JOINT MEETING OF MILPITAS CITY COUNCIL, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, MILPITAS HOUSING AUTHORITY, AND ECONOMIC DEVELOPMENT CORPORATION

AGENDA

TUESDAY, NOVEMBER 19, 2013

455 EAST CALAVERAS BLVD, MILPITAS, CA
6:00 P.M. (CLOSED SESSION) ● 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

I. CALL TO ORDER/ROLL CALL by the Mayor (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING
Pursuant to California Government Code Section 54957.6. City Negotiator: Tom Williams
Employee Groups: International Association of Fire Fighters (IAFF), Mid-management and Confidential Unit, and Professional and Technical Group (ProTech)
Under Negotiation: Wages, Hours, Benefits, and Working Conditions

2. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(a)
County of Santa Clara, et al., v. Milpitas Economic Development Corporation, et al., Sacramento County Superior Court case no. 34-2013-80001436, and
Successor Agency to the Milpitas Redevelopment Agency, et al. v. John Chiang, et al., Sacramento County Superior Court case no. 34-2013-80001508

3. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(a)
City of Milpitas v. City of San Jose, Santa Clara County Superior Court case no. 112CV233069

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Councilmember Giordano)

VI. APPROVAL OF COUNCIL MEETING MINUTES – November 5, 2013

VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – November and December 2013

VIII. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with asterisks*)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

XIII. PUBLIC HEARINGS

1. **Public Hearing on Updated Building Codes, Waive the Second Reading and Adopt Ordinance No. 65.142, Adopting the 2013 Edition of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of International Existing Building Code Appendix Chapters A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

2. **Public Hearing on Updated Fire Code, Waive the Second Reading and Adopt Ordinance No. 113.23, Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments (Staff Contact: Albert Zamora, 408-586-3371)**

3. **Public Hearing and Introduction of Ordinance 38.810 Amending City's Zoning Code to Include Provisions Relating to Emergency Shelters, Single Room Occupancy Residences, Supportive Housing, Transitional Housing and Reasonable Accommodations (Staff Contact: Felix Reliford, 408-586-3071)**

4. **Public Hearing on Trumark Homes' Request to Convert 10.7 Acres of Industrial Land for a Residential Development Along California Circle and Consider Planning Commission's Recommendation to Adopt a Resolution Denying the Waterstone Residential Project (Staff Contact: Cindy Hom, 408-586-3284)**

XIV. REPORT OF OFFICER

* 5. **Consider Approving Submission of a Letter to Lt. Governor Gavin Newsom in Opposition to the Legalization of Marijuana (Staff Contact: Michael Ogaz, 408-586-3040)**

XV. ORDINANCE

* 6. **Second Reading and Adoption of Ordinance No. 286 for Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague) (Staff Contact: Emma Karlen, 408-586-3145)**

XVI. RESOLUTIONS

* 7. **Adopt a Resolution Granting Initial Acceptance of, and Reducing Performance Bond for the Park Renovation 2011 Project No. 5091 (Staff Contact: Jeff Moneda, 408-586-3345)**

* 8. **Adopt a Resolution Approving a Contract with James Faggiano an Individual doing business as JAFCO Canine Management for Police Canine Training Annually Not-To-Exceed $20,260 and Authorize the City Manager to Renew the Agreement on an Annual Basis (Staff Contact: Chris Schroeder, 408-586-3161)**

*** 9. Adopt a Resolution Authorizing the Purchase of Seven Police Vehicles from the National Auto Fleet Group for Not-To-Exceed $239,895.29 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

XVII. AGREEMENTS

*** 10. Approve an Agreement with Material and Contract Services for a Contract Buyer, Not-to-Exceed $45,000 (Staff Contact: Emma Karlen, 408-586-3145)**

*** 11. Approve an Agreement with Reed C. Grandy for the Light Rail Median Landscaping Project No. 2001 (Staff Contact: Jeff Moneda, 408-586-3345)**

*** 12. Approve Amendment No. 3 to the Agreement with TerraCare Associates to Add Two New Service Areas to the City of Milpitas Streetscape Landscape Maintenance and Repair Services Agreement for the Annual Increase Amount of $6,420 (Staff Contact: Chris Schroeder, 408-586-3161)**

XVIII. DEMAND

*** 13. Approve the Purchase of Assorted Badger Water Meters from National Meter and Automation for Not-to-exceed $90,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

XIX. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND MILPITAS HOUSING AUTHORITY

HA1. Call to Order/Roll Call by the Mayor/Chair

HA2. Approval of Agenda

HA3. Conduct Public Hearing and Consider Approval of Assignment and Assumption Agreement and First Amended and Restated Disposition and Development Agreement to Sell 5.94 acres of Land Located at 1504-1620 South Main Street for an Affordable Senior Facility Development (Staff Contact: Felix Reliford, 408-586-3071)

HA4. Authority Adjournment

XX. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION

EDC1. Call to Order/Roll Call by the Mayor/Chair

EDC2. Approval of Agenda

EDC3. Status Report on McCandless Property Park and Potential School (Staff Contact: Tom Williams, 408-586-3050)

EDC4. Corporation Adjournment

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, DECEMBER 3, 2013 AT 7:00 P.M.

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Fax: 408-586-3056 / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO BECOME A CITY COMMISSIONER!

Current vacancies exist on the:
Emergency Preparedness Commission
Public Art Committee (Alliance for the Arts member)
Recycling and Source Reduction Advisory Commission
Telecommunications Commission

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at (408) 586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the Council Chambers for all meetings.

AGENDA REPORTS

XIII. PUBLIC HEARINGS

1. **Public Hearing on Updated Building Codes, Waive the Second Reading and Adopt Ordinance No. 65.142, Adopting the 2013 Edition of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of International Existing Building Code Appendix Chapters A2, A3, A4 and A5 (Staff Contact: Keyvan Irannejad, 408-586-3244)**

   Background: On November 5, 2013, the City Council introduced Ordinance No. 65.142. Ordinance No. 65.142 repeals Chapter 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code and adopts by reference the 2013 Edition of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5, along with specified local amendments. No changes have been made to the ordinance since its first reading. As noticed, a public hearing must be conducted to receive any comments, prior to the adoption of the ordinance.

   Fiscal Impact: None.

   Attachments: Ordinance No. 65.142 and Resolution

   Recommendations:
   1. Open the public hearing for comments, then move to close the hearing.
   2. Adopt a resolution making the findings required under state law for the local amendments of the 2013 Building Code Update.
   3. Waive the second reading of Ordinance No. 65.142.
   4. Adopt Ordinance No. 65.142.

2. **Public Hearing on Updated Fire Code, Waive the Second Reading and Adopt Ordinance No. 113.23, Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments (Staff Contact: Albert Zamora, 408-586-3371)**

   Background: On November 5, 2013, the City Council introduced Ordinance No. 113.23. Ordinance No. 113.23 repeals Chapter 300 of Title V of the Milpitas Municipal Code and adopts by reference the 2013 California Fire Code, along with specified local amendments. No changes have been made to the ordinance since its first reading. As noticed, a public hearing must be conducted to receive any comments, prior to the adoption of the ordinance.

   Fiscal Impact: None.

   Attachments: Ordinance No. 113.23 and Resolution

   Recommendations:
   1. Open the public hearing for comments, then move to close the hearing.
   2. Adopt a resolution making the findings required under state law for the local amendments of the 2013 California Fire Code Update.
   3. Waive the second reading of Ordinance No. 113.23.
   4. Adopt Ordinance No. 113.23.

3. **Public Hearing and Introduction of Ordinance 38.810 Amending City's Zoning Code to Include Provisions Relating to Emergency Shelters, Single Room Occupancy Residences, Supportive Housing, Transitional Housing and Reasonable Accommodations (Staff Contact: Felix Reliford, 408-586-3071)**

Background: Per California Government Code §65580-65589, all California cities are required to prepare and implement a General Plan Housing Element every eight years to comply with state and regional housing goals. The Housing Element contains the following major subject areas:

- The evaluation of local housing needs and analysis of constraints that would affect the ability of the marketplace to meet these needs.
- The identification of community housing goals, objectives and policies.
- An evaluation of the community's performance in achieving the goals that were established for the previous five-years.
- The description of a new eight-year housing program to meet the identified housing needs and goals.

The Milpitas Housing Element was last adopted by the City Council in June 2010 and found by the State of California Department of Housing and Community Development (HCD) to be in conformance with the State Housing Element laws. On June 16, 2013, the Council authorized the City Manager to execute an agreement with Bay Area Economics (BAE) to prepare the Milpitas General Plan Housing Element Update. As required by Housing Element law, a series of community meetings will be held to obtain public input and comments during the preparation process. The proposed Housing Element Update is due by January 31, 2015 and will be presented to the Planning Commission and City Council next year.

STATE LAWS

Housing Element Law. Government Code Section 65583 requires the housing element to identify adequate sites for a variety of housing types including multi-family rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters and transitional housing.

Senate Bill 2 Housing Element Law. Senate Bill 2 clarifies and strengthens the housing element law to ensure local zoning laws encourages and facilities emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law facilitates efforts to address the critical needs of homeless populations and special needs throughout all communities in California. SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Emergency Shelters. Government Code Section 65583(a)(4) requires identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use permit or other discretionary permit.

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one-year round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion of emergency shelters
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provisions of onsite management, length of stay and security.

- Includes flexibility for jurisdictions to meet zoning requirements within existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdiction agreement.

Single Room Occupancy (SRO) Housing

- Single room occupancy (SRO) residence is a multi-tenant building consisting of single room dwelling units that are primary residence of its occupants and contains either individual or shared kitchen or bathroom facilities. These are small units and provide a valuable source of affordable housing for individuals and can serve as entry point into the housing market for formerly homeless people. There is no specific State Law requiring SROs to be in any particular zones or to be treated similar to other similar dwelling types.

Transitional and Supportive Housing

- California Government Code Section 65583(a)(5) states that Transitional and Supportive Housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone. The City is required to treat Transitional Housing and Supportive Housing, as proposed to be defined below, similar to other residential dwellings of the same type in the same zone.

Reasonable Accommodation - Government Code Section 65583(c)(3) Requires the Housing Element provide a program to address and remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities where appropriate and legally possible. The program shall remove constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by or with supportive services for persons with disabilities.

Housing Element Permit Streamlined Review State of California Department of Housing and Community Development (HCD) is the state agency which reviews and certifies cities and counties housing elements. HCD has established a permit streamlined process for those cities and counties that meet specific criteria. The streamlined review process would allow those governmental jurisdictions to expedite their approval of the state-mandated housing element if their zoning includes compliance with SB-2 and other requirements. The existing Housing Element meets all of the other requirements with the exception of SB2 and the State law provisions referenced above. Therefore, staff requests zoning amendments as described.

PROJECT DESCRIPTION

Zoning Ordinance Amendments

The purpose and intent of the proposed zoning ordinance amendments is to comply with state-mandated Housing Element Law, and to provide housing opportunities and reasonable accommodation for special need groups such as low-income seniors, victims of domestic violence (families and children), female-headed households, persons with disabilities and homeless. Through legislation, the State of California has required certain uses be permitted with limited or no discretionary action.

The proposed Zoning Ordinance Amendments includes the following:

Definitions:

- Establish the definitions for emergency shelters, single-room occupancy residences, transitional and supportive housing. Staff recommends amending Title XI, Chapter 10, Section 2 of the Milpitas Zoning Ordinance to include the definitions for emergency shelters, single room occupancy residences, transitional housing, and supportive housing as set forth in the attached proposed ordinance.

Permitted and Conditional Uses:

- Identify the appropriate Residential, Commercial and Mixed Use Zoning Districts as permitted and conditional uses for emergency shelters, single room occupancy residences,

and transitional and supportive housing. Staff recommends amending Title X1, Chapter 10, Section 4.02.1 to include emergency shelters, single room occupancy residences, transitional housing, and supportive housing as permitted and conditional uses in Residential Use Regulations, Section 5.02.1 Commercial Use Regulations, and Section 6.02.1 Mixed Use Regulations, as set forth below.

- **Emergency Shelters** would be permitted by right in the Commercial/Highway Services (HS) Zoning District provided that all of the Special Uses Development Standards established in the proposed Section 13 of the Zoning Code were met. If these development standards are not met, the City has the right to require a Conditional Use Permit.

- **Single-Room Occupancy Residences** would be permitted by Conditional Use permit in the following Residential Zoning Districts (R-3, R-4, and R-5), Commercial/Highway Services (HS). Section 13 Special Use Development Standard has been incorporated as minimum standards to be met for the use permit.

- **Transitional and Supportive Housing** would be permitted by right in the following Residential Zoning Districts (R-2, R-3, R-4, and R-5) and Mixed Use Zoning Districts (MXD, MXD2 and MXD3). No residential uses would be permitted on the ground floor of the MXD Zoning Districts. State Law requires that Transitional and Supportive Housing uses must be treated the same as other residential uses of the same type within the same zoning districts. This approval is by right and does not allow discretionary review or approval by the City.

Minimum Standards:

- Staff proposes to identify in the Special Uses section in the Zoning Ordinance, minimum standards for single-room occupancy residences and emergency shelters.

  Staff recommends amending **Title X1, Chapter 10, Section 13.13 & .14 to include a list of Special Uses and** establish guidelines and development standards for Emergency Shelters and Single-Room Occupancy Residences. If these development standards are met, emergency shelters would not require discretionary review by the City. If these development standards are not met, the applicant needs to apply for a Conditional Use permit to be reviewed and approved by the Planning Commission. As for Single-Room Occupancy Residences, a Conditional Use Permit will be required at all times.

Reasonable Accommodations:

- Establishes policies and criteria for reasonable accommodations as it relates to housing opportunities. Staff recommends amending **Title X1, Chapter 10, Section 62.01 to include a Reasonable Accommodations provision.**

  State Law requires that policies and procedures are adopted to ensure reasonable accommodation for persons with disabilities seeking equal access to housing. A reasonable accommodation is typically an adjustment to the physical design standards to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled person.

Because of the size and number of proposed Zoning Ordinance Amendments, the amendments are included as a redlined Ordinance in the Council's agenda packet. Staff, along with the Housing Element Consultant - Bay Area Economics (BAE)/The Planning Center, will provide a presentation on the proposed amendments at the Council meeting.

ENVIRONMENTAL REVIEW

A Negative Declaration was completed in compliance with the California Environmental Quality Act (CEQA), the guidelines as promulgated by the State Secretary of Resources, and the procedures for review as set forth in the City of Milpitas Environmental Review Guidelines and an Initial Study was been prepared for the project which recommended adoption of a Negative

Declaration. Staff reviewed full record relating to the Negative Declaration and recommends the City Council find there is no substantial evidence in the record before it that the project will have a significant effect on the environment, and that the negative declaration reflects its independent judgment.

At its meeting on October 23, 2013, the Planning Commission unanimously recommended approval of the Negative Declaration and Zoning Ordinance Amendments. Included in the Council's agenda packet is copy of the background information regarding this agenda item.

Fiscal Impact: None.

Attachments: Ordinance No. 38.810, Environmental Documents, and Meeting Minutes of the Planning Commission of 10/23/2013

Recommendations:
1. Open the public hearing for comments, then move to close the hearing.
2. City Attorney shall read aloud the title of Ordinance No. 38.810.
3. Waive the first reading beyond the title of Ordinance No. 38.810.
4. Move to introduce Ordinance No. 38.810 amending the Milpitas Zoning code to include provisions for Emergency Shelters, Single Room Occupancy Residences, Supportive Housing, Transitional Housing and Reasonable Accommodations.

4. Public Hearing on Trumark Homes' Request to Convert 10.7 Acres of Industrial Land for a Residential Development Along California Circle and Consider Planning Commission's Recommendation to Adopt a Resolution Denying the Waterstone Residential Project (Staff Contact: Cindy Hom, 408-586-3284)

Background: In November 2011, Trumark Homes ("Applicant") submitted a preliminary General Plan Amendment application for a development proposal for an 84-unit residential subdivision and a pedestrian bridge over Penitencia Creek and proceeded with a formal application in May 2012 to convert 10.7 acres of developed industrial property to 84 detached single family homes along California Circle. The project request also included supplemental land use changes to adjacent properties totaling 18.5 acres as well as a public benefit amenity proposal to construct a Penitencia Creek pedestrian bridge. A detailed project description is provided in the October 23, 2013 Planning Commission staff report.

The project application remained incomplete through October 2013 due to lack of information regarding compliance with C.3 Storm Water Control requirements, unresolved grading and drainage issues, lack of details for the proposed pedestrian bridge and development standards, as well as incomplete site and architectural design components. The Applicant submitted more information in February 2013. The Applicant held a community meeting in May 2013 to discuss their pedestrian bridge proposal. Residents of the California Landing and Villas opposed the proposed pedestrian bridge. As a result of project analysis, the community meeting, lack of public benefit amenity, the changing economic prospects for the California Circle area, staff communicated to applicant the lack of support for the proposed project based on General Plan and Zoning inconsistencies, as well as a need to comprehensively study the California Circle, Fairview, and Cadillac Court Area.

In June 2013, the Planning Commission conducted a study session on the California Circle area to review land uses, opportunities and constraints, and receive input for future land use and economic development planning of this area. The Planning Commission acknowledged that the California Circle area represents an important and unique opportunity to plan for long term land uses and economic development that would best serve the Milpitas community. The Planning Commission directed staff to proceed with vision planning, communicating a lack of interest in single-family residential for this area. (See 6/12/13 Planning Commission Meeting Minutes).

The vision planning is currently underway and staff intends to bring forward a report with conceptual plans for the Planning Commission's review and comment in December.

At the applicant's request, staff proceeded with processing the application for the residential development project with the explicit understanding that there was no staff support for the requested General Plan Amendment, that the Planning Commission communicated no interest in single-family residential development in this location, and that the City had begun preparation of a long range visioning study for the California Circle area. As with all pre-planning and formal planning applications, staff followed standard practice of providing zoning and development standard information and input as requested by the applicant with the understanding that it is ultimately the City Council which would review and consider the proposed project.

City's Broad Discretion Regarding Legislative Acts

Legislative Acts include both General Plan Amendments and Zoning Amendments, as proposed by the applicant. The City Council is granted broad discretion to make these decisions by State statute and the California Constitution. As such, legislative acts carry the highest threshold for consideration because the General Plan establishes well planned land uses and internally consistent development policies for the entire City. Proposed amendments to the City's General Plan and zoning ordinance require careful consideration and are not subject to the Permit Streamlining Act.

Project Analysis

On October 23, 2013, the Planning Commission held a duly noticed public hearing, received presentations from staff and the applicant as well as public testimony in opposition to the proposed project. Based on the Planning Commission review of project analysis, the Planning Commission unanimously determined the proposed project is inconsistent with the Milpitas General Plan and its long term land use strategy, based on the following findings:

1. The proposed project does not maximize density to achieve a compact form or emphasize mixed use development that maximizes job development or commercial or industrial opportunities.
2. The Transit Area and MidTown have not reached 80 percent build-out.
3. Conversion to residential may impede Dixon Landing Business Park's ability to reposition itself and take advantage of the recent economic recovery.
4. No substantial economic benefit provided by the proposed project that would justify the conversion of prime employment-generating business park property with direct visibility and access to Interstate 880.
5. Conversion from employment generating land uses to uses that increase the residential population should only be considered after proper planning and analysis in light of the City as a whole.

Furthermore, the proposed project has significant site plan deficiencies creating incompatibilities with the surrounding area, which includes the following findings:

1. The proposed project appears as an island of residential amid the Dixon Landing Business Park characterized by industrial and commercial buildings and streetscape.
2. Due to uncertainty with the Base Flood Elevation, the entire site has been design to a worst case scenario which elevates the property approximately six (6) feet higher than neighboring properties. This condition would physically and visually detract from surrounding development requiring a combination of tall retaining/privacy walls creating a walled-off community appearance.
3. The I-880/California Circle location is identified as a "Gateway Site" in the City's Streetscape Master Plan, requiring enhanced design and identification.

Lastly, the applicant's request is premature representing a lost opportunity for the City to significantly influence planning, economic development, and future land use for the California

Circle Area. The California Circle area presents many planning opportunities given its location and proximity to I-880, its ability to utilize existing infrastructure, and its potential for aesthetic, creek, trail, and recreational amenities that will benefit the general public. In so far, a land use visioning study under contract with the Cal Poly City & Regional Planning Urban Design Studio is nearing completion. The results of the study will be presented to the Planning Commission on December 11, 2013 and a final print document is anticipated to be presented to the City in January 2014.

Economic Development

On October 26, 2013, the Planning Commission conducted a second study session on the California Circle area to review and discuss three land use scenarios prepared by the Cal Poly San Luis Obispo Urban Design Studio in consultation with City staff. The Planning Commission emphasized commercial land uses, hotels and public meeting/gathering spaces, high quality pedestrian oriented amenities such as pedestrian walkways, urban plazas and signature architecture, cultural venues, culminating in an overall gateway/economic development land use theme for the City. The Planning Commission expressed support for residential only as an integrated component of an overall commercial or office environment. There was no interest in single-family residential development within the California Circle study area (Refer to 10-23-13 draft Planning Commission Meeting Minutes). Land use scenarios and visioning are currently being revised by the Cal Poly team and staff to reflect the Planning Commission study session.

Also, the Marriott Hotel currently operates a 120 room Residence Inn adjacent to the proposed Project (located at 1501 California Circle). Hotel representatives contacted and met with City staff on several occasions indicating their concerns of the proposed project. Marriott Residence Inn stated the proposed single-family uses is inappropriate in the Industrial Park and will adversely affect its business. More importantly, the City was in contact with a representative for various hotel operators like Holiday Inn Express and Sheraton who is currently pursuing purchase of land in the California Circle area for a hotel and has also expressed significant concerns with the proposed project. Both hotels object to the proposed single-family residential development and believe it will severely impact their businesses because single-family residential not only changes the character and image of the commercial area, it also detracts from the potential economic development opportunities for future uses as currently being studied by the Planning Commission.

The current Marriott Residence Inn provides significant economic impact to the City with Transient Occupancy Tax (TOT) and sales taxes. Additionally, a Holiday Inn Express-type hotel would bring additional revenues to the City and potentially revitalize the Industrial Park. Hotels are a significant economic benefit for the City and allowing industrial land to be converted to single-family residential adjacent to an existing and future hotels could reduce revenues to the General Fund.

Conclusion

Based on the reasons described and in the Planning Commission staff report, the Planning Commission unanimously recommended the City Council deny the application request to change the land use designations from Industrial Park to Residential. A Final Environmental Impact Report was prepared in accordance with CEQA and is included as part of the attachments. If the City Council denies the proposed project, no action is required on the project's Final Environmental Impact Report.

Fiscal Impact: None if denied. Potential impacts to General Fund if approved.

Attachments:

A. Resolution
B. Project Plans
C. Project Letter
D. Final Environmental Impact Report (draft) and Draft EIR

E. Letter from Milpitas Unified School District
F. Meeting Minutes of the Planning Commission 6/12/13
G. Planning Commission Staff Report Final 10/23/13
H. Letter from Residence Inn re: Trumark Homes application

Recommendations:
1. Open the Public Hearing for comments, then move to close the hearing.
2. Regarding the Trumark Homes at California Circle proposed development project, consider the Milpitas Planning Commission's recommendation to adopt a resolution denying General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-00002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001, with no action taken on the Final Environmental Impact Report.

XIV. REPORT OF OFFICER

*** 5. Consider Approving Submission of a Letter to Lt. Governor Gavin Newsom in Opposition to the Legalization of Marijuana (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: On November 5, 2013, Vice Mayor Althea Polanski requested the City Council consider sending a letter to Lieutenant Governor Gavin Newsom opposing the general legalization of marijuana in California. A proposed letter is included in the agenda packet.

Recent statements in the media by the Lieutenant Governor indicate that he will head a panel of the American Civil Liberties Union looking into legalization laws in Colorado and Washington and how those are being implemented. Presumably this would be in anticipation of a California statewide ballot proposition in 2016.

California has already legalized marijuana for certain medicinal purposes. According to Newsom, the new law would be a general legalization of marijuana. This would have no effect on federal law which has always prohibited the use of marijuana for any purpose.

Fiscal Impact: None.

Recommendation: Approve submission of the drafted letter to the state's Lt. Governor opposing efforts generally to legalize marijuana in California (or provide other direction to staff).

XV. ORDINANCE

*** 6. Second Reading and Adoption of Ordinance No. 286 for Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague) (Staff Contact: Emma Karlen, 408-586-3145)**

Background: At the November 5, 2013 meeting, the City Council held a public hearing and adopted a resolution establishing Community Facilities District No. 2013-1 (Piper Montague) and calling an election for the purpose of submitting the levy of the special tax, the incurrence of bonded indebtedness, and the establishment of an appropriations limit to the qualified electors of the proposed community facilities district. The results of the special election were unanimously in favor of the levy of the special taxes to pay for the costs of certain shared public infrastructure improvements. Ordinance No. 286 was introduced at the same Public Hearing and is now ready for a second reading and adoption. This ordinance authorizes and levies special taxes within the City of Milpitas Community Facilities District No. 2013-1, at the rate and in accordance with the Rate and Method of Apportionment of Special Taxes, as approved by the resolution establishing the community facilities district.

Fiscal Impact: Adoption of Ordinance No. 286 will enable the City to levy and apportion the special tax in Community Facilities District No. 2013-1 to recover City costs associated with the construction of shared public infrastructure improvements.

Recommendations:
1. Waive the second reading of Ordinance No. 286.
2. Adopt Ordinance No. 286 for Levying and Apportioning Special Tax in Community Facilities District No. 2013-1 (Piper Montague).

XVI. RESOLUTIONS

*** 7. Adopt a Resolution Granting Initial Acceptance of, and Reducing Performance Bond for the Park Renovation 2011 Project No. 5091 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: The City Council awarded the 2011 Park Renovation Project to DRT Grading and Paving Inc., on April 2, 2013. The project provided for repairs to the pathways at Pinewood Park and Albert J. Augustine Jr. Memorial Park. The project also includes the installation of Americans with Disabilities Act (ADA) compliant curb ramps connecting the pathways to City sidewalks. The project was successfully completed on time and within budget. Staff recommends that Council adopt a resolution granting initial acceptance of the project and authorize the reduction of the contractor's faithful performance bond to $13,911.02, which is 10% of the final contract value.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting initial acceptance of the Park Renovation 2011, Project No. 5091, subject to a one-year warranty period, and reduce the faithful performance bond to $13,911.02.

*** 8. Adopt a Resolution Approving a Contract with James Faggiano an Individual doing business as JAFCO Canine Management for Police Canine Training Annually Not-To-Exceed $20,260 and Authorize the City Manager to Renew the Agreement on an Annual Basis (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The City's purchasing staff worked with the Police Department Canine Unit to develop specifications for Police Canine training. The Invitation for Bid was released on October 21, 2013 and was advertised in the local newspaper, on the City website and on Public Purchase. Four bidders responded and the results are summarized below.

Bidder	Base Bid
Ultimate K9 Training	Disqualified
Vigilant Canine Services International, LLC	$26,700
Witmer-Tyson Imports, Inc.	$26,600
JAFCO Canine Management	$20,260

The contract will provide weekly maintenance training, Basic Canine Handler and Basic Narcotics Canine Handler training, AKC Canine Good Citizen training, and optional weekend maintenance training. The contract is for one year for $20,260 with an option for four one year extensions bringing the total value of the contract to $101,300. Renewal years contain a compensation adjustment clause based on past performance and proof of the prior four quarters of industry price change or 5%, which ever is less.

Fiscal Impact: None. This is a programmed expense in the Police Department's budget.

Recommendations:

1. Adopt a resolution approving the contract with James Faggiano an individual doing business as JAFCO Canine Management for Police Canine Training in the annual not-to-exceed amount of $20,260, and not to exceed $101,300 during the five year term.
2. Authorize the City Manager to extend the term of the agreement annually for the next four years with an annual increase of no more than 5% per year, without further City Council action, except for appropriation of funds.

*** 9. Adopt a Resolution Authorizing the Purchase of Seven Police Vehicles from the National Auto Fleet Group for Not-To-Exceed $239,895.29 through a Cooperative Procurement Contract (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: The Police Department's Fiscal Year 2013-14 budget includes purchase of five 2014 Ford Sedan Police Interceptors and two Ford 2014 Ford Utility Police Interceptors (vehicles), including fitting them with standard push bars, to replace equipment that has reached the end of its useful life. This is a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) #102811 entitled "Passenger Cars, Light Duty, Medium Duty, and Heavy Duty Trucks with Related Accessories" and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas. The price for the vehicles is the same as that offered in the original agreement.

Fiscal Impact: None. Sufficient funding is in the FY 2013-14 Equipment Replacement Fund for this purchase.

Recommendation: Adopt a resolution authorizing the purchase of seven police vehicles from the National Auto Fleet Group for the not-to-exceed amount of $239,895.29 through a cooperative procurement contract, per Milpitas Municipal Code Section I-2-3.08 "Cooperative Purchasing."

XVII. AGREEMENTS

*** 10. Approve an Agreement with Material and Contract Services for a Contract Buyer, Not-to-Exceed $45,000 (Staff Contact: Emma Karlen, 408-586-3145)**

Background: To achieve cost savings in FY 2013-14 the Finance Department includes a vacant Buyer position that is not funded. The workload of purchasing citywide goods and services through bids or requests for proposals, contract administration and other purchasing services can be very heavy at times and is beyond the capacity of one Purchasing Agent. In order to provide timely and efficient purchasing services, staff recommends contracting with Material and Contract Services for a contract buyer to assist the Finance Department with various purchasing projects as needed. It is anticipated that the contract buyer will not perform work for more than 1,000 hours.

Fiscal Impact: None. Sufficient funding is available in the Finance Department budget.

Recommendation: Authorize an agreement with Material and Contract Services for a contract buyer for a total amount not-to-exceed $45,000.

*** 11. Approve an Agreement with Reed C. Grandy for the Light Rail Median Landscaping Project No. 2001 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: Project No. 2001, the Light Rail Median Landscaping Project, is included in the approved Capital Improvement Program. Work involves the installation of median landscape

and irrigation improvements along the Great Mall Parkway median under the Light Rail guideway between Interstate 880 and Capitol Expressway.

The design of the Light Rail Median Landscape Project was previously completed by the architectural firm of Sugimura Finney Architects, with Reed Grandy as the Principal Landscape Architect of Record. Reed C. Grandy is now doing business as Phoenix Design Group, and the City wishes to complete the project under Reed C. Grandy as the Architect in Charge. A new contract with Reed C. Grandy, an individual doing business as Phoenix Design Group, is recommended for this purpose. Phoenix Design Group will assist City staff with project administration by obtaining required permits and agency approvals, project bidding, and construction administration including the review of requests for information, submittals, and change orders from the contractor. Staff negotiated a scope and fee for these services, not to exceed $175,000, which is considered reasonable for the work.

Fiscal Impact: None. Sufficient funds are available in the project budget for these services.

Recommendation: Approve a consultant agreement with Reed C. Grandy doing business as Phoenix Design Group in the amount of $175,000 for the Light Rail Median Landscaping Project No. 2001, for a term through December 31, 2017.

*** 12. Approve Amendment No. 3 to the Agreement with TerraCare Associates to Add Two New Service Areas to the City of Milpitas Streetscape Landscape Maintenance and Repair Services Agreement for the Annual Increase Amount of $6,420 (Staff Contact: Chris Schroeder, 408-586-3161)**

Background: On July 1, 2012 the City entered into a five-year contract with TerraCare Associates to provide streetscape landscape maintenance and repair services at various City of Milpitas locations. The total annual cost for these services was $125,218.00.

Staff now recommends that the City Council approve expanding the maintenance services to include the Tasman median at McCarthy Blvd. and the Sinclair Horizon walking path located in Landscape Lighting Maintenance District LLMD No. 98-1 along the Berryessa Creek Trail. The annual cost for the additional maintenance services for these two service areas is $6,420 per year, per the quotes from TerraCare, which is reasonable for the level of the work specified in the contract. Maintenance costs for these two service areas would be funded through LLMD No. 98-1 and General Fund Landscape Maintenance Contracted Service Budgets.

Fiscal Impact: None. There are sufficient funds in LLMD No. 98-1 and General Fund budgets for the maintenance service.

Recommendation: Approve Amendment No. 3 to the Agreement with TerraCare Associates to add two new service areas to the City of Milpitas Streetscape Landscape Maintenance and Repair Services agreement for the annual increase amount of $6,420.

XVIII. DEMAND

*** 13. Approve the Purchase of Assorted Badger Water Meters from National Meter and Automation for Not-to-exceed $90,000 (Staff Contact: Jeff Moneda, 408-586-3345)**

Background: On May 15, 2007, pursuant to Municipal Code section 1-2-3.13 Standardization, the City Council approved Badger water meters as the standard brand of water meter for the City of Milpitas and, per Municipal Code Section 1-2-5.04-4, approved National Meter and Automation as the sole source distributor for Badger water meters for five years. On February 5, 2013, City Council approved the extension and reinstated National Meter and Automation as the Sole Source distributor for Badger water meter products for the City of Milpitas. The proposed

purchase will allow staff to complete customer orders and restock the supplies that have been depleted.

Fiscal Impact: None. The purchase is a programmed expense approved in the FY 2013-14 budget for Utility Maintenance.

Recommendation: Approve the purchase of assorted Badger water meters from National Meter and Automation for the not-to-exceed amount of $90,000.

XIX. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND MILPITAS HOUSING AUTHORITY

HA3. Conduct Public Hearing and Consider Approval of Assignment and Assumption Agreement and First Amended and Restated Disposition and Development Agreement to Sell 5.94 acres of Land Located at 1504-1620 South Main Street for an Affordable Senior Facility Development (Staff Contact: Felix Reliford, 408-586-3071)

Background: The Milpitas Redevelopment Agency and South Main Senior Lifestyle, LLC, a California limited liability company (the "Applicant") entered into a Disposition and Development Agreement dated August 18, 2009, which was amended on October 18, 2009 ("Initial Agreement"). The Initial Agreement provided for the disposition of approximately 5.94 gross acres known as Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048 located at 1504-1620 South Main Street (the "Property") to the Applicant for a two-phased senior residential complex containing 387 residential units (with 63 low-income units), a new City street and other City rights-of-way, common use facilities, parking, landscaping, and related on and off-site improvements ("Initial Project"). The Property was entitled for development in accordance with a set of entitlements approved by the City Council pursuant to Resolution No. 08-004 of February 5, 2008, which included Site Development Permit (SZ2007-18), Conditional Use Permit (UP2007-15), Density Bonus (DB08-0001) and Vesting Tentative Map (MI2007-2).

Because of several factors, the Initial Project has become financially unfeasible. These factors include the dissolution of redevelopment agencies (the Initial Agreement provided a $7.7 million grant to the Initial Project that is no longer available), downturn in the economy, more stringent debt and equity underwriting requirements which make borrowing money more difficult for the Applicant, and 80% AMI (Area Median Income) congregate care/assisted living units which are not marketable. The Applicant has submitted a revised Project proposal for consideration, as described in detail below ("Revised Project"), which if approved would require an amendment to the Initial Agreement.

As explained below, the Milpitas Housing Authority ("MHA"), as the housing successor to the dissolved Redevelopment Agency, now owns the Property and has the statutory authority to assume and amend the Initial Agreement to implement the Revised Project on the Property. On October 1 2013, the MHA Board held a study session on the Revised Project and associated amendments to the Initial Agreement. The MHA directed Staff to proceed with the negotiation and draft amendment to the Initial Agreement and tentatively return to the MHA Board on November 5 or 19, 2013 for review and consideration of a First Amended and Restated Disposition and Development Agreement (the "Amended DDA") to amend the Initial Agreement.

A local agency is not authorized to dispose of any real property unless the Planning Commission reviews and submit its report to the City Council on General Plan and Specific Plan conformance. On October 23, 2013, the Planning Commission reviewed the proposed Revised Project, and the proposed disposition of the Property by the MHA to the Applicant for development of the Revised Project in accordance with the Amended DDA, pursuant to Government Code Section 65402(c) and adopted Resolution No. 13-027 with findings that the

disposition of the property and development of the 389 senior unit Revised Project are in conformance with the City's General Plan and Mid-Town Specific Plan.

REVISED PROJECT

The Revised Project under the proposed Amended DDA consists of conveyance by MHA of the Property to the Applicant at a nominal purchase price for the development of a senior retirement community. The Revised Project would consist of 389 units of rental housing for seniors 62 years of age and older that offers a continuum of care and services allowing residents to age in place. The Revised Project would be constructed in two phases. Both phases of the development (Phase 1 - 199 congregate care and assisted living units and Phase 2 - 190 active independent living units) would have full high end amenities and features. A total of 48 senior units would be affordable to very-low income seniors at 50% of AMI (Area Median Income). The first phase would have 10 very low-income affordable units and the second phase would have 38 very low-income affordable units. The Revised Project would be unique and currently does not exist within the South Bay Area. The Revised Project would also provide property, sales and special taxes to the City annually, $2.5 million of public infrastructure improvements and generate temporary construction and permanent jobs. Also, the previous $7.7 million grant obligation in the Initial Agreement would be eliminated.

HEALTH AND SAFETY CODE SECTION 33343 REPORT AND FINDINGS

A City consultant, Economic & Planning Systems, Inc., prepared a report in compliance with State law (Health and Safety Code Section 33433) outlining the cost of the proposed Project to the MHA, the estimated value of the land to be conveyed, and an explanation of how the disposition of the Property will assist in the elimination of blight (the "Summary Report"). A copy of the Summary Report is provided as an attachment. The Summary Report documents that the fair reuse value of the Property with the conditions, covenants, and development costs required by the Amended DDA for the sale of the Property (including the provision of the 48 very low-income affordable units) is zero dollars, thereby supporting the nominal purchase price contained in the Amended DDA. In addition to action on the Amended DDA by the MHA, under Health and Safety Code Section 33433 the City Council must also consider making statutory findings regarding the sale of the Property pursuant to the Amended DDA and consider approving execution of the Amended DDA by the MHA.

AGREEMENTS

The Initial Agreement was executed between the Milpitas Redevelopment Agency and the Applicant. With the dissolution of the Milpitas Redevelopment Agency, the City previously elected and the Milpitas Housing Authority agreed to take on the responsibility of performing the housing functions of the dissolved Milpitas Redevelopment Agency, and accepted ownership of the Property. If the Council, acting in separate legal capacities as the MHA Board and the Board of the Successor Agency to the dissolved Redevelopment Agency, would like to move forward with the Revised Project, the Initial Agreement should be assigned from the Successor Agency of the Milpitas Redevelopment Agency to the Milpitas Housing Authority. Additionally, the Initial Agreement would need to be amended by the Milpitas Housing Authority (with companion City Council findings and approval) in the form of the Amended DDA to reflect the Revised Project. The proposed Amended DDA includes a Schedule of Performance requiring the Applicant to meet certain pre-disposition milestones and commence construction of the first phase of the Revised Project in the next two years. As a condition of closing for the Property and commencement of first phase construction, the Applicant would be required to submit a Financing Plan, Service Plan, and Operating Plan for MHA's review and approval. Further, the Applicant must receive all necessary entitlements, pay applicable permit review and inspection fee, and provide evidence of insurance prior to the MHA's conveyance of the Property and the Applicant's commencement of first phase construction.

CEQA

A Program Environmental Impact Report (the "EIR") was prepared and certified (SCH#2000092027) for the Midtown Specific Plan on March 19, 2002. The EIR assumed

development of this Property for residential uses similar to the proposed Revised Project, and the Planning Commission has found that the Revised Project is consistent with the City's General Plan and the Midtown Specific Plan.

No new environmental document is required pursuant to CEQA in connection with the Amended and Restated DDA and the disposition and development of the Property in accordance with the Amended and Restated DDA. Government Code Section 65457 (CEQA Guidelines Section 15182) provides a statutory exemption for residential projects that are consistent with a specific plan for which an EIR was certified after January 1, 1980. Additionally, CEQA Guidelines Section 15168(c)(2) provides that, if the Revised Project is within the scope of the Midtown Specific Plan EIR, no new environmental document is required so long as no new effects could occur or no new mitigation measures are required.

There are no substantial changes in the Revised Project or in the circumstances in which the Revised Project will be undertaken that are different from those reviewed in the Midtown Specific Plan EIR, nor does new information show that any additional environmental impacts will occur. The attached memo from TJKM Transportation Consultants shows that the Revised Project will generate somewhat less peak hour traffic than the development assumed on the site in the Midtown Specific Plan EIR and substantially less peak hour traffic than the Trammell Crow development previously approved on the site, resulting in substantially equivalent or lower air quality and greenhouse gas impacts (see attached letter from Environ consultants). Development capacity in the Midtown Specific Plan Area still exists, and the area has not reached full build out. There are 5,228 residential units planned for the area, and 2,312 have been constructed and/or permitted. Specifically, of the 1,680 residential units planned for the South Main Street/Abel area, 1,270 have been constructed and/or permitted. Access and circulation to the area remain the same as envisioned in the EIR, as well as infrastructure and utility capacity. The project will be built in accordance with the development standards and design guidelines of the Midtown Specific Plan. Mitigation measures required as part of the Midtown Specific Plan EIR are hereby incorporated by reference and apply to the Amended DDA. The Revised Project is therefore statutorily exempt from CEQA as provided in Guidelines Section 15182. Further, because no new effects could occur, no new mitigation measures are required, and the Revised Project is within the scope of the Midtown Specific Plan EIR, no new environmental document is required.

Fiscal Impact: None.

Attachments:
A. Resolution
B. Disposition and Development Agreement
C. Assignment and Assumption Agreement
D. Section 33433 Report
E. Traffic Air Quality/Greenhouse Gas Analysis
F. Letter from Resident
G. Planning Commission Minutes 10-23-13

Recommendations:
1. Open the public hearing for comments, then move to close the hearing.
2. Adopt a joint resolution of the City Council, the Milpitas Housing Authority, and the Successor Agency of the Redevelopment Agency approving (i) an Assignment and Assumption Agreement for the Initial Disposition and Development Agreement for the real property of the Milpitas Housing Authority located at 1504-1620 South Main Street in Milpitas, CA; (ii) a Summary Report required by California Health and Safety Code Section 33433; (iii) the First Amended and Restated Disposition and Development Agreement and the sale of such real property to South Main Senior Lifestyle, LLC; and (iv) adopting findings in connection with such sale.

XX. JOINT MEETING OF CITY OF MILPITAS, SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND ECONOMIC DEVELOPMENT CORPORATION

EDC3. Status Report on McCandless Property Park and Potential School (Staff Contact: Tom Williams, 408-586-3050)

Background: At the October 15, 2013 Milpitas Successor Agency meeting, staff was directed to commence with a joint use agreement for a City park and a K-8 school in partnership with the Milpitas Unified School District (MUSD).

The Milpitas Economic Development Corporation (EDC) acquired the subject 10.89 acre site with a combination of development impact fees and redevelopment property tax increment revenue. As previously discussed, the goal of developing a park and school on the McCandless Property has been a vision of the City Council for several years. Now, the ability of the City and MUSD to move forward with a joint use development has been strained as a result of the State of California eliminating the Milpitas Redevelopment Agency and Santa Clara County attempting to retroactively "claw back" the funds used by the city to acquire the McCandless property.

On October 24, 2013, a joint meeting between the City and MUSD representatives was held to discuss mutual objectives and how best to proceed. At that meeting, it was agreed that both entities would request their outside legal counsel to commence with drafting provisions of a joint use agreement as if the property disposition issue was resolved.

Santa Clara County is attempting to rescind the property tax revenue used to purchase the land for the park and school. This issue constrains the ability of the city to sell a portion of the property to the School District. Despite this challenge, City and MUSD representatives are seeking progress while working together. Legal counsel representing both parties are in discussion, but at this time there is no reportable progress.

The City continues to prepare the site for development of a school and park, while issues continue to be discussed. The City of Milpitas is funding the current demolition of the existing buildings, commenced recently and should be completed by the end of the year.

Recommendation: Receive a report from staff and continue developing a joint use agreement in cooperation with Milpitas Unified School District.

XXI. ADJOURNMENT

NEXT REGULARLY SCHEDULE COUNCIL MEETING
TUESDAY, DECEMBER 3, 2013 AT 7:00 P.M.

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

* 4. Odor Report — Received the October 2013 odor control report.

* 6. Commission Appointment — Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.

* 7. Cancel Council Meeting — Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of $1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

Motion: to adopt Resolution No. 8308 denying the proposed development project by KB Home (Preston property at 133 Bothelo Lane) and all its related actions including no action on the Final Environmental Impact Report

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was $5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the $5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

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Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the $5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

* 4. Odor Report — Received the October 2013 odor control report.

* 6. Commission Appointment — Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.

* 7. Cancel Council Meeting — Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of $1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

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Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

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Councilmember Gomez would vote no, with concern he noted about the EIR.

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Motion/Second: Vice Mayor Polanski/Councilmember Montano

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NOES: 2 (Giordano and Gomez)

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

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Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

* 4. Odor Report — Received the October 2013 odor control report.

* 6. Commission Appointment — Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.

* 7. Cancel Council Meeting — Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of $1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

Motion: to adopt Resolution No. 8308 denying the proposed development project by KB Home (Preston property at 133 Bothelo Lane) and all its related actions including no action on the Final Environmental Impact Report

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was $5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the $5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

Vice Mayor Polanski said those things were critical, and to put an amount toward infrastructure from any new funds the City may have in any budget year.

Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the $5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

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Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

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Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

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Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

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Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

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Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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NOES: 0

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Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

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NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

* 4. Odor Report — Received the October 2013 odor control report.

* 6. Commission Appointment — Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.

* 7. Cancel Council Meeting — Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of $1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

Motion: to adopt Resolution No. 8308 denying the proposed development project by KB Home (Preston property at 133 Bothelo Lane) and all its related actions including no action on the Final Environmental Impact Report

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was $5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the $5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

Vice Mayor Polanski said those things were critical, and to put an amount toward infrastructure from any new funds the City may have in any budget year.

Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the $5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

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Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

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Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

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City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

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UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

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PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

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Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

Motion: to adopt Resolution No. 8308 denying the proposed development project by KB Home (Preston property at 133 Bothelo Lane) and all its related actions including no action on the Final Environmental Impact Report

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was $5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the $5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

Vice Mayor Polanski said those things were critical, and to put an amount toward infrastructure from any new funds the City may have in any budget year.

Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the $5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

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Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

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Motion/Second: Vice Mayor Polanski/Councilmember Giordano

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Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

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NOES: 0

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Motion/Second: Councilmember Giordano/Councilmember Gomez

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Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

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Martha Lamdin, Mt. Diablo Ave. resident , spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

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Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was $5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the $5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

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Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the $5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

Draft MEETING MINUTES
CITY OF MILPITAS

Minutes of:	**Joint Meeting of Milpitas City Council And the Milpitas Housing Authority**
Date:	**Tuesday, November 5, 2013**
Time:	**6:00 PM Closed Session / 7:00 PM Open**
Location:	**Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas**

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

PRESENT: Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

ABSENT: Councilmember Gomez was absent at roll call, and arrived at 6:10 PM.

CLOSED SESSION

City Council convened in Closed Session to discuss two cases of litigation, labor negotiations with one organization, and performance evaluation of the City Attorney.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

INVOCATION

Councilmember Giordano read a quote from a book by Marianne Williams.

MINUTES

Motion: to approve meeting minutes of October 15, 2013 City Council, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meeting for November 2013, as amended

City Manager Tom Williams noted one change: the City Council's Finance Subcommittee would meet on Thursday, November 21 at 5:30 PM.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Esteves proclaimed *World Polio Day* for October 24, 2013, and the proclamation was accepted by Rotary Club President Mark Tiernan. It was requested by Councilmember Debbie Giordano, a member of the Milpitas Rotary Club, which works to eradicate the disease.

Next, Mayor Esteves presented eight Neighborhood Beautification Awards to Milpitas Homeowners and property owners for 2013. A brief reception outside the Chambers on the City Hall 2nd floor lobby followed.

PUBLIC FORUM

Tushar Pandya, a resident and father in Milpitas, spoke about youth in Milpitas and their self image. Milpitas schools are worse versus neighboring cities on this issue, including depression

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:
Mayor Esteves received one contribution from Michael Preston.
Councilmember Giordano had received donations from Preston Pipelines.
Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

* 4. Odor Report — Received the October 2013 odor control report.

* 6. Commission Appointment — Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.

* 7. Cancel Council Meeting — Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of $1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

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<u>Motion</u>: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

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Councilmember Gomez would vote no, with concern he noted about the EIR.

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Motion/Second: Vice Mayor Polanski/Councilmember Montano

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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NOES : 0

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Motion/Second: Councilmember Giordano/Vice Mayor Polanski

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NOES: 0

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Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were $5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from $800 to $1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS Two items were approved on the consent calendar.

REPORTS OF OFFICERS Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:
Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of $8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code – Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments."

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk

October 2013						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
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27	28	29	30	31		

December 2013						
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22	23	24	25	26	27	28
29	30	31				

Council Calendar

November 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	**2**
3 **Daylight Savings Time Ends – Turn Clocks Back 1 hour** 	**4** **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP)	**5** **6:00 PM**-Closed Session **7:00 PM**-City Council	**6** **7:30 AM**-VTA Northeast Group (JE) **7:00 PM**-Community Advisory Commission (AG)	**7** **5:30 PM**-VTA Board of Directors (JE)	**8**	**9**
10	**11** **City Holiday** **Veterans Day** **9:00 AM** **Veterans Day Ceremony at City Hall, Veterans Plaza**	**12**	**13** **9:30 AM**-Coyote Flood Protection & Watershed Committee (CM) **12:00 PM**-Recycling & Source Reduction Advisory Subcommittee (Re: The 60th) **7:00 PM**-Planning Commission	**14** **4:00 PM**-VTA Policy Advisory Committee (AG) **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose) **7:00 PM**-Cities Assoc. of SCC (JE) **7:00 PM**-Youth Advisory Comm. (DG) **7:00 PM**-Bicycle Pedestrian Advisory Commission (AG)	**15**	**16**
17	**18** **6:00 PM**-Economic Development Commission (CM) **7:00 PM**-Telecommunications Commission (AP) **7:00 PM**-Library Advisory Commission (CM)	**19** **6:00 PM**-Closed Session **7:00 PM**-City Council	**20**	**21** **12:30 PM**-VTA Admin & Finance Committee (JE) **5:30 PM-**Finance Subcommittee (JE/AP) **7:00 PM**-Bay Area Water Supply Consv. Agency (AG) (Foster City) **7:00 PM**-Emergency Prep. Commission (AP)	**22**	**23**
24	**25** **6:00 PM**-Arts Commission (DG) **7:00 PM**-Public Art Committee (DG)	**26**	**27**	**28** ----------City Holiday---------- 	**29**	**30**

10/29/13

November 2013						
S	M	T	W	T	F	S
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January 2014						
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Council Calendar

December 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 **7:00 PM** **Tree Lighting Ceremony** 	2 **10:00 AM**-SVRT Program Working Committee (JE) **7:00 PM**-Parks, Recreation & Cultural Resources Commission (AP)	3 **6:00 PM**-Closed Session **7:00 PM**-City Council	4 **7:30 AM**-VTA Northeast Group (JE) **5:30 PM**-Veterans Commission (DG) **7:00 PM**-Community Advisory Comm. (AG)	5 **5:30 PM**-VTA Board of Directors (JE) **5:30 PM**-Milpitas Chamber of Commerce Board (DG)	6	7
8	9	10 **1:30 PM**-Senior Advisory Commission Special Meeting (Re: Work Plan)	11 **7:00 PM**-Planning Commission	12 **12:00 PM**-Terrace Gardens Board of Directors (DG) **4:00 PM**-VTA Policy Advisory Committee (AG) **4:30 PM**-Treatment Plant Advisory Committee (JE) (San Jose) **7:00 PM**-Youth Advisory Commission (DG)	13	14
15	16 **7:00 PM**-Telecommunications Commission (AP)	17 **6:00 PM**-Closed Session **7:00 PM**-City Council ***(meeting canceled)***	18	19 **12:30 PM**-VTA Admin & Finance Committee (JE)	20	21
22	23	24 **CHRISTMAS EVE HOLIDAY**	25 **CHRISTMAS DAY HOLIDAY**	26	27	28
29	30	31				

11/13/13

REGULAR

NUMBER: **65.142**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING AND REPLACING CHAPTERS 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 AND 170 OF TITLE II OF THE MILPITAS MUNICIPAL CODE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 5, 2013, upon motion by Councilmember Giordano 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas intends to adopt by reference into the Milpitas Municipal Code the 2013 California Building Code, Volume 1 and Volume 2, 2013 California Residential Code, 2013 California Mechanical Code, 2013 California Plumbing Code, 2013 California Electrical Code, 2013 California Historical Code, 2013 California Green Building Standards Code, 2013 California Energy Code and 2013 California Existing Building Code with Appendixes A2, A3, A4 and A5 of the 2013 International Existing Building Code; and

WHEREAS, in doing so, the City Council wishes to amend portions of the California Codes to better address local concerns and to be consistent with amendments made by the other cities and counties in the San Francisco East Bay, San Francisco Peninsula and Monterey Bay areas; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.5 requires such amendments to be reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.7 requires local entities to make express findings that such amendments are necessary and the City has adopted a resolution making those findings in conjunction with this Ordinance adopting the model codes.

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. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE II

Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code are hereby repealed in their entirety and replaced with the text below to read as follows:

Chapter 1 BUILDING ADMINISTRATION CODE

Sections:

Section 1 - Adoption of Code—Title
Section 2 - Purpose
Section 3 - Application to Existing Buildings and Building Service Equipment
Section 4 - Definitions
Section 5 - Conflicting Provisions
Section 6 - Alternate Materials, Design and Methods of Construction and Equipment
Section 7 - Modifications
Section 8 - Tests and Research Reports
Section 9 - Establishment of the Department
Section 10 - Authority
Section 11 - Powers and Duties of Chief Building Official
Section 12 - Unsafe Buildings, Structures or Building Service Equipment

Section 13 - Appeals
Section 14 - Violations
Section 15 - Nuisance
Section 16 - Remedies
Section 17 - Permits
Section 18 - Application for Permit
Section 19 - Permit Issuance
Section 20 - Fees
Section 21 - Inspections
Section 22 - Special Inspections
Section 23 - Structural Observation
Section 24 - Connection to Utilities
Section 25 - Certificate of Occupancy
Section 26 - Notice of Code Violations
Section 27 - Repeal of Conflicting Ordinances
Section 28 - Severability
Section 29 - Effective Date

Section 1 Adoption of Code—Title

II-1-1.01
II-1-1.02

II-1-1.01

The Milpitas Building Administration Code is hereby adopted. There is one copy of said code in the office of the Chief Building Official for use and examination by the public.

II-1-1.02

These regulations shall be known as the "Milpitas Building Administration Code," may be cited as such and will be referred to herein as "this Chapter."

Section 2 Purpose

II-1-2.01

The purpose of this Chapter is to provide for the administration and enforcement of building codes (also referred to as the Technical Codes) and municipal ordinances within the Milpitas Municipal Code, Title II, adopted by this jurisdiction.

Technical Code	Adopted by Milpitas Municipal Code, Title II, Technical Code Chapter

	(as follows)
California Building Code	3
California Residential Code	3.5
California Mechanical Code	5
California Electrical Code	6
California Plumbing Code	7
California Energy Code	11
Code for Abatement of Dangerous Buildings	12
California Existing Building Code	14
California Green Building Standards Code	19
California Historical Building Code	150
All Supplements and Appendices and Standards Adopted for each of said Codes by said Title II and Chapters Thereof (which shall be known as the "technical codes") except as the specific provisions of any of said technical codes shall expressly declare this Chapter or any part thereof to be inapplicable.	

Section 3 Application to Existing Buildings and Building Service Equipment

II-1-3.01 General

II-1-3.02 Additions, Alterations or Repairs

II-1-3.03 Existing Installations

II-1-3.04 Existing Occupancy

II-1-3.05 Maintenance

II-1-3.06 Moved Buildings

II-1-3.07 Temporary Structures and Uses

II-1-3.08 Historic Buildings

II-1-3.01 General

Buildings, structures and their building service equipment to which additions, alterations or repairs are made shall comply with all the requirements of the technical codes for new facilities, except as specifically provided in this section.

II-1-3.02 Additions, Alterations or Repairs

Additions, alterations or repairs may be made to any building or its building service equipment without requiring the existing building or its building service equipment to comply with all the requirements of the technical codes, provided the addition, alteration or repair conforms to that required for a new building or building service equipment.

Additions or alterations shall not be made to an existing building or building service equipment which will cause the existing building or building service equipment to be in violation of any of the provisions of the technical codes nor shall such additions or alterations cause the existing building or building service equipment to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or building service equipment to become structurally unsafe or overloaded; will not provide adequate egress in compliance with the provisions of the Building Code or will obstruct existing exits; will create a fire hazard; will reduce required fire resistance; will cause building service equipment to become overloaded or exceed their rated capacities; will create a health hazard or will otherwise create conditions dangerous to human life. Any building so altered, which involves a change in use or occupancy, shall not exceed the height, number of stories and area permitted by the Building Code for new buildings. Any building plus new additions shall not exceed the height, number of stories and area specified by the Building Code for new buildings.

Additions or alterations shall not be made to an existing building or structure when such existing building or structure is not in full compliance with the provisions of the Building Code except when such addition or alteration will result in the existing building or structure being no more hazardous based on life safety, fire safety and sanitation, than before such additions or alterations are undertaken.

Exception: Alterations of existing structural elements, or additions of new structural elements, which are not required by Sections II-1-3.03 and II-1-3.04 and which are initiated for the purpose of increasing the lateral-force-resisting strength or stiffness of an existing structure need not be designed for forces conforming to these regulations provided that an engineering analysis is submitted to show that:

1. The capacity of existing structural elements required to resist forces is not reduced;

2. The lateral loading to required existing structural elements is not increased beyond their capacity;

3. New structural elements are detailed and connected to the existing structural elements as required by these regulations;

4. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required by these regulations;

5. An unsafe condition as defined in Section II-1-3.02 is not created by such alterations or additions.

Alterations or repairs to an existing building or structure which are nonstructural and do not adversely affect any structural member or any part of the building or structure having required fire resistance may be made with the same materials of which the building or structure is constructed, subject to approval by the Chief Building Official. The installation or replacement of glass shall be as required for new installations.

Minor additions, alterations and repairs to existing building service equipment installations may be made in accordance with the technical code in effect at the time the original installation was made, subject to approval of the Chief Building Official, and provided such additions, alterations and repairs will not cause the existing building service equipment to become unsafe, unsanitary or overloaded.

II-1-3.03 Existing Installations

Building service equipment lawfully in existence at the time of the adoption of the technical codes may have their use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and a hazard to life, health or property has not been created by such building service equipment.

II-1-3.04 Existing Occupancy

Buildings in existence at the time of the adoption of the Building Code may have their existing use or occupancy continued if the use or occupancy was legal at the time of the adoption of the Building Code, and provided continued use is not dangerous to life, health and safety.

Any change in the use or occupancy of any existing building or structure shall comply with the provisions of Section II-1-25.02 of this Chapter and Section 3408 of the Building Code.

II-1-3.05 Maintenance

All buildings, structures and building service equipment, existing and new, and all parts thereof shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by the technical codes shall be maintained in conformance with the technical code under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and their building service equipment. To determine compliance with this subsection, the Chief Building Official may cause any structure to be re-inspected.

II-1-3.06 Moved Buildings

Buildings, structures and their building service equipment moved into or within this jurisdiction shall comply with the provisions of the technical codes for new buildings or structures and their building service equipment.

II-1-3.07 Temporary Structures and Uses

Temporary structures such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public around and in conjunction with construction work may be erected by special permit from the Chief Building Official for a limited period of time but shall not be permitted for more than 180 days. Such buildings or structures erected under a special permit need not comply with the type of construction or fire-resistive time periods required by the Building Code. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this Title and technical codes as necessary to ensure public health, safety and general welfare. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.

II-1-3.08 Historic Buildings

Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building structure, or its building service equipment may be made without conforming to the requirements of the technical codes when authorized by the Chief Building Official, provided:

1. The building or structure has been designated by official action of the legally constituted authority of this jurisdiction as having special historical or architectural significance.

2. Any unsafe conditions as described in this Title are corrected.

3. The restored building or structure and its building service equipment will be no more hazardous based on life safety, fire safety and sanitation than the existing building.

4. The restored or altered building conforms to minimum requirements of the California Historical Building Code.

Section 4 Definitions

II-1-4.01 General

For the purpose of this Chapter, certain terms, phrases, words and their derivatives shall be construed as specified in this section.

1. ADDITION is an extension or increase in floor area or height of a building or structure.

2. ALTER or ALTERATION is any construction or renovation to an existing structure other than repair or addition.

3. APPROVED, as to materials, types of construction, equipment and system, refers to approval by the Chief Building Official as the result of investigation and tests conducted by him, or by reason of accepted principles or tests by recognized authorities, technical or scientific organizations.

4. APPROVED AGENCY is an established and recognized agency regularly engaged in conducting tests or furnishing inspection services, when such agency has been approved by the Chief Building Official.

5. BUILDING is any structure used or intended for supporting or sheltering any use or occupancy.

6. BUILDING CODE is the most current edition of the California Building Code promulgated by the International Code Council and the State of California Building Standards Commission, as adopted by this jurisdiction.

7. BUILDING, EXISTING is a building erected prior to the adoption of this code, or one for which a legal building permit has been issued.

8. CHIEF BUILDING OFFICIAL is the officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

9. BUILDING SERVICE EQUIPMENT refers to the plumbing, mechanical, electrical and elevator equipment including piping, wiring, fixtures and other accessories which provide sanitation, lighting, heating, ventilation, cooling, refrigeration, fire-fighting and transportation facilities essential to the occupancy of the building or structure for its intended and designated use.

10. ABATEMENT OF DANGEROUS BUILDINGS CODE is the Uniform Code for the Abatement of Dangerous Buildings promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

11. ELECTRICAL CODE is the most current edition of California Electrical Code promulgated by the National Fire Protection Association and the State of California Building Standards Commission, as adopted by this jurisdiction.

12. JURISDICTION, as used in this Chapter, is the City of Milpitas.

13. LISTED and LISTING are terms referring to equipment, materials, products or services, included in a list published by an approved testing agency, inspection agency, or other organization concerned with evaluation of products or services that maintains periodic inspection of current productions of listed equipment or materials or periodic evaluation of services. The published list shall state that the material, equipment, product or services complies with approved national recognized codes, standards or tests and has been tested or evaluated and found suitable for a specific purpose.

14. MECHANICAL CODE is the California Mechanical Code promulgated by the International Association of Plumbing and Mechanical Officials and the State of California Building Standards Commission, as adopted by this jurisdiction.

15. OCCUPANCY is the purpose for which a building, or part thereof, is used or intended to be used.

16. OWNER is any person, agent, firm or corporation having a legal or equitable interest in the property.

17. PERMIT is an official document or certificate issued by the Chief Building Official authorizing performance of a specified activity.

18. PERSON is an individual, heirs, trustee, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

19. PLUMBING CODE is the California Plumbing Code promulgated by the International Association of Plumbing and Mechanical Officials and the State of California Building Standards Commission, as adopted by this jurisdiction.

20. REPAIR is the reconstruction or renewal of any part of an existing building, structure or building service equipment for the purpose of its maintenance.

21. SHALL, as used in this code, means a mandatory specification or requirement.

22. STRUCTURAL OBSERVATION means the visual observation of the structural system by a registered design professional, including but not limited to, the elements and connections for general conformance to the approved construction documents at significant construction stages and at completion of the structural system. Structural observation does not include or waive the responsibility for the inspections required by Sections II-1-21 and II-1-22.

23. STRUCTURE is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

24. TECHNICAL CODES refer to those codes adopted by this jurisdiction containing the provisions for design, construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures and building service equipment as herein defined. The term refers to the following codes as adopted and amended by the City of Milpitas:

Technical Code	Adopted by Milpitas Municipal Code, Title II, Technical Code Chapter (as follows)
California Building Code	3
California Residential Code	3.5
California Mechanical Code	5
California Electrical Code	6
California Plumbing Code	7
California Energy Code	11
Code for Abatement of Dangerous Buildings	12
California Existing Building Code	14
California Green Building Standards Code	19
California Historical Building Code	150
All Supplements and Appendices and Standards Adopted for each of said Codes by said Title II and Chapters Thereof (which shall be known as the "technical codes") except as the specific provisions of any of said technical codes shall expressly declare this Chapter or any part thereof to be inapplicable.	

25. VALUATION or VALUE, as applied to a building and its building service equipment, shall be the estimated cost to replace the building and its building service equipment in kind, based on current replacement costs.

26. CONSTRUCTION DOCUMENTS are written, graphic and pictorial documents or plans prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a building permit.

Section 5 Conflicting Provisions

II-1-5.01

When conflicting provisions or requirements occur between this code, the technical codes and other codes or laws, the most restrictive shall govern.

When conflicts occur between the technical codes, those provisions providing the greater safety to life shall govern. In other conflicts where sanitation, life safety or fire safety are not involved, the most restrictive provisions shall govern.

Where in any specific case different sections of the technical codes specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

When conflicts occur between specific provisions of this Chapter and any administrative provisions in the technical codes, which are then applicable within this jurisdiction, those provisions of this Chapter shall govern, unless the technical codes (or the ordinance adopting the same) shall expressly declare that this Chapter or any part thereof is inapplicable.

Section 6 Alternate Materials, Design and Methods of Construction and Equipment

II-1-6.01

The provisions of the technical codes are not intended to prevent the installation of any material, or to prohibit any design or method of construction not specifically prescribed by the technical codes, provided any such alternative has been approved.

An alternative material, design or method of construction shall be approved where the Chief Building Official finds that the proposed design is satisfactory and complies with the provisions of the technical codes, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in the technical codes in quality, strength, effectiveness, fire resistance, durability, safety, sanitation and provides access to the physically disabled in accordance with State standards.

The Chief Building Official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of an action granting approval of an alternate shall be recorded and entered in the files of the code enforcement agency.

The Chief Building Official may require the applicant to arrange for the proposed alternative materials, design and method of construction be reviewed and evaluated by an outside agency designated by the Chief Building Official at the applicants' expense.

Section 7 Modifications

II-1-7.01

Whenever there are practical difficulties involved in carrying out the provisions of the technical codes, the Chief Building Official may grant modifications for individual cases, provided that owner or owner representative shall first find that a special individual reason makes the strict letter of the

technical codes impractical and the modification is in conformity with the intent and purpose of the technical codes, and that such modification does not lessen health, life safety, fire safety requirements, any degree of structural integrity or access for the physically disabled. The details of actions granting modifications shall be recorded and entered in the files of the code enforcement agency.

The Chief Building Official may require the applicant to arrange for the proposed modification to be reviewed by an outside agency designated by the Chief Building Official at the applicant's expense.

Section 8 Tests and Research Reports
II-1-8.01
II-1-8.02

II-1-8.01

Whenever there is insufficient evidence of compliance with the provisions of the technical codes, or evidence that a material or construction method does not conform to the requirements of the technical codes, or in order to substantiate claims for alternative materials or construction methods, the Chief Building Official may require tests as evidence of compliance to be made at no expense to this jurisdiction.

Test methods shall be as specified by the technical codes or by other recognized test standards. In the absence of recognized and accepted test methods, the Chief Building Official shall approve the testing procedures.

Tests shall be made by an agency approved by the Chief Building Official. Reports of such tests shall be retained by the Chief Building Official for the period required for the retention of public records.

II-1-8.02

Supporting data, where necessary to assist in the approval of materials or assemblies not specially provided for in the technical codes, shall consist of valid research reports from approved sources.

Section 9 Establishment of the Department

II-1-9.01

There is hereby established in the City of Milpitas the "Building and Safety Department" which shall be under the jurisdiction of the City Manager.

Section 10 Authority

II-1-10.01 - Creation of Enforcement Agency

II-1-10.02 - General

II-1-10.01 Creation of Enforcement Agency

There is hereby established in this jurisdiction a code enforcement agency which shall be under the administrative and operational control of the Chief Building Official.

II-1-10.02 General

Whenever the term of title "administrative authority," "responsible official," "building official," "chief inspector," "code enforcement officer," or other similar designation is used herein or in any of the technical codes, it shall be construed to mean the Chief Building Official designated by the appointing authority of this jurisdiction.

Section 11 Powers and Duties of Chief Building Official

II-1-11.01 General

II-1-11.02 Deputies

II-1-11.03 Right of Entry

II-1-11.04 Stop Orders

II-1-11.05 Occupancy Violations

II-1-11.01 General

The Chief Building Official is hereby authorized and directed to enforce all the provisions of this Title, and the referenced technical codes. For such purposes, the Chief Building Official shall have the powers of a law enforcement officer.

The Chief Building Official shall have the power to render interpretations of this Title and the referenced technical codes, and to adopt and enforce policies, procedures, rules and regulations supplemental to this code in order to clarify the application of the provisions of this Title. Such interpretations, policies, procedures, rules and regulations shall be in conformity with the intent and purpose of this Title. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

II-1-11.02 Deputies

In accordance with prescribed procedures and with the approval of the appointing authority, the Chief Building Official may appoint related technical officers and inspectors and other employees as shall be authorized. The Chief Building Official may deputize such technical officers, inspectors or employees as may be necessary to carry out the functions of the code enforcement agency.

II-1-11.03 Right of Entry

Whenever it is necessary to make an inspection to enforce any of the provisions of this Title, and the technical codes or whenever the Chief Building Official or his/her authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Chief Building Official or his/her authorized representative is authorized to enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the Chief Building Official by this Title, provided that, if such building or premises be occupied that credentials be presented to the occupant, entry requested and permission received; and if such building or premises is unoccupied, the Chief Building Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request and receive permission for entry. If such entry is refused, the Chief Building Official or his/her authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Chief Building Official or his/her authorized representative obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Chief Building Official or his/her authorized representative for the purpose of inspection and examination pursuant to this code.

II-1-11.04 Stop Work Orders

Whenever any work is being done contrary to the provisions of this Title, the technical codes or other pertinent laws or ordinances implemented through the enforcement of this Title, or that may be dangerous or unsafe, the Chief Building Official is authorized to issue a stop work order in writing served on any persons engaged in the doing or causing such work to be done, or by posting said notice at main entry or other conspicuous location of the structure, and any such persons shall forthwith stop such work until authorized by the Chief Building Official to proceed with the work in writing. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

II-1-11.05 Occupancy Violations

Whenever any building or structure or building service equipment therein regulated by this Title and the technical codes is being used contrary to the provisions of this Title, the Chief Building Official may order such use discontinued and the structure, or portion thereof, vacated by written notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Chief Building Official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this Title.

Section 12 Unsafe Buildings, Structures or Building Service Equipment

II-1-12.01

II-1-12.02 Notice of Correction or Abatement of Unsafe Structures

II-1-12.03 Posting Notice of Hazardous Building

II-1-12.04 Authority to Disconnect Utilities

II-1-12.05 Authority to Condemn Building Service Equipment

II-1-12.06 Connection After Order to Disconnect

II-1-12.07 Withholding Permit

II-1-12.08 Liability

II-1-12.09 Hearing

II-1-12.01

All building or structures regulated by this Title and the technical codes, which are structurally inadequate or have inadequate means of egress, or inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life, for the purpose of this section shall be deemed unsafe condition.

Building service equipment regulated by such codes, which constitute a fire, electrical or health hazard, or an unsanitary condition, or is otherwise dangerous to human life, for the purpose of this section, shall be deemed unsafe. Any use of buildings, structures or building service equipment constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment, for the purpose of this section, shall be deemed an unsafe use.

Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the Building Code are hereby designated as unsafe building appendages.

Unsafe buildings, structures or appendages and building service equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the Uniform Code for the Abatement of Dangerous Buildings or such alternate procedures as may be adopted by this jurisdiction. As an alternative, the Chief Building Official or other employee or official of this jurisdiction as designated by the governing body may institute any other appropriate action to prevent, restrain, correct or abate the violation.

II-1-12.02 Notice of Correction or Abatement of Unsafe Structures

If an inspection shows a building or structure or portion thereof to be "Unsafe" as defined herein, the Chief Building Official shall give the owner of said building or structure written notice stating the defects thereof. Said notice may order the correction or abatement thereof by demolition, closing or repair within ninety days of the date said notice is given or such additional time as the Chief Building Official may allow. If, in the opinion of the Chief Building Official, such conditions can be corrected or abated by repair, the notice shall state the repair required. Notice hereunder may also be given to any mortgagee or beneficiary under any deed or trust of record.

II-1-12.03 Posting Notice of Hazardous Building

Every building which the Chief Building Official causes to be vacated because of an immediate danger or hazard may be posted at each entrance with a notice which states: "Do Not Enter: Unsafe to Occupy: Building and Safety Department, City of Milpitas." Such notice may remain posted until the required repairs, improvements, demolition or removal are completed. Such notice shall not be removed without written permission of the Chief Building Official, and all persons shall forthwith

vacate said building and no person shall enter the building except for the purpose of making the required repairs, improvements, demolition or removal of the building.

II-1-12.04 Authority to Disconnect Utilities

The Chief Building Official or his/her authorized representative shall have the authority to disconnect any utility service or energy supplied to the building, structure or building service equipment therein regulated by this Title or the technical codes in case of emergency where necessary to eliminate an immediate hazard to life or property. The Chief Building Official shall whenever possible notify the serving utility, the owner and occupant of the building, structure or building service equipment of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building, structure or building service equipment, in writing, of such disconnection immediately thereafter.

This Title shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the City of Milpitas be held to have assumed any such liability by reason of the inspections authorized by this Title or any certificates of inspection issued under this Title.

II-1-12.05 Authority to Condemn Building Service Equipment

Whenever the Chief Building Official ascertains that any building service equipment regulated in the technical codes has become hazardous to life, health, or property, or has become unsanitary, he/she shall order in writing that such equipment either be removed or restored to a safe or sanitary condition, as appropriate. The written notice itself shall fix a time limit for compliance with such order. Defective building service equipment shall not be maintained after receiving such notice.

When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefore will be given within 24 hours to the serving utility, the owner and occupant of such building, structure or premises.

When any building service equipment is maintained in violation of the technical codes and in violation of any notice issued pursuant to the provisions of this section, the Chief Building Official shall institute any appropriate action to prevent, restrain, correct or abate the violation.

II-1-12.06 Connection After Order to Disconnect

No person shall make connections from any energy, fuel or power supply nor supply energy or fuel to any building service equipment which has been disconnected or ordered to be disconnected by the Chief Building Official or the use of which has been ordered to be discontinued by the Chief Building Official until the Chief Building Official authorizes the reconnection and use of such equipment.

II-1-12.07 Withholding Permit

No Building or Occupancy Permit shall be issued for any building or structure unless and until:

1. All conditions imposed thereon or in connection with any development or subdivision of which it is a part (and which affect said building or structure) by the Milpitas Planning Commission or Milpitas City Council have been complied with;

2. Said building or structure and any development or subdivision of which it is a part shall be in compliance with all ordinances and statutes affecting said building or structure, development or subdivision.

II-1-12.08 Liability

Without limitation to the generality of any provision of the Milpitas Municipal Code, the duties imposed by this Title upon the Chief Building Official, or his/her authorized representatives are discretionary and not mandatory. Neither said Official nor his/her representatives shall render himself/herself personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of his/her duties.

The City of Milpitas, its officers or employees shall not be held to have assumed any liability by reason of the inspections authorized by such codes or approvals issued under such codes.

This Title shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure to any damages to persons or property caused by defects, nor shall the City of Milpitas be held as assuming any liability by reasons of the inspections authorized by this Chapter or any certificates of inspections issued under this Chapter.

II-1-12.09 Hearing

Any aggrieved person may request an informal hearing before the Chief Building Official or his/her designee, with respect to any action taken or to be taken under the provisions of Section 12 of this Chapter. Said request shall be in writing and said hearing shall be held within 2 working days of receipt of the request provided a request for a hearing shall not stay the operation of the Chief Building Official's order unless the Chief Building Official shall so order.

Section 13 Appeals

II-1-13.01

Appeals may be had under this Chapter, pursuant to the provisions of Section 5 of the Standard Procedures Chapter of the Milpitas Municipal Code. An appeal shall stay all proceedings in furtherance of the act or decision appealed unless the Chief Building Official whose act is appealed shall certify in writing that a stay would in his opinion cause peril to life or property. Said certificate shall contain a detailed statement of the facts out of which said peril arises and of the reasons for said opinion.

Section 14 Violations

II-1-14.01

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building structure, building service equipment, or cause or permit the same to be done in violation of this Title and the technical codes.

II-1-14.02 Civil Penalties

Any person who intentionally, accidentally or negligently violates any provision of this Title, any written authority of the Chief Building Official or the City Manager or his or her duly authorized agents and representatives, or any provision of any permit issued pursuant to this Code may be civilly liable to the City in the sum of not less than $100.00 but not to exceed $1,000 per day for each day in which such violation occurs or continues. The City may petition the Superior Court to impose, assess, and recover such sums. The civil penalty provided in this Section excludes inspection costs and abatement costs, is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state and federal law and local ordinances. Funds collected pursuant to this Section shall be paid to the City's Building Code Training account which shall be a holding account to be used solely for Building Code enforcement training.

Section 15 Nuisance

II-1-15.01

The erection, construction, enlarging, equipping, use, height, altering, repairing, moving, removing, conversing, demolishing, improving, occupying or maintaining of buildings or structures or the installation, alteration or repair of electrical wiring, devices, appliances, equipment, systems, or facilities, or the installation, alteration or repair of plumbing or drainage lines, equipment, systems or facilities, or the use, design, installation, alteration, repair and replacement of heating and comfort cooling equipment contrary to the provisions of this Title is unlawful and the same is hereby declared to be a public nuisance.

Section 16 Remedies

II-1-16.01

The remedies and penalties provided for by this Chapter shall be cumulative, and not exclusive, and shall be in addition to such other remedies or penalties as are provided.

Section 17 Permits

II-1-17.01 Permits Required

II-1-17.02 Exempted Work

II-1-17.03 Building Permits

II-1-17.04 Plumbing Permits

II-1-17.05 Electrical Permits

II-1-17.06 Mechanical Permits

II-1-17.01 Permits Required

Except as specified in Section II-1-17.03 of this Chapter, no building, structure or building service equipment regulated by this Title and the technical code shall be erected, constructed,

enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate, appropriate permit for each building, structure or building service equipment has first been obtained from the Chief Building Official.

II-1-17.02 Exempted Work

A permit shall not be required for the types of work in each of the separate classes of permits as listed below. Exemption from the permit requirements of this Chapter shall not be deemed to grant authorization for any work to be done in violation of the provisions of the technical codes or any other laws or ordinances of this jurisdiction.

II-1-17.03 Building Permits

A Building Permit shall not be required for the following:

1. One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet.

2. Wood fences not over 7 feet high or masonry and concrete fences not over 4 feet high.

3. Non-fixed and moveable fixtures, cases, racks, counters, storage shelves and partitions not over 5 feet 9 inches high.

4. Retaining walls, which are not over 4 feet in height, measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III A. liquids.

5. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one.

6. Platforms, walks and driveways, not more than 30 inches above grade and not over any basement or story below and are not part of an accessible route.

7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.

8. Temporary motion picture, television and theatre stage sets and scenery.

9. Window awnings supported by an exterior wall of Group R-3, and Group U Occupancies when projecting not more than 54 inches from exterior wall and do not require additional support of Group R-3 or U Occupancies.

10. Oil Derricks.

11. Swings and other playground equipment accessory to detached one and two-family dwellings.

12. Prefabricated swimming pools accessory to a Group R-3 Occupancy that are less than 24 inches deep, are installed entirely above the adjacent grade and do not exceed 5,000 gallons.

13. Residential decks not exceeding 200 square feet in area that are not more than 30 inches above grade at any point, are not attached to a dwelling unit and do not serve the required exit door.

Unless otherwise exempted by this Title, separate plumbing, electrical and mechanical permits are required for the above exempted work.

II-1-17.04 Plumbing Permits

A plumbing permit shall not be required for the following:

1. The stopping of leaks in drains, soil, waste or vent pipes, provided, however, that should any concealed trap, drainpipe, soil, waste or vent pipe become defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this Title.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

II-1-17.05 Electrical Permits

An Electrical Permit shall not be required for the following:

1. Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by the Electrical Code.

2. Repair or replacement of motors, transformers and controls within fixed approved appliances of the same type and rating in the same location.

3. Temporary decorative lighting.

4. Repair or replacement of current-carrying parts of any switch, contactor or control device.

5. Reinstallation of attachment plug receptacles, but not the outlets thereof.

6. Replacement of any overcurrent device less than 1,200 amps of the same capacity in the same location.

7. Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube systems.

8. Taping joints.

9. Removal of electrical wiring.

10. Temporary wiring for experimental purposes in suitable experimental laboratories.

11. The wiring for temporary theatre, motion picture or television stage sets.

12. Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.

13. Low-energy power, control and signal circuits of Classes II and III as defined in the Electrical Code.

14. A permit shall not be required for the installation, alteration or repair of electrical wiring, apparatus or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility.

II-1-17.06 Mechanical Permits

A Mechanical Permit shall not be required for the following excepting that a permit is required for vertical and structural support and anchoring of permanent equipment and overhead pipes:

1. Any portable heating appliance.

2. Any portable ventilating equipment.

3. Any portable cooling unit.

4. Any portable evaporative cooler.

5. Any closed system of steam, hot or chilled water piping within any heating or cooling equipment regulated by the Mechanical Code.

6. Replacement of any component part of assembly of an appliance, which does not alter its original approval and complies with other applicable requirements of the technical codes.

7. Any refrigerating equipment, which is part of the equipment for which a permit has been issued pursuant to the requirements of the technical codes.

Section 18 Application for Permit

II-1-18.01 Application

II-1-18.02 Submittal Documents

II-1-18.03 Information on Plans and Specifications

II-1-18.04 Architect or Engineer of Record—General

II-1-18.05 Deferred Submittals

II-1-18.06 Amended Construction Documents

II-1-18.07 Special Inspection and Structural Observation Program

II-1-18.01 Application

To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. Indicate the use and occupancy for which the proposed work is intended.

4. Be accompanied by plans, diagrams, computations and specifications and other information as required in Section II-1-18.02 of this Chapter.

5. State the valuation of the proposed work.

6. Be signed by the applicant, or the applicant's authorized agent.

7. Give such other data and information as may be required by the Chief Building Official.

II-1-18.02 Submittal Documents

Construction documents, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted for each permit application in two or more sets as determined by the Chief Building Official. When such construction documents are not prepared by a California registered licensed architect or engineer, the Chief Building Official may require the applicant submitting such construction documents or other data to demonstrate that state law does not require that the construction documents be prepared by a California registered licensed architect

or engineer. The Chief Building Official may require the construction documents to be prepared and designed by an engineer or architect licensed by the state to practice as such even if not required by state law.

Exception:

The Chief Building Official may waive the submission of construction documents, engineering calculations, construction inspection requirements, and other data, if it is found that the nature of the work applied for is such that reviewing of the above documents is not necessary to obtain compliance with this Title.

II-1-18.03 Information on Plans and Specifications

Construction documents shall be dimensioned and drawn to scale upon suitable material. Electronic media documents are permitted to be submitted when approved by the Chief Building Official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the technical codes and all relevant laws, ordinances, rules and regulations.

Construction documents for buildings of other than Groups R-3 and Group U Occupancies shall indicate how required structural and fire-resistive integrity will be maintained where penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes and similar systems.

II-1-18.04 Architect or Engineer of Record—General

When it is required that documents be prepared by a California registered licensed architect or engineer, the Chief Building Official may require the owner to engage and designate on the building permit application a California registered licensed architect or engineer who shall act as the architect or engineer of record. If the circumstances require, the owner may designate a substitute architect or engineer of record who shall perform all of the duties required of the original architect or engineer of record. The Chief Building Official shall be notified in writing by the owner if the architect or engineer of record is changed or is unable to continue to perform the duties.

The architect or engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building.

II-1-18.05 Deferred Submittals

For the purposes of this section, deferred submittals are defined as those portions of the design which are not submitted at the time of the application and which are to be submitted to the Chief Building Official within a specified period.

Deferral of any submittal items shall have prior approval of the Chief Building Official. The architect or engineer of record shall list the deferred submittals on the plans and shall submit the deferred submittal documents for review by the Chief Building Official.

Submittal documents for deferred submittal items shall be submitted to the architect or engineer of record who shall review them and forward them to the Chief Building Official with a notation indicating that the deferred submittal documents have been reviewed and that they have been found to be in general conformance with the design of the building. The deferred submittal items shall not be installed until their design and submittal documents have been approved by the Chief Building Official.

II-1-18.06 Amended Construction Documents

Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

II-1-18.07 Special Inspection and Structural Observation Program

When special inspection is required by Section II-1-22, the architect or engineer of record shall prepare a special inspection program which shall be submitted to the Chief Building Official for approval prior to issuance of the building permit. The inspection program shall designate the portions of the work to have special inspection, the name or names of the individuals or firms who are to perform the special inspections and indicate the duties of the special inspectors.

The special inspector shall be employed by the owner, the engineer or architect of record, or an agent of the owner, but not the contractor or any other person responsible for the work. When structural observation is required by Section II-1-23, the inspection program shall name the individuals or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur. The inspection program shall include samples of inspection reports and provide time limits for submission of reports.

Section 19 Permit Issuance

II-1-19.01 Issuance

II-1-19.02 Retention of Construction Documents

II-1-19.03 Validity of Permit

II-1-19.04 Expiration

II-1-19.05 Suspension or Revocation

II-1-19.01 Issuance

The application, construction documents, specifications, computations and other data, filed by an applicant for permit shall be reviewed by the Chief Building Official. Such documents may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the Chief Building Official finds that the work described in an application for a permit and the construction documents, specifications and other data filed therewith conform to the requirements of this Title and the technical codes and other pertinent laws and ordinances, and that the fees specified have been paid, the Chief Building Official shall issue a permit therefore to the applicant.

The Chief Building Official shall endorse in writing or stamp the required construction documents and specifications. Such approved construction documents and specifications shall not be changed, modified or altered without authorizations from the Chief Building Official, and all work regulated by this Title shall be done in accordance with approved plans.

The Chief Building Official may issue a permit for the construction of part of a building, structure or building service equipment before the entire construction documents and specifications for the whole building, structure or building service equipment have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent

requirements of the technical codes. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building, structure or building service will be granted.

II-1-19.02 Retention of Construction Documents

One set of approved construction documents and computations shall be retained by the Chief Building Official for a period of not less than 180 days from the date of completion of the permitted work covered therein; and one set of approved construction documents shall be returned to the applicant and shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

II-1-19.03 Validity of Permit

The issuance of a permit or approval of construction documents, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Title, or the technical codes, or any other ordinance of the jurisdiction. Permit presuming to give authority to violate or cancel the provisions of the technical codes shall not be valid.

The issuance of a permit based upon construction documents, specifications and other data shall not prevent the Chief Building Official from thereafter requiring the correction of errors in said construction documents, specifications and other data, or from preventing building operations being carried on there under when in violation of this Title or of any other ordinances of this jurisdiction.

II-1-19.04 Expiration

Every permit issued by the Chief Building Official under the provisions of this Title and the technical codes shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced or an inspection made within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original construction documents and specifications for such work; and provided further that such suspension or abandonment has not exceeded 360 days. If the suspension or abandonment exceeds 360 days, the permittee shall pay a new full permit fee for the issuance of a permit.

Any permittee holding an unexpired permit may apply for an extension of the time within which the permittee may commence work under that permit. Requests must be in writing and demonstrate that an extension is warranted because of circumstances beyond the control of the permittee. The Chief Building Official may grant one or more extensions of time for periods not exceeding 180 days each. No permit shall be extended more than three times.

II-1-19.05 Suspension or Revocation

The Chief Building Official may, in writing, suspend or revoke a permit issued under the provisions of this Title whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this Title.

Section 20 Fees

II-1-20.01 Permit Fees

II-1-20.02 Plan Review Fees

II-1-20.03 Expiration of Plan Review

II-1-20.04 Investigation Fees—Work Without a Permit

II-1-20.05 Fee Refunds

II-1-20.01 Permit Fees

The fee for each permit shall be as set forth by resolution of the City Council.

II-1-20.02 Plan Review Fees

When construction documents or other data are required to be submitted by Section II-1-18.02, a plan review fee shall be paid at the time of submitting construction documents and specifications for review. Said plan review fee shall be as set forth by resolution of the City Council.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section II-1-18.05, an additional plan review fee may be charged at the rate set by resolution of the City Council.

II-1-20.03 Expiration of Plan Review

Applications for which no permit is issued within 180 days following the date of application shall expire by limitation and construction documents and other data submitted for review may thereafter be returned to the applicant or destroyed by the Chief Building Official. In order to renew action on an application after expiration, the applicant shall resubmit construction documents and pay a new plan review fee.

For active applications, the Chief Building Official may grant one or more extensions of time upon submission of a written request by the applicant that demonstrates that circumstances beyond the control of the applicant warrant the issuance of an extension. Each extension shall not exceed 180 days and an application shall not be extended more than three times. In the event that a second or third extension is requested, the Chief Building Official shall require the resubmission of construction documents and other data and the payment of additional fees if this Title or any other pertinent laws or ordinances have been amended subsequent to the date of the application's submission. In such case, the applicant shall be required to pay additional fees for reprocessing of the submission.

II-1-20.04 Investigation Fees—Work Without a Permit

Whenever any work for which a permit is required by this Title has been commenced without first obtaining said permit, a special investigation will be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, may be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this Title. The minimum investigation fee shall be the same as the minimum fee. The

payment of such investigation fee shall not exempt any applicant from compliance with all other provisions of this title or the technical codes nor from any penalty prescribed by law.

II-1-20.05 Fee Refunds

The Chief Building Official may authorize the refunding of any fee paid hereunder when there are two permits for the same work (double permitting).

The Chief Building Official may authorize the refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this title.

The Chief Building Official may authorize the refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan review is done.

The Chief Building Official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 1 year after the date of fee payment.

Section 21 Inspections

II-1-21.01 General

II-1-21.02 Inspection Record Card

II-1-21.03 Inspection Requests

II-1-21.04 Approval Required

II-1-21.05 Required Building Inspections

II-1-21.06 Required Building Service Equipment Inspections

II-1-21.07 Operation of Building Service Equipment

II-1-21.08 Other Inspections

II-1-21.09 Re-inspections

II-1-21.01 General

All construction work for which a permit is required shall be subject to inspection by the Chief Building Official and all such construction or work shall remain accessible and exposed for inspection purposes until approved by the Chief Building Official. In addition, certain types of construction shall have continuous inspection as specified in Section II-1-22.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this Title or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this Title or of other ordinances of the jurisdiction shall not be valid.

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the Chief Building Official nor this jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

A survey of the lot may be required by the Chief Building Official to verify that the structure is located in accordance with the approved plans.

II-1-21.02 Inspection Record Card

Work requiring a permit shall not be commenced until the permit holder or his/her agent have posted or otherwise made available an inspection record card to allow the Chief Building Official conveniently to make the required entries thereon regarding inspection of the work. This card shall be maintained available by the permit holder until final approval has been granted by the Chief Building Official.

II-1-21.03 Inspection Requests

It shall be the duty of the person doing the work authorized by a permit to notify the Chief Building Official that such work is ready for inspection. The Chief Building Official may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing, on line or by telephone at the option of the Chief Building Official.

It shall be the duty of the person requesting any inspections required either by this Title or the technical codes to provide access to and means for inspection of the work.

II-1-21.04 Approval Required

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Chief Building Official. The Chief Building Official, upon notification, shall make the requested inspections and shall either indicate that portion of the construction is satisfactory as completed or shall notify the permit holder or his agent wherein the same fails to comply with any of the technical codes or any other ordinances of the City of Milpitas. Any portions which do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the Chief Building Official.

There shall be a final inspection and approval of all buildings and structures when completed and ready for occupancy and use.

Reinforcing steel or structural framework of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Chief Building Official. Protection of joints and penetrations in fire-resistive assemblies shall not be concealed from view until inspected and approved.

II-1-21.05 Required Building Inspections

The Chief Building Official, upon notification, shall make the following inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his agent wherein the same fails to comply with this title.

1. Foundation Inspection. Inspection to be made after excavation for footings are complete and required reinforcing steel and inserts are in place. For concrete foundations, any required forms shall be in place prior to inspection. All materials for the foundation shall be on the job, except concrete ready-mixed in accordance with nationally recognized standards need not be on the job. Where the foundation is to be constructed of approved treated wood, additional inspections may be required by the Chief Building Official.

2. Concrete Slab or Under-Floor Inspection. Inspection to be made after all in-slab or under-floor building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including sub-floor.

3. Frame Inspection. Inspection to be made after the roof, all framing, fire blocking and bracing are in place and all pipes, chimneys and vents are complete and the rough electrical, plumbing, and heating wires, pipes, and ducts are approved.

4. Lath and/or Gypsum Board Inspection. Inspection to be made after all lath and Gypsum Board, interior and exterior, is in place, but before any plastering is applied or before Gypsum Board joints and fasteners are taped and finished.

5. Final Inspection. Inspection will be made after all work required by permit is completed and ready for occupancy.

II-1-21.06 Required Building Service Equipment Inspections

All building service equipment for which a permit is required by this Title shall be inspected by the Chief Building Official. No portion of any building service equipment intended to be concealed by any permanent portion of the building shall be concealed until inspected and approved. When the installation of any building service equipment is complete, an additional and final inspection shall be made. Building service equipment regulated by the technical codes shall not be connected to the water, fuel or power supply or sewer system until authorized by the Chief Building Official.

II-1-21.07 Operation of Building Service Equipment

The requirements of this section shall not be considered to prohibit the operation of any building service equipment installed to replace existing building service equipment serving an occupied portion of the building in the event a request for inspection of such building service equipment has been filed with the Chief Building Official not more than 48 hours after such replacement work is completed, and before any portions of such building service equipment is concealed by any permanent portion of the building.

II-1-21.08 Other Inspections

In addition to the called inspections specified above, the Chief Building Official may make or require other inspections of any construction work to ascertain compliance with the provisions of this Title or technical codes and other laws which are enforced by the code enforcement agency.

II-1-21.09 Re-inspections

A re-inspection fee may be assessed as set by resolution of the City Council for each inspection or re-inspection when such portion of work for which inspection is called is not complete or when corrections called for are not made.

This subsection is not to be interpreted as requiring re-inspection fees the first time a job is rejected for failure to comply with the requirements of the technical codes, but as controlling the practice of calling for inspections before the job is ready for such inspection or re-inspection.

Re-inspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, or failure to provide access on the date for which inspection is requested, or for deviating from plans requiring the approval of the Chief Building Official.

To obtain a re-inspection, the applicant shall make a request to the Chief Building Official and pay the re-inspection fee in accordance with the fee schedule adopted by this jurisdiction.

In instances where re-inspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

Section 22 Special Inspections

II-1-22.01 Special Inspections and Structural Testing

Special inspection and structural testing shall be provided in accordance with Sections 1704 and 1705 of the California Building Code. Additional special inspections and structural testing may be required when deemed necessary by the Chief Building Official.

Section 23 Structural Observation

II-1-23.01 Structural Observation

Structural observation shall be provided in accordance with Section 1704.5 of the California Building Code. Additional structural observation may be required when deemed necessary by the Chief Building Official.

Section 24 Connection to Utilities

II-1-24.01 Energy Connections

II-1-24.02 Temporary Connections

II-1-24.01 Energy Connections

No person shall make connections from a source of energy, fuel or power to any building service equipment which is regulated by the technical codes and for which a permit is required by this Title, until approved by the Chief Building Official.

II-1-24.02 Temporary Connections

The Chief Building Official may authorize the temporary connection of the building service equipment to the source of energy, fuel or power for the purpose of testing building service equipment, or for use under a temporary Certificate of Occupancy.

Section 25 Certificate of Occupancy

II-1-25.01 Use and Occupancy

II-1-25.02 Change in Use

II-1-25.03 Certificate Issued

II-1-25.04 Temporary Occupancy

II-1-25.05 Posting

II-1-25.06 Revocation

II-1-25.01 Use and Occupancy

Buildings or structures shall not be used or occupied nor shall a change in the existing occupancy group classification of a building or structure or portion thereof be made until the Chief Building Official has issued a Certificate of Occupancy therefore as provided herein.

Exception: Group R-3and U Occupancies, and work exempt from building permits under Section II-17.03.

Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this Title or of other ordinances of the jurisdiction shall not be valid.

If a portion of any building does not conform to the requirements of this Title for a proposed occupancy, that portion shall be made to conform. The Chief Building Official may issue a new Certificate of Occupancy without stating therein that all of the requirements of this Title have been made and without requiring compliance with all such requirements if he/she finds that the change in occupancy will result in no increased hazard to life, health, property or public welfare.

When application is made for such Certificate of Occupancy, the Chief Building Official shall cause an inspection of the building to be made. The Chief Building Official shall advise the applicant of any alterations necessary. Before any application for such Certificate of Occupancy is accepted, a fee as set forth in the fee schedule shall be paid by the applicant to cover the cost to the City of the inspection of the building. Such fee shall be in addition to the business licensee fee required by Chapter I, Title III of the Milpitas Municipal Code.

II-1-25.02 Change in Use

Changes in the character or use of a building shall not be made except as specified in this Title and the technical codes.

II-1-25.03 Certificate Issued

After the Chief Building Official inspects the building or structure and finds no violations of the provisions of this Title or the technical codes or other laws, which are enforced by the code enforcement agency, the Chief Building Official shall issue a Certificate of Occupancy which shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building has been inspected for compliance with the requirements of this Title for the group of occupancy and the use for which the proposed occupancy is classified.
6. The use and occupancy.
7. Type of construction.

8. The name of the Chief Building Official and Fire Marshall.
9. Any special conditions of the Building Permit.

II-1-25.04 Temporary Occupancy

If the Chief Building Official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, he/she may issue a Temporary Certificate of Occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure. Temporary Certificate of Occupancy shall state the time period for which it is valid as set by the Chief Building Official.

II-1-25.05 Posting

The Certificate of Occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the Chief Building Official.

II-1-25.06 Revocation

The Chief Building Official may, in writing, suspend or revoke a Certificate of Occupancy issued under the provisions of this Title whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this Title.

Section 26 Notice of Code Violations

II-1-26.01 Notice of Code Violation

II-1-26.02 Recordation of Violation

II-1-26.03 Appeal to City Manager

II-1-26.01 Notice of Code Violation

Whenever the Chief Building Official has knowledge of a violation of the provisions of any Chapter of Title II of the Milpitas Municipal Code or any of the California Codes or appendices incorporated in any of the Chapters of said Title (including, but not limited to, the California Building Code, the California Residential Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, the California Energy Code, the California Green Building Standards Code) or the provisions of Chapter 300, Title V of the Milpitas Municipal Code, or of the California Fire Code, California Fire Code Appendices and California Fire Code Standards adopted therein, the Chief Building Official may issue a Notice of Intent to record a Notice of Code Violation to the owner of the land where the violation is located. Notice shall be given to the owner at the address shown on the latest equalized assessment roll of the County of Santa Clara, California, or as is known to the City Manager of the City of Milpitas by posting on the property itself and by personal service or by certified mail, postage prepaid, and with return receipt requested.

Notice by mail may also be given (but shall not be required to be given) to any other owner of any interest in said land as may be known to the Chief Building Official. The notice shall state that within 20 days of the date of notice, the owner may request a hearing with the Chief Building Official to present evidence that a violation does not exist.

II-1-26.02 Recordation of Violation

Following a hearing and after consideration of the evidence presented, if the Chief Building Official determines that a code violation in fact exists, the Chief Building Official shall give notice either by personal service or by certified mail, postage prepaid and return receipt requested, to the owner at the address shown on the latest equalized assessment roll of the County of Santa Clara, California, or as is known to the City Manager of the City of Milpitas that if the violation is not corrected within 45 days of the date of personal service or mailing or within such time as deemed appropriate by the Chief Building Official, the Chief Building Official shall record a Notice of Code Violation in the Office of the County Recorder of Santa Clara County, California. Unless an appeal from the Chief Building Official's decision is filed with the City Manager, as hereafter provided, the Chief Building Official shall record said notice of code violation after 45 days.

If no hearing was requested under Section II-1-26.01 and the violation continues, the Chief Building Official shall inform the owner by personal service or certified mail that a notice of code violation shall be recorded with the County Recorder or Santa Clara County in 45 days. Unless presented with proof of complete correction, the Chief Building Official shall record said notice of code violation after 45 days.

II-1-26.03 Appeal to City Manager

If the owner requested a hearing and is dissatisfied with the result, the owner may file a written appeal to the City Manager within 15 days of the date of mailing of the letter from the Chief Building Official referred to in Section II-1-26.02. The appeal shall be made in accordance with Section I-20-5.00 of the Milpitas Municipal Code and shall be heard by the City Manager as hearing officer in accordance with the procedures set forth in Section I-20-3.00 of the Milpitas Municipal Code. In any case involving the interpretation of technical provisions of any of the codes, the City Manager may seek a written report of an expert of the Manager's selection, but shall not be bound by said report. The decision of the City Manager following the close of said hearing may be appealed to the City Council in accordance with Section I-20-5.01. The owner shall be given written notice by mail of the City Manager's decision within sixty (60) days of the hearing. No Notice of Code Violation shall be recorded until thirty (30) days from date of mailing of said decision to give the owner an additional opportunity to correct the violations.

Section 27 Repeal of Conflicting Ordinances

II-1-27.01

Upon adoption of each new Administrative Code, as amended, the previously adopted Administrative Code is superseded in its entirety.

Section 28 Severability

II-1-28.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 29 Effective Date

II-1-29.01

This Chapter shall become effective on January 1, 2014.

Chapter 2 MOVING AND DEMOLITION

Sections:

Section 1 - Application of This Title and Chapter
Section 2 - Permits
Section 3 - Inspection By the Building Official
Section 4 - Denial of Permit
Section 5 - Notice Of Intention To Issue Moving Permit
Section 6 - Issuance of permits and conditions thereto
Section 7 - Cash Deposit or Surety Bond
Section 8 - Liability Insurance Required
Section 9 - Sealing the Sewer
Section 10 - Moving Requirements
Section 11 - Demolition of Buildings
Section 12 - Additional Requirements
Section 13 - Bond Requirement

Section 1 Application of This Title and Chapter

II-2-1.00

In addition to the other provisions of this Title, the provision of this Chapter shall apply to the moving and demolition of buildings or structures. Without limitation to the generality thereof, the moving permit and demolition permit herein referred to shall be deemed to be a class of the permit referred to in Section II-1-17.01 of this Title, and all provisions in this Chapter or in any other Chapter or Title of the Milpitas Municipal Code relating to permit under this Chapter shall also apply to said moving or demolition permits.

Section 2 Permits

II-2-2.00

II-2-2.01 Application

II-2-2.02 Contents of Application

II-2-2.03 Application Fee

II-2-2.04 Moving Permit Fee

II-2-2.05 Fee for Additional Buildings

II-2-2.00

No person shall move or cause to be moved any building or structure, as defined in this Title, or any Code adopted thereby, from any location within the City of Milpitas to any other location (within or without the said City of Milpitas,) without first obtaining a permit in writing.

II-2-2.01 Application

Application for said permit shall be filed in duplicate with the Building Official.

II-2-2.02 Contents of Application

The application shall specify the size and character of the building or structure to be moved, the proposed improvement to be made, if any, the place from which and the place to which said building or structure is to be moved, the method of such moving and the proposed route to be followed.

II-2-2.03 Application Fee

At the time of filing such application, the applicant shall pay to the Building Official an application fee in the amount of One Hundred Thirty-Eight Dollars ($138.00), plus a fee of 25 cents per mile one-way outside the City limits of Milpitas.

II-2-2.04 Moving Permit Fee

If a moving permit fee is issued as hereinafter provided by the Building Official, the applicant shall pay an additional moving permit fee of One Hundred Thirty-Eight Dollars ($138.00).

II-2-2.05 Fee for Additional Buildings

The fee for each additional building or portion of any severed building moved under one permit as provided herein shall be Two and 50/100 Dollars ($2.50).

Section 3 Inspection by the Building Official

II-2-3.01 Regulations on Inspection

Within three (3) working days after receipt of an application, the Building Official shall inspect the building or structure to be moved and the site to which the move is proposed (provided, however, that the Building Official may, but shall not be required to, inspect any site which is located outside the City of Milpitas). In addition, the Building Official may, in his discretion, inspect all roller, trucks, wheels, dollies, tractors or other apparatus proposed to be used in the moving operation, and shall restrict the use of such apparatus to that which, in his judgement will not cause injury to highways, bridges, or other property or hazard to traffic. The Building Official may also require reasonable changes in the route proposed, even though the route required may be longer than the one proposed, and may specify the hours within which any moving must be accomplished.

Section 4 Denial of Permit

II-2-4.01 Defective Buildings
II-2-4.02 Prohibited zone
II-2-4.03 Notice
II-2-4.04 Conditions must be met

The application for permit shall be denied when:

II-2-4.01 Defective Buildings

Any unlawful, dangerous or defective condition of a building proposed to be moved is such that remedy or correction cannot effectively be made; or

II-2-4.02 Prohibited Zone

The building or structure is of a type prohibited in that location by fire zone or zoning ordinance.

II-2-4.03 Notice

The Building Official shall inform the applicant of the denial in writing within five (5) working days of the filing of the application. The denial shall set forth the reasons therefor, shall designate the applicable provisions of the law or regulations upon which said denial is predicted.

II-2-4.04 Conditions Must be Met

The consents required by subsection II-2-6.05 of this Chapter cannot be obtained or the condition imposed pursuant thereto cannot or are not being met.

Section 5 Notice Of Intention To Issue Moving Permit

II-2-5.01 Posting of Notice

If the Building Official determines that the building or structure proposed to be moved will not come within the scope of the conditions prohibited by this Chapter, he shall cause a notice of intention to issue a moving permit to be posted within five (5) working days from filing the application on stakes at the front and rear of the proposed location (unless the proposed location is outside the City of Milpitas, in which event the Building Official may, but shall not be required to, post the front and rear of the proposed location) and on the front of the building proposed to be moved. Such notice shall not be less than 11″ × 14″ in size and shall set forth the character of the building to be moved, the present and proposed location of the building and the date of the posting. Such notice shall be posted for a minimum of five (5) days before the actual moving.

Section 6 Issuance of Permits and Conditions Thereto

II-2-6.01 Issuance
II-2-6.02 Compliance
II-2-6.03 No Occupancy or Utility Connection Until Contents of Permit are Completed
II-2-6.04 Proof of Completion of Requirements
II-2-6.05 Notification of Utilities

II-2-6.01 Issuance

In the event the decision of the Building Official to grant the permit is not appealed within the time authorized by this Chapter specified above and the building or structure proposed to be moved will not come within the scope of the conditions prohibited by this Chapter, and the applicant has complied with all other applicable requirements of this Title, the Building Official shall issue the permit. In the event an appeal has been filed, the Building Official shall issue or deny said permit, pursuant to the terms of the final decision of the Council and the other applicable provisions of this Title.

II-2-6.02 Compliance

If a permit is granted, it shall be granted under terms which shall require the applicant or owner of any building or structure to be moved to comply with the provisions of all applicable State laws, local ordinances and conditions specified by the Building Official, to make such changes or repairs as may be necessary to make such changes or repairs as may be necessary to comply therewith.

II-2-6.03 No Occupancy or Utility Connection Until Contents of Permit are Completed

No building or structure moved in accordance with the provisions of this Title shall be used or occupied or have utility services connected thereto until said necessary changes or repairs have been completed.

II-2-6.04 Proof of Completion of Requirements

Prior to the issuance of any permit, the Building Official shall also require the applicant to furnish proof that the requirements of any public utility, whose lines, wires, pipes or other structures which may be affected by said move, have been met.

II-2-6.05 Notification of Utilities

The applicant, as a condition to the issuance of the permit, shall agree to notify the public utilities which may be involved of the tentative time of such moving, the route of such moving, and the estimated loaded height of the building and moving equipment. The applicant shall further agree to bear the costs of any measures required to protect said public utility structures from destruction or damage due to the moving of any building pursuant to this Chapter. The Public Works Inspector shall inspect the public property before and after.

II-2-6.06 Moving of building outside the city

If the applicant proposes to move the building or structure outside the limits of the City of Milpitas, the Building Official shall require as condition to the issuance of a permit by said Building Official that:

6.06-1 The consent of the jurisdiction or jurisdictions through which and to which said building or structure shall be moved and shall be located is or are obtained in writing, and written evidence thereof be filed with the Building Official.

6.06-2 In addition to such other grounds as may be authorized by the provisions of this Title or any other applicable law for the denial of a permit hereunder, the Building Official shall be empowered to deny an application for a permit when the consent of said jurisdiction or jurisdictions cannot be obtained or the conditions imposed by said jurisdictions upon said consent cannot or are not being met by the applicant.

Section 7 Cash Deposit or Surety Bond

II-2-7.01 Amount Set at the Discretion of the Building Official
II-2-7.02 Form and Language

II-2-7.01 Amount Set at the Discretion of the Building Official

The Building Official may require the applicant to deposit cash or a surety bond issued by a surety company authorized to transact a surety business in the State of California with the City to insure compliance with the applicable provisions of law and the conditions imposed on the subject permit. The amount of such bond is to be set at the discretion of the Building Official. The amount shall be 125% of the Building Official's estimated cost of proposed work. At the time of filing the cash or bond with the City, applicant must also execute and file a statement in substantially the following language.

II-2-7.02 Form and Language

"I,_____, applicant, hereby promise to comply with all applicable provisions of law and the conditions imposed on moving permit No._____. By way of guarantee that this work will be done, I herewith deposit with the City cash (or bond) in the amount of _____ dollars and agree that in the event these conditions are not fulfilled within _____ days hereafter the City may in its discretion either cause said conditions to be fulfilled or demolish the building or structure which was moved under authority of said moving permit and charge the costs thereof including reasonable attorneys fees in the event of suit upon said bond plus repair costs of public property to said cash or bond."

Section 8 Liability Insurance Required

II-2-8.01 Conditions

No permit shall be issued under the provisions of this Chapter unless the permittee shall have first taken out and agree to maintain at all times public liability insurance in an amount not less than $100,000.00 for injuries, including wrongful death, to any one person in an amount not less than $300,000.00 on account of one occurrence, and unless also he shall take out and agree to maintain at

all times property damage insurance in an amount no less than $50,000.00. Such insurance shall name the City, its officers and employees as an insured, shall be primary insurance to the full extent thereof and shall not be cancelled or reduced in coverage without thirty (30) days prior notice in writing to City, and a certificate of insurance shall be filed with the Building Official.

Section 9 Sealing the Sewer

II-2-9.01 Conditions

All moving permits shall contain the condition that applicants, when moving from a site within the City:

9.01-1 has sealed or will seal the sewer line at the site from which the building is being moved in the manner prescribed by the political subdivision having jurisdiction thereof, or

9.01-2 has pumped and filled with earth or sand or will pump and fill with earth and sand the sewage disposal system in accordance with State, County or City health requirements.

Section 10 Moving Requirements

II-2-10.01 Safety requirements
II-2-10.02 Traffic
II-2-10.03 Crossing of curbs and walks
II-2-10.04 Permit Limitations, Time
II-2-10.05 Transfer
II-2-10.06 Refunds
II-2-10.07 Additional Buildings
II-2-10.08 Public Nuisances

II-2-10.01 Safety requirements

Red lights shall be maintained by the mover at each corner of the building or structure from ½ hour after sunset until ½ hour before sunrise on such dates as the building is on any public right-of-way or within 15 feet of any surfaced roadway.

II-2-10.02 Traffic

The Police and Fire Department shall be informed of the route of travel and time at least 24 hours before moving.

II-2-10.03 Crossing of curbs and walks

The Public Works Department shall be informed of travel and shall inspect all public facilities such as stop signs, curbs and walks, just before and immediately after the moving.

II-2-10.04 Permit Limitations, Time

Permission to move any building or structure under any permit shall expire 60 days after issuance, except that the Building Official may extend the expiration time and additional 60 days upon request with good reason.

II-2-10.05 Transfer

Permits issued under this Chapter shall not be transferred by the holder thereof to any other person. All movements of buildings authorized by the permit shall be made under the control and supervision of the grantee of the permit.

II-2-10.06 Refunds

No fees required by this Chapter shall be refunded if the moving of a building or structure authorized by the permit is not made.

II-2-10.07 Additional Buildings

Additional buildings or structures or portions of buildings or structures may be moved on a single permit when all are moved from one location or parcel of land to another using the same route.

II-2-10.08 Public Nuisances

Any building or structure moved contrary to any of the provisions of this Chapter is hereby declared to be a public nuisance.

Section 11 Demolition of Buildings

II-2-11.01 Permit Required

11.01-1 No building shall be demolished without first obtaining a permit to do the same.

11.01-2 If the permit is for a building listed on the 1990 Historic Sites Inventory, which is identified in Section 11.01.3 below, the permit shall be issued by the City Council upon application filed with the building division of City. The Building Official shall promptly transmit the permit application to the City Clerk, together with his or her comments and recommendations. The Council may consider the matter on the first available agenda but shall not be required to take action for 30 days following the filing of the application. In granting any permit hereunder, the City Council shall be empowered to:

(a) Impose reasonable conditions to protect the public peace, health, safety and general welfare and to defer issuance of the permit until those conditions are met or secured.

(b) Impose a reasonable delay (not to exceed 180 days) on the issuance of a permit if it finds a building a potential cultural resource within the meaning of Chapter 4, Title XI of the Milpitas Municipal Code.

The provisions of this subsection 11.01-2 shall expire and be of no further effect on May 31, 1992, unless the City Council shall amend this Chapter to make this subsection 11.01-2 permanent.

11.01-3 The following buildings are subject to the permit requirements described in Section 11.01-2:

(a) Dutra Home/Smith Home, 86 N. Main Street;

(b) 27 S. Main Street;

(c) Venturini House/Pashote House, 99 S. Main St.;

(d) Cracolice Store/Pashote Bros. Store, 111-129 S. Main Street;

(e) Kozy Kitchen/Pashote Bros. Meat Market, 114 S. Main Street;

(f) Deniz Home/Crabb Home, 230 S. Main Street;

(g) Cardoza House/Crabb House, 244 S. Main Street;

(h) Caudillo House/Silvera House, 280 S. Main Street;

(i) Evatt Home/Dr. Curlin Home & Office, 290 S. Main Street;

(j) Torres House, 155 Sinnott Lane.

II-2-11.02 Application

Application for such permit shall be filed with the Building Official.

II-2-11.03 Fee

There shall be a fee charged in accordance with the resolution adopted by Council setting forth building inspection fees.

II-2-11.04 Time

Permission to demolish any building shall expire 60 days after issuance of permit.

II-2-11.05 Transfer

Permits issued under this Section shall not be transferred to anyone else.

II-2-11.06 Ownership

Permits shall be issued only to an owner of the building to be demolished or to a state licensed contractor.

Section 12 Additional Requirements

II-2-12.01 Public Improvements
II-2-12.02 Public Utilities
II-2-12.03 Septic Tanks
II-2-12.04 Lots

II-2-12.01 Public Improvements

The public improvements within the street right-of-way shall be inspected before the start of demolition and at the completion by a Public Works Inspector. The applicant shall be held responsible for any damage to Public Improvements.

II-2-12.02 Public Utilities

All public utilities shall be disconnected or removed as required by the agencies concerned.

II-2-12.03 Septic Tanks

Where a sewage disposal system exists it shall be pumped and filled with earth or sand in accordance with State, County and City Health Department requirements.

II-2-12.04 Lots

Lots shall be left clean. All foundations shall be removed, (unless permission is given to rebuild on same) and the lot shall be graded to drain and be free of water holes.

Section 13 Bond Requirement

II-2-13.01 Bond
II-2-13.02 Form and Language

II-2-13.01 Bond

The Building Official shall require the applicant to deposit with the city cash or a surety bond issued by a corporate surety authorized to transact a surety business in the State of California to insure compliance of the job. The amount of such bond shall be set at the discretion of the Building Official. The amount of said bond shall be set at 125% of the estimated cost of the work. The applicant shall file a statement in substantially the following language.

II-2-13.02 Form and Language

"I, _____, applicant, hereby promise to comply with all provisions of law and conditions imposed on demolition permit No._____. By way of guarantee that this job will be completed and the property left clear of debris or other hazards and that any damaged public utilities be repaired, I herewith deposit with the City cash (or bond) in the amount of _____ dollars and agree that in the event that these conditions are not fulfilled within _____ days hereafter the City may in its discretion cause that such remaining material or debris shall be removed and any change to public property be repaired. The cost including reasonable attorney's fees in the event of any suit upon said bond thereof shall be charged to said cash or bond."

Chapter 3 BUILDING CODE

Sections:

Section 1 - Adoption of the Building Code
Section 2 - Amendments to the 2013 California Building Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Building Code

II-3-1.01

The 2013 Edition of the California Building Code, Volumes 1 and 2, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 2, incorporating the International Building Code, 2012 Edition, including Appendices C and I published by the International Code Council, with the amendments set forth in Section II-3-2.00 is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Building Code

II-3-2.01
II-3-2.02
II-3-2.03
II-3-2.04
II-3-2.05
II-3-2.06
II-3-2.07
II-3-2.08
II-3-2.09
II-3-2.10 – II-3-2.11 Reserved
II-3-2.12
II-3-2.13
II-3-2.14
II-3-2.15
II-3-2.16 – II-3-2.30 Reserved
II-3-2.31
II-3-2.32 Reserved
II-3-2.33
II-3-2.34
II-3-2.35
II-3-2.36
II-3-2.37

II-3-2.38 Reserved
II-3-2.39

II-3-2.01

The California Building Code, 2013 Edition is amended or changed in the following respects.

II-3-2.02

Chapter 1 Division I of the California Building Code, 2013 Edition, is adopted as amended. Delete sections 1.8.4, 1.8.5, 1.8.7 and 1.8.8.

Chapter 1 Division II of the California Building Code, 2013 Edition is deleted and replaced by Chapter 1 of this Title.

II-3-2.03

Section 402.5 of the California Building Code, 2013 Edition is amended as follows:

Delete exception

Section 403.3 of the California Building Code, 2013 Edition is amended as follows:

Delete exception

Section 404.3 of the California Building Code, 2013 Edition is amended as follows:

Delete all exceptions

Add Section 406.3.6 of the California Building Code, 2013 Edition to read as follows:

406.3.6 Flammable Vapor Ventilation. In enclosed private garages attached to R occupancies, provide 1 sq. ft. of ventilation area located at the lower 12″ of garage wall. Said ventilation areas shall be directly communicable with the exterior, but shall not be installed where protection of openings is required.

Section 410.7 of the California Building Code, 2013 Edition is amended as follows:

Delete exceptions 1 and 2

II-3-2.04

Amend Section 717.2.2 of the California Building Code, 2013 Edition to read as follows:

717.2.2 Hazardous Exhaust Ducts. Penetrations of structural elements by hazardous exhaust duct systems shall conform to sections 717.2.2.1 through 717.2.2.4.

717.2.2.1 **Fire Dampers.** Fire Dampers are prohibited in hazardous exhaust ducts.

717.2.2.2 **Floors.** Hazardous exhaust duct systems that penetrate a floor/ceiling assembly shall be enclosed in a fire-resistance-rated shaft constructed in accordance with Section 713 and such enclosure shall have a minimum fire-resistance-rating of not less than the highest fire-resistance-rated floor/ceiling assembly penetrated.

717.2.2.3 **Wall Assemblies.** Hazardous exhaust duct systems that penetrate fire-resistance-rated construction shall be enclosed in a fire-resistance-rated shaft from the point of penetration to the outlet terminal, except where the interior of the duct is equipped with an approved automatic fire

suppression system. Ducts shall be enclosed in accordance with the requirements of Section 713 for shaft construction and such enclosure shall have a minimum fire-resistance-rating of not less than the highest fire-resistance-rated wall assembly penetrated.

717.2.2.4 **Fire Walls.** Hazardous exhaust ducts shall not penetrate a fire wall.

II-3-2.05

Amend Chapter 9 of the 2013 California Building Code as follows:

In addition to Milpitas Municipal Code Title II for local amendments to Fire Protection Systems requirements refer to Milpitas Municipal Code Title V Chapter 300.

II-3.2.06

Amend Section 907.2.11.6 of the California Building Code, 2013 Edition by adding the following:

When the valuation of an addition, alteration or repair to Group R Occupancy exceeds $1,000 and a permit is required, or when one or more sleeping rooms are added or created in existing Group R Occupancies, chimney spark arresters shall be installed. Spark arresters shall be constructed in conformance with Section 2802.

II-3-2.07

Section 1505.1.5 is added to the California Building Code, 2013 Edition, to read as follows:

1505.1.5 Roofing. Class A or Class B roof covering shall be required for all Hillside Construction.

II-3-2.08

Reserved

II-3-2.09

Section 1609.1 of the California Building Code, 2013 Edition is amended by adding the following at the end of the first paragraph:

Hillside construction - construction in hillside areas shall be designed for a minimum wind speed (Vasd) 80 mph and exposure C.

All structures located in the hillside shall conform to minimum requirements of section 2308.10.1.

II-3-2.10

Reserved

II-3-2.11

Reserved

II-3-2.12

Section 1705-3 of the California Building Code, 2013 Edition is amended as follows:

1705.3 Concrete Construction. The special inspections and verifications for concrete construction shall be as required by this section and Table 1705.3.

EXCEPTIONS: Special inspection shall not be required for:

1. Isolated spread concrete footings of buildings three stories or less in height that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength, f'c, no greater than 2,500 pounds per square inch (psi) (17.2 MPa).
2. Continuous concrete footings supporting walls of buildings three stories or less in height that are fully supported on earth or rock where:
   - 2.1. The footings support walls of light-frame construction;
   - 2.2. The footings are designed in accordance with Table 1809.7; or
   - 2.3. The structural design of the footing is based on a specified compressive strength, f'c, no greater than 2,500 pounds per square inch (psi) (17.2 MPa), regardless of the compressive strength specified in the construction documents or used in the footing construction.
3. Nonstructural concrete slabs supported directly on the ground, including prestressed slabs on grade, where the effective prestress in the concrete is less than 150 psi (1.03 Mpa).
4. Concrete patios, driveways and sidewalks on grade.

II-3-2.13

Section 1808.1 of the California Building Code, 2013 Edition is amended as follows:

Add the following to Section 1808.1:

All new foundations required due to building additions to existing occupancies shall be of the same type of foundation system as the existing structure. Additions to R-3 occupancies without an available soils report and where the existing foundation system is a standard "T" type or a pier and grade beam type, may be constructed as described in Section 1808.1.1 through 1808.1.2 at the option of the property owner.

EXCEPTION: A soil report is required for both new residences and additions to residences in Hillside Areas.

1808.1.1 General

Footings for R-3 & U occupancies shall be designed in accordance with the structural provisions of the California Building Code including, where applicable, Table 1809.7 and this Chapter.

1808.1.2 Concrete Pier and Grade Beam Type Foundation

Unless the new foundation has been designed by a California licensed Architect, or Civil or Structural Engineer, the building addition no more than one story in height may be constructed on a pier and grade beam type foundation as described in Section 1808.1.2.1 through 1808.1.2.3.

1808.1.2.1 Concrete Piers

The concrete piers shall be at least 12 inches in diameter, extend at least 6 feet below pad grade, and have a horizontal center-to-center spacing of no greater than 6 feet.

Interior floor supports for a building addition constructed with a raised floor (4-inch by 4-inch post on a nailer plate or equal) shall be supported on concrete piers extended at least 8″ above pad grade. The piers can be extended using a short section of a sonotube.

1808.1.2.2 Grade Beams

The connecting grade beams for a building addition constructed with either a raised floor or a concrete slab-on-grade shall be at least 10 inches wide by 16 inches deep. A 1-1/2 inch void space shall be created at the bottom of the beam between pier locations.

1808.1.2.3 Reinforcement

The minimum reinforcement for grade beams shall be two #4 bars at top and two #4 bars at bottom, with #4 ties at 18-inch on center or #3 ties at 12-inch on center. All bars shall have a minimum 3-inch clear cover of concrete. Splices in reinforcement shall be as follows:

1. Top steel shall be spliced at mid span between piers.
2. Bottom steel shall be spliced over the pier centerline.
3. All splices shall have a minimum length of 40 bar diameters and shall be staggered. Pier reinforcement shall consist of at least three #4 vertical bars with #3 ties at 4″ o.c. for upper 18″ of pier and 8″ o.c. for remaining pier depth. This reinforcement shall extend to within 6 inches of the bottom of the pier holes, shall have a minimum 3-inch cover of concrete between each bar and the sides of the pier hole, and shall be aligned with the centerline of the connecting beam. The vertical bar(s) of each pier shall extend into the grade beam and have a minimum 12-inch standard hook with the top bar of the connecting footing.

Reinforcement is required in concrete floor slabs constructed on grade. The slab shall be reinforced with not less than six inches by six inches by ten-gauge wire mesh or an approved alternate installed at mid height of the slab.

1808.1.3 Interior Concrete Slab-on-Grade

Interior concrete slab-on-grade shall be at least 4 inches thick and be constructed on a capillary break that has been placed on a stabilized subgrade and is capped with a vapor retarder that shall be used to retard vapor transmission through the floor slab. The capillary break should be at least 4 inches thick and consist of a free-draining material, such as 3/8″ pea gravel or a permeable aggregate complying with CALTRANS Standard Specifications, Section 68, Class 1, Type A or Type B. The membrane vapor retarder should be a high quality membrane such as 6 mil polyethylene with joints lapped not less than 6 inches or other approved equivalent methods or materials. A minimum 2-inch-thick protective cushion of sand or capillary break material should be placed over the membrane. The slab shall be reinforced with not less than 6×6 ten gauge wire mesh or an approved alternative installed at mid height of the slab.

Where interior stud wall loads are to be carried by the floor slab, the slab section shall be thickened to 12 inches and founded directly on the undisturbed sub-grade.

The soil sub-grade should be brought to moisture equilibrium by covering it with an impervious membrane for a minimum period of two weeks before placement of the concrete floor slab. The covering should be equivalent to at least a 6 mil polyethylene. Rock to be used as capillary break may be used to keep the basal membrane in place.

II-3-2.14

Delete Section 1905.1.8 of the California Building Code, 2013 Edition and replace with the following:

1905.1.8 ACI 318-11, section 22.10. Delete ACI 318, Section 22.10, and replace with the following:

22.10 - Plain concrete in structures assigned to seismic design category C, D, E or F.

22.10.1- Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

(a) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one and two-family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

(b) Plain concrete footing supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than no. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

II-3-2.15

Section 2301.2, method 3 of California Building Code, 2013 Edition is revised as follows:

Delete exception

II-3-2.16 – II-3-2.30

Reserved

II-3-2.31

Add section 2305.1.3 to California Building Code, 2013 Edition to read as follows:

Amend section 4.3.4 of AF&PA SDPWS, 2008 Edition as follows:

Delete rows 5 & 6 and footnote 2 of Table 4.3.4

II-3-2.32

Reserved

II-3-2.33

Section 2306.3 of the California Building Code, 2013 Edition is amended as follows:

Add to Section 2306.3 the following:

Shear walls sheathed with Portland cement plaster, gypsum lath, gypsum sheathing or gypsum board shall not be used to resist seismic forces in structures assigned to Seismic Design Category D, E or F.

Exception: Expanded metal or woven wire lath and Portland cement plaster on studs spaced at 16 inches (406 mm) on center installed per Table 2306.3(3) is permitted for use in one story structures of R-3 and U occupancies in Seismic Design Category D.

II-3-2.34

Section 2308.1 of The California Building Code, 2013 Edition is adopted with amendments as follows:

Section 2308.1 General. The requirements of this section are intended for conventional light-frame construction. Other methods are permitted to be used, provided a satisfactory design is submitted showing compliance with other provisions of this code. Interior nonload-bearing partitions, ceilings and curtain walls of conventional light-frame construction are not subject to the limitations of this section. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the California Residential Code.

Section 2308.3.4 of The California Building Code, 2013 Edition is adopted with amendments as follows:

Section 2308.3.4 Braced wall line support. Braced wall lines shall be supported by continuous foundations.

Exceptions:

1. One-story buildings with maximum plan dimension not exceeding 50 feet (15240 mm), may have continuous foundations located at exterior braced wall lines only.
2. Two-story buildings with a maximum plan dimension not exceeding 50 feet (15240 mm) may have braced wall lines supported on continuous foundations at the exterior walls only, provided:
   a) Cripple walls do not exceed 4 feet (1219 mm) in height*;* and
   b) Where the first story is supported on a raised wood framed floor, the interior braced wall panels are directly supported by either doubled joists, continuous 4x blocking, or minimum 4x floor beams.

Section 2308.12.4 of The California Building Code, 2013 Edition is adopted with amendments by adding the following to the end of the first paragraph:

Wall studs shall be spaced a maximum of 16 inches on center. Nailing shall be minimum 8d common placed at least 3/8 inches from panel edges and spaced not more than 6 inches on center, and 12 inches on center along intermediate framing members.

Footnotes b and c in Table 2308.12.4 are amended as follows:

b. G-P = fiberboard, particleboard, lath and plaster; S-W = wood structural panels and diagonal wood sheathing.

c. Nailing as specified below shall occur at all panel edges at studs, at top and bottom plates and, where occurring, at blocking:

For Portland cement plaster, No. 11 gage (0.120 inch) by 1½ inches long, 7/16 inch head at 6 inches on center;

For fiberboard and particleboard, No. 11 gage (0.120 inch) by 1½ inches long, 7/16 inch head, galvanized nails at 3 inches on center.

Section 2308.12.5 of the California Building Code, 2013 Edition is adopted with amendments as follows:

Attachment of sheathing. Fastening of braced wall panel sheathing shall not be less than that prescribed in Table 2308.12.4 or 2304.9.1. Wall sheathing shall not be attached to framing members by adhesives. All braced wall panels shall extend to the roof sheathing and shall be attached to parallel roof rafters or blocking above with framing clips (18 gauge minimum) spaced at maximum 24 inches (6096 mm) on center with four 8d nails per leg (total eight 8d nails per clip). Braced wall panels shall be laterally braced at each top corner and at maximum 24 inch (6096 mm) intervals along the top plate of discontinuous vertical framing.

II-3-2.35

Section 2505 of the California Building Code, 2013 Edition, is amended as follows:

Deleted in its entirety.

II-3-2.36

Section 2901.2 is added to the California Building Code, 2013 Edition, to read as follows:

Food Consumed on the Premises

Not withstanding anything to the contrary contained in or inferable from the applicable California Building Code, or in this Chapter, every establishing selling food for consumption on the premises of said establishment (at tables or counters or otherwise) shall have at least one (1) toilet room (with toilet and wash basin) for the use of employees and customers. The provisions of this Section shall not apply to an establishment which sells food exclusively for take-out (i.e. consumption off the premises) and which does not have tables, counters or other places or facilities for customers to consume food on the premises excepting that employees of all food facilities shall have access to toilet and hand-washing facilities as required by this code and as required by the Health Department.

II-3-2.37

Section 3310.1 of California Building Code, 2013 Edition, is amended as follows:

3310.1 Stairways Required. All floor levels above the first story in new multi-story buildings that require 2 exit stairs shall be provided with at least two usable exit stairways (temporary or permanent) after the floor decking is installed. The stairways shall be continuous and discharge to grade level. Stairways serving more than two floor levels shall be enclosed (with openings adequately protected) after exterior walls/windows are in place. Exit stairs in new and in existing,

occupied buildings during construction shall be lighted and maintained clear of debris and construction materials at all times.

Exception: For new multi-story buildings, one of the required exit stairs may be obstructed on not more than two contiguous floor levels for the purposes of stairway construction (i.e., installation of gypsum board, painting, flooring, etc.).

II-3-2.38

Reserved

II-3-2.39

Section 3405 of California Building Code 2013 is amended as follows:

Add section 3405.2.4 to read as follows:

3405.2.4 Seismic Evaluation and Design Procedures for Repairs. The seismic evaluation and design shall be based on the procedures specified in the California Building Code, ASCE 31 Seismic Evaluation of Existing Buildings (for evaluation only) or ASCE 41 Seismic Rehabilitation of Existing Buildings. The procedures contained in Appendix A2, A3, A4 and A5 of the International Existing Building Code shall be permitted to be used as specified in Section 3405.2.4.

3405.2.4.1 Compliance with CBC level seismic forces. Where compliance with the seismic design provisions of the California Building Code is required, the procedures shall be in accordance with one of the following:

1. One-hundred percent of the values in the California Building Code. Where the existing seismic force-resisting system is a type that can be designated as "Ordinary," the values of R, Ω_o, and C_d used for analysis in accordance with Chapter 16 of the California Building Code shall be those specified for structural systems classified as "Ordinary" in accordance with Table 12.2-1 of ASCE 7, unless it is demonstrated that the structural system will provide performance equivalent to that of a "Detailed," "Intermediate" or "Special" system.
2. Compliance with ASCE 41 using both BSE-1 and BSE-2 earthquake hazard levels and the corresponding performance levels in Table 3405.2.4.1.

TABLE 3405.2.4.1
PERFORMANCE CRITERIA FOR CBC LEVEL SEISMIC FORCES

RISK CATEGORY (BASED ON CBC TABLE 1604.5)	PERFORMANCE LEVEL FOR USE WITH ASCE 31 AND WITH ASCE 41 BSE-1 EARTHQUAKE HAZARD LEVEL	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-2 EARTHQUAKE HAZARD LEVEL
I	Life Safety (LS)	Collapse Prevention (CP)
II	Life Safety (LS)	Collapse Prevention (CP)

III	Note a	Note a
IV	Immediate Occupancy (IO)	Life Safety (LS)

a. Acceptance criteria for Occupancy Category III shall be taken as 80 percent of the acceptance criteria specified for Occupancy Category II performance levels, but need not be less than the acceptance criteria specified for Occupancy Category IV performance levels.

3405.2.4.2 Compliance with reduced CBC level seismic forces. Where seismic evaluation and design is permitted to meet reduced California Building Code seismic force levels, the procedures used shall be in accordance with one of the following:

1. The California Building Code using 75 percent of the prescribed forces. Values of R, Ω_o, and C_d used for analysis shall be as specified in Section 3405.2.4.1 Item 1.
2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A2, A3, A4 and A5 of the International Existing Building Code as specified in Items 2.1 through 2.5 below shall be deemed to comply with this section.
   - 2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A1 of the California Existing Building Code, 2013 Edition.
   - 2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A2.
   - 2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A3.
   - 2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A4.
   - 2.5. Seismic evaluation and design of concrete buildings in all Risk Categories are permitted to be based on the procedures specified in Appendix Chapter A5.
3. Compliance with ASCE 31 based on the applicable performance level as shown in Table 3405.2.4.2. It shall be permitted to use the BSE-1 earthquake hazard level as defined in ASCE 41 and subject to the limitations in item 4 below.
4. Compliance with ASCE 41 using the BSE-1 Earthquake Hazard Level defined in ASCE 41 and the performance level as shown in Table 3405.2.4.2. The design spectral response acceleration parameters S_{xs} and S_{x1} specified in ASCE 41 shall not be taken less than 75 percent of the respective design spectral response acceleration parameters S_{DS} and S_{D1} defined by the California Building Code and its reference standards.

TABLE 3405.2.4.2
PERFORMANCE CRITERIA FOR REDUCED CBC LEVEL SEISMIC FORCES

RISK CATEGORY	PERFORMANCE LEVEL FOR USE WITH ASCE 31	PERFORMANCE LEVEL FOR USE WITH ASCE 41 BSE-1

(BASED ON CBC TABLE 1604.5)		EARTHQUAKE HAZARD LEVEL
I	Life Safety (LS)	Life Safety (LS)
II	Life Safety (LS)	Life Safety (LS)
III	Note a, Note b	Note a
IV	Immediate Occupancy (IO)	Immediate Occupancy (IO)

a. Acceptance criteria for Risk Category III shall be taken as 80 percent of the acceptance criteria specified for Risk Category II performance levels, but need not be less than the acceptance criteria specified for Risk Category IV performance levels.

b. For Risk Category III, the ASCE screening phase checklists shall be based on the life safety performance level.

3405.2.4.3 Referenced Standards

Standard Referenced Number	TITLE	Reference In Code Section Number
ASCE 31-03	Seismic Evaluation of Existing Buildings	3405.2.4.1, TABLE 3405.2.4.1 3405.2.4.2, TABLE 3405.2.4.2
ASCE 41-06	Seismic Rehabilitation of Existing Buildings including Supplement No. 1	3405.2.4.1, TABLE 3405.2.4.1 3405.2.4.2, TABLE 3405.2.4.2

Section 3 Repeal of Conflicting Ordinances

II-3-3.01

Upon adoption of each new California Building Code, as amended, the previous adopted California Building Code is superseded in its entirety.

Section 4 Severability

II-3-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-3-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 3.5 RESIDENTIAL CODE

Sections:

Section 1 Adoption of the Residential Code
Section 2 - Amendments to the 2013 California Residential Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Residential Code

II-3.5-1.01

The 2013 Edition of the California Residential Code, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 2.5 incorporating the International Residential Code, 2012 Edition, including Appendix H published by the International Code Council, with the amendments set forth in Section II-3.5-2.00 is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Residential Code
II-3.5-2.01
II-3.5-2.02
II-3.5-2.03
II-3.5-2.04
II-3.5-2.05
II-3.5-2.06

II-3.5-2.01

The California Residential Code, 2013 Edition is amended or changed in the following respects.

II-3.5-2.02

Chapter 1 Division I of the California Residential Code, 2013 Edition, is adopted as amended. Delete sections 1.8.4, 1.8.5, 1.8.7 and 1.8.8.

Delete Chapter 1 Division II of the California Residential Code, 2013 Edition.

II-3.5-2.03

Amend Section R301.1.1 of the California Residential Code, 2013 Edition as follows:

Delete Item 1 in this section.

Amend Table R301.2(1) of the California Residential Code, 2013 Edition as follows:

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From			Winter Design Temp	Ice Barrier Underlayment Required	Flood Hazard	Air Freezing Index	Mean Annual Temp
	Speed (mph)	Topographic Effects		Weathering	Frost line depth	Term-ite					
N/A	70[a]	No	D_2	Negligible	N/A	Yes	32F	No	See Flood Zone Map	0	59.7F

a. **Hillside construction** - construction in hillside areas shall be designed for minimum wind speed (Vasd) 80 mph and exposure C. All structures located in the hillside shall conform to minimum requirements of Section R802.11.

Add Section R303.10 of the California Residential Code, 2013 Edition to read as follows:

R303.10 Flammable Vapor Ventilation. In enclosed private garages attached to R occupancies, provide 1 sq. ft. of ventilation area located at the lower 12″ of garage wall. Said ventilation areas shall be directly communicable with the exterior, but shall not be installed where protection of openings is required.

Amend Section R314.6.2 Item (a) of the California Residential Code, 2013 Edition by adding the following:

3. When the valuation of an addition, alteration or repair to Group R Occupancy exceeds $1,000 and a permit is required, or when one or more sleeping rooms are added or created in existing Group R Occupancies, chimney spark arresters shall be installed. Spark arresters shall be constructed in conformance with Section R1003.9.2.

Add Section R329 to the California Residential Code, 2013 Edition to read as follows:

R329 Sound Transmission. For sound transmission control between attached dwelling units, see Section 1207 of the California Building Code, 2013 Edition.

II-3.5-2.04

Amend Section R401.1 of the California Residential Code, 2013 Edition to read as follows:

R401.1 Application. The provisions of this Chapter shall control the design and construction of the foundation and foundation spaces for all buildings. In addition to the provisions of this chapter, the design and construction of foundations in areas prone to flooding as established by Table 301.2(1) shall meet the provisions of Section R322.

Delete Section R402.1, R402.1.1, R402.1.2 of the California Residential Code, 2013 Edition.

Amend Section R403.1 of the California Residential Code, 2013 Edition as follows:

Delete "crushed stone footings" and "wood foundations" in the first paragraph.

Add Milpitas Municipal Code Section II-3-2.13 wording at the end of the paragraph.

Amend Section R403.1.3 of the California Residential Code, 2013 Edition as follows:

Amend the first paragraph to read as follows:

R403.1.3 Seismic reinforcing. Concrete footings located in Seismic Design Categories D_0, D_1 and D_2, as established in Table R301.2 (1), shall have minimum reinforcement of at least one continuous longitudinal reinforcing bars not smaller than No. 4 bars at top and bottom. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) clear from the bottom of the footing.

II-3.5-2.05

Amend Table R602.10.3(3) of the California Residential Code, 2013 Edition as follows:

Add a footnote notation "e" in the title of the Table to read as follows:

TABLE R602.10.3(3)[a,b,c,d,e]

Add a new footnote "e" to the end of the Table to read as follows:

e. In Seismic Design Categories D_0, D_1, and D_2, Method GB is not permitted and the use of Methods PCP, SFB, HPS is limited to one-story single family dwellings and accessory structures.

Section R602.10.4.4 is added to the California Residential Code, 2013 Edition, to read as follows:

R602.10.4.4 Limits on methods GB, PCP, SFB and HPS. In Seismic Design Categories D_0, D_1, and D_2, Method GB is not permitted for use as intermittent braced wall panels, but gypsum board is permitted to be installed when required by this Section to be placed on the opposite side of the studs from other types of braced wall panel sheathing. In Seismic Design Categories D_0, D_1, and D_2,

the use of Methods PCP, SFB and HPS is limited to one-story single family dwellings and accessory structures.

Amend Section R602.10.9.1 Exception 2 of the California Residential Code, 2013 Edition to read as follows:

2. First story braced wall panels are supported on doubled floor joists, continuous 4x blocking or minimum 4x floor beams.

II-3.5-2.06

Section R902.1.5 is added to the California Residential Code, 2013 Edition, to read as follows:

R902.1.5 Roofing. Class A or Class B roof covering shall be required for all Hillside Construction.

Section 3 Repeal of Conflicting Ordinances

II-3.5-3.01

Upon adoption of each new California Residential Code, as amended, the previous adopted California Residential Code is superseded in its entirety.

Section 4 Severability

II-3.5-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-3.5-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 5 MECHANICAL CODE

Sections:

Section 1 – Adoption of the Mechanical Code
Section 2 - Amendments to the 2013 California Mechanical Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability

Section 5 - Effective Date

Section 1 Adoption of the Mechanical Code

II-5-1.01

The 2013 Edition of the California Mechanical Code, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 4, incorporating the Uniform Mechanical Code, 2012 Edition including Appendix A, Appendix B, Appendix C, Appendix D, Appendix F published by the International Association of Plumbing and Mechanical Officials, with the amendments set forth in Section II-5-2.00 is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Mechanical Code

II-5-2.01
II-5-2.02
II-5-2.03

II-5-2.01

The California Mechanical Code, 2013 Edition, is amended or changed in the following respects.

II-5-2.02

Chapter 1 Division I of the California Mechanical Code, 2013 Edition, is adopted as amended. Delete sections 1.8.4, 1.8.5, 1.8.7 and 1.8.8

Chapter 1 Division II of the California Mechanical Code, 2013 Edition, consisting of administrative provisions is deleted in its entirety.

II-5-2.03

Section 315.2 shall be added to the California Mechanical Code, 2013 Edition, to read as follows:

315.2 Non-Essential Use of Domestic Water. City water used for cooling purposes is prohibited unless fifty (50) percent or more is recycled.

Section 3 Repeal of Conflicting Ordinances

II-5-3.01

Upon adoption of each new California Mechanical Code, the previously adopted California Mechanical Code is superseded in its entirety.

Section 4 Severability

II-5-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-5-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 6 ELECTRICAL CODE

Sections:

Section 1 - Adoption of the Electrical Code
Section 2 - Amendments to the 2013 California Electrical Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Electrical Code

II-6-1.01

The 2013 Edition of the California Electrical Code, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 3, incorporating the National Electrical Code, 2011 Edition including Annex A, Annex B, Annex C, Annex D, Annex E and Annex F, published by the National Fire Protection Association with the amendments set forth in Section II-6-2.00 is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Electrical Code
II-6-2.01
II-6-2.02
II-6-2.03
II-6-2.04
II-6-2.05

II-6-2.01

The California Electrical Code, 2013 Edition is amended or changed in the following respects.

II-6-2.02

Section 230.2 of the California Electrical Code, 2013 Edition, is amended by adding subsection (F) to read as follows:

230.2(F). Underground Service. All new electrical services shall be underground and installed per Section 230.30, Underground Service-Lateral Conductors.

II-6-2.03

Subsection 230.70(A) of the California Electrical Code, 2013 Edition, is amended by adding sub-subsection (4) to read as follows:

(4) **Disconnect Location.** The building main service disconnect and/or disconnects shall be installed on the first floor level of the building.

II-6-2.04

Section 250.50 of the California Electrical Code, 2013 Edition, is amended by adding subsection (A) to read as follows:

250.50(A). Grounding System in New Buildings. Grounding electrode systems in all new buildings shall be an electrode encased by at least 50 mm (two inches) of concrete, located horizontally near the bottom or vertically, and within that portion of a concrete foundation or footing that is in direct contact with earth. The electrode shall consist of at least 6.0 m (20 feet) of one or more steel reinforcing bars or rods, of not less than 13 mm (½ inch) diameter, or consisting of at least 6.0 m (20 feet) of bare copper conductor not smaller than 4 AWG. The connection side of this concrete-encased electrode shall be located remotely away from the main electrical service equipment.

II-6-2.05

Section 300.1 of the California Electrical Code, 2013 Edition, is amended by adding subsection (D) to read as follows:

300.1(D). Underground Raceways. All underground raceways shall be provided with an equipment grounding conductor unless indicated elsewhere in this code.

Section 3 Repeal of Conflicting Ordinances

II-6-3.01

Upon adoption of each new California Electrical Code, the previously adopted California Electrical Code is superseded in its entirety.

Section 4 Severability

II-6-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-6-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 7 PLUMBING CODE

Sections:

Section 1 - Adoption of the Plumbing Code
Section 2 - Amendments to the 2013 California Plumbing Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Plumbing Code

II-7-1.01

The 2013 Edition of the California Plumbing Code, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 5, incorporating the Uniform Plumbing Code, 2012 Edition, including Appendix A, Appendix B, Appendix D and Appendix I published by the International Association of Plumbing and Mechanical Officials, with the amendments set forth in Section II-7-2.00 is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Plumbing Code
II-7-2.01
II-7-2.02
II-7-2.03

II-7-2.01

The California Plumbing Code, 2013 Edition, is amended or changed in the following respects.

II-7-2.02

Chapter 1 Division I of the California Plumbing Code, 2013 Edition, is adopted as amended. Delete sections 1.8.4, 1.8.5, 1.8.7 and 1.8.8.

Chapter 1 Division II of the California Plumbing Code, 2013 Edition, consisting of administrative provisions is deleted in its entirety.

II-7-2.03

Section 602.5 is added to the California Plumbing Code, 2013 Edition, to read as follows:

602.5. Non Essential Use of Domestic Water. City water use for cooling purposes is prohibited unless fifty (50) percent or more is recycled.

Section 3 Repeal of Conflicting Ordinances

II-7-3.01

Upon adoption of each new California Plumbing Code, as amended, the previous adopted California Plumbing Code is superseded in its entirety.

Section 4 Severability

II-7-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-7-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 11 ENERGY CODE

Sections:

Section 1 - Adoption of the Energy Code
Section 2 - Reserved
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Energy Code

II-11-1.01

The 2013 Edition of the California Energy Code known as the California Code of Regulations, Title 24, Part 6, published by the International Code Council. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Reserved

Section 3 Repeal of Conflicting Ordinances

II-11-3.01

Upon adoption of each new California Energy Code, the previously adopted California Energy Code is superseded in its entirety.

Section 4 Severability

II-11-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-11-5.01

This Chapter shall become effective on January 1, 2014.

Chapter 12 CODE FOR ABATEMENT OF DANGEROUS BUILDINGS

Sections:

Section 1 - Adoption of the Uniform Code for Abatement of Dangerous Buildings
Section 2 - Amendments to the 1997 Uniform Code for Abatement of Dangerous Buildings
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Uniform Code for Abatement of Dangerous Buildings

II-12-1.01

The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials, is hereby adopted by reference as the Abatement of Dangerous Buildings Code for the City of Milpitas with amendments as identified herein. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 1997 Uniform Code for Abatement of Dangerous Buildings

II-12-2.01
II-12-2.02
II-12-2.03
II-12-2.04

II-12-2.01

The Uniform Code for Abatement of Dangerous Buildings, 1997 Edition, is amended or changed in the following respects.

II-12-2.02

Applicability. Notwithstanding any other provision in this Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, it shall be applicable only to non-residential buildings in the City of Milpitas.

II-12-2.03

Subsection 201.3, Section 205, Chapter 5 and Chapter 6 of the Uniform Code for Abatement of Dangerous Buildings, 1997 Edition, are deleted in their entirety.

II-12-2.04

Section 403 (3) of the Uniform Code for Abatement of Dangerous Buildings, 1997 Edition, is added in its entirety to read as follows:

Structural Analysis and Repair of Potentially Hazardous Buildings and Structures. If the Chief Building Official has determined that a building or structure is potentially hazardous, as defined in Government Code Sec. 8875, the order shall require that structural analysis be submitted within 270 days of the order and that repair or rehabilitation shall be commenced within 60 days thereafter and that the work be completed within such time as the Chief Building Official shall determine is reasonable. Where applicable, structural analysis, design, and plans shall be in accordance with the current edition of California Existing Building Code and International Building Code Appendices A2, A3, A4 and A5.

Section 3 Repeal of Conflicting Ordinances

II-12-3.01

Upon adoption of each new Abatement of Dangerous Buildings Code, as amended, the previous adopted Uniform Code for Abatement of Dangerous Buildings is superseded in its entirety.

Section 4 Severability

II-12-4.01

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-12-5.01

The ordinance codified in this Chapter shall become effective on January 1, 2014

Chapter 13 GRADING, EXCAVATION, PAVING & EROSION CONTROL

Sections:

Section 1-Title
Section 2-Purpose
Section 3-Scope
Section 4-Permits Required
Section 5-Hazards
Section 6-Definitions
Section 7-Grading Permit requirements
Section 8-Site Map and Grading Plan
Section 9-Specifications Covering Construction and Material Requirements

Section 10-Erosion Control
Section 11-Work Schedule
Section 12-Reserved
Section 13-Cuts
Section 14-Fills
Section 15-Setbacks
Section 16-Drainage and Terracing
Section 17-Lot Improvement, Paving of Driveways, Parking Lots
Section 18-Paving Standards
Section 19—22 Reserved
Section 23-Design Standard—General
Section 24-Native Vegetation
Section 25-Planting Time Limits
Section 26-Drainage Controls
Section 27-Slope Construction
Section 28-Slope Surface Stabilization
Section 29-Vegetation Maintenance
Section 30-Protection of Watercourses
Section 31-Sediment Control
Section 32-Grading Inspection
Section 33-Completion of Work
Section34-Conditions of Approval or Denial of Grading Permit
Section35-Review and Approval
Section36-Enforcement and Inspection
Section37-Grading and Erosion Control Inspection
Section38-Notification of Completion
Section39-Applicant's Responsibilities
Section40-Permit Suspension
Section41-Abatement of Hazards
Section42-Performance Bond
Section43-Appeal
Section44-Penalties
Section45-Fees
Section46-Grading Permit Fees
Section47-Reserved

Section 1 Title

II-13-1 Title

This Chapter shall be known as the City of Milpitas Grading, Excavation, Paving and Erosion Control Ordinance.

Section 2 Purpose

II-13-2 Purpose

The purpose of this Chapter is to set forth rules, regulations, and controls on grading, excavation, paving and earth work construction including cuts, fills, embankments, the cutting and clearing of vegetation, the revegetation of cleared areas, the management of drainage and measures to protect exposed soil surfaces in order to safeguard water ways, promote the public health, safety and welfare and to protect public and private property. And further to encourage the harmonious blend between the built environment and the natural environment, to implement the City of Milpitas adopted General Plan and to insure that the design, scope and location of grading and related activities cause minimum disturbance to terrain and natural features, to provide erosion control and to prevent sedimentation or damage to off-site property.

Section 3 Scope

II-13-3 Scope

This Chapter sets forth rules and regulations to control excavation, grading, paving and earth work construction, including fills and embankments; and erosion control; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction.

Section 4 Permits Required

II-13-4 Permits Required

01. No person shall do any grading, filling, excavation, or clearing of natural vegetation without first having obtained a grading permit from the Building and Safety except for the following:

.01 An excavation below finished grade for swimming pools, basements and footings of a building, retaining wall pier holes or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure.

.02 Cemetery graves.

.03 Refuse disposal sites controlled by other regulations.

.04 Excavations for wells or tunnels or utilities.

.05 Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in, or pressure upon any adjacent or contiguous property.

.06 Exploratory excavations under the direction of soil engineers or engineering geologists.

.07 An excavation which (a) is less than 2 feet in depth, and (b) which does not create a cut slope greater than 5 feet in height and steeper than two horizontal to one vertical, (c) and does not result in the movement of more than (50) cubic yards of material.

.08 A fill less than 1 foot in depth and placed on natural terrain with a slope flatter than five horizontal to one vertical, and less than 2 feet in depth, not intended to support structures, and which does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course.

02. Fees shall be as set by Resolution of the City Council of Milpitas.

Section 5 Hazards

II-13-5 Hazards

Whenever the Chief Building Official determines that any existing excavating or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, the Lessee thereof or other person or agent in control of said property, upon receipt of notice in writing from the Chief Building Official, shall within the period specified therein, repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this Chapter.

Section 6 Definitions

II-13-6 Definitions

For the purposes of this Chapter the definitions listed hereunder shall be construed as specified in this section.

.01 APPROVAL shall mean a written engineering or geological opinion concerning the progress and completion of the work.

.02 AS-GRADED is the surface conditions extant on completion of grading.

.03 BEDROCK is in-place solid rock.

.04 BENCH is a relatively level step excavated into earth material on which fill is to be placed.

.05 BORROW is earth material acquired from an off-site location for use in grading on a site.

.06 BUILDING PAD, the ground under the building.

.07 CIVIL ENGINEER shall mean a professional engineer registered in the state to practice in the field of civil works.

.08 CIVIL ENGINEERING shall mean the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil work for the beneficial uses of mankind.

.09 COMPACTION is the densification of a fill by mechanical means.

.10 CUT. See Excavation.

.11 DOWNDRAIN. A device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.

.12 EARTH MATERIAL is any rock, natural soil or fill and/or any combination thereof.

.13 ENGINEERING GEOLOGIST shall mean a geologist experienced and knowledgeable in engineering geology.

.14 ENGINEERING GEOLOGY shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

.15 EROSION is the wearing away of the ground surface as a result of the movement of wind, water and/or ice.

.16 EXCAVATION is the mechanical removal of earth material. Also referred to as a CUT.

.17 FILL is a deposit of earth material placed by artificial means.

.18 GRADE shall mean the vertical location of the ground surface.

.19 EXISTING GRADE is the grade prior to grading.

.20 ROUGH GRADE is the stage at which the grade approximately conforms to the approved plan.

.21 FINISH GRADE is the final grade of the site which conforms to the approved plan.

.22 GRADING is any excavating or filling or combination thereof.

.23 KEY is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

.24 SITE is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

.25 SLOPE is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

.26 SOIL is naturally occurring superficial deposits overlying bedrock.

.27 SOIL ENGINEER shall mean a Civil Engineer experienced and knowledgeable in the practice of soil engineering.

.28 SOIL ENGINEERING shall mean the application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.

.29 TERRACE is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

Section 7 Grading Permit Requirements

II-13-7 Grading Permit Requirements

.01 **Permits Required.** Except as exempted in Section II-13-4 of this Chapter, no person shall do any grading without first obtaining a grading permit from the Building and Safety Department. A separate permit shall be required for each site, and may cover both excavations and fills.

.02 **Issuance.** The provisions of Section II-13-7 are applicable to grading permits. The Chief Building Official may require that grading operations and project designs be modified if delays occur which incur weather-generated problems not considered at the time permit was issued.

.03 **Application.** The application for a grading plan shall include:

1. A Site Map.

2. A Grading Plan.
3. An Erosion Control Plan.
4. Any supplementary material as required by the Building and Safety Department.
5. Work schedule.
6. Application fees.
7. Estimated quantities of material involved.

.04 **Plans and Specifications.** Each application for a grading permit shall be accompanied by Five sets of plans and Two sets of specifications, they shall specify the amount of cut, fill export, and import, and supporting data consisting of a soil engineering report and engineering geology report. The plans and specifications shall be prepared and signed by a Civil Engineer when required by the Chief Building Official.

.05 **Information on Plans and in Specifications.** Plans shall be drawn to scale upon suitable material, minimum dimension 24″ × 36″ sheet size, and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared.

Section 8 Site Map and Grading Plan

II-13-8 Site Map and Grading Plan

.01 A vicinity sketch indicating the location of the site relative to the entire property, adjacent properties, and the principal roads in the area.

.02 Existing and proposed topography of the site taken at not more than a two-foot contour interval over the entire site. Ninety percent (90%) of the contours shall be plotted within one contour interval of the true location.

.03 Two-foot contour intervals that extend a minimum of 200 feet off-site.

.04 The site's property lines shown in true location with respect to the plan's topographic information; and any proposed divisions of land.

.05 The location and graphic representation of all existing and proposed drainage facilities.

.06 The location of proposed excavations and fills, of on-site storage of soil and other earth materials, and of on-site and/or off-site disposal. In cases where the location is off-site, a written description of the location will suffice.

.07 The location of all existing vegetation, especially locations of tree with a trunk diameter of 6 inches or more measured at a point 1 foot above average natural ground level.

.08 The quantity of soil or earth materials in cubic yards, to be excavated, filled, stored or otherwise utilized on-site.

.09 The location of any existing and proposed roads, buildings, wells, pipelines and other structures, facilities, and features on the site and the location of any improvements on adjacent land within twenty-five (25) feet of the proposed work.

.10 The location of watercourses including the width, direction of flow, and approximate location of high banks of any water course, and approximate boundaries of any areas subject to inundation.

.11 Location of known soil or geologic hazard areas.

.12 Availability of public facilities, such as sanitary sewage, water and fire protection.

.13 Completion of an environmental questionnaire unless previously submitted as part of project.

.14 Detailed description of measures to be taken to prevent soil erosion.

.15 Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of, the proposed work together with a map showing the drainage area and the estimated runoff of the area served by any drains.

.16 Location of any buildings or structures on the property where the work is to be performed and the location of any building or structures on land of adjacent owners which are within 15 feet of the property of which may be affected by the proposed grading operations, or other information required to complete the application process.

Section 9 Specifications Covering Construction and Material Requirements

II-13-9 Specifications Covering Construction and Material Requirements

.01 **Soil Engineering Report.** The soil engineering report required by Section II-13-7.04 shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures when necessary, and opinions and recommendations covering adequacy of sites to be developed by the proposed grading.

.02 Recommendations included in the report and approved by the Chief Building Official shall be incorporated in the grading plans or specifications.

.03 In-depth soils investigations shall be performed by the Soils Engineer if any of the following circumstances occur on the site:

1. More than 1,000 cubic yards of cut and fill material is moved.
2. Cuts and/or fills are more than 10 feet deep.
3. Grading or clearing will be done on slopes greater than 10%.
4. Other conditions as determined by the Chief Building Official.

.04 **Engineering Geology Report.** The engineering geology report required by Section II-13-7.04 shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading.

Recommendations included in the report and approved by the Chief Building Official shall be incorporated in the grading plans or specifications.

.05 In-depth geologic investigations shall be performed by a Geological Engineer, if required by the Chief Building Official.

Section 10 Erosion Control

II-13-10 Erosion Control

All aspects of Stormwater Quality protection shall be adhered to, and erosion control plans shall be prepared to be consistent with Section XIII, Stormwater of the Engineering Design Guidelines per Ordinance 66.3 and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

.01 **Erosion Control Plan.** The plan shall be signed by a registered Civil Engineer. When site stabilization measures are included these shall be prepared by a registered Civil Engineer, Landscape Architect, or Architect.

.02 The erosion control plan will fully indicate necessary land treatment, structural measures and timing requirements which will effectively minimize soil erosion and sedimentation. The erosion and sediment control plan shall contain appropriate information according to this Section and as deemed necessary by the Chief Building Official. Following submittal of the application, the Chief Building Official shall determine the adequacy of the plan and may require the submission of further qualification or information when necessary to judge the adequacy of the planned erosion and sediment control measures.

.03 The erosion control plan shall contain a detailed description of the following:

1. Vegetative measures to stabilize the site, including steps to promote and protect native vegetation.

a) a description and delineation of the vegetative measures to stabilize the site, including, but not limited to, seed bed preparation, seeding methods, seeding time for new erosion control planting, the type, location and extent of pre-existing and undisturbed vegetation, and the steps for the promotion and protection of the native vegetation.

2. Drainage protection and control measures.

3. A description and delineation of non-vegetative surface runoff, erosion and sediment control measures, including, but not limited to, types of and methods of applying mulches, design and specification of berms sediment basins, retention basins, diverters and dikes.

4. Cut and fill construction.

5. Disposal of excess materials.

6. Stockpiling of materials.

7. Dust control measures.

8. A clear and definite delineation of the limits of work showing areas to remain undisturbed and showing areas to be disturbed.

9. Any additional information required by the Chief Building Official when necessary to judge the adequacy of the plan (i.e., mandatory soils and geologic investigations).

10. The site assessment which shall identify the character of the site as it pertains to:

a) erosion and loss of sediments.

b) slope stability.

.04 **Slopes.** The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting. The protection for the slopes shall be installed as soon as practicable and prior to calling for final approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.

.05 **Other Devices.** Where necessary, check dams, cribbing, riprap and other devices or methods that shall be employed to control erosion and provide safety.

Section 11 Work Schedule

II-13-11 Work Schedule

.01 The applicant must submit a master work schedule showing the following information:

1. The proposed grading schedule.
2. The proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures.
3. The schedule for construction, if any.
4. The schedule for installation of permanent erosion and sediment control devices where required.
5. For Hillside residences a detailed schedule of maintenance and upkeep for both erosion and sediment control facilities and plantings through the first rainy season, as identified by Engineering Design Guidelines.
6. For Hillside residences approval on a week to week basis during the period of rainy season may be granted by the Chief Building Official. This approval will require long range weather projection as a primary basis.

Section 12 Reserved

Section 13 Cuts

II-13-13 Cuts

.01 **General.** Unless otherwise recommended in the approved soil engineering and/or engineering geology report, cuts shall conform to the provisions of this section.

.02 **Slope.** The slope of cut surfaces shall be no steeper than safe for the intended use. Cut slopes shall be no steeper than two horizontal to one vertical.

Section 14 Fills

II-13-14 Fills

.01 **General.** Unless otherwise recommended in the approved soil engineering report, fills shall conform to the provisions of this section.

Exception: In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures.

.02 **Fill Location.** Fill slopes shall not be constructed on natural slopes steeper than two to one.

.03 **Preparation of Ground.** The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill, and, where slopes are steeper than five to one, and the height is greater than 5 feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one shall be at least 10 feet wide and 2 feet deep in accordance with Fig. No. 1. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least 10 feet wide but the cut must be made before placing fill and approved by the Soils Engineer and Engineering Geologist as a suitable foundation for fill. Unsuitable soil is soil which, in the opinion of the Chief Building Official or the Civil Engineer or the Soils Engineer or the Geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

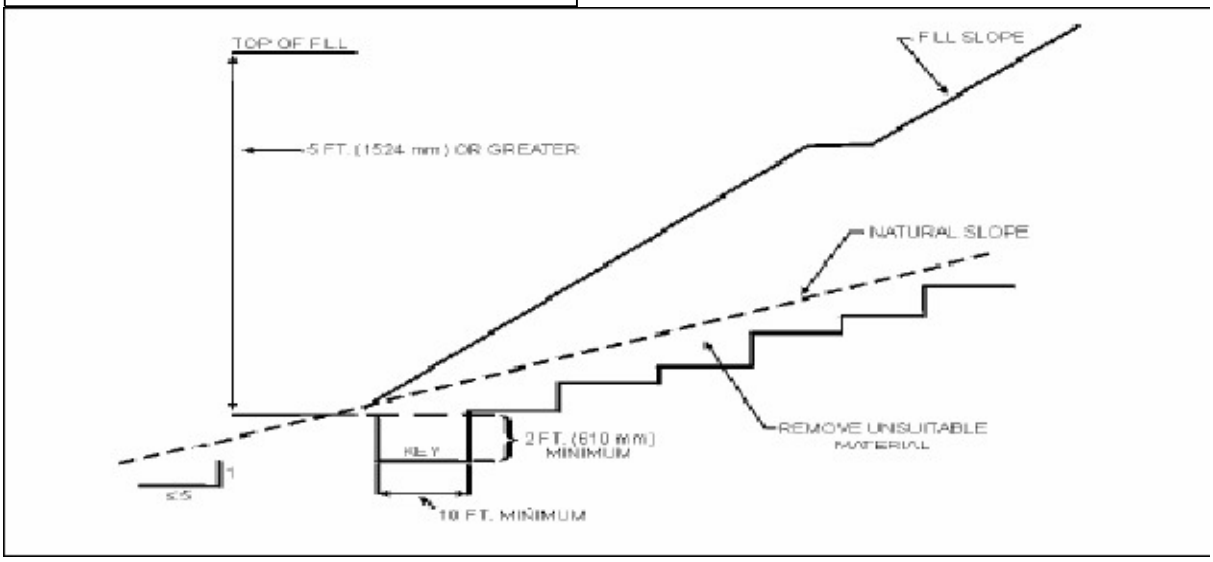

Figure No. 1

.04 **Fill Material.** Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the Chief Building Inspector no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be buried or placed in fills.

Exceptions: The Chief Building Official may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement and approves the fill stability. The following conditions shall also apply:

A. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.

B. Rock sizes greater than 12 inches in maximum dimension shall be 10 feet or more below the grade, measured vertically.

C. Rocks shall be placed so as to assure filling of all voids with fines.

.05 **Compaction.** All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth or equivalent as approved by the Building and Safety.

.06 **Slope.** The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two horizontal to one vertical.

.07 **Drainage and Terracing.** Drainage and terracing shall be provided, and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section II-13.

Section 15 Setbacks

II-13-15 Setbacks

.01 **General.** The setbacks and other restrictions specified by this section are minimum and may be increased by the Chief Building Official or by the recommendation of a Civil Engineer, Soils Engineer or Engineering Geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the Chief Building Official.

.02 **Setbacks from Property Lines.** The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure No. 2.

.03 **Design Standards for Setbacks.** Setback between graded slopes (cut or fill) and structures shall be provided in accordance with CBC 2010 Figure No. 1808.7.1.

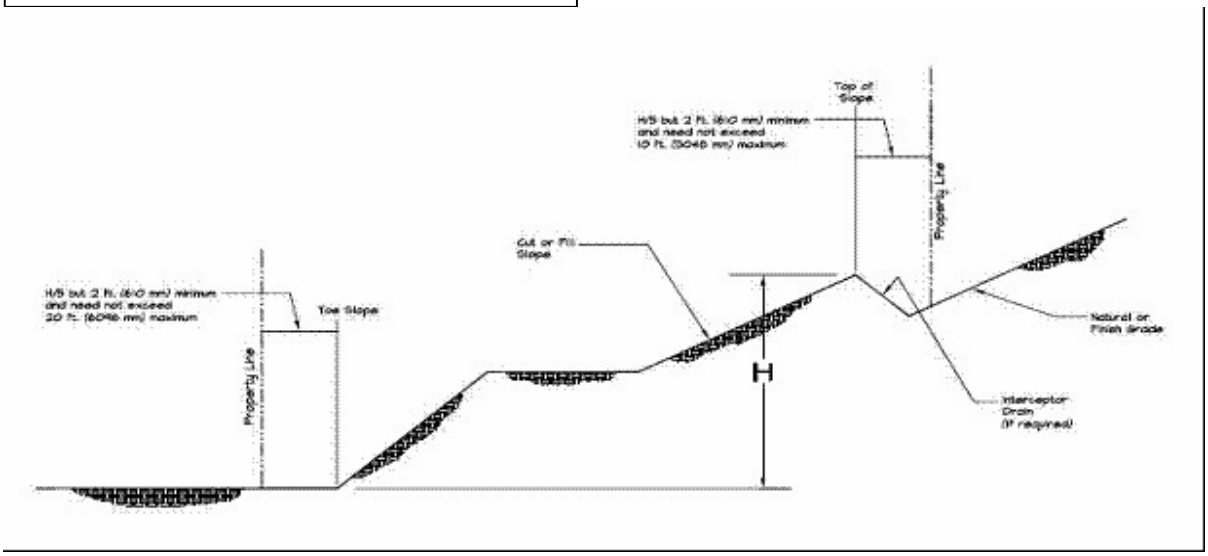

Figure No. 2

Section 16 Drainage and Terracing

II-13-16 Drainage and Terracing

.01 **General.** Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provision of this section and Section XIII Stormwater of the Engineering Design Guidelines per Ordinance 66.3. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

.02 **Terrace.** Terraces at least 6 feet in width shall be established at not more than 30-feet vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in

height shall be designed by the Civil Engineer and approved by the Chief Building Official. Suitable access shall be provided to permit proper cleaning and maintenance.

.03 **Swales or Ditches.** Swales and ditches on terraces shall have a minimum gradient of 5 percent and must be paved with reinforced concrete not less than 3 inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of 1 foot and a minimum paved width of 5 feet. A single run of swale or ditch shall not collect runoff from a tributary area exceeding 1 surface acre (projected) without discharging into a down drain, and subject to approval of the Chief Building Official.

.04 **Subsurface Drainage.** Cut and fill slopes shall be provided with sub-surface drainage as necessary for stability.

.05 **Disposal.** All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the Chief Building Official and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive downdrains or other devices.

.06 **Building** sites shall have a drainage gradient of 2 percent from the building pad toward approved drainage facilities, unless waived by the Chief Building Official.

Exception: The gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:

A. No proposed fills are greater than 10 feet in maximum depth.

B. No proposed finish cut or fill slope faces have a vertical height in excess of 10 feet.

C. No existing slope faces, which have a slope face steeper than 10 horizontally to 1 vertically, shall have a vertical height in excess of 10 feet.

.07 **Interceptor Drains.** Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches of concrete, or gunite and reinforced. They shall have a minimum depth of 12 inches and a minimum paved width of 36 inches measured horizontally across the drain. The slope of drain shall be approved by the Chief Building Official.

Section 17 Lot Improvement, Paving of Driveways, Parking Lots

II-13-17 Lot Improvement, Paving of Driveways, Parking Lots

.01 **Drainage Swales.** Each lot shall be graded to provide protective slopes away from all sides of all buildings on the lot. Where such a swale meets a slope which drains toward a building, a drainage swale of adequate width, depth and longitudinal gradient will be required to carry away the surface water without flooding against the buildings or without ponding lot areas. The location of the swales is to be directly related to the block grading type.

.02 **Elevation of Pads.** The elevation of the pads shall be higher than the elevation of the drainage swale or ground slope measured at least 5' (five feet) from the outer walks of the buildings.

.03 **Drainage Method** used shall be shown on all plans. When building plans indicate that the construction will comply with the provisions of this Chapter, but inspection shows that the building as constructed cannot drain by gravity, the Building and Safety may require that the

condition be remedied by installing a pump or by other approved means. No Final Inspection or Certificate of Occupancy may be issued until this requirement is met.

.04 Not used.

.05 **Flat Cement Work** for garage, or carport floors, and patio slabs shall have minimum thickness of 3½ inches and shall be installed over (4) inches of an approved aggregate base (6 X 6 X1 0 X10 woven wire mesh laid within the slab may be used in place of the approved aggregate base. Other flat cement work, except walkways, having any minimum dimension of (6ï¿½) six feet and a minimum area of (64) sixty-four square feet shall be installed in a like manner.

Section 18 Paving Standards

II-13-18 Paving Standards

Private streets shall be designed consistent with Section VII "Street Design" of the Engineering Design Guidelines per Ordinance 66.3 and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

.01 The areas designed for use as driveways, parking lots and loading areas and their approaches shall be paved with asphalt concrete, portland cement concrete on prepared bases or any other approved material meeting traffic index as noted in Section II-13-18.02 and shall be maintained in good condition to the satisfaction of the Chief Building Official.

.02 Paving sections shall be designed by a Civil Engineer or a Soils Engineer based on a "R" value test of the native soil and a traffic index as noted below and approved by the Chief Building Official.

1. One family residential	T.I. 3.5
2. Multi-family	T.I. 5
3. Commercial	T.I. 5
4. Industrial auto parking lots	T.I. 5
5. Industrial driveways	T.I. 5.5
6. Industrial & commercial loading zones	T.I. 6

.03 On approval of the Chief Building Official, the following minimum standards may be used without a soils report:

a. Residential—Single Family and Duplex.

(1) Portland Cement concrete four (4) inches of concrete on four (4) inches of approved granular aggregate base on compacted subgrade.

(2) Asphaltic concrete surfacing Two (2) inches of asphaltic concrete with fog seal on six (6) inches of aggregate base on compacted subgrade.

.04 Residential Multiple, Commercial and Institutional

(1) Portland Cement concrete Five (5) inches of concrete on four (4) inches of aggregate base.

(2) Asphaltic concrete surfacing Two and one half inches (2 ?) of asphaltic concrete with fog seal on ten (10) inches of aggregate base material on compacted subgrade.

An alternate, with approval of the Chief Building Official, a 6 × 6 × 10 × 10 mesh in the concrete may be substituted for the aggregate base under the Portland Cement.

.05 Materials:

a. "Aggregate Base" material shall be Class 2 and shall conform to Caltrans Standard Specifications, Section 26 for 3/4″, one and one-half (1½') inches maximum combined grading, except as herein specified.

b. Equipment used in lieu of Section 26-1.04 shall be approved by the Chief Building Official prior to construction.

c. "Asphalt Concrete Surfacing" shall conform to Caltrans Standard Specifications, Section 39 for Type B Asphalt Concrete. Aggregate grading shall conform to ?″ maximum, Medium.

d. Asphalt of grade AR 4000 shall be used and a certificate guaranteeing compliance of asphalt with specification is to be furnished.

e. Placing of tack coat, prime coat, spreading and compaction methods and miscellaneous details of asphaltic construction shall be in accordance with applicable portions of Caltrans Standard Specifications.

f. Concrete. Portland Cement Concrete shall be designed to develop a strength of a minimum of 2000 pounds per square inch at twenty-eight (28) days and shall be poured with a maximum of (4″) four inches of slump.

g. Mix Design. Mix design shall be designed by an approved laboratory and paid for by the contractor. The basic proportions of the mix shall be determined by weight of loose dry material, and all proportioning of the ingredients for each batch shall be done by weighing the fine and coarse aggregates separately. Water and cement shall be separately measured and introduced to the mix by such methods that the proportions thereof can be accurately controlled and easily checked at any time.

h. Approval. Approval of the mix shall be by the Building and Safety who may determine accuracy by making tests, to be paid for by the contractor. Batch tickets to be provided the Building and Safety Department upon request with each load.

Section 19 – 22 Reserved

Section 23 Design Standard--General

II-13-23 Design Standard—General

.01 Developments shall be accomplished so as to minimize adverse effects upon the natural or existing topography and soil conditions and to minimize the potential for erosion. Control measures shall apply to all aspects of the proposed grading and shall be in operation during all stages of development. The following basic design standards shall serve as minimum guidelines for grading and erosion and sediment control plans.

Section 24 Native Vegetation

II-13-24 Native Vegetation

.01 Native vegetation, requiring minimum maintenance, shall be used, to the extent possible, in permanent replanting areas subject to provisions of the local Fire Code.

.02 Existing natural vegetation shall be retained, protected, and supplemented to the greatest extent possible. Site development shall be accomplished so that existing trees can be preserved whenever possible and practical. For specific standards, refer to Title X, Chapter 2, Tree Maintenance and Protection, of the Milpitas Municipal Code.

Section 25 Planting Time Limits

II-13-25 Planting Time Limits

.01 The planting schedule, as part of erosion control plan, shall include initiation, sequence of installation of sediment control facilities, duration of exposure, start/stop dates of critical area stabilization.

.02 Planting shall be completed as soon as possible after grading and clearance.

.03 Planting shall be completed within 90 days after grading completion and as subject to other seasonal limitations.

Section 26 Drainage Controls

II-13-26 Drainage Controls

All drainage design shall comply with Storm Drain Design Criteria per Engineering Design Guidelines per Ordinance 66.3 Section XII, Stormwater and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

.01 Drainage controls shall be installed immediately after extensive clearing or grading.

.02 Concentrated runoff shall be taken in nonerodable surfaced facilities.

.03 Runoff conduits shall have energy dissipaters at discharge points.

.04 Roads and driveways shall have a nonerodable surface with drainage facilities.

.05 All graded areas larger than 5,000 sq. ft. that tend to pond or concentrate water be provided with drains.

.06 Underground drainage shall be provided for, where necessary.

.07 Localized drainage from roof areas and driveways shall be removed by adequate drainage systems to prevent erosion.

Section 27 Slope Construction

II-13-27 Slope Construction

.01 Fill slopes shall not be steeper than two horizontal to one vertical unless a thorough geological and engineering analysis indicates that steeper slopes are safe and appropriate erosion control measures are specified.

.02 Cut slopes shall not be steeper than 2:1 unless a thorough geological and engineering analysis indicates that steeper slopes are safe and appropriate erosion control measures are specified.

Section 28 Slope Surface Stabilization

II-13-28 Slope Surface Stabilization

.01 No clearing shall take place more than 15 days before grading commences (except with special approval).

.02 All cut/fill surfaces shall have appropriate low maintenance plant material installed.

.03 Clearing shall be kept to the minimum needed, as determined by Building and Safety.

.04 All soil stabilization measures shall be in place as soon as possible after grading and will be defined within the approved sediment control plan.

Section 29 Vegetation Maintenance

II-13-29 Vegetation Maintenance

.01 Adequate irrigation measures shall be available for use prior to planting and shall be maintained until planting has become sufficiently established to properly promote growth.

Section 30 Protection of Watercourses

II-13-30 Protection of Watercourses

.01 Cuts and fills shall not encroach on natural watercourses or constructed channels.

.02 Fills placed against watercourses shall have suitable protection against erosion during flooding.

.03 Excavated materials shall not be deposited or stored in or alongside the river or watercourses where the materials can be washed away by high water or storm runoff.

Section 31 Sediment Control

II-13-31 Sediment Control

All sediment control shall comply with Engineering Design Guidelines per Ordinance 66.3 Section XII, Stormwater and this section. In case of conflict between this section and Engineering Design Guidelines, the stricter requirement shall be followed.

.01 Facilities shall be constructed to maximize the retention of sediment produced on site.

.02 Sediment basins, sediment traps, diversions or similar required measures shall be installed well in advance, coincident of any clearing or grading and maintained throughout any such operations. The design of such structures shall account for potential mosquito problems.

.03 Permanent control structures and final vegetation shall be installed as soon as practical in the development.

.04 Surface runoff rates in excess of pre-development levels shall be retarded by appropriate measures.

.05 Disposal of cleared vegetation and excavated materials shall be done in a manner which reduces the risk of erosion and shall strictly conform to the provisions of the approved grading permit. Topsoil shall be conserved for reuse in revegetation of disturbed areas whenever possible.

Section 32 Grading Inspection

II-13-32 Grading Inspection

.01 **General.** All grading operations for which a permit is required shall be subject to inspection by the Chief Building Official. When required by the Chief Building Official, special inspection of grading operations and special testing shall be performed in accordance with the provisions of Section II-I-22.01 of the City of Milpitas Municipal Code.

.02 **Grading Designation.** All grading in excess of 5000 cubic yards shall be performed in accordance with the approved grading plan prepared by a Civil Engineer, and shall be designated as "engineered grading." Grading involving less than 5000 cubic yards shall be designated "regular grading," unless the permittee, with the approval of the Chief Building Official, chooses to have the grading performed as "engineered grading."

.03 **Engineered Grading Requirements.** For engineered grading, it shall be the responsibility of the Civil Engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He also shall be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade and drainage of the development area. The Civil Engineer shall act as the coordinating agent in the event the need arises for liaison between the other professionals, the contractor and the Chief Building Official. The Civil Engineer also shall be responsible for the preparation of revised plans and the submission of as-graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the Chief Building Official a statement of compliance to said as-built plan.

.04 **Soil Engineering** and Engineering Geology reports shall be required as specified in Section II-13-7. During grading all necessary reports, compaction data and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the Chief Building Official by the Soils Engineer and the Engineering Geologist.

.05 **The Soils Engineer's** area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes and the design of buttress fills, where required, incorporating data supplied by the Engineering Geologist.

.06 **The Engineering Geologist's** area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other ground water drainage devices. He shall report his findings to the Soils Engineer and the Civil Engineer for engineering analysis.

.07 **The Chief Building Official** shall inspect the project at the various stages of the work requiring approval and at more frequent intervals as necessary, to determine that adequate control is being exercised by the professional consultants.

.08 **Regular Grading Requirements.** The Chief Building Official may require inspection and testing by an approved testing agency, paid for by the Contractor.

The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills.

When the Chief Building Official has cause to believe that geologic factors may be involved the grading operation will be required to conform to "engineered grading" requirements.

.09 **Notification of Noncompliance.** If, in the course of fulfilling their responsibility under this Chapter, the Civil Engineer, the Soils Engineer, the Engineering Geologist or the testing agency finds that the work is not being done in conformance with this Chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the Chief Building Official. Recommendations for corrective measures, if necessary, shall be submitted.

.10 **Transfer of Responsibility for Approval.** If the Civil engineer, the Soils Engineer, the Engineering Geologist or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

Section 33 Completion of Work

II-13-33 Completion of Work

.01 **Final Reports.** Upon completion of the rough grading work and at the final completion of the work the Chief Building Official may require the following reports and drawings and supplements thereto:

1. An as-graded grading plan prepared by the Civil Engineer including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and sub-surface drainage facilities. Civil Engineer shall provide approval that the work was done in accordance with the final approved grading plan.

2. A soil grading report prepared by the Soil Engineer including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. Soil Engineer shall provide approval as to the adequacy of the site for the intended use.

3. A geologic grading report prepared by the Engineering Geologist including a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved

grading plan. Engineering Geologist shall provide approval as to the adequacy of the site for the intended use as affected by geologic factors.

.02 **Notification of Completion.** The permittee or his/her agent shall notify the Chief Building Official when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required report have been submitted.

Section 34 Conditions of Approval or Denial of Grading Permit

II-13-34 Conditions of Approval or Denial of Grading Permit

.01 The City of Milpitas reserves the right to impose such conditions on the grading permit as may be reasonable or necessary to prevent creation of a nuisance or dangerous conditions, and to deny the issuance of a grading permit where the proposed work would cause hazards adverse to the public safety and welfare.

.02 Approval of the permit will not be granted unless:

1. The proposed grading is related to a use presently permitted by law on the property.
2. The grading is necessary for the establishment or maintenance of a use.
3. The design, scope, and location of the grading or clearing is appropriate for the use and causes minimum disturbance of the terrain and natural features of the land, and does not degrade water quality or certain other natural resources.

Section 35 Review and Approval

II-13-35 Review and Approval

.01 Grading permit applications and accompanying maps and plans shall be reviewed by the Chief Building Official and approved when found to be in compliance with the provisions of this Chapter, and conforms to acceptable grading and erosion control techniques.

Section 36 Enforcement and Inspection

II-13-36 Enforcement and Inspection

.01 The provisions of this ordinance shall be enforced by the City of Milpitas and by the Chief Building Official who shall inspect all grading and erosion control work and require compliance with all the provisions of the Chapter.

Section 37 Grading and Erosion Control Inspection

II-13-37 Grading and Erosion Control Inspection

.01 The Chief Building Official shall inspect the work site for compliance with conditions of the approved permit, for verification of reports submitted by the permittee, and for the quality of the work being performed as approved by the permit.

.02 Approved plans and permits for grading and erosion control work shall be maintained at the site during the grading activity and until the work has been approved.

.03 A minimum of at least five inspections shall be made as listed.

1. Initial Inspection. When permittee or his agent is ready to begin work on excavation or fill and construction stakes have been set, but no grading begun;
2. Rough Grading. Including stripping, keying, compaction and subsurface drains;
3. Erosion Control Compliance Inspection. For hillside residences, an inspection of erosion control facilities and revegetation measures shall be made between September 15 and October 1, if work completion is scheduled after October 1.
4. Final Construction Inspection. When all work, including installation of all drainage, and other erosion control facilities and all planting has been completed.
5. Final Stabilization Inspection. For Hillside residences during the first rainy season an inspection of the site will be made to determine if any remedial work is necessary to abate erosion and sedimentation problems prior to issuing the Notice of Compliance for the permit.

Section 38 Notification of Completion

II-13-38 Notification of Completion

.01 The permittee or his agent shall notify the Chief Building Official when the grading/erosion operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed and maintained following completion of grading or clearing, in accordance with the final approved grading and erosion control plans and the required reports have been submitted.

Section 39 Applicant’s Responsibilities

II-13-39 Applicant's Responsibilities

.01 The applicant shall install all soil erosion and sediment control measures in strict compliance with this Chapter and in accordance with the approved erosion control plan. All soil erosion and sediment control measures shall be adequately maintained by the applicant for three years or until such measures are stabilized as determined by the Chief Building Official. The Chief Building Official shall issue a notice of compliance when the approved grading and erosion control plan measures are fully applied and completed indicating the date of compliance.

.02 The design guidelines for construction Best Management Practices and permanent stormwater quality protection shall conform to the City's Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit, issued by the State of California Regional Water Quality Control Board by Order R2-2009-0074 for Municipal Regional Permit Number (MRP) CAS612008. Developers are responsible for reviewing and complying with the MRP conditions.

.03 The applicant shall comply with the City’s Flood Plain Ordinance (Ord. 209.1, Chapter 15, Title XI).

.04 A new or modified erosion and sediment control technique may be allowed to be used provided there is mutual agreement between the Chief Building Official and the applicant that the technique meets the intent of the erosion control plan.

.05 The City of Milpitas may cause remedial work to be done, at the applicant's expense, if it is determined that it is necessary to protect completed work or to prevent damage.

Section 40 Permit Suspension

II-13-40 Permit Suspension

.01 In the event that work performed does not conform to the provisions of the permit, or to the approved plans and specifications, or to any written instructions of the Chief Building Official, a written notice to comply shall be given to the permittee. Such notice shall set forth the nature of the corrections required and the time within which corrections shall be made. Failure to comply with such written notice shall be deemed justification for suspension of the permit, which will require that all work stop except that necessary for correction of the violation. Upon correction of the violation the permittee may apply for removal of suspension.

Section 41 Abatement of Hazards

II-13-41 Abatement of Hazards

.01 Whenever the City of Milpitas determines that any existing excavation embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of public way, drainage channel, or identified sensitive environmental resources of critical concern, the owner of the property upon which the excavation or fill is located, or the Lessee thereof, or other person or agent in control of said property, upon receipt of notice in writing from the City of Milpitas shall, within the period specified therein, repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this Chapter.

Section 42 Performance Bond

II-13-42 Performance Bond

.01 The Chief Building Official shall, before issuing a permit in hillside areas, require a cash or corporate surety bond, instrument of credit or other security acceptable to the City be posted by the applicant, conditioned upon the faithful performance of the conditions in the permit, and erosion control measures specified in the permit within the time specified by the Chief Building Official.

.02 The amount of the bond or security shall be the full cost of the installed erosion and sediment control measures and facility maintenance.

.03 The Chief Building Official may grant a partial or complete waiver of such bond where he finds minimal impairment of existing surface drainage, minimal erosion hazard and minimal sedimentation hazard upon any adjacent land or watercourse and no hazard to human life or property.

.04 The bond or security shall remain in effect and held until the erosion and sediment control measures have stabilized the site and all plan and permit conditions have been met, at which time a "notice of compliance" certificate will be issued following the final construction inspection.

Section 43 Appeal

II-13-43 Appeal

Any act of any officer or employee of the City of Milpitas under the provisions of this Chapter may be appealed in accordance with the provisions of II-1-13.01 of the Milpitas Municipal Code.

Section 44 Penalties

II-13-44 Penalties

.01 See II-1-26.

Section 45 Fees

II-13-45 Fees

.01 **Plan Checking Fee.** For excavation and fill on the same site, the fee shall be based on the volume of the excavation or fill, whichever is greater. Before accepting a set of plans and specifications for checking, the Chief Building Official shall collect a plan checking fee. Separate permits and fees shall apply to retaining walls or major drainage structures as indicated elsewhere in this Chapter. There shall be no separate charge for standard terrace drains and similar facilities. The amount of the plan checking fee for grading plans shall be as set forth by Resolutions of the City Council.

.02 The plan checking fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between such fee paid for the original permit and the fee shown for the entire project.

Section 46 Grading Permit Fees

II-13-46 Grading Permit Fees

A fee for each grading permit shall be paid to the City of Milpitas as set forth by Resolutions of the City Council.

Section 47 Reserved

Chapter 14 EXISTING BUILDING CODE

Sections:

Section 1 - Adoption of the Existing Building Code
Section 2 - Amendments to the 2013 California Existing Building Code
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Existing Building Code

II-14-1.01 Adoption of the Existing Building Code

The 2013 Edition of the California Existing Building Code, California Building Standards Code, known as the California Code of Regulations, Title 24, incorporating Appendices A2, A3, A4, and A5 of the International Existing Building Code, 2012 Edition published by the International Code Council is hereby adopted. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Amendments to the 2013 California Existing Building Code

II-14-2.01 Amendments to the 2013 California Building Code

Adopt Appendices A2, Earthquake Hazard Reduction in Existing Reinforced Concrete and Reinforced Masonry Wall Building with Flexible Diaphragms, A3, Prescriptive Provisions for Seismic strengthening of Cripple Walls and Sill Plate Anchorage of Light, Wood-framed Residential Buildings, A4, Earthquake Hazard Reduction in Existing Wood-frame Residential Buildings with Soft, Weak or Open-front Walls & A5, Earthquake Hazard Reduction in Existing Concrete Buildings of 2009 International Existing Building Code.

Section 3 Repeal of Conflicting Ordinances

II-14-3.01 Repeal of Conflicting Ordinances

Upon adoption of each new California Existing Building Code, the previously adopted California Code for Building Conservation is superseded in its entirety.

Section 4 Severability

II-14-4.01 Severability

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-14-5.01 Effective Date

This Chapter shall become effective on January 1, 2014.

Chapter 15 FIREPLACE/WOODSMOKE POLLUTION

Sections:
Section 1 - General Requirements
Section 2 - Applicability
Section 3 - Definitions
Section 4 - Enforcement

Section 1 General Requirements

II-15.1.01 General Requirements

It shall be unlawful to install a wood burning appliance that is not pellet-fueled wood heater or EPA certified wood heater.

Section 2 Applicability

II-15.2.01 New Construction
II-15.2.02 Existing Structures
II-15.2.03 Conversions
II-15.2.04 Reconstruction/Repair

II-15.2.01 New Construction

Only gas fireplaces, pellet-fueled wood heaters or E.P.A. certified wood-burning appliances may be installed in any new construction.

II-15.2.02 Existing Structures

Only gas fireplaces, pellet-fueled wood heater or E.P.A. certified wood-burning appliances may be added to or replace wood-burning appliances in existing buildings.

II-15.2.03 Conversions

The conversion of a gas fireplace to burn wood shall constitute the installation of a wood burning appliance and shall be subject to the requirements of this Chapter.

II-15.2.04 Reconstruction/Repair

A wood burning appliance shall comply with this Chapter if (1) it is reconstructed, (2) additions, alterations, or repairs are made to the appliance that require opening up immediately-adjacent walls, or (3) the residential unit or commercial building in which the appliance is located is renovated, and the renovation includes opening up walls immediately adjacent to the appliance.

Section 3 Definitions

II-15.3.01 Bay Area Air Quality Management District
II-15.3.02 E.P.A.
II-15.3.03 E.P.A. Certified Wood Heater
II-15.3.04 Fireplace
II-15.3.05 Gas Fireplace
II-15.3.06 Pellet-fueled Wood Heater
II-15.3.07 Solid Fuel
II-15.3.08 Wood Burning Appliance

II-15.3.01 Bay Area Air Quality Management District

"Bay Area Air Quality Management District" means the air quality agency for the San Francisco Bay Area pursuant to California Health and Safety Code Section 40200.

II-15.3.02 E.P.A

"E.P.A." means United States Environmental Protection Agency.

II-15.3.03 E.P.A. Certified Wood Heater

"E.P.A. certified wood heater" means any wood heater that meets the standards in Title 40, Part 60; Subpart AAA, Code of Federal Regulations in effect at the time of installation and is certified and labeled pursuant to those regulations.

II-15.3.04 Fireplace

"Fireplace" means any permanently installed masonry or factory-built wood burning appliance, except pellet-fueled wood heater, designed to be used with an air-to-fuel ratio greater than or equal to 35 to 1, a burn rate of 11 pounds per hour, or a weight over 1,760 pounds.

II-15.3.05 Gas Fireplace

"Gas fireplace" means any device designed to burn natural gas in a manner that simulates the appearance of a wood burning fireplace.

II-15.3.06 Pellet-fueled Wood Heater

"Pellet-fueled wood heater" means any solid-fueled burning device that operates on pellet-fuel and is U.S. EPA Phase II certified. Pellet fuel may be compressed wood, com or other biomass.

II-15.3.07 Solid Fuel

"Solid fuel" means wood or any other non-gaseous or non-liquid fuel.

II-15.3.08 Wood Burning Appliance

"Wood burning appliance" means fireplace, wood heater, or pellet-fired wood heater or and similar device burning and solid fuel used for aesthetic or space-heating purposes.

Section 4 Enforcement

II-15.4.01 Enforcement

Any person who plans to install a wood burning appliance must submit documentation to the Building and Safety Department of the City of Milpitas demonstrating that the appliance is a pellet-fueled wood heater or EPA certified wood heater. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be punishable as provided by law.

Chapter 19 GREEN BUILDING STANDARDS CODE

Sections:

Section 1 - Adoption of the Green Building Standards Code
Section 2 - Reserved
Section 3 - Repeal of Conflicting Ordinances
Section 4 - Severability
Section 5 - Effective Date

Section 1 Adoption of the Green Building Standards Code

II-19-1.01 Adoption of the Green Building Standards Code

The 2013 Edition of the California Green Building Standards Code, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 11, also known as the CALGreen Code, published by the International Code Council. There is one copy of said code on file in the office of the Chief Building Official for use and examination by the public.

Section 2 Reserved

Section 3 Repeal of Conflicting Ordinances

II-19-3.01 Repeal of Conflicting Ordinances

Upon adoption of each new California Green Building Standards Code, the previously adopted California Green Building Standards Code is superseded in its entirety.

Section 4 Severability

II-19-4.01 Severability

The City Council declares that, should any provision, section, paragraph, sentence, or word of this amendment be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of said Chapter hereby adopted shall remain in full force and effect.

Section 5 Effective Date

II-19-5.01 Effective Date

This Chapter shall become effective on January 1, 2014.

Chapter 20 GREEN BUILDING REGULATIONS

Sections:

Section 1 - Purpose and Intent
Section 2 - Definitions
Section 3 - Standards for Compliance
Section 4 - Incentives for Compliance
Section 5 - Administrative Procedures and Implementation of Regulations
Section 6 - Hardship or Infeasibility Exemption
Section 7 - Appeal
Section 8 - Effective Date

Section 1 Purpose and Intent

II-20-1.01 Purpose and Intent

The purpose and intent of this Chapter is to enhance the public health and welfare by promoting the environmental and economic health of the City through the design, construction, maintenance, operation and deconstruction of buildings and other site development by incorporating green building practices into all development. The green building provisions referred to in this Chapter are designed to achieve the following goals:

1. Increase energy efficiency;
2. Encourage water and resource conservation;
3. Reduce waste generated by construction projects; and
4. Promote the health of residents, workers and visitors to the City.

Section 2 Definitions

II-20-2.01 Purpose

The purpose of this Section is to ensure precision in interpretation of this Chapter. This Section provides definitions of terms and phrases used that are technical or specialized, or may not reflect common usage. If any of the definitions in this Chapter conflict with definitions in other provisions of the Municipal Code, these definitions shall control for the purposes of these Green Building Regulations. If a word is not defined in this Chapter, or other provisions of the Municipal Code, the most common dictionary definition is presumed to be correct.

II-20-2.02 Definitions

The following terms shall have the ascribed definition for the purposes of applying the criteria of this Chapter.

A

"Addition" means new construction square footage added to an existing structure.

"Applicant" means any entity that applies to the City for the applicable permits to undertake any covered project within the City, or any subsequent owner of the site.

C

"Compliance Official" means the Chief Building Official or designee.

"Compliance Threshold" means the minimum number of points or rating level of a green building rating system that must be attained for a particular Covered Project.

"Covered Project" means any planning entitlement application(s) or building permit application(s) for commercial (non-residential) new construction or renovations, for any single-family, two-family or multi-family new construction or renovation, or for city-sponsored construction projects subject to the Standards for Compliance Section of this Ordinance.

G

"Good Faith Effort" means a project that has not met the required compliance threshold, but for extenuating reasons or reasons beyond the control of the applicant, the Compliance Official has found the project meets the good faith effort provisions.

"Green Building" means a whole systems approach to the design, construction and operation of buildings that substantially mitigates the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide a healthy, productive indoor environment.

"Green Building Project Checklist" means a checklist or scorecard developed for the purpose of calculating a green building rating.

"Green Building Rating System" means the rating system associated with specific green building criteria and used to determine compliance thresholds. Examples of rating systems include, but are not limited to, the LEED and GreenPoint Rated systems.

"GreenPoint Rated" means a residential green building rating system developed by the Build It Green organization.

"GreenPoint Rated Verification" means verification of compliance by a certified GreenPoint Rater, resulting in green building certification by Build It Green including green points allocation across all of the resource categories.

L

"LEED®" means the "Leadership in Energy and Environmental Design" green building rating system developed by the U.S. Green Building Council.

M

"Mixed Use" means the construction of a building or buildings that include both commercial and residential uses.

"Multi-Family Residential" means a building containing three or more attached dwelling units.

N

New Construction, Commercial (Nonresidential). "Commercial (Nonresidential) New Construction" means the construction of a new retail, office, industrial, warehouse, service, hotel, motel, or similar building(s), or additions to such building(s).

New Construction, Residential. "Residential New Construction" means the construction of a new single-family or two-family dwelling unit or of new or replacement multi-family residential building(s), or additions to such building(s).

P

"Priority Plan Review" means a covered project meeting the Incentives for Compliance will receive building permit plan review comments from all City Departments on the first plan review within fifty percent (50%) less time than what would normally be scheduled for the scale and size of the project. The plan review would be performed during regular working hours and would be scheduled ahead of other plan reviews for which off-hour fees were not already paid.

Q

"Qualified Green Building Professional" means a person including but not limited to an employee of the City, trained through the USGBC as a LEED accredited professional or through

Build It Green as a certified green building professional or similar qualifications if acceptable to the Compliance Official.

R

"Renovation" means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible.

S

"Single-Family or Two-Family Residential" means a single detached dwelling unit or two units in a single building.

"Square Footage," for the purposes of calculating commercial, multi-family residential, and single-family and two-family new construction square footage, means all new and replacement square footage, including basement areas [seven (7) feet or greater in height] and garages, except that unconditioned garage space shall only count as fifty percent (50%) of that square footage. Areas demolished shall not be deducted from the total new construction square footage.

Section 3 Standards for Compliance

II-20-3.01 Covered Projects

Standards for Compliance for covered projects are identified in Table 3.01-1, Green Building Standards for Compliance, of this Chapter.

Table 3.01-1
Green Building Standards for Compliance[1]

Type of Project	Building Improvements		
	Checklist Required	Minimum Threshold	Verification Required
Residential			
New Construction: ≥ five (5) units	Build it Green or LEED for Homes	50 Green Points (Build it Green) or LEED for Homes Certified	Yes
Nonresidential			
New Construction: >25,000 and ≤49,999 s.f.	LEED	LEED Certified	Yes
New Construction or renovations*: ≥ 50,000 s.f.	LEED	LEED Silver	Yes
City Buildings			

New construction or renovations* over 25,000. s.f.	LEED	LEED Silver	Yes
Mixed Use	Residential and Commercial criteria as applicable to each residential and commercial component of the project.		

Note: All square footage is gross.

* Renovation area includes only the area of work that requires permit application.

Per these green building regulations, a rating system other than LEED or Build It Green may be used with equivalent thresholds at the discretion of the Compliance Officer.

II-20-3.02 Exempted projects

The following projects are exempted from the provisions of this Chapter:

1. Buildings designated as a local Cultural Resource or listed on California Register of Historic Resources or the National Registry of Historic Places.
2. Remodels or renovations to residential buildings that do not add more than five (5) new dwelling units.

Section 4 Incentives for Compliance

II-20-4.01 Purpose

To further encourage higher levels of green building compliance for a project, incentives are offered for Residential and Commercial (Nonresidential) projects.

II-20-4.02 Residential

Projects meeting the following threshold shall be eligible for Priority Plan Review:

1. Projects earning seventy-five (75) Green Points or equivalent in LEED.

II-20-4.03 Commercial (Nonresidential)

Projects meeting the following threshold shall be eligible for Priority Plan Review:

1. Projects meeting LEED Gold and above.

Section 5 Administrative Procedures and Implementation of Regulations

II-20-5.01 Administration

A. Responsibility of the Compliance Official. The responsibility of the Compliance Official shall be as follows:

1. The Compliance Official shall promulgate any rules and regulations necessary or appropriate to achieve compliance with the requirements of this Chapter. The rules and regulations shall provide, at a minimum, for the incorporation of green building requirements of this Chapter into checklist submittals with planning entitlement and building permit applications, and supporting design, construction, or development documents to demonstrate compliance with this Chapter.

2. The Compliance Official shall have the responsibility to administer and monitor compliance with the green building requirements set forth in this Chapter and with any rules and regulations promulgated thereunder, and to grant exemptions from the requirements, where so authorized.

II-20-5.02 Implementation of Regulations

Compliance with the provisions of this Chapter shall be listed as a condition of approval on any discretionary permit approval, and on the building plans for building permit approval, for any Covered Project.

A. Compliance Procedures. The procedures for compliance documentation shall include, but not be limited to, the following:

1. Preliminary Documentation. Applicants for a Covered Project are encouraged, but not required, to meet with the Compliance Official or his or her designated staff, in advance of submittal of an application, to determine required green building thresholds for compliance and to review the proposed green building program and details to achieve compliance.

2. Discretionary Planning Entitlements. Upon submittal of an application for any discretionary planning entitlement for any Covered Project, including but not limited to Site Development Permits, Conditional Use Permit, Planned Unit Development or Variance requests, application materials shall include the appropriate completed checklists, as required by Section 3, Standards for Compliance, of this Chapter, accompanied by a text description of the proposed green building program and expected measures and milestones for compliance.

3. Building Plan Review. Upon submittal of an application for a building permit, building plans for any Covered Project shall include a checklist and green building program description, reflecting any changes proposed since the planning entitlement phase (if a planning entitlement was required). The checklist shall be incorporated onto a separate plan sheet included with the building plans. A qualified green building professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the requirements of Section 3, Standards for Compliance, of this Chapter, prior to issuance of a building permit.

4. Documentation for Final Building Inspection, Verification, and Occupancy. Prior to scheduling of final building inspection and occupancy for any Covered Project, a

Qualified Green Building Professional shall provide evidence of adequate green building compliance or documentation to the Compliance Official to satisfy the requirements of Section 3, Standards for Compliance, of this Chapter. This information shall include, but is not limited to:

a. Documentation that verifies incorporation of the design and construction-related credits specified in the project approval for the Covered Project. This documentation can be in the form of inspection records when a City Building Inspector serves as the Qualified Green Building Professional;

b. A letter from the Qualified Green Building Professional that certifies that the Covered Project has been constructed in accordance with the approved green building project checklist;

c. Any additional documentation that would be required by the LEED reference guide for LEED certification (if required), or by the GreenPoint Rated manuals for GreenPoint Rated certification (if required); and

d. Any additional information that the applicant believes is relevant to determining that a good faith effort has been made to comply with this Chapter.

5. Final Determination of Compliance and Good Faith Effort to Comply. Prior to final building inspection for a Covered Project, the Compliance Official shall review the documentation submitted by the applicant in Section 5.02 (A)(4) above, and determine whether the applicant has achieved the required compliance threshold as set forth in Section 3, Standards for Compliance, of this Chapter, and/or demonstrated that measures are in place to assure that compliance shall take place no later than one year after approval of final building inspection.

If the Compliance Official determines that the applicant has met the requirements of Section 3 of this Chapter, for the project, the final building inspection may proceed, provided the Covered Project has received approval of all other inspections required by the Compliance Official.

If the Compliance Official determines that the required green building rating has not been achieved, the Compliance Official shall find one of the following:

a. Good Faith Effort to Comply: When an applicant submits a request in writing to the Compliance Official for approval of a good faith effort to comply, the Compliance Official shall determine that the applicant has made a good faith effort to comply with this Chapter when finding that either:

   i. The cost for assuring compliance is disproportionate to the overall cost of the project, or

   ii. The green building materials and technologies on the green building checklist are no longer available or not yet commercially available, or

   iii. At least eighty percent (80%) of the required green point credits have been achieved, and measures are in place to assure full compliance not later than one year after approval of the final building inspection.

Determination of a good faith effort to comply shall be made separately for each item on the green building project checklist. Granting of a good faith effort to comply for one item does not preclude the need for the applicant to comply with the other items on the green building checklist.

b. Non-Compliant Project. If the Compliance Official determines that the applicant has not made a good faith effort to comply with this Chapter, or if the applicant fails to submit the documentation required within the required time period, then the project shall be determined to be non-compliant, and the final inspection and approval for the project shall be withheld. A final inspection shall not take place until the applicant has implemented equivalent alternate measures approved by the Compliance Official or unless an exemption is granted for the project.

6. Non-Compliance. If, as a result of any inspection, the City determines that the Covered Project does not or is unlikely to comply with the approved plans or green building checklist, a full stop work order shall be issued if the Compliance Official determines that continuation of construction activities will jeopardize the project's ability to meet the required compliance threshold. The stop order shall remain in effect until the Compliance Official determines that the project will be brought into compliance with the approved plans and/or checklist.

7. Lack of Inspectors. If the Compliance Official determines that there is a lack of Qualified Green Building Professionals available to perform green building inspections within a timely manner, the Compliance Official may allow the architect, designer or contractor, who is a Qualified Green Building Professional, of the project to determine that green building requirements have been met.

Section 6 Hardship or Infeasibility Exemption

II-20-6.01 Exemption

If an applicant for a covered project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Ordinance, the applicant may request an exemption. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

The applicant shall indicate in the pre-permitting documentation the maximum number of credits he or she believes is practical or feasible for the covered project and the circumstances that he or she believes make it a hardship or infeasible to comply fully with this Chapter. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

1. Granting of Exemption: If the City Manager or designee determines that it is a hardship or infeasible for the applicant to meet fully the requirements of this Chapter based on the information provided, the City Manger or designee shall determine the maximum feasible number of credits reasonably achievable for the covered project and shall indicate this number on the pre-permitting documentation submitted by the applicant.

2. Denial of Exemption: If the City Manager or designee determines that it is possible for the applicant to fully meet the requirements of this Chapter, he or she shall so notify the applicant in writing.

Section 7 Appeal

II-20-7.01 Appeals

1. Any aggrieved applicant or person may appeal the determination of the Compliance Official regarding: (a) the granting or denial of an exemption; or (b) compliance with any other provision of this ordinance.
2. Any appeal must be submitted in accordance with Title I, Section 5, Appeals to Council, of the Milpitas Municipal Code.
3. The appeal process shall follow the procedures set forth in Title I, Section 5, Appeals to Council, of the Milpitas Municipal Code.

Section 8 Effective Date

II-20-8.01 Effective Date of Ordinance

This Green Building Ordinance becomes effective on January 1, 2014 and applies to Covered Projects for which planning application(s) are submitted after January 1, 2014 or Covered Projects, not requiring planning entitlements, for which building permit applications are submitted after January 1, 2014.

Chapter 150 HISTORICAL BUILDING CODE

Sections:

Section 1-Adoption of Historical Building Code by Reference
Section 2-Purpose and Intent
Section 3-Additions and Amendments (Reserved)
Section 4-Violation an Infraction
Section 5-Conflict
Section 6-Effective Date

Section 1 Adoption of Historical Building Code by Reference

II-150-1.00 Adoption of Historical Building Code by Reference

The City Council of the City of Milpitas does hereby adopt 2013 California Historical Building Code, such code consisting of all the provisions of Part 8 - State Historical Building Code of Title 24, Building Standards of the California Administrative Code, published by International Code Council, 500 New Jersey Avenue, NW, 6th floor, Washington, D.C. 20001.

Section 2 Purpose and Intent

II-150-2.01 Purpose

The purpose of this code is to provide regulations for the preservation, restoration, rehabilitation, relocation, or reconstruction of buildings or properties designated as qualified historical buildings or properties. This Code is intended to provide solutions for the preservation of sustainability, to provide access for persons with disabilities, to provide a cost-effective approach to preservation, and to provide for the reasonable safety of the occupants or users. This Code required enforcing agencies to accept solutions that are reasonably equivalent to the regular code when dealing with qualified historical buildings or properties.

II-150-2.02 Intent

The intent of this Code is to facilitate the preservation and continuing use of qualified historical buildings or properties while providing reasonable safety for the building occupants and access for persons with disabilities.

Section 3 Additions and Amendments (Reserved)

Section 4 Violation an Infraction

II-150-4.00 Violation an Infraction

Whenever in this Chapter any act is prohibited or is made or is declared to be unlawful, or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of any such provision of said Chapter is hereby declared to be an infraction within the meaning of the Government Code and the Penal Code of the State of California. Pursuant to said provisions of said Section 36900 of the Government Code of the State of California, every violation determined to be an infraction is punishable by (1) a fine not exceeding One Hundred Dollars ($100) for a first violation; (2) a fine not exceeding Two Hundred Dollars ($200) for a second violation of the same act within one year; (3) a fine not exceeding Five Hundred Dollars ($500) for each additional violation of the same act within one year. Each day such a violation continues shall be regarded as a new and separate infraction.

Section 5 Conflict

II-150-5.00 Conflict

If any procedural provision of Chapter 1, Title II of the Milpitas Municipal Code shall conflict with any procedural provision of the code hereby adopted, the provisions of Chapter 1, Title II of the Milpitas Municipal Code shall prevail. If any provision of Chapter 1, Title II of the Milpitas Municipal code relating to housing or building standards shall conflict with the provisions of the code hereby adopted relating to housing or building standards, the provisions of the California Code hereby adopted shall prevail. Provided, however, that all remedies and penalties provided in said Chapter 1, Title II of the Milpitas Municipal Code and in the code hereby adopted shall be cumulative and not exclusive and in addition to such other remedies or penalties as are provided by law.

Section 6 Effective Date

II-150-6.00 Effective Date

This Chapter shall be effective January 1, 2014.

Chapter 170 GAS SHUT-OFF DEVICES

Sections:

Section 1-Definitions
Section 2-Location of Installation
Section 3-Automatic Gas Shut-off Devices
Section 4-Enforcement

Section 1 Definitions

II-170-1.01 Downstream of Gas Utility Meter

"Downstream of Gas Utility Meter" shall refer to all customer-owned gas piping.

II-170-1.02 Residential Building

"Residential Building" shall mean any single-family dwelling, duplex, multi-family dwelling, apartment building, condominium building, townhouse building, lodging house, congregate residence, hotel, or motel.

II-170-1.03 Excess Flow Gas Shut-off Device

"Excess Flow Gas Shut-off Device" shall mean those valves or devices that are not actuated by motion, but are activated by significant gas leaks or overpressure surges, which can occur when pipes rupture inside the structure. The design of the device shall provide a proven method to provide automatically for expedient and safe gas Shut-off in an emergency. The design of the device shall provide a capability for ease of consumer or owner resetting in a safe manner. The device shall be certified by the Office of State Architect or the operational and functional design of the device shall meet or exceed the device certified by the Office of the State Architect. The determination of whether the operational and functional design of the device is at least equal to the device certified by the Office of State Architect may be made by one of the following: the Independent Laboratory of the International Accreditation Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO), or other recognized listing and testing agency.

II-170-1.04 Seismic Gas-Shut-Off Device

"Seismic Gas Shut-off Device" shall mean a system consisting of a seismic sensing device and a gas Shut-off device designed to actuate automatically. The system may consist of separable components or may incorporate all functions in a single body. Where separable components are utilized, the companion gas-shut-off will be installed in a gas piping system in order to shut-off the gas downstream of the location of the gas seismic sensing device in the event of a severe seismic

disturbance. The device shall be certified by the Office of State Architect and the operational functional design of the device shall meet or exceed the device certified by the Office of State Architect. The determination of whether the operational and functional design of the device is at least equal to the device certified by the Office of State Architect may be made by one of the following: the Independent Laboratory of the International Accreditation Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO), or other recognized listing and testing agency.

II-170-1.05 Upstream of Gas Utility Meter

"Upstream of Gas Utility Meter" shall refer to all gas piping installed by the utility up to and including the meter and the utility's bypass tee at the connection to the customer owned piping.

II-170-1.06 Automatic Gas Shut-off Device

"Automatic Gas Shut-off Device" shall refer to either: a Seismic Gas Shut-off Device or Excess Flow Gas Shut-off Device.

Section 2 Location of Installation

II-170-2.00 Location of Installation

(1) An approved Seismic Gas Shut-off Device (motion sensitive) or an approved Excess Flow Gas Shut-off Device (non-motion sensitive) shall be installed downstream of the gas utility meter and Excess Flow Gas Shut-off Devices shall be installed at each gas fuel appliance outlet on each fuel gas line where the gas line serves any new building (commercial, industrial or residential) containing fuel gas piping for which a building permit is first issued on or after the effective date of the ordinance codified in this Chapter.

(2) An approved Excess Flow Gas Shut-off Device (non-motion sensitive) shall be installed at gas fuel appliance outlet when replacing any existing gas fuel appliance.

(3) An approved Seismic Gas Shut-off Device (motion sensitive) or an approved Excess Flow Gas Shut-off Device (non-motion sensitive) shall be installed downstream of gas utility meter when providing alteration or addition to the existing gas fuel line and an approved Excess Flow Gas Shut-off Device (non-motion sensitive) shall be installed at gas fuel appliance outlet when replacing any existing or installing new gas fuel appliance.

II-170-2.01 Exceptions

(a) Automatic Gas Shut-off Devices installed on a gas distribution system owned or operated by a public utility shall not be subject to the requirements of this Chapter.

(b) The ordinance codified in this Chapter shall not apply to mechanical process equipment used in manufacturing.

Section 3 Automatic Gas Shut-off Devices

II-170-3.00 Automatic Gas Shut-off Devices

Gas Shut-off Devices-either installed in compliance with this ordinance or voluntarily, with a permit issued on or after the effective date of this ordinance, shall comply with the following requirements:

(a) Automatic Gas Shut-off Devices shall be installed by a contractor licensed in the appropriate classification by the State of California and in accordance with the manufacturer's instructions.

(b) Seismic Gas Shut-off Devices (motion sensitive) must be mounted rigidly to the exterior of the building or structure containing the fuel gas piping. This requirement need not apply if the Building and Safety Division determines that the Seismic Gas Shut-off Device (motion sensitive) has been tested and listed for an alternate method of installation.

(c) Seismic Gas Shut-off Devices (motion sensitive) must be certified by the Office of State Architect and be listed by an approved listing and testing agency such as IAS, IAMPO, UL or the Office of State Architect. In the case of Excess Flow Gas Shut-off Devices only, be certified by the Office of State Architect or be listed by an approved listing and testing agency such as IAS, IAMPO, UL or the Office of the State Architect.

(d) Both Excess Flow Gas Shut-off Devices and Seismic Gas Shut-off Devices must have a thirty (30) year warranty which warrants that the valve or device is free from defects and will continue to operate properly for thirty (30) years from the date of installation.

(e) Where Automatic Gas Shut-off Devices are installed voluntarily or as required by this section, they shall be maintained for the life of the building or structure or be replaced with a valve or device complying with the requirements of this section.

II-170-3.01 List of Approved Valves and Devices

The Building and Safety Department shall maintain a list of all Seismic Gas Shut-off Devices (motion sensitive) and Excess Flow Gas Shut-off Devices (non-motion sensitive) which meet or exceed the requirements of devices certified by the Office of the State Architect for installation in the State of California and which comply with the standards and criteria set forth in Health and Safety Code Section 19180 et seq., including quality and design regulation for earthquake actuated automatic gas Shut-off systems (see 24 Cal. Cod Regs. Ch. 12-16-1).

Section 4 Enforcement

II-170-4.00 Enforcement

The City of Milpitas Building and Safety Department shall administer and enforce the provisions of this ordinance.

SECTION 3. 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 4. 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.

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS NECESSARY UNDER STATE LAW TO ADOPT WITH LOCAL AMENDMENTS TO THE BUILDING CODE ADMINISTRATION ORDINANCE, THE 2013 CALIFORNIA BUILDING CODE, VOLUMES 1 AND 2, 2013 CALIFORNIA RESIDENTIAL CODE, 2013 CALIFORNIA MECHANICAL CODE, 2013 CALIFORNIA PLUMBING CODE, 2013 CALIFORNIA ELECTRICAL CODE, 2013 CALIFORNIA HISTORICAL CODE, 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE, 2013 CALIFORNIA ENERGY CODE, AND 2013 CALIFORNIA EXISTING BUILDING CODE WITH APPENDIXES A2, A3, A4 AND A5 OF THE 2012 INTERNATIONAL EXISTING BUILDING CODE

WHEREAS, the City Council of the City of Milpitas intends to adopt by reference into the Milpitas Municipal Code the 2013 Edition of the above-noted California Codes and the above noted Appendixes of the 2012 International Existing Building Code; and

WHEREAS, in doing so, the City Council wishes to amend portions of the California Codes to better address local concerns and to be consistent with amendments made by the other cities and counties in the San Francisco East Bay, San Francisco Peninsula and Monterey Bay areas; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.5 requires such amendments to be reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.7 requires local entities to make express findings that such amendments are necessary.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The proposed amendments to the Building Code Administration Ordinance are generally not substantive in nature and are limited to editorial updating of this Ordinance. These amendments are necessary in order to update adopted Building Code references and to enhance the ability of the City to administer and enforce provisions of the technical building codes.

3. The proposed substantive amendments to the 2013 California Building Code involve:

   (1) Garage Ventilation
   (2) Chimney Spark Arresters On Fireplaces
   (3) Roofing for Hillside Construction
   (4) Seismic Engineering Provisions and Standards
   (5) Foundations and Foundation Reinforcement
   (6) Minimum Interior Concrete Slab Thickness and Minimum Reinforcement
   (7) Conventional Construction Provisions (Bracing)
   (8) Food Consumed on the Premises
   (9) Existing Structures

4. The proposed substantive amendments to the 2013 California Residential Code involve:

   (1) Garage Ventilation

(2) Chimney Spark Arresters On Fireplaces
(3) Roofing for Hillside Construction
(4) Seismic Engineering Provisions and Standards
(5) Foundations and Foundation Reinforcement
(6) Minimum Interior Concrete Slab Thickness and Minimum Reinforcement
(7) Conventional Construction Provisions (Bracing)

The above amendments are necessary because of the local climatic, geological or topographical conditions for the following reasons:

a. Garage ventilation is necessary since increased ventilation will delay or avoid ignition of flammable liquids or gases that may be dislodged due to seismic activity common to this geological area.
b. Amending the Code to require chimney spark arresters on fireplaces is necessary due to the local climatic wind conditions combined with a proximity to high fire hazard areas.
c. Amending the Code to require that all hillside construction be designed for a minimum speed of 80 mph, exposure C and be subject to requirements of Section 2308.10.1 of the 2013 California Building Code is necessary due to the climatic conditions of the area. The hillside area has a long history of high winds. Windstorms have caused significant damage to homes located in this area.
d. Amendments to the Code in regards to seismic engineering provisions and standards are necessary due to the fact the San Francisco Bay Area is densely populated and is in an area of high seismic activities as indicated by the United States Geological Survey and the California Division of Mines and Geology. Recent earthquake activities, including the 1989 Loma Prieta earthquake, have indicated the lack of adequate design and detailing as a contributing factor to damages that reduced life-safety of building occupants.
e. Amending the Code to require special foundation and extra reinforcement is necessary due to expansive (clay) soils and seismic activity common to this geological area.
f. Amending the Code to specify the minimum thickness and reinforcement of concrete slabs inside buildings and structures is due to local geological soil conditions, specifically that of predominantly expansive soils.
g. Amending the conventional construction (bracing) provisions of the Code by limiting the bracing use of gypsum board, structural fiberboard sheathing, hardboard panel siding and cement plaster is necessary because the City of Milpitas is located in an active seismic fault area and these materials have performed poorly during recent California seismic events.
h. Providing access to restrooms by customers in establishments selling food on premises is necessary in order to safeguard public health and general welfare through providing adequate sanitation.
i. Amending the existing structures chapter by adding structural provisions for repairs in existing buildings is necessary because the City of Milpitas is located in an active seismic fault area.
j. Other proposed amendments which are not substantive in nature, including various use restrictions, definitions and administrative provisions are necessary in order to enhance the City's ability to implement proposed amendments identified in Sections 2 and 3, above, as well as other provisions of the 2013 California Building Code, in that they will enhance the Code's purpose to provide minimum standards to safeguard life or limb, health, property and public welfare.

5. The proposed substantive amendment to the 2013 California Mechanical Code involves:

(1) Cooling water for mechanical equipment.

The above amendment is necessary because of local climatic, geological or topographical conditions for the following reasons:

a. Climatic and geological conditions limit the amount of fresh water that can be unnecessarily used and disposed of when other methods, such as air-cooled equipment, are available.
b. Other amendments are not substantive in nature and are limited to deleting administrative provisions, which are found in the Building Code Administration Ordinance. This amendment is necessary in order to enhance the City's ability to implement the provisions of the 2013California Mechanical Code.

6. The proposed substantive amendment to the 2013 California Plumbing Code involves:

(1) Non Essential Use of Domestic Water

The above amendment is necessary because of local climatic, geographical or topographical conditions for the following reasons:

a. Climatic and geological conditions limit the amount of fresh water that can be used for non-essential purposes and disposed of.
b. Other amendments are not substantive in nature and are limited to deleting administrative provisions, which are found in the Building Code Administration Ordinance. This amendment is necessary in order to enhance the City's ability to implement the provisions of the 2013 California Plumbing Code.

7. The proposed substantive amendments to the 2013 California Electrical Code involve:

(1) Requirement for all new electrical services to be underground
(2) Disconnects of electrical power for each building to be in a readily accessible location on the first floor
(3) Grounding systems in new buildings shall be an electrode encased in concrete
(4) Underground raceways (conduits) shall have an equipment grounding conductor

The above amendments are necessary because of local climatic, geographical or topographical conditions for the following reasons:

a. Provides for elimination of overhead services that are inherently less safe in event of floods, windstorms and accidental contact due to local climatic condition. Many buildings in the City of Milpitas are located in the flood zone and high wind areas.
b. Provides for a reasonably quick means of finding the location of power disconnects to buildings in the event of fires and/or other emergencies because the City of Milpitas is located in an active seismic fault area.
c. Sets a standard embraced in surrounding communities for grounding of electrical systems especially important for large electrical services commonly found on high-tech and manufacturing buildings typical in the City of Milpitas. Other types of grounding, such as rods, may be subject to deterioration in local soils.
d. Providing equipment grounding conductors enhances capability of keeping electrical systems grounded, which is important in high amperage electrical services common to Milpitas.

8. The proposed amendments to the 2013 California Historical Building Code are not substantive in nature and are limited to administrative provisions of the use and enforcement of this Code.

9. The proposed amendments to the 2013 California Green Building Standards Code are not substantive in nature and are limited to administrative provisions of the use and enforcement of this Code.
10. The proposed amendments to the 2013California Energy Code are not substantive in nature and are limited to administrative provisions of the use and enforcement of this Code.

11. The proposed substantive amendments to the 2013 California Existing Building Code involve:

    (1) Include Appendix A2 of the 2012 International Existing Building Code
    (2) Include Appendix A3 of the 2012 International Existing Building Code
    (3) Include Appendix A4 of the 2012 International Existing Building Code
    (4) Include Appendix A5 of the 2012 International Existing Building Code

    The above amendments are necessary because of local climatic, geological or topographical conditions for the following reasons:

    a. Include seismic strengthening provisions for existing reinforced concrete and masonry wall buildings with flexible diaphragms
    b. Include seismic strengthening provisions for cripple walls and sill plates of light, wood-frame residential buildings
    c. Include seismic strengthening provisions for wood-frame residential buildings with soft or open-front walls
    d. Include seismic strengthening provisions for existing concrete buildings

12. All previous findings by the City Council in updating the above referenced codes are hereby adopted and incorporated herein.

PASSED AND ADOPTED this ___ day of _____, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

REGULAR

NUMBER: 113.23

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS REPEALING AND REPLACING CHAPTER 300 OF TITLE V OF THE MILPITAS MUNICIPAL CODE ADOPTING THE 2013 EDITION OF THE CALIFORNIA FIRE CODE AND SPECIFIED LOCAL AMENDMENTS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 5, 2013, upon motion by Vice Mayor Polanski, 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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas intends to adopt by reference into the Milpitas Municipal Code the 2013 California Fire Code; and

WHEREAS, in doing so, the City Council wishes to amend portions of the California Fire Code to better address local concerns and to be consistent with amendments made by the other cities and counties in the San Francisco East Bay, San Francisco Peninsula and Monterey Bay areas; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.5 requires such amendments to be reasonably necessary because of local climatic, geological or topographical conditions; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.7 requires local entities to make express findings that such amendments are necessary and the City has adopted a resolution making those findings in conjunction with this Ordinance adopting the model codes.

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. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE V, CHAPTER 300

Chapter 300 of Title V of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 300

FIRE CODE

Sections:
V-300-1 Adoption of the California Fire Code, 2013 Edition
V-300-2 Amendments to the 2013 California Fire Code

Section 1 Adoption of the California Fire Code, 2013 Edition

V-300-1.01

An Ordinance of the city of Milpitas adopting the 2013 edition of the *California Fire Code,* regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the city of Milpitas providing for the issuance of permits and collection of fees. That a certain document, except as herein amended, one (1) copy of which is on file in the office of the City Clerk, known as the California Fire Code, including Appendix Chapters 4, B, BB, C, CC, D and K with California State amendments as published by the International Code Council being particularly the 2013 edition, is hereby adopted by reference as the Fire Code for the City of Milpitas in the State of California regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of

hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions penalties, conditions and terms of said Fire Code on file in the office of the City Clerk are hereby referred to, adopted, and made a part hereof, as if fully set out in this Ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this Ordinance.

Section 2 Amendments to the 2013 California Fire Code

V-300-2.01

Chapter 1, Scope and Administration, International Fire Code, 2012 Edition, with California State amendments is hereby adopted and amended as follows:

V-300-2.02

Section 101.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

101.1 Title. These regulations shall be known as the Fire Code of the City of Milpitas, herein referred to as 'this code.'

V-300-2.03

Section 102.3 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

102.3 Changes in use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the City of Milpitas building codes adopted under Milpitas, California, Code of Ordinances, Title II. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code and the City of Milpitas building codes for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

V-300-2.04

Section 102.4 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

102.4 Application of building code. The design and construction of new structures shall comply with the City of Milpitas building codes adopted under Milpitas, California, Code of Ordinances, Title II, and any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the City of Milpitas building codes, shall be made in accordance therewith.

V-300-2.05

Section 102.5 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

102.5 Application of residential code. Where structures are designed and constructed in accordance with the City of Milpitas building codes adopted under Milpitas, California, Code of Ordinances, Title II, the provisions of this code shall apply as follows:

1. Construction and design provisions: Provisions of this code pertaining to the exterior of the structure shall apply, including, but not limited to premises identification, fire apparatus access

and water supplies. Where interior or exterior systems or devise are installed, construction permits required by Section 105.7 of this code shall also apply.

2. Administrative, operational and maintenance provisions: All such provision of this code shall apply.

V-300-2.06

Section 103.2 of the International Fire Code, 2012 Edition, is deleted in its entirety.

V-300-2.07

Section 104.10 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

104.10 Fire Investigations. The fire code official, the fire department or other responsible authority shall have the authority to investigate the cause, origin and circumstances of any fire, explosion or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

The Fire Marshal and authorized members of the fire department shall have the powers of a peace officer pursuant to Penal Code Section 830.37. Other members of the fire department, as designated by the Fire Chief, may issue citations for violations of fire-related laws and ordinances pursuant to Penal Code Section 836.5.

V-300-2.08

Section 105.1 of the California Fire Code 2013 Edition, is amended to read in its entirety as follows:

105.1 General. Permits shall be in accordance with Sections 105.1.1 through 105.7.16.

V-300-2.09

Section 105.1.4 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

105.1.4 Permits required. The fee for each permit shall be as set forth by resolution of the City of Milpitas City Council. The City Council may establish fees sufficient to recover its costs in administering this code and no permit shall be issued until such fees have been paid.

Operational Permits. All fees for annual operational fire permits under the provision of Section 105.6 of this Chapter shall be due and payable at the time of commencement of occupancy and said permit shall expire by December 31 of the same year. Fees for the renewal of such permit(s) shall be due and payable upon the expiration of the prior permit. No permit fee hereunder shall be refundable by reason of the cessation of occupancy during the permit period. Every annual permit fee that is not paid within a period of thirty (30) days from the time the same become due is hereby declared to be delinquent, and a penalty of 100% shall be added to said fee.

V-300-2.10

Section 105.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

105.2 Application. Applications for a permit required by this code shall be made to the fire code official in such form and detail as prescribed by the fire code official. Applications for permits shall be accompanied by such plans as prescribed by the fire code official. Said application shall be accompanied by a fee in the amount set by resolution of the City Council.

V-300-2.11

Section 105.4.2.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

105.4.2.2 Electronic documents. The fire code official may require electronic based documents for all construction documents and operational permits. The fire code official shall designate the software base format for the electronic documents.

V-300-2.12

Section 105.6 of the California Fire Code 2013 Edition, is amended to read in its entirety as follows:

105.6 Required operational permits. The fire code official is authorized to issue operational permits for the operations set forth in Sections 105.6.1 through 105.6.52.

V-300-2.13

Table 105.6.8 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

TABLE 105.6.8
PERMIT AMOUNTS FOR COMPRESSED GASES[1]

TYPE OF GAS	AMOUNT (cubic feet)[2] X 0.0283 for m^3
Corrosive	200
Flammable (except cryogenic and liquefied petroleum gases)	200
Highly toxic	Any amount
Inert and simple asphyxiant	200
Irritant	200
Moderately toxic	20
Other health hazards	200
Oxidizing (including oxygen)	200
Pyrophoric	Any amount
Radioactive	Any amount
Sensitizer	200
Toxic	Any Amount
Unstable (reactive)	Any amount

For SI: 1 cubic foot = 0.02832m^3.

1 Refer to Chapters 27, 30, 32, 35, 37, 40 and 41 for additional requirements and exceptions.
2 Cubic feet measured at normal temperature and pressure.

V-300-2.14

Table 105.6.10 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

TABLE 105.6.10
PERMIT AMOUNTS FOR CRYOGENIC FLUIDS

TYPE OF CRYOGENIC FLUID	INSIDE BUILDING (gallons)	OUTSIDE BUILDING (gallons)
Flammable	More than 1	55

Inert	55	55
Oxidizing (includes oxygen)	10	50
Physical or health hazard not indicated above	Any Amount	Any Amount

For SI: 1 gallon = 3.785 L

V-300-2.15

Section 105.6.16(3) of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95L) in a building or in excess of 55 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.

V-300-2.16

Table 105.6.20 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

TABLE 105.6.20
PERMIT AMOUNTS FOR HAZARDOUS MATERIALS[1]

TYPE OF MATERIAL	AMOUNT
Carcinogens	10 pounds
Combustible liquids	
Inside	25 gallons
Outside	55 gallons
Corrosive materials:	
Gases	See Table 105.6.8
Liquids	55 gallons
Solids	500 pounds
Cryogens	See Table 105.6.10
Explosive materials	Any Amount
Flammable materials:	
Gases	See Table 105.6.8
Liquids	See Section 105.6.16
Solids	10 pounds
Highly toxic materials:	
Gases	Any amount
Liquids	Any amount
Solids	Any amount
Moderately toxic gas	20 cubic feet
Organic peroxides:	
Liquids: Class I-II	Any Amount
Liquids: Class III	1 gallon
Liquids: Class IV	2 gallons
Liquids: Class V	No Permit Required
Solids: Class I-II	Any Amount
Solids: Class III	10 pounds
Solids: Class IV	20 pounds
Solids: Class V	No Permit Required
Oxidizing materials:	

Gases	See Table 105.6.8
Liquids: Class 4	Any amount
Liquids: Class 3	1 gallon
Liquids: Class 2	10 gallons
Liquids: Class 1	55 gallons
Solids: Class 4	Any amount
Solids: Class 3	10 pounds
Solids: Class 2	100 pounds
Solids: Class 1	500 pounds
Other health hazards:	
Liquids	55 gallons
Solids	500 pounds
Pyrophoric materials:	
Gases	Any amount
Liquids	Any amount
Solids	Any amount
Radioactive materials:	
Gases	Any Amount
Liquids	See Section 105.6.48
Solids	See Section 105.6.48
Toxic materials:	
Gases	See Table 105.6.8
Liquids	10 gallons
Solids	100 pounds
Unstable (reactive) materials:	
Liquids	
Class 4 & 3	Any Amount
Class 2	5 gallons
Class 1	10 gallons
Solids	
Class 4 & 3	Any Amount
Class2	50 pounds
Class 1	100 pounds
Water-reactive materials:	
Liquids	
Class 3	Any amount
Class 2	5 gallons
Class 1	55 gallons
Solids	
Class 3	Any Amount
Class 2	50 pounds
Class 1	500 pounds

For SI: 1 gallon = 3.785 L, 1 pound = 0.454kg.

V-300-2.17

Section 105.6.43 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

105.6.43 Temporary membrane structures, tents and canopies. An operational permit is required to operate an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (19 m^2), or a canopy in excess of 400 square feet (37 m^2).

Exceptions:

1. Tents used exclusively for recreational camping purposes.

V-300-2.18

Section 105.6.48 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.6.48 Radioactive Materials. To store or handle at any installation more than one microcurie (37,000 becquerel) of radioactive material not contained in a sealed source or more than 1 millicurie (37,000,000 becquerel) of radioactive material in a sealed source or sources, or any amount of radioactive material for which a specific licenses from the Nuclear Regulatory Commission is required.

V-300-2.19

Section 105.6.49 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.6.49 Day care facility. An operational permit is required to operate a day care facility.

V-300-2.20

Section 105.6.50 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.6.50 Residential care facility. An operational permit is required to operate any residential care or service facility.

V-300-2.21

Section 105.6.51 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.6.51 Woodworking. An operational permit is required to conduct woodworking operations involving mass production or involving more than one of each type of machine, or where machines are used continuously (as opposed to intermittently) or substantial products of sawdust may be a problem.

V-300-2.22

Section 105.6.52 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.6.52 Outdoors sales. An operational permit is required to conduct outdoors sales for commercial establishments.

V-300-2.23

Section 105.7 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

105.7 Required construction permits. The fire code official is authorized to issue construction permits for work as set forth in Sections 105.7.1 through 105.7.18.

V-300-2.24

Section 105.7.16 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

105.7.16 Temporary membrane structures, tents and canopies. A construction permit is required to erect an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (19 m^2), or a canopy in excess of 400 square feet (37 m^2).

Exceptions:

1. Tents used exclusively for recreational camping purposes

V-300-2.25

Section 105.7.17 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.7.17 Cryogenic Fluids. Except where federal or state regulations apply and except for fuel systems of the vehicle, to produce, store or handle cryogens in excess of the amounts listed in Table 105.6.10, to install a cryogenic vessel or piping system for the storage or distribution of cryogens.

V-300-2.26

Section 105.7.18 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

105.7.18 Other building permits. The Building Department shall transmit to the Fire Department a copy of each plan submitted for construction, alteration, or change of use or occupancy for all occupancy classifications for review and approval for conformance to the fire code of the City of Milpitas. The fee for each permit shall be as set forth by resolution of the City Council.

V-300-2.27

Section 106.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

106.1 Inspection Authority. The fire code official is authorized to inspect, as often as necessary, buildings and premises, including such other hazards or appliances designated by the fire code official for the purposes of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, result in an unauthorized discharge of hazardous materials, or any violation of this code or any other law or standard affecting fire and life safety. The fee for each inspection shall be as set forth by resolution of the City Council. The City may establish fees sufficient to recover its costs in administering this Chapter.

V-300-2.28

Section 106.5 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

106.5 Documents. Any person or party who prevents or attempts to prevent any representative of the Fire Department from examining any relevant books or records in the conduct of his or her official duties under this code shall be in violation of this code.

V-300-2.29

Section 106.6 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

106.6 Evidence. Any person or party who prevents or interferes with the preservation of evidence of any violation of any of the provisions of this code or of the rules and regulations promulgated pursuant to this code or any other Federal, State, or local law, rule, or regulation shall be in violation of this code.

V-300-2.30

Section 106.7 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

106.7 Interference. Any person or party who willfully prevents, interferes with, or attempts to hinder in any way the work of any authorized representative of the Fire Department in the lawful enforcement of any provision of this code, or fails to promptly permit entry for the purpose of inspection and examination pursuant to this code shall be in violation of this code.

V-300-2.31

Section 108.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

108.1 Appeals. Whenever the Fire Chief or his or her designee disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of this Code do not apply or that the true intent and meaning of this Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Chief to the City Manager or designee within ten (10) calendar days from the date of the decision appealed. Appeals shall be carried out pursuant to the provisions of Section 5 of the Standard Procedures Chapter of the Milpitas Municipal Code. An appeal shall stay all proceedings in furtherance of the act or decision appealed unless the Fire Chief or his or her designee whose act is appealed shall certify in writing that a stay would, in his or her opinion, cause peril to life or property. Said certificate shall contain a detailed statement of the facts of which said peril arises and of the reasons for said opinion. The decision of the City Manager or designee shall be final.

V-300-2.32

Section 108.2 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

108.2 Limitations on authority. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed.

V-300-2.33

Section 108.3 of the International Fire Code, 2012 Edition, is deleted in its entirety.

108.3 Qualifications. This section is deleted.

V-300-2.34

Section 109.1.1 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.1 Abatement Of Fire And Life Safety Hazards By Fire Code Official. If any person fails to comply with the orders of the fire code official, or if the fire code official is unable to locate the owner, operator, occupant or other person responsible within a reasonable time, the fire code official or any authorized representative may take such steps as are necessary to abate the hazard for the protection of the public safety. In no event is notice necessary before abatement, when the hazard is a clear and present danger to the public welfare. All costs related to such abatement shall become a lien or special assessment on the subject property.

V-300-2.35

Section 109.1.2 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.2 Criminal Or Civil Penalty For Violation; Payment Of Funds To Account. Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of this code in any

manner authorized by this section or by any other law, including but not limited to issuance of criminal citations, referral to the District Attorney, referral to the City Attorney, referral to other appropriate agencies, administrative actions and civil actions.

V-300-2.36

Section 109.1.3 hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.3 Misdemeanors – Continuing Violations. Any person who violates any of the provisions of this code, any of the provisions of any written authority of the City Manager or his or her duly authorized agents and representatives or any provision of any permit issued pursuant to this code shall be guilty of an infraction/misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued or allowed shall be a separate offense. Penalties for violations shall be as set forth by resolution of the City Council.

V-300-2.37

Section 109.1.4 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.4 Prosecution. Every violation of this code shall be a misdemeanor; provided, however, that where the City Attorney or his or her duly authorized agents has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading, citation or amendment thereto that the violation shall be prosecuted as an infraction.

V-300-2.38

Section 109.1.5 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.5 Penalty For Infraction. Each and every violation of this code, which is deemed an infraction, is punishable by:

(1) A fine not exceeding one hundred dollars ($100.00) for the first violation;

(2) A fine not exceeding two hundred dollars ($200.00) for the second violation of the same or similar provision within one year period; or,

(3) A fine not exceeding five hundred dollars ($500.00) for each additional violation, after the second, of the same or similar provision of this Chapter within a one year period of the first violation.

V-300-2.39

Section 109.1.6 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.6 Penalty For Misdemeanor. Each and every violation of this code, which is deemed a misdemeanor, is punishable by a penalty of not more than one thousand dollars ($1,000.00) or by imprisonment in the City or County jail for a period not exceeding six (6) months, or, by both penalty and imprisonment.

V-300-2.40

Section 109.1.7 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.7 Enforcement Authority. The following designated employee positions may enforce the provisions of this code by issuance of citations. Peace officers and persons employed in such positions are authorized to exercise the authority provided in Penal Code Section 836.5 and are authorized to issue

citations for violations of this code. The designated employee positions are: the City Manager or his or her duly authorized agents and representatives.

V-300-2.41

Section 109.1.8 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

109.1.8 Civil Penalties. Any person who intentionally, accidentally or negligently violates any provision of this code, any written authority of the City Manager or his or her duly authorized agents and representatives, or any provision of any permit issued pursuant to this code may be civilly liable to the City in the sum of not less than one hundred dollars ($100.00) but not to exceed one thousand dollars ($1,000.00) per day for each day in which such violation occurs or continues. The City may petition the municipal or superior court to impose, assess, and recover such sums. The civil penalty provided in this Section excludes inspection costs and abatement costs, is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state and federal law and local ordinances. Funds collected pursuant to this Section shall be paid to City's Fire Code Training account, which shall be a holding account to be used solely for Fire code enforcement training.

V-300-2.42

Section 202 of the California Fire Code, 2013 Edition, is amended by adding the following definitions:

CARCINOGEN is a substance that causes the development of cancerous growths in living tissue. A chemical is considered a carcinogen if:

1. It has been evaluated by the International Agency for Research on Cancer and found to be a carcinogen or potential carcinogen, or
2. It is listed as a carcinogen or potential carcinogen in the latest edition of the Annual Report on Carcinogens published by the National Toxicology program, or
3. It is regulated by OSHA as a carcinogen.

CONTINUOUS GAS DETECTION SYSTEM. A gas detection system where the analytical instrument is maintained in continuous operation and sampling is performed without interruption. Analysis is allowed to be performed on a cyclical basis at intervals not to exceed 30 minutes. In occupied areas where air is re-circulated and not exhausted to a treatment system (e.g. breathing zone), the fire code official may require a cyclical basis at intervals not to exceed 5 minutes. The gas detection system shall be able to detect the presence of a gas at or below the permissible exposure limit in occupiable areas and at or below ½ IDLH (or 0.05 LC 50 if no established IDLH) in unoccupiable areas.

CORROSIVE LIQUID. Corrosive liquid is:

1. any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action;
2. any liquid having a pH of 2 or less or 12.5 or more;
3. any liquid classified as corrosive by the U.S. Department of Transportation; and
4. any material exhibiting the characteristics of corrosivity in accordance with Title 22, California Code of Regulations §66261.22.

DEVICE is an appliance or piece of equipment that plays an active part in the proper functioning of the regulated systems. Examples include, but are not limited to the following: smoke detectors, heat detectors, flame detectors, manual pull stations, horns, alarms, bells, warning lights, hydrants, risers, FDCs, standpipes, strobes, control panels, transponders, and other such equipment used to detect, transmit, initiate, annunciate, alarm, or respond according to the system design criteria.

MODERATELY TOXIC GAS. A chemical or substance that has a median lethal concentration (LC50) in air more than 2000 parts per million but not more than 5000 parts per million by volume of gas or vapor, when administered by continuous inhalation for an hour, or less if death occurs within one hour, to albino rats weighing between 200 and 300 grams each.

MAXIMUM THRESHOLD QUANTITY (MAX TQ). Maximum Threshold Quantity (Max TQ) is the maximum quantity of a moderately toxic or toxic gas, which may be stored in a single vessel before a more stringent category of regulation is applied. The following equation shall be used to calculate the Max TQ:

Max TQ (pounds) = LC50 (ppm) x 2 lb.

For gas mixtures containing one or more toxic, highly toxic or moderately toxic components, LC50 shall be calculated using CGA Standards P-20 and P-23 as referenced in Appendix E, Section 103.1.3.1

OTHER HEALTH HAZARD MATERIAL is a hazardous material which affects target organs of the body, including but not limited to, those materials which produce liver damage, kidney damage, damage to the nervous system, act on the blood to decrease hemoglobin function, deprive the body tissue of oxygen or affect reproductive capabilities, including mutations (chromosomal damage) or teratogens (effect on fetuses).

SECONDARY CONTAINMENT. Secondary containment is that level of containment that is external to and separate from primary containment and is capable of safely and securely containing the material, without discharge, for a period of time reasonably necessary to ensure detection and remedy of the primary containment failure.

SENSITIZER is a chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

TEMPORARY shall not exceed one year.

WORKSTATION is a defined space or independent principal piece of equipment using hazardous materials where a specific function, laboratory procedure or research activity occurs. Approved or listed hazardous materials storage cabinets, flammable liquid storage cabinets or gas cabinets serving a workstation are included as part of the workstation. A workstation is allowed to contain ventilation equipment, fire protection devices, electrical devices, and other processing and scientific equipment.

V-300-2.43

Chapter 3, General Precautions Against Fire, of the International Fire Code, 2012 Edition, with California State amendments is hereby adopted and amended as follows:

V-300-2.44

Section 3.11.5 of the International Fire Code, 2012 Edition, is hereby amended as follows:

The following sections are deleted:
Section 311.5 Placards.
Section 311.5.1 Placard Location.
Section 311.5.2 Placard Size And Color.
Section 311.5.3 Placard Date.
Section 311.5.4 Placard Symbols.
Section 311.5.5 Informational Use.

V-300-2.45

Section 316.7 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

316.7 Roof Guardrails At Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through.

Exception: Where the roof opening is greater than 600 square feet in area.

V-300-2.46

Section 503.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.6 and Appendix D of this code.

V-300-2.47

Section 503.2.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm) or as required by Appendix D, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of 13 feet 6 inches (4115 mm).

Exception: When there are not more than two Group R, Division 3, or Group U occupancies, the access road width may be modified by the fire code official.

V-300-2.48

Section 503.7 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

503.7 Adjacent Access. No source of access from lands adjoining a property to be developed shall be considered unless there is obtained the irrevocable and unobstructed right to use same.

V-300-2.49

Section 504.3.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

504.3.1 Number of stairways. The fire code official shall determine the required number and location of stairway(s) to the roof.

V-300-2.50

Section 504.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

504.5 Enclosed courts. Enclosed courts shall be provided with readily accessible access for fire department personnel to bring in a 36 feet long ground ladder into the court. The access height and width shall be large enough to accommodate the ladder and the personnel carrying the ladder.

V-300-2.51

Section 504.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

504.5 Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the fire code official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress.

V-300-2.52

Section 505.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

505.3 Address illumination. All required address numbers shall be provided with illumination.

V-300-2.53

Section 507.5.1.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

507.5.1.1 Hydrant for standpipe systems. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Sections 903 and or 905 shall have a fire hydrant within 50 feet of the fire department connections.

Exception: The distance shall be permitted to exceed 50 feet (30 m) where approved by the fire code official.

V-300-2.54

Section 507.5.7 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

507.5.7 Private hydrants. Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color.

V-300-2.55

Section 508.1.5 of the California Fire Code, 2013 Edition, is amended by adding the following:

20. A locking key box, approved by the fire code official, large enough for ten (10) sets of master keys.

21. Ten (10) sets of master keys for the building.

22. A complete set of architectural, electrical, mechanical and plumbing plans for the building.

V-300-2.56

Section 510.1.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

510.1.1 Obstruction by new building. When a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other location, the developer of the new structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.

V-300-2.57

Section 510.6.4 hereby added to the California Fire Code, 2013 Edition, to read as follows:

510.6.4 Radio system supervision. The radio system required by this Code shall be monitored for system trouble and system impairment by an approved supervising station.

V-300-2.58

Section 605.12 hereby added to the California Fire Code, 2013 Edition, to read as follows:

605.12 Immersion Heaters. All electrical immersion heaters used in dip tanks, sinks, vats and similar operations shall be provided with approved over-temperature controls and low liquid level electrical disconnects. Manual reset of required protection devices shall be provided.

V-300-2.59

Section 607.1.1 hereby added to the California Fire Code, 2013 Edition, to read as follows:

607.1.1 New elevators. All new passenger service elevators shall meet the medical service elevator requirements in the California Building Code, 2013 Edition, Chapter 30.

V-300-2.60

Section 608.6.1.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

608.6.1.1 Failure of Ventilation System. Failure of the ventilation system shall automatically disengage the charging system.

V-300-2.61

Section 903.1.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.1.2 Fire Walls and Fire Barriers. Fire walls and fire barriers shall not be considered to create separate buildings for the purpose of automatic fire sprinkler requirements as set forth in Chapter 9 of this code.

Exception: Buildings separated by continuous fire wall of 4-hour fire resistive construction without openings or penetrations. Buildings required to have automatic fire sprinkler protection as set forth in Section 13113 of Health and Safety Code are prohibited from using fire walls in lieu of automatic fire sprinkler protection.

V-300-2.62

Section 903.2 of the California Fire Code, 2013 Edition, is amended to read as follows:

903.2 Where Required. Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or per the requirements set forth in Sections 903.2.1 through 903.2.19, whichever is the more restrictive:

1. An automatic fire sprinkler system shall be provided throughout all new buildings and structures.

   Exception: Other than residential occupancies, buildings and structures that do not exceed 1,000 square feet of building area.

2. An automatic fire sprinkler system shall be provided throughout existing Group A, B, E, F, I, L, M, S and U buildings and structures, when additions are made that increase the building area to more than 3,600 square feet or that create conditions described in Sections 903.2.1 through 903.2.19.

3. An automatic sprinkler system shall be provided throughout existing Group R occupancies when additions are made that increase the building area to more than 3,600 square feet.

4. An automatic sprinkler system shall be provided throughout all new basements regardless of size and throughout existing basements that are expanded by more than 50%.

5. An automatic sprinkler system shall be provided when there is any change in the character of occupancy or in the use of any existing building when the fire code official determines the change would place the building into a more hazardous division of the same occupancy group, or into a different occupancy group, which constitutes a greater life safety exposure or increased fire risk.

V-300-2.63

Section 903.3.1.1 of the California Fire Code, 2013 Edition, is amended to read as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 as amended in Chapter 80 except as provided in Section 903.3.1.1.1.

For a new building having no designated use or tenant, the minimum sprinkler design density shall be Ordinary Hazard Group 2. Where future use or tenant is determined to require a higher density, the sprinkler system shall be augmented to meet the higher density.

V-300-2.64

Section 903.3.1.4 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.1.4 One sprinkler design. One sprinkler head design shall not be permitted.

V-300-2.65

Section 903.3.5.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.5.3. Riser Location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance.

V-300-2.66

Section 903.3.5.4 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.5.4 Number of water supplies. For buildings and or structures over 200,000 square feet, the fire code official may require more than one source of water supply.

V-300-2.67

Section 903.3.5.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.5.5 Sprinkler Riser system. The sprinkler riser system shall be a manifold pipe system and shall meet the design requirements of the NFPA 13 Standards.

V-300-2.68

Section 903.3.5.6 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.5.6 Water supply safety margin. Hydraulic design for automatic fire sprinkler system shall provide a minimum of 20% safety margin.

Exception: The fire code official may grant a reduction in the required safety margin for existing buildings but not less than 10%.

V-300-2.69

Section 903.3.5.7 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

903.3.5.7 Sprinkler pipe velocity. The automatic fire sprinkler system shall be designed to a maximum 20 feet per second water flow.

Exception: The fire code official may grant higher water velocity for existing buildings when supported by mechanical engineering design done by a California registered engineer.

V-300-2.70

Section 914.2.1 of the California Fire Code, 2013 Edition, is amended to delete the exception:

914.2.1 Automatic sprinkler systems exception under item number 2 (open parking garages) is deleted.

V-300-2.71

Section 914.3.1 of the California Fire Code, 2013 Edition, is amended to delete the exception:

914.3.1 Automatic sprinkler systems exception is deleted.

V-300-2.72

Section 914.3.8 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

914.3.8 Anchor devices. Anchor repelling devices meeting the Fire department requirements shall be placed on the roof for Fire department use.

V-300-2.73

Section 914.3.9 is hereby added to the International Fire Code, 2012 Edition, to read as follows:

914.3.9 Helicopter pad. High-rise buildings greater than 150' in height (above the lowest level of Fire department access) may be required to provide a helicopter pad, which meets the requirements of the Fire department.

V-300-2.74

Section 914.4.1 of the California Fire Code, 2013 Edition, is amended to delete the exceptions:

914.4.1 Automatic Sprinkler Systems exceptions 1 and 2 are deleted.

V-300-2.75

Section 914.6.1 of the California Fire Code, 2013 Edition, is amended to delete the exceptions:

914.6.1 Automatic Sprinkler Systems exceptions 1 and 2 are deleted.

V-300-2.76

Section 914.12 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

914.12 Special Provisions For Group B office Buildings and Group R Division 1 and 2 Occupancies. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height shall provide the following:

1. Equipment cache rooms shall be located on the 1st floor above the ground floor, and every other floor thereafter, or as directed by the fire code official.
    a. Cache rooms shall be located and accessible from within the rated stair enclosures.

    b. Prior to the purchase of the fire department cache room equipment and or materials a complete list of the equipment and or materials with all necessary cut-sheets shall be submitted to the fire department for review and approval.

    c. Due to operational needs, the fire code official reserves the right to make changes to the required equipment and or materials listed under item 2 below.

2. Each equipment storage room size should be a minimum of 4' deep, full height (8' to 9'), with a door the minimum width of 43". A roll-up door can be used provided it has a 43" minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a 'timer'), be sprinklered, and be locked with a 'break-away' type lock. Fixed shelving[1] shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:

    - 2 - Hotel Hose pack (double jacketed hose) with 100 feet of 1¾-inch fire hose and a 1½" variable fog nozzle (Task Force Tip, 1 ¾") with a detachable bail, both having National Standard threads. Each pack to have 1-spanner wrench, 1- 2 ½" X 1 ½" gated wye, and 1-2 ½" X 1 ½" reducer coupling Red Head Brass 2 ½" X 1 ½" reducer
    - 2 - 50' banded hose rolls (North American Hose)
    - 2 - 2-1/2" 10' hose with one male end connector & female end connector both with National Standard threads ('Stynger')
    - 1 - Hooligan tool (Paratech Hooligan, 11 pound)
    - 2 - pick head axe (Council Axe, Pick head)
    - 1 - Little Giant Ladder, or 1- attic ladder; Fire agency to determine type.
    - 1 - 3' Ames Tru Temper Wrecking bar,
    - 12 - Open Door Industries, door stops
    - 4 - salvage covers (blue tarps) measuring 18' X 24' with grommets every 16"
    - 3 - Spare sprinkler heads, for each type used (these are in addition to those required in the riser room)
    - 1 - each Sprinkler head wrench(es), one for each type of head used
    - 1 - Push type cart for use to move air bottles (type subject to Fire agency approval)
    - 1 - Rapid Intervention Pack (RIT) (location to be determined by Fire agency)
    - 1 - Evacuation Chair Stryker Model 6253 (per side)
    - Air Bottles*: Fixed SCBA bottle storage rack, number of bottles to be determined by the fire agency. A minimum capacity for 5 bottles per closet shall be provided. Individual rack slots should be positioned for horizontal storage, and be oversized to accommodate changes in bottle sizes. Product Brand and Model shall be approved by the Fire Department.

[1] Shelving shall be every 16" after ladder placement is determined.

3. Equipment maintenance, inspections, replacement and or equipment update and required certification(s) shall be the responsibility of the building owner and or owner's association.

   *The fire code official may require, an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A 'monument-type' fill station port should be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry should also be provided. The storage system should be designed to provide enough air @ 4500 psig for up to fifty 45 minute bottles, prior to augmentation by an outside air source.

V-300-2.77

Section 2807.6 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

2807.6 Fire Protection Water Supply System. An approved fire protection water supply and hydrant system suitable for the fire hazard involved shall be provided for open storage yards and processing areas. Hydrant systems shall be installed in accordance with NFPA 24 adopted by this code.

V-300-2.78

Section 2808.11 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

2808.11 Fire Protection Water Supply System. An approved fire protection water supply and hydrant system suitable for the fire hazard involved shall be provided for open storage yards and processing areas. Hydrant systems shall be installed in accordance with NFPA 24 adopted by this code.

V-300-2.79

Section 3103.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

3103.2 Approval required. Tents and membrane structures having an area in excess of 200 square feet (19 m^2) and canopies in excess of 400 square feet (37 m^2) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

Exceptions:

1. Tents used exclusively for recreational camping purposes.

V-300-2.80

Section 3304.8 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

3304.8 Fire Walls. When fire walls are required, the wall construction shall be completed (with all openings protected) immediately after the building is sufficiently weather-protected at the location of the wall(s).

V-300-2.81

Section 3311.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

[B] 3311.1 Stairways Required. Each level above the first story in new multi-story buildings that requires two (2) exit stairways shall be provided with at least two (2) usable exit stairways after the floor decking is installed. The stairways shall be continuous and discharge to grade level. Stairways serving more than two (2) floor levels shall be enclosed (with openings adequately protected) after the exterior

walls/windows are in place. Exit stairs in new and in existing, occupied buildings shall be lighted and maintained clear of debris and construction materials at all times.

Exception: For new multi-story buildings, one of the required exit stairs may be obstructed on not more than two (2) contiguous floor levels for the purposes of stairway construction (i.e., installation of gypsum board, painting, flooring, etc.).

V-300-2.82

Section 3311.1.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

3311.1.1 Required Means Of Egress. All new buildings under construction shall have a least one unobstructed means of egress. All means of egress shall be identified in the prefire plan per Section 3308.2.

V-300-2.83

Section 5001.1.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5001.1.2 Other Requirements. This chapter shall include those parts of Chapter 6.95 (commencing with Section 25500) and Chapter 6.7 (commencing with Section 25280) of the Health and Safety code which impose additional requirements or are more restrictive.

Any person who violates Health and Safety Code SS 25507 shall be subject to the penalties specified in Health and Safety Code SS 25515. The violation of any other Health and Safety Code Sections specified in this paragraph shall constitute a misdemeanor.

V-300-2.84

Section 5001.2.2.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5001.2.2.2 Health Hazards. The material categories listed in this section are classified as health hazards. A material with a primary classification as a health hazard can also pose a physical hazard.

1. Highly toxic and toxic materials.
2. Corrosive materials.
3. Moderately toxic gas.
4. Other health hazards.

V-300-2.85

Section 5003.1.3.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5003.1.3.1 Toxic, Highly Toxic, Moderately Toxic gases and similarly used or handled materials. The storage, use and handling of toxic, highly toxic and moderately toxic gases in amounts exceeding Table 6004.2 or 6004.3 shall be in accordance with this chapter and Chapter 60. Any toxic, highly toxic or moderately toxic material that is used or handled as a gas or vapor shall be in accordance with the requirements for toxic, highly toxic or moderately toxic gases.

V-300-2.86

Section 5003.1.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5003.1.5 Other Health Hazards. The storage, use and handling of materials classified as other health hazards including carcinogens, irritants and sensitizers in amounts exceeding 810 cubic feet for gases, 55 gallons for liquids and 5,000 pounds for solids shall be in accordance with this Section 5003.

V-300-2.87

Section 5003.1.6 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5003.1.6 Spill Control and Secondary Containment Requirements. A containment system shall be required for all hazardous materials, which are liquids or solids at normal temperature, and pressure (NTP) where a spill is determined to be a plausible event and where such an event would endanger, people, property or the environment. Construction shall be substantial, capable of safely and securely containing a sudden release without discharge. Design criteria shall be performance oriented and constructed of physically and chemically compatible materials to resist degradation and provide structural and functional integrity for a period of time reasonably necessary to ensure detection, mitigation, and repair of the primary system. Regardless of quantities, spill control and secondary containment shall also comply with Section 5004.2.

V-300-2.88

Section 5003.2.2.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5003.2.2.1 Design And Construction. Piping, tubing, valves, fittings and related components used for hazardous materials shall be in accordance with the following:

1. Piping, tubing, valves, fittings and related components shall be designed and fabricated from materials compatible with the material to be contained and shall be of adequate strength and durability to withstand the pressure, structural and seismic stress, and exposure to which they are subject.

2. Piping and tubing shall be identified in accordance with ASME A13.1 and Santa Clara County Fire Chiefs Marking Requirements and Guidelines for Hazardous Materials and Hazardous Waste to indicate the material conveyed.

3. Readily accessible manual valves or automatic remotely activated fail-safe emergency shutoff valves shall be installed on supply piping and tubing at the following locations:

    1. The point of use.
    2. The tank, cylinder or bulk use.

4. Manual emergency shutoff valves and controls for remotely activated emergency shutoff valves shall be identified and the location shall be clearly visible accessible and indicated by means of a sign.

5. Backflow prevention or check valves shall be provided when the backflow of hazardous materials could create a hazardous condition or cause the unauthorized discharge of hazardous materials.

6. Where gases or liquids having a hazard ranking of:
    Health hazard Class 3 or 4
    Flammability Class 4
    Reactivity Class 4

in accordance with NFPA 704 are carried in pressurized piping above 15 pounds per square inch gauge (psig)(103 Kpa), an approved means of leak detection, emergency shutoff and excess flow control shall be provided. Where the piping originates from within a hazardous material storage room or area, the excess flow control shall be located within the storage room or area. Where the piping originates from a bulk source, the excess flow control shall be located as close to the bulk source as practical.

Exceptions:

1 Piping for inlet connections designed to prevent backflow.
2. Piping for pressure relief devices.

7. Secondary containment or equivalent protection from spills shall be provided for piping for liquid hazardous materials and for highly toxic and toxic corrosive gases above threshold quantities listed in Tables 6004.2 and 6004.3. Secondary containment includes, but is not limited to double walled piping.

Exceptions:

1. Secondary containment is not required for toxic corrosive gases if the piping is constructed of inert materials.
2. Piping under sub-atmospheric conditions if the piping is equipped with an alarm and fail-safe-to-close valve activated by a loss of vacuum.

8. Expansion chambers shall be provided between valves whenever the regulated gas may be subjected to thermal expansion. Chambers shall be sized to provide protection for piping and instrumentation and to accommodate the expansion of regulated materials.

V-300-2.89

Section 5003.2.2.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5003.2.2.2 Additional Regulation for Supply Piping for Health Hazard Materials. Supply piping and tubing for gases and liquids having a health hazard ranking of 3 or 4 in accordance with ASME B31.3 and the following:

1. Piping and tubing utilized for the transmission of toxic, highly toxic, or highly volatile corrosive liquids and gases shall have welded or brazed connections throughout except for connections within an exhausted enclosure if the material is a gas, or an approved method of drainage or containment is provided for connections if the material is a liquid.

2. Piping and tubing shall not be located within corridors, within any portion of a means of egress required to be enclosed in fire-resistance-rated construction or in concealed spaces in areas not classified as Group H Occupancies.

   Exception: Piping and tubing within the space defined by the walls of corridors and the floor or roof above or in concealed space above other occupancies when installed in accordance with Section 415.10.6.4 of the California Building Code as required for Group H, Division 5 Occupancies.

3. Primary piping for toxic, highly toxic and moderately toxic gases shall pass a helium leak test of 1x10-9 cubic centimeters/second where practical, or shall pass testing in accordance with

an approved, nationally recognized standard. Tests shall be conducted by a qualified "third party" not involved with the construction of the piping and control systems.

V-300-2.90

Section 5003.3.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5003.3.1 Unauthorized Discharges. When hazardous materials are released in quantities reportable under state, federal or local regulations or when there is a threatened release or that presents a threat to health, property or the environment, the fire code official shall be notified immediately in an approved manner and the following procedures required in accordance with Sections 5003.3.1.1 through 5003.3.1.4.

V-300-2.91

Section 5003.5.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5003.5.2 Ventilation Ducting. Product conveying ducts for venting hazardous materials operations shall be labeled with the hazard class of the material being vented and the direction of flow.

V-300-2.92

Section 5003.5.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5003.5.3 "H" Occupancies. In "H" occupancies, all piping and tubing may be required to be identified when there is any possibility of confusion with hazardous materials transport tubing or piping. Flow direction indicators are required.

V-300-2.93

Section 5003.9.8 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5003.9.8 Separation of Incompatible Materials. Incompatible materials in storage and storage of materials that are incompatible with materials in use shall be separated. When the stored materials are in containers having a capacity of more than 5 pounds (2 kg) or 0.5 gallon (2 L), separation shall be accomplished by:

1. Segregating incompatible materials in storage by a distance of not less than 20 feet (6096 mm) and in an independent containment system.
2. Isolating incompatible materials in storage by a noncombustible partition extending not less than 18 inches (457 mm) above and to the sides of the stored material.
3. Storing liquid and solid materials in hazardous material storage cabinets.
4. Storing compressed gases in gas cabinets or exhausted enclosures in accordance with Sections 5003.8.5 and 5003.8.6. Materials that are incompatible shall not be stored within the same cabinet or exhausted enclosure.

V-300-2.94

Section 5003.9.11 is hereby added to the California Fire Code, 2013 Edition to read as follows:

5003.9.11 Fire Extinguishing Systems For Workstations Dispensing, Handling or Using Hazardous Materials. Combustible and non-combustible workstations, which dispense, handle or use hazardous materials, shall be protected by an approved automatic fire extinguishing system in accordance with Section 2703.10.

Exception: Internal fire protection is not required for Biological Safety Cabinets that carry NSF/ANSI certification where quantities of flammable liquids in use or storage within the cabinet do not exceed 500 ml.

V-300-2.95

Section 5004.2.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5004.2.1 Spill Control for Hazardous Material Liquids. Rooms, buildings or areas used for storage of hazardous material liquids shall be provided with spill control to prevent the flow of liquids to adjoining areas. Floors in indoor locations and similar surfaces in outdoor locations shall be constructed to contain a spill from the largest single vessel by one of the following methods:

1. Liquid-tight sloped or recessed floors in indoor locations or similar areas in outdoor locations.
2. Liquid-tight floors in indoor locations or similar areas provided with liquid-tight raised or recessed sills or dikes.
3. Sumps and collection systems.
4. Other approved engineered systems.

Except for surfacing, the floors, sills, dikes, sumps and collection systems shall be constructed of noncombustible material, and the liquid-tight seal shall be compatible with the material stored. When liquid-tight sills or dikes are provided, they are not required at perimeter openings having an open-grate trench across the opening that connects to an approved collection system.

V-300-2.96

Section 5004.2.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5004.2.2 Secondary Containment for Hazardous Material Liquids and Solids. Buildings, rooms or areas used for the storage of hazardous materials liquids or solids shall be provided with secondary containment in accordance with this section.

V-300-2.97

Table 5004.2.2 of the California Fire Code, 2013 Edition is hereby deleted.

V-300-2.98

Section 5004.2.2.2 is hereby amended to the California Fire Code, 2013 Edition, to read as follows:

5004.2.2.2 Incompatible Materials. Incompatible materials shall be separated from each other in independent secondary containment systems.

V-300-2.99

Section 5005.4.4 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5005.4.4 Emergency Alarm. When hazardous materials having a hazard ranking of 3 or 4 in accordance with NFPA 704, or toxic gases exceeding 10 cu. ft. and any amount of highly toxic compressed gases are transported through corridors or exit enclosures, there shall be an emergency telephone system, a local manual alarm station or an approved alarm-initiating device at not more than 150-foot (45,720 mm) intervals and at each exit and exit-access doorway throughout the transport route.

The signal shall be relayed to an approved central, proprietary or remote station service or constantly attended on-site location and shall also initiate a local audible alarm.

V-300-2.100

Section 5601.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5601.1 Scope. For explosives requirements see California Code of Regulations, Title 19, Division 1, Chapter 10 and Section 5601.2 of this chapter. For fireworks requirements see California Code of Regulations, Title 19, Division 1, Chapter 6 and Section 5601.3 of this chapter. For small arms ammunition, see Section 5601.5 of this chapter.

Exceptions:

1. The armed Forces of the United States, Coast Guard or National Guard.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The use of explosive materials by federal, state and local regulatory, law enforcement and fire agencies acting in their official capacities.
4. Items preempted by federal regulations.

V-300-2.101

Section 5601.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.2 Explosives. The possession, manufacture, storage, sale, handling, and use of explosives are prohibited.

V-300-2.102

Section 5601.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.3 Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks, including those fireworks classified as Safe and Sane by the California State Fire Marshal, are prohibited.

Exceptions:

1. Storage, handling and use of fireworks and pyrotechnic special effects outside of buildings when used for public or proximate audience displays, motion picture, television, theatrical and group entertainment productions and when in accordance with Title 19 of the California Code of Regulations.
2. Storage, handling and use of pyrotechnic special effects fireworks inside of buildings when used for proximate audience displays or special effects in theatrical, television, motion picture and group entertainment productions when in accordance with Title 19 of the California Code of Regulations and when in buildings equipped throughout with an approved fire sprinkler system.

V-300-2.103

Section 5601.4 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.4 Rocketry. The storage, handling, and use of model rockets shall be in accordance with Title 19 of the California Code of Regulations and as approved by the Fire code official.

V-300-2.104

Section 5601.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5 Small Arms Ammunition-General. Indoor storage and display of black powder, smokeless propellants and small arms ammunition shall comply with Sections 5601.5.1 through 5601.5.4.2.3.

V-300-2.105

Section 5601.5.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.1 Packages. Smokeless propellants shall be stored in approved shipping containers conforming to DOT 49 CFR, Part 173.

V-300-2.106

Section 5601.5.1.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.1.1 Repackaging. The bulk repackaging of smokeless propellants, black powder and small arms primers shall not be performed in retail establishments.

V-300-2.107

Section 5601.5.1.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.1.2 Damaged packages. Damaged containers shall not be repackaged.

Exception: Approved repackaging of damaged containers of smokeless propellant into containers of the same type and size as the original container.

V-300-2.108

Section 5601.5.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.2 Storage in Group R occupancies. The storage of small arms ammunition in Group R occupancies shall comply with Sections 5601.5.2.1 through 5601.5.2.3.

V-300-2.109

Section 5601.5.2.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.2.1 Smokeless propellants. Smokeless propellants intended for personal use in quantities not exceeding 20 pounds (9 kg) are permitted to be stored in Group R-3 occupancies where kept in original containers. Smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) are permitted to be stored in Group R-3 occupancies where kept in a wooden box or cabinet having walls of at least 1 inch (25 mm) nominal thickness.

V-300-2.110

Section 5601.5.2.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.2.2 Black powder. Black powder intended for personal use in quantities not exceeding 20 pounds (9 kg) are permitted to be stored in Group R-3 occupancies where kept in original containers and stored in a wooden box or cabinet having walls of at least 1 inch (25 mm) nominal thickness

V-300-2.111

Section 5601.5.2.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.2.3 Small arms primers. No more than 10,000 small arms primers shall be stored in Group R-3 occupancies.

V-300-2.112

Section 5601.5.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3 Display and storage in Group M occupancies. The display and storage of small arms ammunition in Group M occupancies shall comply with Sections 5601.5.3.1 through 5601.5.3.2.3.

V-300-2.113

Section 5601.5.3.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.1 Display. The display of small arms ammunition in Group M occupancies shall comply with Sections 5601.5.3.1.1 through 5601.5.3.1.3.

V-300-2.114

Section 5601.5.3.1.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.1.1 Smokeless propellant. No more than 20 pounds (9 kg) of smokeless propellants, each in containers of 1 pound (0.454 kg) or less capacity, shall be displayed in Group M occupancies.

V-300-2.115

Section 5601.5.3.1.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.1.2 Black powder. No more than 1 pound (0.454 kg) of black powder shall be displayed in Group M occupancies.

V-300-2.116

Section 5601.5.3.1.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.1.3 Small arms primers. No more than 10,000 small arms primers shall be displayed in Group M occupancies.

V-300-2.117

Section 5601.5.3.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.2 Storage. The storage of small arms ammunition in Group M occupancies shall comply with Sections 5601.5.3.2.1 through 5601.5.3.2.3.

V-300-2.118

Section 5601.5.3.2.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.2.1 Storage of Smokeless propellant. Commercial stocks of smokeless propellants not on display shall not exceed 100 pounds (45 kg). Quantities exceeding 20 pounds (9 kg), but not exceeding 100 pounds (45 kg) shall be stored in portable wooden boxes having walls of at least 1 inch (25 mm) nominal thickness.

V-300-2.119

Section 5601.5.3.2.2 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.2.2 Black powder. Commercial stocks of black powder not on display shall not exceed 50

pounds (23 kg) and shall be stored in a type 4 indoor magazine. When black powder and smokeless propellants are stored together in the same magazine, the total quantity shall not exceed that permitted for black powder.

V-300-2.120

Section 5601.5.3.2.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5601.5.3.2.3 Small arms primers. Commercial stocks of small arms primers not on display shall not exceed 750,000. Storage shall be arranged such that not more than 100,000 small arms primers are stored in any one pile and piles are at least 15 feet (4572 mm) apart.

V-300-2.121

Section 5704.2.7.5.8 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

5704.2.7.5.8 Overfill Prevention. An approved means or method in accordance with Section 5704.2.9.7.6 shall be provided to prevent the overfill of all Class I, II and IIIA liquid storage tanks. Storage tanks in refineries, bulk plants or terminals regulated by Sections 5706.4 or 5706.7 shall have overfill protection in accordance with API 2350.

An approved means or method in accordance with Section 5704.2.9.7.6 shall be provided to prevent the overfilling of Class IIIB liquid storage tanks connected to fuel-burning equipment inside buildings.

V-300-2.122

Section 5704.2.7.5.9 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

5704.2.7.5.9 Automatic Filling of Tanks. Systems that automatically fill flammable or combustible liquid tanks shall be equipped with overfill protection, approved by the fire code official that sends an alarm signal to a constantly attended location and immediately stops the filling of the tank. The alarm signal and automatic shutoff shall be tested on an annual basis and records of such testing shall be maintained on-site for a period of five (5) years.

V-300-2.123

Section 5704.2.13.1.4 of the California Fire Code, 2013 Edition, is amended to delete exception under item 3.

V-300-2.124

Section 5803.1.1 of the California Fire Code, 2013 Edition, is amended to delete exception under item 2.

V-300-2.125

Section 6001.3 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6001.3 Moderately Toxic Gases With A LC50 Equal To Or Less Than 3000 Parts Per Million. Notwithstanding the hazard class definition in Section 6002, moderately toxic gases with an LC50 less than 3000 parts per million shall additionally comply with the requirements for toxic gases in Section 6004 of this code.

V-300-2.126

Section 6004 is hereby amended to the California Fire Code, 2013 Edition, to read as follows:

SECTION 6004 HIGHLY TOXIC, TOXIC AND MODERATELY TOXIC COMPRESSED GASES INCLUDING THOSE USED AS REFRIGERANTS.

V-300-2.127

Section 6004.1.4 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.4 Automatic Shut-Off Valve. An automatic shut-off valve, which is of a fail-safe to close design, shall be provided to shut off the supply of highly toxic gases for any of the following:

1. Activation of a manual fire alarm system.
2. Activation of the gas detection system.
3. Failure of emergency power.
4. Failure of primary containment.
5. Seismic activity.
6. Failure of required ventilation.
7. Manual activation at an approved remote location.

V-300-2.128

Section 6004.1.5 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.5 Emergency Control Station. Signals from emergency equipment used for highly toxic gases shall be transmitted to an emergency control station or other approved monitoring station, which is continually staffed by trained personnel.

V-300-2.129

Section 6004.1.6 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.6 Maximum Threshold Quantity. Toxic gases stored or used in quantities exceeding the maximum threshold quantity in a single vessel per control area or outdoor control area shall comply with the additional requirements for highly toxic gases of Section 6004 of this code.

Moderately toxic gases stored or used in quantities exceeding the maximum threshold quantity. in a single vessel per control area or outdoor control area shall comply with the additional requirements for toxic gases of Section 6004 of this code.

V-300-2.130

Section 6004.1.7 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.7 Reduced Flow Valve. All containers of materials other than lecture bottles containing Highly Toxic material and having a vapor pressure exceeding 29 psia shall be equipped with a reduced flow valve when available. If a reduced flow valve is not available, the container shall be used with a flow-limiting device. All flow limiting devices shall be part of the valve assembly and visible to the eye when possible; otherwise, they shall be installed as close as possible to the cylinder source.

V-300-2.131

Section 6004.1.8 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.8 Fire Extinguishing Systems. Buildings and covered exterior areas for storage and use areas of materials regulated by this Chapter shall be protected by an automatic fire sprinkler system in accordance with NFPA 13. The design of the sprinkler system for any room or area where highly toxic, toxic and moderately toxic gases are stored, handled or used shall be in accordance with Section 5004.5.

V-300-2.132

Section 6004.1.9 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.9 Local Gas Shut Off. Manual activation controls shall be provided at locations near the point of use and near the source, as approved by the fire code official. The fire code official may require additional controls at other places, including, but not limited to, the entry to the building, storage or use areas, and emergency control stations. Manual activated shut-off valves shall be of a fail-safe-to-close design.

V-300-2.133

Section 6004.1.10 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.10 Exhaust Ventilation Monitoring. For highly toxic gases and toxic gases exceeding threshold quantities, a continuous monitoring system shall be provided to assure that the required exhaust ventilation rate is maintained. The monitoring system shall initiate a local alarm. The alarm shall be both visual and audible and shall be designed to provide warning both inside and outside of the interior storage, use, or handling area.

V-300-2.134

Section 6004.1.11 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.11 Emergency Response Plan. If the preparation of an emergency response plan for the facility is not required by any other law, responsible persons shall prepare, or cause to be prepared, and filed with the fire code official, a written emergency response plan. If the preparation of an emergency response plan is required by other law, a responsible person shall file a copy of the plan with the fire code official.

V-300-2.135

Section 6004.1.12 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.12 Cylinder Leak Testing. Cylinders shall be tested for leaks immediately upon delivery and again immediately prior to departure. Testing shall be approved by the fire code official in accordance with appropriate nationally recognized industry standards and practices, if any. Appropriate remedial action shall be immediately undertaken when leaks are detected.

V-300-2.136

Section 6004.1.13 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.13 Inert Gas Purge System. Gas systems shall be provided with dedicated inert gas purge systems. A dedicated inert gas purge system may be used to purge more than one gas, provided the gases are compatible. Purge gas systems shall be located in an approved gas cabinet unless the system operates by vacuum demand.

V-300-2.137

Section 6004.1.14 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6004.1.14 Seismic Shutoff Valve. An automatic seismic shut-off valve, which is of a fail-safe to close design, shall be provided to shutoff the supply of highly toxic, toxic and moderately toxic gases with an LC_{50} less than 3000 parts per million.

V-300-2.138

Section 6004.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2 Indoor Storage and Use. The indoor storage or use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.1 through 6004.2.2.10.3.3. The threshold quantity for highly toxic, toxic and moderately toxic gases for indoor storage and use are set forth in Table 6004.2.

V-300-2.139

Table 6004.2 to be added to the California Fire Code, 2013 Edition, read as follows:

TABLE 6004.2

Threshold Quantities for Highly Toxic, Toxic and Moderately Toxic Gases for Indoor Storage and Use	
Highly Toxic	0
Toxic	10 cubic feet
Moderately Toxic	20 cubic feet

V-300-2.140

Section 6004.2.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2.1 Applicability. The applicability of regulations governing the indoor storage and use of highly toxic, toxic, and moderately toxic compressed gases shall be as set forth in Sections 6004.2.1.1 through 6004.2.1.3.

V-300-2.141

Section 6004.2.1.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2.1.1 Quantities Not Exceeding the Maximum Allowable Quantity per Control Area. The indoor storage or use of highly toxic, toxic and moderately toxic gases in amounts exceeding the threshold quantity per control area set forth in Table 6004.2 shall be in accordance with Sections 5001, 5003, 6001, 6004.1 and 6004.2.

V-300-2.142

Section 6004.2.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2.2 General indoor requirements. The general requirements applicable to the indoor storage and use of highly toxic and toxic compressed gases shall be in accordance with Sections 6004.2.2.1 through 6004.2.2.10.3.

Moderately toxic gases with an LC_{50} less than 3000 parts per million shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.10.3

All other moderately toxic gases exceeding the threshold quantity shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.7.

V-300-2.143

Section 6004.2.2.7 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2.2.7 Treatment Systems. The exhaust ventilation from gas cabinets, exhausted enclosures, gas rooms and local exhaust systems required in Section 6004.2.2.4 and 6004.2.2.5 shall be directed to a treatment system. The treatment system shall be utilized to handle the accidental release of gas and to process exhaust ventilation. The treatment system shall be designed in accordance with Sections 6004.2.2.7.1 through 6004.2.2.7.5 and Section 510 of the California Mechanical Code.

Exceptions:

1. Highly toxic, toxic and moderately toxic gases storage. A treatment system is not required for cylinders, containers and tanks in storage when all of the following are provided:
   1.1. Valve outlets are equipped with gas-tight outlet plug or caps.
   1.2. Hand wheel-operated valves have handles secured to prevent movement.
   1.3. Approved containment vessels or containment systems are provided in accordance with Section 6004.2.2.3.

V-300-2.144

Section 6004.2.2.10.2 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.2.2.10.2 Alarms. The gas detection system shall initiate a local alarm and transmit a signal to a constantly attended control station when a short-term hazard condition is detected. The alarm shall be both visual and audible and shall provide warning both inside and outside the area where the gas is detected. The audible alarm shall be distinct from all other alarms.

V-300-2.145

Section 6004.3 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.3 Outdoor Storage and Use. The outdoor storage or use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.3.1 through 6004.3.4. The threshold quantity for highly toxic, toxic and moderately toxic gases for outdoor storage and use are set forth in Table 6004.3.

V-300-2.146

Table 6004.3 to be added to the California Fire Code, 2013 Edition, read as follows:

TABLE 6004.3

Threshold Quantities for Highly Toxic, Toxic and Moderately Toxic Gases for Outdoor Storage and Use	
Highly Toxic	0
Toxic	10 cubic feet
Moderately Toxic	20 cubic feet

V-300-2.147

Section 6004.3.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.3.1 Applicability. The applicability of regulations governing the outdoor storage and use of highly toxic, toxic, and moderately toxic compressed gases shall be as set forth in Sections 6004.3.1.1 through 6004.3.1.3.

V-300-2.148

Section 6004.3.1.1 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.3.1.1 Quantities Not Exceeding The Maximum Allowable Quantity Per Control Area. The outdoor storage or use of highly toxic and toxic gases in amounts exceeding the threshold quantity per control area set forth in Table 6004.3 shall be in accordance with Sections 5001, 5003, 6001, 6004.1, and 6004.3.

Moderately toxic gases with an LC50 less than 3000 parts per million in amounts exceeding the threshold quantity in Table 6004.3 shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.

Moderately toxic gases in amounts exceeding the threshold quantity in Table 6004.3 shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.2.1 through 6004.3.2.5.

V-300-2.149

Section 6004.3.3 of the California Fire Code, 2013 Edition, is amended to read in its entirety as follows:

6004.3.3 Outdoor storage weather protection for portable tanks and cylinders. Weather protection in accordance with Section 5004.13 and this section shall be provided for portable tanks and cylinders located outdoors and not within gas cabinets or exhausted enclosures. The storage area shall be equipped with an approved automatic sprinkler system in accordance with Section 5004.5.

V-300-2.150

Section 6405.3.1 is hereby added to the California Fire Code, 2013 Edition, to read as follows:

6405.3.1 Silane distribution systems automatic shutdown. Silane distribution systems shall automatically shut down at the source upon activation of the gas detection system at levels above the alarm level and/or failure of the ventilation system for the silane distribution system.

V-300-2.151

Chapter 80 Referenced Standards is hereby amended to include the following referenced standards:

NFPA 96-11, "Ventilation Control and Fire Protection of Commercial Cooking Operations"
NFPA 318-12, "Protection of Semiconductor Fabrication Facilities"

V-300-2.152

Section D101.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D101.1 Scope. Fire apparatus access roads shall be in accordance with this appendix and all other applicable requirements of this code.

V-300-2.153

Section D103.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D103.1 Access road width with a hydrant. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm). See Figure D103.1.

Exception: The Fire Code Official may approve other condition that provides equivalent access.

V-300-2.154

Section D104.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D104.1 Buildings with two or more fire apparatus access roads. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m2) shall be provided with at least two means of fire apparatus access for each structure.

V-300-2.155

Section D104.2 of the International Fire Code, 2012 Edition, is deleted in its entirety.

V-300-2.156

Section D105.2 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D105.2 Width. Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm) in the immediate vicinity of any building or portion of building more than 30 feet (9144) in height.

Exception: The Fire Code Official may approve the use of other usable space/area that provides equivalent required width.

V-300-2.157

Section D106.1 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D106.1 Projects having more than 50 dwelling units. Multiple-family residential projects having more than 50 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.

V-300-2.158

Section D106.2 of the International Fire Code, 2012 Edition, is amended to read in its entirety as follows:

D106.2 Projects having more than 200 dwelling units. For Multiple-family residential projects having more than 200 units, the fire code official may require more than two fire apparatus access roads.

V-300-2.159

Section D107.1 of the International Fire Code, 2012 Edition, exceptions No. 1 and No. 2 are deleted.

SECTION 3. 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 4. 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.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS NECESSARY UNDER STATE LAW TO ADOPT WITH LOCAL AMENDMENTS THE 2013 CALIFORNIA FIRE CODE

WHEREAS, the City Council of the City of Milpitas intends to adopt by reference into the Milpitas Municipal Code the 2013 Edition of the California Fire Code; and

WHEREAS, in doing so, the City Council wishes to amend portions of the California Fire Code to better address local concerns and to be consistent with amendments made by other cities in Santa Clara County; and

WHEREAS, to the extent that it applies, Health and Safety Code Section 17958.5 requires such amendments to be reasonably necessary because of local climatic, geographical or topographical conditions; and

WHEREAS, to the extent it applies, Health and Safety Code Section 17958.7 requires local entities to make express findings that such amendments are necessary.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The proposed substantive amendments to the 2013 California Fire Code involve additions that:
(1) address the handling of toxic gases;
(2) address the storage of hazardous materials; and
(3) require sprinklers under specified circumstances.

3. The above amendments are necessary because of local climatic, geographical or topographical conditions for the following reasons:

   (a) Amending the Code to address the handling of toxic gases and storage of hazardous materials is necessary due to the following conditions:

   (i) prevailing winds and relatively high temperatures seasonally that can increase the velocity in which escaping gases and other hazardous materials spread;
   (ii) the existence of large amounts and varieties of toxic gases and hazardous materials – the escape of which could present significant health hazards to large populations – due to the concentration of heavy industry in the City and the existence of the expanding and changing electronics industry in the region;
   (iii) the lack of adequate infrastructure to serve all areas of the City and region, which negatively impacts emergency response times; and
   (iv) alluvial soils in the City and region on and near major earthquake faults that are deemed potentially active, which could jeopardize the structural integrity of buildings housing toxic gases and other hazardous materials;

(b) Amending the Code to require sprinklers under specified circumstances is necessary due to the following conditions:

(i) prevailing winds and relatively high temperatures seasonally, which can increase the speed at which fire spreads;
(ii) the lack of adequate infrastructure to serve all areas of the City, which negatively impacts emergency response times; and
(iii) the existence of large amounts of toxic gases and other hazardous materials in industrial and business park zones, which increase the chances that fires in such areas will present a life threatening danger to the general public.

4. Other proposed amendments which are not substantive in nature, including various use restrictions, cost recovery, enforcement, and administrative provisions, are necessary in order to enhance the City's ability to implement the three categories of proposed amendments identified in Section 2, above, as well as other provisions of the 2013 California Fire Code, in that they tend to deter activities that might result in life-threatening fires.

5. All previous findings by the City Council in updating the above referenced Code are hereby adopted and incorporated herein.

PASSED AND ADOPTED this ____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

3A

PLEASE NOTE:

This copy of Ordinance No. 38.810 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: **38.810**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ZONING**

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:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas intends to amend the Milpitas Zoning Code to add provisions for Emergency Shelters, Single Room Occupancies, Supportive Housing, Transitional Housing and Reasonable Accommodations in accordance with state law; and

WHEREAS, pursuant to California Government Code Sections 65580 – 65589 ("Housing Element Laws"), each city is required to prepare and adopt a General Plan Housing Element that identifies adequate sites for a variety of housing types; and

WHEREAS, the City Council previously approved the Milpitas General Plan Housing Element in June 2010 in accordance with the State Housing Element Laws; and

WHEREAS, the City of Milpitas ("City") is required to update its General Plan Housing Element by January 31, 2015; and

WHEREAS, on June 18, 2013, the City Council initiated the Housing Element Update and as part of the Update the City's Zoning Code will need to be amended to include provisions for emergency shelters, single room occupancies, supportive housing, transitional housing and reasonable accommodations. These amendments will enable the City to take advantage of the streamlined review process to be conducted by the California Housing and Community Development for the General Plan Housing Element Update and to be compliance with the State Housing Element Laws; and

WHEREAS, the Negative Declaration has been completed in compliance with the California Environmental Quality Act (CEQA), the guidelines as promulgated by the State Secretary of Resources, and the procedures for review as set forth in the City of Milpitas Environmental Review Guidelines and an Initial Study has been prepared for the project which recommended adoption of a Negative Declaration; and

WHEREAS, on October 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.

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. ENVIRONMENTAL REVIEW

A Negative Declaration has been completed in compliance with the California Environmental Quality Act (CEQA), the guidelines as promulgated by the State Secretary of Resources, and the procedures for review as set forth in the City of Milpitas Environmental Review Guidelines, and an Initial Study has been prepared for the project which recommended adoption of a Negative Declaration.

The City Council has reviewed the record and all other relevant information presented to it and has determined through its independent judgment to adopt the Negative Declaration. The City Council concurs that the City of Milpitas' Housing Element proposes no policy changes and contains no substantial evidence in the record before it that the project will have a significant effect on the environment, and therefore would not require a Supplemental or Subsequent Mitigated Negative Declaration to be prepared.

SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 2.03

Chapter 10, Section 2.03 "Definitions," of Title XI of the Milpitas Municipal Code, is hereby amended to add the following definitions:

"Emergency Shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay as set forth in the California Health and Safety Code Section 50801(e), as may be amended.

"Single Room Occupancy (SRO) Residence" means a multi-tenant building consisting of single room dwelling units that are the primary residence of its occupants, containing either individual or shared kitchen and bathroom facilities. These units are small (generally less than 350 square feet), and provide a valuable source of affordable housing for individuals and can serve as an entry point into the housing market for formerly homeless people.

"Supportive Housing" means housing with no limit on length of stay, that is occupied by the target population as defined in Section 11302 of Title 42 of the United States Code, as may be amended, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community as defined in the California Health and Safety Code Section 50801(e), as may be amended.

"Transitional Housing" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months as defined in the California Health and Safety Code Section 50801(e), as may be amended.

SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 4.02

Chapter 10, Table XI-10-4.02-1 "Residential Zone Uses" of Section 4.02 of Title XI of the Milpitas Municipal Code, is hereby amended to read as follows:

Table XI-10-4.02-1
Residential Zone Uses

Use	R1	R2	R3	R4	R5
1. Commercial					
Commercial services[1,2]	NP	NP	C	C	C
2. Professional Offices and related uses					
Offices[1,2]	NP	NP	C	C	C
3. Public/Quasi-Public and Institutional Uses					
Child care center	C	C	C	C	P
Nursing home[3]	NP	C	C	C	C
Park, playground or community center (non-profit)	C	C	C	C	C
Parking lots	C	C	C	C	C

Public service structure	C	C	C	C	C
School (not trade or vocational)	C	C	C	C	C
Social hall, lodge, fraternal organization, club and religious assembly (non-profit)	C	C	C	C	C
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home[4]	P	NP	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development[5]	P	P	P	P	P
Second residential dwelling unit[6]	P	SFR: P Duplex: NP	NP	NP	NP
Single family dwelling	P	P	NP	NP	NP
Single-room occupancy residences[7]	NP	NP	C	C	C
Transitional and supportive housing	P[8]	P[8]	P[9]	P[9]	P[9]
5. Restaurants					
Restaurants[1,2]	NP	NP	C	P/C	P/C
6. Unclassified Uses					
Agriculture[10]	P	P	P	NP	NP
Boarding house (three or more persons)	NP	C	C	C	C
Golf course[11]	C	C	C	NP	NP
Live work units[12]	NP	NP	C	C	C
Model home complex[13]	P	P	P	P	P

[1] Refer to Subsection XI-10-4.03(A), Residential Zone Special Uses, of this Chapter, for standards.

[2] Refer to Subsection XI-10-4.03(B), Residential Zone Special Uses, of this Chapter, for standards.

[3] Licensed nursing home serving more than six (6) persons, except when used primarily for contagious sickness, mental or drug alcohol addict cases.

[4] Refer to Subsection XI-10-13.07, Manufactured Homes, of this Chapter, for standards.

[5] Refer to Subsection XI-10-54.07, Planned Unit Developments, of this Title, for standards.

[6] In conjunction with an existing legal single-family dwelling. Refer to Subsection XI-10-13.08, Second Family Unit, of this Chapter, for standards.

[7] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

[8] Permitted only in single family dwellings

[9] Permitted only in multi-family dwellings

[10] Except for the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.

[11] Except for driving tee or range, miniature course and similar uses operated for commercial purposes.

[12] Allowed commercial uses to be specified through the Conditional Use Permit process.

[13] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 5.02

Chapter 10, Section 5.02 A, B, and C "Commercial Use Regulations," and Table XI-10-5.02-1 "Commercial Zone Uses" of Section 5.02, Title XI of the Milpitas Municipal Code, are hereby amended to read as follows:

XI-10-5.02 - Commercial Use Regulations.

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table 5.02-1, Commercial Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 5.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this Chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.

O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol "NP" appears within Table 5.02-1.

2. Uses that have been excluded from Table 5.02-1, unless they are found by the City to be similar to permitted or conditionally permitted uses in accordance with C below.

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

Table XI-10-5.02-1
Commercial Zone Uses

Use	CO	C1	C2	HS	TC
1. Commercial Uses					
Alcoholic beverage sales	C[6]	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services[1]	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P
Not fully enclosed operation	NP	C	C	C	C
Household appliance store[2]	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P

Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P[2]	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP
Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store	NP	NP	P	P	P
Tobacco shop	NP	C	C	NP	C
2. Entertainment and Recreation					
Adult business[3]	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					
Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
3. Health and Veterinarian Uses					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C

Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P
4. Industrial Uses [4]					
Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP
Warehousing and wholesale	NP	NP	C	NP	NP
5. Lodging					
Hotel and motel	NP	NP	C	C	C
6. Professional Offices, Financial Institutions and Related Uses					
Automatic Teller Machines (freestanding)[5]	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel	P	P	P	P	P

agencies, etc.)					
7. Public, Quasi-Public and Assembly Uses					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C
Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (-elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group[7]	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C
Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
8. Restaurants or Food Service					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C[6]	P	P	P	P

With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters[8]	NP	NP	NP	P/C	NP
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
Single-room occupancy residences[9]	NP	NP	NP	C	NP
10. Vehicle Related Uses					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail)[10]	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
11. Unclassified Uses					
Accessory structures[11]	P	P	P	P	P
Model home complex[12]	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales[13]	NP	P	P	P	P

[1] Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

[2] Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

[3] In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

[4] For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

[5] Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

[6] When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

[7] Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

[8] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter

[9] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

[10] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

[11] Not including warehouses on the same site as the permitted use.

[12] No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

[13] Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 6.02

Chapter 10, Section 6.02 A, B and C "Mixed Use Regulations," and Table XI-10-6.02-1 "Mixed Use Zone Uses" of Section 6.02, Title XI of the Milpitas Municipal Code, are hereby amended to read as follows:

XI-10-6.02 - Mixed Use Regulations

A. Permitted and Conditionally Permitted Uses.

1. Primary uses. The uses identified in Table 6.02-1, Mixed Use Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 6.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this Chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

2. Accessory Uses.

a. Massage Services. Massage services may be allowed as an accessory use to any permitted or conditionally permitted medical office, medical clinic, chiropractor practice, acupuncture practice, physical therapist, fitness and athletic facility, health care facility (such as hospitals, nursing homes and sanitariums), and accredited school, college, and university. Massage services, limited to massage of the head, neck, shoulders, hands and feet may be allowed as an accessory use to any permitted or conditionally permitted beauty salon, barbershop, and healing art

practices. This section shall not exempt any person or business from complying with all the provisions of Title III, Chapter 6.

B. Prohibited Uses. The following uses are prohibited:

1. Uses where the symbol "NP" appears within Table 6.02-1.

2. The following uses are not permitted in any mixed use zone:

a. Adult Businesses as defined in Subsection 13.04, Adult Businesses, of this Chapter.

b. Disinfecting and extermination business.

c. Ground level residential in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1 and Zoning Map.

d. Outdoor storage of vehicles.

e. Private self-storage facilities

f. Single family detached dwellings

g. Two family dwelling units

h. Drive through uses (restaurants, pharmacies, etc.)

C. Other Uses. Any other uses may be considered by the Planning Commission that are similar in accordance with the procedure, prescribed in Subsection 10-54.02, Other Uses Permitted by Commission, of this Chapter.

Table XI-10-6.02-1
Mixed Use Zone Uses

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail street)	Upper Floor	
1. Commercial Uses				
Alcohol beverage sales	C	C	C	C
Commercial services[1]	MCS	MCS	MCS	MCS
Grocery stores (supermarkets)	C	C	C	C
Pawnshops[2]	C	C	C	C
Pet shops	C	NP	NP	NP
Retail stores, general merchandise[3]	MCS	MCS	MCS	MCS
Tanning salons	P	P	P	P
Thrift shops (used merchandise)				
Retail	P	P	P	P

With collections	C	C	C	C
2. Entertainment and Recreation				
Commercial athletic facilities	P	P	P	P
Motion picture theater (see 6 below)				
Recreation or entertainment facility	C	C	C	C
3. Health and Veterinarian Uses				
Animal grooming (no boarding)	P	P	NP	P
Hospitals or sanitariums[4]	C	C	C	C
Massage establishment	C	C	C	C
Medical or dental offices and clinics	P	NP	P	P
Medical support laboratories	P	P	P	P
Optician and optometrist shop	P	P	P	P
Pharmacy or drug store	P	P	P	P
Veterinarian clinic	P	P	P	P
4. Lodging				
Bed and breakfast	P	P	NP	NP
Boarding houses (3 or more persons)	C	C	C	C
Group dwellings	C	C	C	C
Hotels	C	P	P	P
Motels	C	C	C	C
5. Professional Offices, Financial Institutions and Related Uses[4]				
Financial institutions (banks, savings and loans, etc.)	MCS	NP	MCS	P
Offices[3]	MCS	NP	MCS	P
6. Public/Quasi Public and Assembly Uses				
Child care				
Child care center	C	P	C	P
Day care school	C	C	C	
Large family child care home	P	P	C	P

Small family child care home	P	P	P	P
Instruction				
Group[13]	P	NP	NP	NP
Private	P	P	P	P
Park, playground or community center[5]	O	O	O	O
Places of assembly[4]	C	C	C	C
Public utilities	C	C	C	C
Schools, private (elementary, middle and high)[4]	C	C	C	C
Theaters (Indoor)	C	C	C	C
Trade and vocational schools[4]	C	C	C	C
Transportation facilities[2]	C	C	C	C
7. Residential Uses				
Multi-family housing[7]	P	NP	P	P
Transitional and supportive housing	P	NP[9]	P	P
8. Restaurants or Food Service				
Bar or nightclub	C	C	C	C
Brewery/Eateries[10]	MCS	MCS	NP	MCS
Catering establishments	C	C	C	C
Restaurants[2]	P/C	P/C	NP	P/C
With dancing and entertainment	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	P	P	P	P
9. Unclassified Uses				
Artisan Studios & Live-work units, woodworking or glassworking, plumbing or metalworking and sign shops[2]	MCS	MCS	MCS	MCS
Lobbies and entries for upper floor uses	P	P	NP	P
Model home complex[11]	P	P	P	P
Mixed use developments[12]	P	P	P	P
Planned Unit Development[13]	P	P	P	P

Temporary seasonal sales[14]	P	P	P	P
10. Vehicle-Related Repair, Sales and Services				
Auto sales and rental[15]	C	C	C	C
Auto broker (wholesale, no vehicles on site)[2]	MCS	MCS	MCS	MCS
Vehicle service uses[16]	C	NP	NP	C

[1] Refer to Subsection XI-10-6.02-1(B), Performance standards for certain uses, of this Chapter, for standards.

[2] Refer to Subsection XI-10-6.02-1, Special Uses, of this Chapter, for standards.

[3] Refer to Subsection XI-10-6.02-1(B) Performance standards for certain uses, of this Chapter.

[4] Refer to Subsection XI-10-6.02-2, Quasi-Public Uses, of this Chapter, for standards.

[5] For parks, playgrounds or community center owned and operated by a government agency or a nonprofit community organization.

[6] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter

[7] Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.

[8] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter

[9] Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

[10] Reserved

[11] Refer to Subsection XI-10-13.11(E), Model Home Complexes and Sales Offices, of this Chapter for temporary tract offices.

[12] Which include only permitted uses.

[13] Refer to Section XI-10-54.07, Planned Unit Developments, of this Chapter, for standards.

[14] Refer to Section XI-10-13.11(D), Temporary Seasonal Sales, of this Chapter.

[15] New and used auto, recreational vehicle and boat sales, excluding commercial vehicles, trucks, buses, vans, and farm equipment, with accessory repairs and services, only allowed if fully enclosed within a building. Bicycle and auto rental agency, excluding commercial vehicles, trucks, buses, vans, boats and RV rentals, only if fully enclosed within a building.

[16] Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 13

Chapter 10, Section 13 "Special Uses," of Title XI of the Milpitas Municipal Code, is hereby amended to add subsections 13.12 and 13.13 to read as follows:

XI-10-13.12 Single Room Occupancy Residences

A. Purpose and Intent. The purpose of this Section is to provide for multi-tenant housing that is affordable to low-income individuals. Single Room Occupancy (SRO) residences house one to two persons in individual rooms, typically sharing bathrooms and/or kitchens. Units may, but are not required to, include full or partial kitchens and bathrooms.

B. Applicability. Standards for SRO residences contained in this section apply to all SRO residences where permitted by this Chapter.

C. Minimum Standards.

1. An SRO shall be located:

a. At least ¼ mile away from schools, parks, day care centers, adult businesses and concentrations of two or more bars and/or liquor stores; and

b. Within ½ mile of fixed rail or buses with 30 minute minimum headways; and

c. At least 1,000 feet from other SROs.

2. Each SRO unit shall:

a. Be a minimum of 150 square feet without individual kitchen or bathroom facilities, or a minimum of 300 square feet with full kitchen and bathroom facilities.

b. Not exceed 400 square feet.

c. Contain a closet and storage area within the unit.

3. An SRO facility shall meet the following standards:

a. If an individual full bath is not provided in each unit, common bath facilities shall be provided that adequately serve the residents of the SRO facility.

b. If an individual full kitchen is not provided in each unit, common kitchen facilities shall be provided that adequately serve the residents of the SRO facility.

c. Laundry facilities shall be provided in a separate room at the ratio of one washer, dryer and laundry tub with hot and cold running water for every twenty (20) units, with at least one washer, dryer and laundry tub per floor.

d. A minimum of two hundred (200) square feet of interior useable common space shall be provided, excluding janitorial storage, laundry facilities and hallways.

e. A management plan shall be submitted to the City Planning Division for review and approval prior to issuance of an occupancy permit. Management plans shall be resubmitted to City Planning Division on an annual basis for review and approval. A facility with ten (10) or more units shall provide on-site management.

XI-10-13.13 Emergency Shelters

A. Purpose and Intent. The purpose of this Section is to comply with California Government Code Section 65583(a)(4), as may be amended, which requires that emergency shelters be permitted by-right in at least one zone with sufficient capacity to accommodate the local need for emergency shelter.

B. Applicability. Standards for Emergency Shelters contained in this Section shall apply to all Emergency Shelters where permitted by this Chapter.

C. Minimum Standards.

1. A management plan shall be submitted to the City Planning Division for review and approval prior to issuance of an occupancy permit. Management plans shall be resubmitted to City Planning Division on an annual basis for review and approval.

2. The number of beds for each Emergency Shelter shall be limited to thirty (30).

3. Parking requirements shall be either one space per three hundred (300) square feet of habitable floor area, or sufficient to serve the parking demand determined in a study prepared by the applicant and approved by the Planning Division.

4. The size of outdoor waiting areas on private property shall be sufficient to accommodate the expected number of clients without infringing upon the public right-of-way.

5. Onsite management shall be provided during the hours that the emergency shelter is in operation.

6. An emergency shelter shall not be located within 300 feet of other emergency shelters.

7. The length of stay for each individual at any emergency shelter shall not exceed 90 days, unless the management plan approved by City provides for longer residency by those enrolled and regularly participating in a training or rehabilitation program.

8. Exterior lighting of the property shall be designed to provide a minimum maintained horizontal illumination of at least one foot candle of light on parking surfaces and walkways that serve the facility. Illumination shall not extend across property lines to an adjacent property.

9. Security shall be provided during the hours that the emergency shelter is in operation. Security plans shall be submitted to City staff for review and approval prior to issuance of an occupancy permit. Security plans shall be resubmitted to City staff on an annual basis for review and approval.

D. Additional Standards. The Director of Planning and Neighborhood Services may adopt additional written objective minimum standards consistent with California Government Code Section 65583(a)(4)(A), as may be amended. Any such administrative standards adopted by the Director of Planning and Neighborhood Services shall be published on the Planning Division's website.

SECTION 8. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10, SECTION 62

Chapter 10, Section 62 "Reasonable Accommodations," of Title XI of the Milpitas Municipal Code, is hereby added to replace the previous "Reserved" text, to now read as follows:

Section 62 Reasonable Accommodation

XI-10-62.01 Purpose

This Section establishes a procedure for requesting Reasonable Accommodation for persons with disabilities seeking equal access to housing. A Reasonable Accommodation is typically an adjustment to physical design standards to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled resident.

XI-10-62.02 Applicability

A. **Eligible Applicants.** A request for Reasonable Accommodation may be made by any person with a disability, their representative, or any entity, when the application of the Zoning Ordinance or other land use regulations, policy, or practice acts as a barrier to fair housing opportunities.

B. **Definition.** A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment as further defined under Section 12102 of the Americans with Disabilities Act and applicable State law, as may be amended.

C. **Eligible Request.** A request for Reasonable Accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

XI-10-62.03 Review Authority

A. The Planning Division shall take action on all Reasonable Accommodation applications.

B. The Planning Division may choose to refer any Reasonable Accommodation application to the Planning Commission for review and final decision.

XI-10-62.04 Application Submittal and Review

An application for Reasonable Accommodation shall be filed and processed in the same manner as required for a Minor Site Development permit, as described in sections 10-57 (Applications) and 10-64 (Development Review Process).

XI-10-62.05 Criteria for Decision

The Planning Division shall make a written decision and either approve, approve with modifications, or deny a request for Reasonable Accommodation based on consideration of all of the following factors:

A. Whether the housing which is the subject of the request will be used by an individual with a disability thereunder;

B. Whether the request for Reasonable Accommodation is necessary to make specific housing available to an individual with a disability;

C. Whether the requested Reasonable Accommodation would impose an undue financial or administrative burden on the City;

D. Whether the requested Reasonable Accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning;

E. Potential impacts on surrounding uses;

F. Physical attributes of the property and structures; and

G. Other Reasonable Accommodations that may provide an equivalent level of benefit.

XI-10-62.06 Conditions of Approval

In approving a request for Reasonable Accommodation, the Planning Division may impose conditions of approval deemed reasonable and necessary to ensure that the Reasonable Accommodation will comply with the criteria required by Section 10-62.05 (Criteria for Decision).

XI-10-62.07 Post-Decision Procedures

The procedures and requirements relating to notices of decision, effective dates, permit expiration, permit revocation, and changed plans shall apply to Reasonable Accommodations as provided in Section 64 (Development Review Process).

SECTION 9. 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 10. 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.

THE PLANNING CENTER DC&E

3B

MEMORANDUM

DATE October 29, 2013

TO Felix Reliford

FROM Terri McCracken

RE Response to Comment Letter on the Zoning Ordinance Amendments: Housing Element Implementation Project

The City of Milpitas received the following two letters in response to the Notice of Intent (NOI) submitted to the State Clearinghouse on Monday, September 23, 2013 for a 30-day review period ending on Wednesday, October 23, 2013.

1) Ken Chiang, Utilities Engineer, California Public Utilities Commission, October 17, 2013.
2) Scott Morgan, Director of State Clearinghouse, Office of Planning and Research, State Clearinghouse and Planning Unit, October 24, 2013.

The comment letter received on October 17, 2013 from the California Public Utilities Commission (Commission), which has jurisdiction over the safety of highway-rail crossings (crossings) in California, recommends on behalf of the Commission Rail Crossings Engineering Section (RCES) that the City of Milpitas include language to the Zoning Ordinance Amendments: Housing Element Implementation Project (proposed Project) so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is planned with the safety of the rail corridor in mind. Possible language suggested by the RCES could include, but is not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW. As described in the Initial Study on pages 36 and 37, the proposed Project will have no effect on the circulation system of Milpitas because it will not increase development potential and would not directly or indirectly result in population growth. Therefore, the recommendation of the Commission is not applicable to this Project. However, the City is currently in the process of updating their Housing Element and their Seismic and Safety Element, and will consider the recommendations of the Commission during this process.

The comment letter received on October 24, 2013 from the State Clearinghouse acknowledges the City has complied with the State Clearinghouse review requirements for draft environmental review documents pursuant to the California Environmental Quality Act (CEQA). No response is required.

STATE OF CALIFORNIA

Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Edmund G. Brown Jr.
Governor

Ken Alex
Director

RECEIVED

OCT 28 2013

HNP DIVISION

October 24, 2013

Felix J. Reliford
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

Subject: Zoning Ordinance Amendments: Housing Element Implementation
SCH#: 2013092044

Dear Felix J. Reliford:

The State Clearinghouse submitted the above named Negative Declaration 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 October 23, 2013, 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.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Dat ase

SCH#	**2013092044**
Project Title	Zoning Ordinance Amendments: Housing Element Implementation
Lead Agency	Milpitas, City of

Type	**Neg** Negative Declaration
Description	The proposed Project would allow for special needs housing including emergency shelters, transitional and supportive housing, single room occupancy units, and reasonable accommodations consistent with the City's 2010 General Plan Housing Element.

Lead Agency Contact

Name	Felix J. Reliford		
Agency	City of Milpitas		
Phone	408 586 3071	***Fax***	
email			
Address	455 E. Calaveras Boulevard		
City	Milpitas	***State*** CA	***Zip*** 95035

Project Location

County	Santa Clara			
City	Milpitas			
Region				
Lat / Long				
Cross Streets	citywide			
Parcel No.	citywide			
Township		***Range***	***Section***	***Base***

Proximity to:

Highways	
Airports	
Railways	
Waterways	
Schools	
Land Use	Residential, Mixed-Use and Commercial Land Uses & Zoning Districts

Project Issues	Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects; Other Issues
Reviewing Agencies	Resources Agency; Department of Fish and Wildlife, Region 3; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 4; Department of Housing and Community Development; Regional Water Quality Control Board, Region 2; Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission

Date Received	09/24/2013	***Start of Review***	09/24/2013	***End of Review***	10/23/2013

October 29, 2013

California Public Utilities Commission
320 West 4th Street, Suite #500
Los Angeles, CA 90013

Re: City of Milpitas Housing Element Implementation-Negative Declaration

Dear. Mr. Chiang:

The City has received your letter written on October 17, 2013 on behalf of the California Public Utilities Commission (Commission). The City recognizes the Commission has jurisdiction over the safety of highway-rail crossings (crossings) in California and has reviewed the recommendations from the Rail Crossings Engineering Section (RCES). The City understands the RCES has requested that language be added to the Zoning Ordinance Amendments: Housing Element Implementation Project (proposed Project) so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is planned with the safety of the rail corridor in mind and that possible language suggested by the RCES could include, but is not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

As described in the Initial Study on pages 36 and 37, the proposed Project will have no effect on the circulation system of Milpitas because it will not increase development potential and would not directly or indirectly result in population growth. Therefore, the recommendation of the Commission is not germane to this Project. However, the City is currently in the process of updating their Housing Element and their Seismic and Safety Element, and will consider the recommendations of the Commission during this process.

Sincerely,

Felix J. Reliford
Principal Housing Planner

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET, SUITE 500
LOS ANGELES, CA 90013
(213) 576-7083

October 17, 2013

Felix J. Reliford
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Mr. Reliford:

Re: SCH 2013092044 Milpitas Housing Element Implementation - DND

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the Draft *Negative Declaration (DND)* for the proposed City of Milpitas (City) Housing Element Implementation project.

The project area includes active railroad tracks. RCES recommends that the City add language to the Housing Element Implementation so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW.

If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.

Sincerely,

Ken Chiang, P.E.
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

C: State Clearinghouse

NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION

ZONING ORDINANCE AMENDMENTS: HOUSING ELEMENT IMPLEMENTATION PROJECT

City of Milpitas
Planning & Neighborhood Services Department
455 East Calaveras Boulevard
Milpitas, CA 95035

PHONE: (408) 586-3071
freliford@ci.milpitas.ca.gov

The City of Milpitas is intending to adopt a Negative Declaration for the Zoning Ordinance Amendments: Housing Element Implementation Project in accordance with the California Environmental Quality Act.

SUMMARY PROJECT DESCRIPTION: The proposed Project would allow for special needs housing including emergency shelters, transitional and supportive housing, single room occupancy units, and reasonable accommodations consistent with the City's 2010 General Plan Housing Element.

LOCATION OF PROJECT: City of Milpitas

FINDING: On the basis of the Initial Study, the City has determined that the proposed project would not have a significant adverse effect on the environment.

PUBLIC REVIEW PERIOD: The Initial Study and Proposed Negative Declaration are available for public review at the following locations:

City of Milpitas-City Hall (1st Floor Pubic Information Desk)
455 E. Calaveras Blvd.
Milpitas, CA 95035

Milpitas Public Library (Public Reference Desk)
160 North Main Street
Milpitas, CA 95035

City of Milpitas Website: www.ci.milpitas.ca.gov. (Department of Planning &Neighborhood Services)

The Initial Study and Proposed Negative Declaration are available for a 30-day review period beginning Monday, September 23, 2013 and ending Wednesday, October 23, 2013. Comments on the Negative Declaration must be submitted in writing within the 30-day review period and sent by mail or email to:

City of Milpitas
Attn: Felix J. Reliford, Principal Housing Planner
455 East Calaveras Boulevard
Milpitas, CA 95035
freliford@ci.milpitas.ca.gov

PUBLIC MEETINGS: Meetings at which actions would be undertaken are listed below. The Milpitas City Council is the decision-making body responsible for adopting the proposed Negative Declaration and approving the proposed project.

Planning Commission Hearing
Wednesday, October 23, 2013, 7:00 p.m.
City Hall Council Chambers

455 East Calaveras Boulevard
Milpitas, CA 95035

City Council Hearing
Tuesday, November 29 2013, 7:00 p.m.
City Hall Council Chambers
455 East Calaveras Boulevard
Milpitas, CA 95035

Please contact Felix J. Reliford, Principal Housing Planner at (408) 586-3071 if you have questions regarding this Notice.

City of Milpitas
Initial Study Checklist
Zoning Ordinance Amendments:
Housing Element Implementation Project

The proposed Zoning Ordinance Amendments: Housing Element Implementation is a project under the California Environmental Quality Act (CEQA). This Initial Study was prepared by The Planning Center | DC&E for the City of Milpitas (City), Planning & Neighborhood Services Department. This Initial Study was prepared pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.), CEQA Guidelines (Title 14, Section 15000 et seq. of the California Code of Regulations).

1.	**Title:**	Zoning Ordinance Amendments: Housing Element Implementation
2.	**Lead Agency Name and Address:**	City of Milpitas Planning & Neighborhood Services Department 455 East Calaveras Boulevard Milpitas, CA 95035
3.	**Contact Person and Phone Number:**	Felix J. Reliford, Principal Housing Planner (408) 586-3071
4.	**Location:**	Milpitas, CA
5.	**Sponsor's Name and Address:**	City of Milpitas Planning & Neighborhood Services Department 455 East Calaveras Boulevard Milpitas, CA 95035
6.	**General Plan Land Use Designations:**	Residential, Mixed-Use and Commercial Land Uses
7.	**Zoning:**	Residential: Single-Family Residential (R1), One- and Two-Family Residential (R2), Multi-Family High Density Residential (R3), Multi-Family Very High Density Residential (R4), and Urban Residential (R5) Commercial: Highway Services (HS) Mixed-Use: Mixed Use (MXD), High Density Mixed Use (MXD2), and Very High Density Mixed Use (MXD3)
8.	**Location, Setting, Project Description:**	See page 3 of this Initial Study
9.	**Other Required Approvals:**	The Zoning Ordinance Amendments will be adopted by the City of Milpitas, without oversight or permitting by other agencies.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by the proposed Project, involving at least one impact that is a Potentially Significant Impact, as indicated by the checklist on the following pages.

❒ Aesthetics	❒ Agriculture & Forestry Resources	❒ Air Quality
❒ Biological Resources	❒ Cultural Resources	❒ Geology & Soils
❒ Greenhouse Gas Emissions	❒ Hazards & Hazardous Materials	❒ Hydrology & Water Quality
❒ Land Use	❒ Mineral Resources	❒ Noise
❒ Population & Housing	❒ Public Services	❒ Recreation
❒ Transportation/Traffic	❒ Utilities & Service Systems	❒ Mandatory Findings of Significance

Determination:

On the basis of this initial evaluation:

XX❒ I find that the proposed Project COULD NOT have a significant effect on the environment and a NEGATIVE DECLARATION will be prepared.

❒ I find that, although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the Project have been made by or agreed to by the City. A MITIGATED NEGATIVE DECLARATION will be prepared.

❒ I find that the proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT (EIR) will be prepared.

❒ I find that the proposed Project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

❒ I find that although the proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed Project, nothing further is required.

Signature	Date
Felix J. Reliford	Principal Housing Planner
Printed Name	Title

LOCATION AND SETTING

The City of Milpitas (City) is situated on the eastern shore of the San Francisco Bay, in Santa Clara County, just south of Alameda County. The City encompasses about 13.64 square miles of land, and borders Fremont on the north, San Jose on the south and west, and unincorporated county to the east. See Figure 1 for map location.

EXISTING CONDITIONS

The Zoning Ordinance of the City of Milpitas is found in Chapter 10 (Zoning) of Title XI (Zoning, Planning, and Annexation) of the Milpitas Municipal Code. The Zoning Ordinance establishes various districts within the boundaries of the city and restrictions for erecting, constructing, altering, or maintaining certain buildings, identifying certain trades or occupations, and makes certain uses of lands. The Zoning Ordinance includes performance standards that set forth the height and bulk limits of buildings, the open spaces limits that shall be required about buildings and other appropriate regulations to be enforced in each districts. The following sections of the Zoning Ordinance would be amended under the proposed Project:

- Section 2, Definitions, of the Zoning Ordinance, provides definitions of terms and phrases used in this Zoning Ordinance that are technical or specialized, or that may not reflect common usage.
- Section 4, Residential Zones and Standards, establishes land use regulations and development standards for residential zones in the city. Residential districts include Single-Family Residential (R1), One- and Two-Family Residential (R2), Multi-Family High Density Residential (R3), Multi-Family Very High Density Residential (R4), and Urban Residential (R5) Zone.
- Section 5, Commercial Zones and Standards, establishes land use regulations and development standards for commercial zones in the city. Commercial zones that would be affected by the proposed Project include the Highway Services (HS) designation.
- Section 6, Mixed Use Zones and Standards, establishes land use regulations and development standards for mixed-use zones in the city. Mixed Use Zones include Mixed Use (MXD), High Density Mixed Use (MXD2), and Very High Density Mixed Use (MXD3).
- Section 13, Special Uses, of the Zoning Ordinance identifies and regulates certain activities and uses that have special impacts upon the community, giving rise to a need for special review procedures or standards in order to ensure the maintenance of the public health, safety and welfare in accordance with the goals, objectives, policies, and implementation programs of the General Plan.
- Section 62 is a reserved section. Under the proposed Project, this section would be amended to provide the procedures for requesting Reasonable Accommodation. The proposed amendments are described below.

PROJECT DESCRIPTION

This Initial Study evaluates the proposed Zoning Ordinance Amendments: Housing Element Implementation Project, herein referred to as "proposed Project." The proposed Project would allow for special needs housing including emergency shelters, transitional and supportive housing, single room occupancy units, and reasonable accommodations consistent with the City's 2010 General Plan Housing Element.[1] Specifically, Housing Element Policy G-2 states that the City will modify its Zoning Ordinance to ensure that there are opportunities for special needs housing.

[1] A Negative Declaration (State Clearinghouse Number 2009052014) was prepared and circulated to the appropriate state and local agencies in May 2009. The City did not receive any comments and concluded that no additional environmental assessment is required. *City of Milpitas 2010 Housing Element,* page ii.

Figure 1 Regional and Location Map

The discussion below provides a brief description of the proposed amendments to the Zoning Ordinance sections listed above.

SECTION 2, DEFINITIONS

Section XI-10-2.03 has been amended to include the following definitions:

Emergency Shelters

Emergency shelter refers to housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay (pursuant to Health and Safety Code).

Single Room Occupancy

Single room occupancy (SRO) residence is a multi-tenant building consisting of single room dwelling units that are the primary residence of its occupants, containing either individual or shared kitchen and bathroom facilities. These units are small, and provide a valuable source of affordable housing for individuals and can serve as an entry point into the housing market for formerly homeless people.

Supportive Housing

Supportive housing is housing with no limit on length of stay that is occupied by the target population as defined in Section 11302 of Title 42 of the United States Code, and that is linked to onsite or offsite services that assist the resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community (pursuant to Health and Safety Code).

Transitional Housing

Transitional housing refers to buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months (pursuant to Health and Safety Code).

SECTION 4, RESIDENTIAL ZONES AND STANDARDS

The uses identified in Table XI-10-4.02-1, Residential Zone Uses, below, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted entirely within enclosed structures. The primary uses identified in Table XI-10-4.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

Proposed amendments to this section are shown as underline as follows in Table IX-10-4.02-1:

Table XI-10-4.02-1 Residential Zone Uses

Use	R1	R2	R3	R4	R5
4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home[4]	P	NP	NP	NP	NP
Multi-family dwellings (three or more units)	NP	NP	P	P	P
Planned unit development[5]	P	P	P	P	P
Second residential dwelling unit[6]	P	SFR: P Duplex: NP	NP	NP	NP
Single-family dwelling	P	P	NP	NP	NP
Single-room occupancy residences[7]	NP	NP	P/C	P/C	P/C
Transitional and supportive housing	P[8]	P[8]	P[9]	P[9]	P[9]

[7] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this chapter.
[8] Permitted only in single-family dwellings.
[9] Permitted only in multi-family dwellings.

SECTION 5, COMMERCIAL ZONES AND STANDARDS

Proposed amendments to Section 5 include additions shown as underline to the following tables:

The uses identified below in Table XI-10-5.02-1, Commercial Zone Uses, below, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 5.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.

C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this Chapter.
MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Subsection 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

Table XI-10-5.02-1 Commercial Zone Uses

Use	CO	C1	C2	HS	TC
9. Residential Uses					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters[8]	NP	NP	NP	P/C	NP
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
Single-room occupancy residences[9]	NP	NP	NP	P/C	NP

[8] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this chapter.
[9] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this chapter.

SECTION 6, MIXED USE ZONES AND STANDARDS

Amendments to Section 6 include additions shown as underline to the following tables:

The uses identified in Table 6.02-1, Mixed Use Zone Uses, shall be the primary uses allowed to occur on a property. All uses except for those noted shall be conducted within enclosed structures. The primary uses identified in Table 6.02-1 shall be permitted or conditionally permitted, as indicated:

P	Where the symbol "P" appears, the use shall be permitted.
MCS	Where the symbol "MCS" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit by staff, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
P/C	Where the symbol "P/C" appears the use may be permitted if certain criteria is met or otherwise a Conditional Use Permit shall be required, in accordance with Section XI-10-57.04, Conditional Use Permits, of this chapter.
C	Where the symbol "C" appears, the use shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.

MC	Where the symbol "MC" appears, the use shall be permitted subject to the issuance of a Minor Conditional Use Permit, in accordance with Section 57.04, Conditional Use Permits and Minor Conditional Use Permits, of this chapter.
O	Where the symbol "O" appears, the use is subject to an alternative review process described in a subsequent footnote.

Table XI-10-6.02-1 Mixed Use Zone Uses

Use	MXD	MXD2		MXD3
		Ground Level (Facing Retail Street)	Upper Floor	
7. Residential Uses				
Multi-family housing[7]	P	NP	P	P
Single-room occupancy residences[8]	P/C	NP[9]	P/C	P/C
Transitional and supportive housing	P	NP[9]	P	P

[6] Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.
[7] Ground level residential is prohibited in the Ground Level Commercial Area as shown on the Midtown Specific Plan Land Use Map, Figure 3.1.
[8] Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.
[9] Uses serving upper-floor residential uses, such as common gathering space, lobby, and resident services, may be allowed as ground floor uses where residential uses would otherwise not be permitted.

SECTION 13, SPECIAL USES

Section 13 has been amended to include Section XI-10-13.13, Single Room Occupancy Residences and Section XI-10-13.14, Emergency Shelters as follows:

XI-10-13.13 – Single Room Occupancy Residences

A. Purpose and Intent. The purpose of this Section is to provide for multi-tenant housing that is affordable to low-income individuals. Single Room Occupancy (SRO) residences house one to two persons in individual rooms, typically sharing bathrooms and/or kitchens. Units may, but are not required to, include full or partial kitchens and bathrooms.

B. Applicability. Standards for SRO residences contained in this section apply to all SRO residences where permitted by this Chapter.

C. Minimum Performance Standards.

1. An SRO shall be located:

   a. At least ¼-mile away from schools, parks, day care centers, adult businesses and concentrations of two or more bars and/or liquor stores.

b. Within ½-mile of fixed rail or buses with 30-minute minimum headways.

c. At least 1,000 feet from other SROs.

2. SRO units shall:

a. Be a minimum of 150 square feet without individual kitchen or bathroom facilities, or a minimum of 300 square feet with full kitchen and bathroom facilities.

b. Contain a closet and storage area.

3. An SRO facility shall meet the following standards:

a. If an individual full bath is not provided in each room, common bath facilities shall be provided that adequately serve the residents of the SRO.

b. If an individual full kitchen is not provided in each room, common kitchen facilities shall be provided that adequately serve the residents of the SRO.

c. Laundry facilities shall be provided in a separate room at the ratio of one washer, dryer and laundry tub with hot and cold running water for every 20 units, with at least one washer, dryer and laundry tub per floor.

d. A minimum of 200 square feet of interior useable common space shall be provided, excluding janitorial storage, laundry facilities and hallways.

e. A management plan shall be submitted to City staff for review and approval. A facility with 10 or more units shall provide on-site management.

XI-10-13.14 – Emergency Shelters

A. Purpose and Intent. The purpose of this section is to comply with State Government Code Section 65583(a)(4), which requires that emergency shelters be permitted by-right in at least one zone with sufficient capacity to accommodate the local need for emergency shelter.

B. Applicability. Standards for Emergency Shelters contained in this section apply to all Emergency Shelters where permitted by this Chapter.

C. Minimum Performance Standards.

1. The number of beds shall be limited to 30.

2. Parking requirements shall be either one space per 300 square feet of habitable floor area, or sufficient to serve the parking demand determined in a study prepared by the applicant and approved by the Planning Division.

3. The size of outdoor waiting areas shall be sufficient to accommodate the expected number of clients without infringing upon the public right-of-way.

4. Onsite management shall be provided during the hours that the emergency shelter is in operation.

5. An emergency shelter shall be located at least 300 feet from other emergency shelters.

6. The length of stay at any emergency shelter shall not exceed 90 days, unless the management plan provides for longer residency by those enrolled and regularly participating in a training or rehabilitation program.

7. Exterior lighting of the property shall be designed to provide a minimum maintained horizontal illumination of at least one foot-candle of light on parking surfaces and walkways that serve the facility.

8. Security shall be provided during the hours that the emergency shelter is in operation.

SECTION 62, REASONABLE ACCOMMODATIONS

Under the proposed Project, Chapter XI-10-62, Reasonable Accommodation, will be added as follows:

XI-10-62 – Reasonable Accommodation

XI-10-62.01 Purpose
XI-10-62.02 Applicability
XI-10-62.03 Review Authority
XI-10-62.04 Application Submittal and Review
XI-10-62.05 Criteria for Decision
XI-10-62.06 Conditions of Approval
XI-10-62.07 Post-Decision Procedures

XI-10-62.01 – Purpose

This chapter establishes a procedure for requesting Reasonable Accommodation for persons with disabilities seeking equal access to housing. A Reasonable Accommodation is typically an adjustment to physical design standards to accommodate the placement of wheelchair ramps or other exterior modifications to a dwelling in response to the needs of a disabled resident.

XI-10-62.02 – Applicability

A. Eligible Applicants. A request for Reasonable Accommodation may be made by any person with a disability, their representative, or any entity, when the application of the Zoning Ordinance or other land use regulations, policy, or practice acts as a barrier to fair housing opportunities.

B. Definition. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.

C. Eligible Request. A request for Reasonable Accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

XI-10-62.03 – Review Authority

A. The Planning Division shall take action on all Reasonable Accommodation applications.

B. The Planning Division may choose to refer any Reasonable Accommodation application to the Planning Commission for review and final decision.

XI-10-62.04 – Application Submittal and Review

An application for Reasonable Accommodation shall be filed and processed in the same manner as required for a Minor Site Development permit, as described in Sections 10-57 (Applications) and 10-64 (Development Review Process).

XI-10-62.05 – Criteria for Decision

The Planning Division shall make a written decision and either approve, approve with modifications, or deny a request for Reasonable Accommodation based on consideration of all of the following factors:

A. Whether the housing which is the subject of the request will be used by an individual defined as disabled under the Americans with Disabilities Act;

B. Whether the request for Reasonable Accommodation is necessary to make specific housing available to an individual with a disability under the Americans with Disabilities Act;

C. Whether the requested Reasonable Accommodation would impose an undue financial or administrative burden on the City;

D. Whether the requested Reasonable Accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning;

E. Potential impacts on surrounding uses;

F. Physical attributes of the property and structures; and

G. Other Reasonable Accommodations that may provide an equivalent level of benefit.

XI-10-62.06 – Conditions of Approval

In approving a request for Reasonable Accommodation, the Planning Division may impose conditions of approval deemed reasonable and necessary to ensure that the Reasonable Accommodation will comply with the criteria required by Section 10-62.05 (Criteria for Decision).

XI-10-62.07 – Post-Decision Procedures

The procedures and requirements relating to notices of decision, effective dates, permit expiration, permit revocation, and changed plans shall apply to Reasonable Accommodations as provided in Section 64 (Development Review Process).

This section of the Zoning Ordinance complies with requirements of the Americans with Disability Act (ADA).

POTENTIAL PHYSICAL CHANGES

The proposed amendments to the Zoning Ordinance support the goals and policies of the City's General Plan Housing Element. The proposed amendments relate to identifying Zoning districts within the city to accommodate emergency shelters, transitional and supportive housing, and single-room occupancy units. The amendments related to reasonable accommodations include procedural guidance for potential applicants. The proposed amendments do not include actions that could directly or indirectly result in substantial physical changes to the environment.

The proposed Zoning Ordinance amendments would enable future development to meet the needs of at-risk populations by providing housing types designed for these groups. No projects have been identified or are proposed as part of the amendments. When specific implementing projects are identified, the development applications for such individual projects, as required, would be submitted separately to the City for review, and would be subject, if necessary, to separate, site-specific CEQA analysis.

ENVIRONMENTAL CHECKLIST

I. AESTHETICS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	❒	❒	■	❒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings and historic buildings within a State scenic highway?	❒	❒	❒	■
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	❒	❒	■	❒
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	❒	❒	■	❒

DISCUSSION:

a) Potential future development permitted under the proposed Project would have the potential to affect scenic vistas and/or scenic corridors if new or intensified development blocked views of areas that provide or contribute to such vistas. Potential effects could include blocking views of a scenic vista/corridor from specific publically accessible vantage points or the alteration of the overall scenic vista/corridor itself. Such alterations could be positive or negative, depending on the characteristics of individual future developments and the subjective perception of observers.

Scenic corridors are considered public views as seen along a linear transportation route and scenic vistas are views of a specific scenic feature. Scenic vistas are generally interpreted as long range views, while scenic corridors are comprised of short-, middle-, and long-range views. The Milpitas General Plan, in Chapter 4.7, Scenic Resources and Routes, designates scenic routes, corridors, connectors, and a variety of other scenic resources (e.g. foothills and the tree-lined Coyote Creek corridor).

Potential future development permitted under the proposed Project would allow for special needs housing within the City's Residential, Commercial and Mixed Use Zoning designations and some minor modifications to residential housing as required by the Americans with Disabilities Act. Potential future residential facilities permitted under the proposed Project would be subject to the general development standards for that particular zone as set forth in City Municipal Code Sections (i.e. XI-10-4.04 [Residential], XI-10-5.03 [Commercial], XI-10-6.04 [Mixed-Use]). The general development standards as well as the following General Plan policies identified in Chapter 4.7, Scenic Resources and Routes, address the preservation of scenic vistas and corridors in the city.

Policy 4.g-I-1 Limit uses in Scenic Corridors to those uses allowed by right and conditionally in the R-1 Single-Family Residence and Park and Open Space Zoning Districts. Commercial development can only be allowed when its design will not result in a loss of any scenic potential.

Policy 4.g-I-3 Development in the Scenic Corridor shall not exceed 17 feet in height. The 17-foot height limit may be waived by the City Council when the following two criteria are met: (1) taller buildings are allowed through the underlying zoning district or a PUD process; and (2) development that exceeds the 17-foot height limit does not significantly obstruct views of the Hillside based on the following guide-

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

lines:

- The development will not significantly obstruct scenic features including but not limited to ridgelines, stands of trees or other vegetation, geologic formations, historic, or scenic structures.
- The development is sited to avoid destruction of any distinctive physical characteristics with significant scenic value.
- The development will avoid architectural features such as unusually long blank walls, unbroken roof lines, and excessively steep roof pitches which would detract from the scenic characteristics of the site.
- The scale of the project is consistent with the scale of existing development in the immediate vicinity and within the Scenic Corridor.
- The bulk of the building(s) will not dominate views of the corridor.
- Building materials and colors will blend in and complement the rural "natural" hillside setting (i.e., earth tones, stucco, clay, stone, wood, etc.).

Policy 4.g-I-4 Require all development within or abutting Scenic Corridors to be oriented away from the Corridors, with limited driveway access.

Policy 4.g-I-5 New development within the Scenic Corridor will be subject to site and architectural review ("S" zone Approval) by the Planning Commission. The review will include:

- reviewing architectural design and site planning of all development;
- requiring development that adjoins natural environments to use materials that help to blend buildings into the surroundings; and
- requiring parking, storage, and other such areas to be screened-off from view by using trees and shrubs.

Policy 4.g-I-6 Provide view turnouts, rest areas and picnic facilities at appropriate locations along Scenic Corridors.

As discussed above, potential future development permitted under the proposed Project would involve special needs housing that would be subject to the general development standards within the City's Municipal Code. Accordingly, the proposed Project would not be expected to significantly alter scenic viewsheds in Residential, Commercial and Mixed Use zones and overall impacts to scenic corridors and vistas within the city would be less than significant. Implementation of the listed General Plan policies would further ensure that impacts on scenic vistas would be *less than significant*.

b) The City of Milpitas is not adjacent to a designated State scenic highway and therefore *no impact* would occur.[2]

[2] California Department of Transportation website, Officially Designated State Scenic Highways, http://www.dot.ca.gov/hq/LandArch/scenic_highways/, accessed August 30, 2013.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
c) As discussed in Section I.a above, potential special needs housing permitted as a result of the proposed Project would be restricted to the existing built environment in areas were residential and transient uses are currently permitted and would be required to comply with enumerated development standards set forth in the City's Municipal Code to ensure compatibility with adjoining land uses. Additionally, implementation of the General Plan policies listed in Section I.a would protect the existing visual character or quality of the city and its surroundings. Accordingly, future development permitted under the proposed Project would result in a *less-than-significant* impact to visual character.				
d) Substantial light and glare comes mainly from commercial areas, safety lighting, traffic on major arterials and the freeway, and street lights. Future potential development permitted under the proposed Project does not include any land use changes that would re-designate areas from residential to commercial. Light pollution in most of the city is restricted primarily to street lighting along major arterials streets and to night-time illumination of commercial buildings, shopping centers, and industrial buildings. Potential special needs housing permitted under the proposed Project would occur in already largely built-out areas where street and site lighting currently exist. The proposed Project includes minimum performance standards that dictate the design of exterior lighting for Emergency Shelters to provide a minimum maintained horizontal illumination of at least one foot-candle of light on parking surfaces and walkways that serve the facility. Implementation of this performance standard would limit adverse impacts on surrounding development with regards to Emergency Shelters. Similar to the discussions in Sections I.a and I.c above, potential future development permitted under the proposed Project would be required to comply with enumerated general development standards set forth in the City's Municipal Code to ensure compatibility with adjoining land uses. These factors contribute to a *less-than-significant* impact with respect to light and glare.				

II. AGRICULTURE AND FORESTRY RESOURCES

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	❒	❒	❒	■
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	❒	❒	❒	■

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timber-land zoned Timberland Production (as defined by Government Code Section 51104(g))?	❒	❒	❒	■
d) Result in the loss of forest land or conversion of forest land to non-forest use?	❒	❒	❒	■
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use or of conversion of forest land to non-forest use?	❒	❒	❒	■

DISCUSSION:

a) Maps pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency categorize land within the city as primarily Urban and Built-Up Land.[3] There are no agricultural lands identified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance within the Zoning districts affected by the proposed Project, potential future development permitted as a result of the proposed Project would only occur within existing Residential, Commercial, and Mixed Use zoning designations. Therefore, there would be *no impact*.

b) The California Land Conservation (Williamson) Act 2010 Status Report identifies land in Santa Clara County that is currently under Williamson Act contract.[4] However, as discussed in response to Section II.a, there is no agricultural land within the affected zoning districts, and, therefore, implementation of the proposed Project would not conflict with existing zoning for agricultural use, or a Williamson Act contract. Consequently, there would be *no impact*.

c) According to 2003 mapping data from the California Department of Forestry and Fire Protection, the city does not contain any woodland or forest land cover;[5] thus, the city does not contain land zoned for Timberland Production and *no impact* would occur.

d) For the reasons provided in response to Sections II.a through II.c, there would be *no impact* in relation to the conversion of farmland to non-agricultural use or forest land to non-forest use.

e) See Sections II.b, II.c, and II.d above.

[3] California Resources Agency, Farmland Mapping and Monitoring Program. Santa Clara County Important Farmland 2010, ftp://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/regional/2010/bay_area_fmmp2010.pdf. accessed on August 29, 2013.

[4] California Department of Conservation, 2010, California Land Conservation (Williamson) Act 2010 Status Report, page 23, http://www.conservation.ca.gov/dlrp/lca/stats_reports/Documents/2010%20Williamson-%20Act%20Status %20Report.pdf, accessed on August 30, 2013.

[5] California Department of Forestry and Fire Protection Fire and Resource Assessment Program, Land Cover map, http://frap.cdf.ca.gov/webdata/maps/statewide/fvegwhr13_map.pdf accessed on August 29, 2013.

III. AIR QUALITY

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	❒	❒	❒	■
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	❒	❒	❒	■
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project area is in non-attainment under applicable federal or State ambient air quality standards (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	❒	❒	■	❒
d) Expose sensitive receptors to substantial pollutant concentrations?	❒	❒	❒	■
e) Create objectionable odors affecting a substantial number of people?	❒	❒	■	❒

DISCUSSION:

The Bay Area Air Quality Management District (BAAQMD) is the regional air quality agency for the San Francisco Bay Area Air Basin (SFBAAB), which comprises all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara Counties; the southern portion of Sonoma County; and the southwestern portion of Solano County. Accordingly, the City is subject to the rules and regulations imposed by the BAAQMD, as well as the California ambient air quality standards adopted by the California Air Resources Board (CARB) and national ambient air quality standards adopted by the United States Environmental Protection Agency (U.S. EPA).

a), b), d)

Potential future development permitted under the proposed Project could potentially have significant impacts on air quality through additional automobile trips associated with an additional housing units. However, the BAAQMD does not require project specific analysis for projects proposing less than 520 apartments/condominiums or resulting in less than 2,000 vehicle trips per day. If a project does not exceed either of these thresholds, it is typically assumed to have a less than significant impact on air quality. While no projects have been identified or are proposed as part of the Zoning Ordinance Amendments, the proposed Project would not result in any potential future development that would meet or exceed the current BAAQMD standards for air quality impacts.

Residential development in proximity to Interstates 680 and 880, State Route 237-Calaveras Boulevard, Montague Expressway, The Santa Clara Valley Transportation Authority (VTA) Light Rail line, the Union Pacific Railroad tracks could expose sensitive receptors to human health risks associated with toxic air contaminants (TACs). Concentrations of TACs such as diesel particulate matter are much higher near railroads traveled by locomotives and heavily traveled highways and intersections, and prolonged exposure can cause health risks such as cancer, birth defects, and neurological damage. Potential future development permitted under the proposed Project would not increase development potential, but rather would allow for special needs housing in Residential, Commercial and Mixed Use Zoning Districts where residential and transient uses are currently permitted. The HS Zoning District is located in several parts of the City and in some cases is near major thoroughfares. While no projects have been identified or are

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

proposed as part of the Zoning Ordinance Amendments, potential future development permitted under the proposed Project, as necessary, would be subject to separate environmental review as required under CEQA.

Given the proposed Project would not exceed BAAQMD standards of significance for air quality impacts and compliance with mandatory regulation (i.e. CEQA), potential future development permitted under the proposed Project will have *no impact* with respect to air quality.

c) The Bay Area 2010 Clean Air Plan is the current control strategy to reduce ozone, particulate matter (PM), air toxins, and greenhouse gases (GHGs) for the City of Milpitas. The 2010 Clean Air Plan was based on the Association of Bay Area Governments' (ABAG) population and employment projections for the San Francisco Bay area, including growth that would be accommodated under the City's General Plan. The Bay Area Air Quality Management District (BAAQMD) monitors air quality at several locations in the San Francisco Bay Air Basin. Historically, problematic criteria pollutants in urbanized areas include ozone, particulate matter, and carbon monoxide. Combustion of fuels and motor vehicle emissions are a major source of each of these three criteria pollutants. Milpitas is within the San Francisco Bay Area Air Ozone non-attainment area as delineated by the U.S. Environmental Protection Agency (U.S. EPA).

As discussed in Section III.a above, potential future development permitted under the proposed Project would not increase development potential (no new automobile trips or additional housing units), but rather would allow for new types of special needs housing where residential and transient housing is currently permitted and accounted for in the General Plan. Therefore, no increase of criteria air pollutants would occur as a result of potential future development permitted under the proposed Project and impacts would be *less than significant*.

e) Odors are also an important element of local air quality conditions. Specific activities allowed within each land use category can raise concerns related to odors on the part of nearby neighbors. Major sources of odors include restaurants and wastewater treatment plants. While sources that generate objectionable odors must comply with air quality regulations, the public's sensitivity to locally produced odors often exceeds regulatory thresholds.

The special needs housing that would be permitted under the proposed Project is not considered a major source of odor and would not create objectionable odors to surrounding sensitive land uses. Furthermore, Section XI-10-6.02, Mixed Use Regulations, and Section XI-10-5.04, Commercial Zone Special Development Standards, of the City's Municipal Code, provides regulations to prevent objectionable odors to sensitive receptors (i.e. residential housing). Compliance with these existing standards would result in *less-than-significant* odor impacts.

IV. BIOLOGICAL RESOURCES

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	❒	❒	■	❒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	❒	❒	❒	■
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	❒	❒	❒	■
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	❒	❒	❒	■
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	❒	❒	■	❒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?	❒	❒	❒	■

DISCUSSION:

a) Special status plants include those listed as "Endangered," "Threatened," or "Candidate for Listing" by the California Department of Fish and Wildlife (CDFW); the U.S. Fish and Wildlife Service (USFWS), that are included in the California Rare Plant Rank, or that are considered special-status in local or regional plans, policies, or regulations. Special status animals include those listed as "Endangered," "Threatened," or "Candidate for Listing" by the CDFW or the USFWS, that are designated as "Watch List," "Species of Special Concern," or "Fully Protected" by the CDFW, or that are considered "Birds of Conservation Concern" by the USFWS. There are occurrences of plant and animal species with special-status within the city limits.[6]

Potential future development permitted under the proposed Project would not increase development

[6] Milpitas General Plan, Chapter 4, Open Space and Environmental Conservation Element, Table 4-3 Species with Special Status and Table 4-4 Special California Department of Fish and Games Designation, Table 4-5 Inventory of Rare and Endangered Vascular Plants for Milpitas and Calaveras Reservoir Quads, page 4-8 and 4-9.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

potential, but rather would allow for new types of residential housing in the City's Residential, Commercial and Mixed Use Zoning designations. Potential impacts from construction of special needs housing would most likely be related to the removal of trees and other vegetation in these habitats during the nesting season of the migratory birds found in Milpitas.

The following General Plan policies protect special-status species associated with potential future development.

Policy 4.b-I-2 Preserve remaining stands of trees.

Policy 4.b-I-4 Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.

Policy 4.d-P-4 Where consistent with other policies, preserve, create, or restore riparian corridors and wetlands. Where possible, set back development from these areas sufficiently to maximize habitat values.

Policy 4.b-I-5 Utilize sensitive species information acquired through biological assessments, project land use, planning and design.

Implementation of these General Plan policies as well as compliance with Municipal Code Chapters 2, Tree Maintenance and Protection, federal and State laws, including but not limited to, the Migratory Bird Treaty Act, Clean Water Act, Federal and California Endangered Species Acts, and California Native Plant Protection Act would ensure impacts to special-status species associated with potential future development would be *less than significant*.

b), c) As previously discussed the zoning designations affected through implementing the proposed Project include Residential, Commercial and Mixed Use zones. While there is riparian habitat (i.e. Coyote Creek, Calaveras Reservoir, Sandy Wool Lake) in the city limits and surrounding areas, as shown on the City's October 2012 Zoning Map and General Plan Land Use Map, these areas are not within the affected Zoning Districts under the proposed Project.

Furthermore, wetlands and other waters are protected under the federal Clean Water Act and the State's Porter-Cologne Water Quality Control Act are under the jurisdiction of the U.S. Army Corps of Engineers and the San Francisco Bay Regional Water Quality Control Board. Federal and State regulations require avoidance of impacts to the extent feasible, and compensation for unavoidable losses of jurisdictional wetlands and waters. Compliance with the General Plan policies described in Section IV.a above would ensure *no impact* would occur to riparian and wetland habitats as a result of potential future development under the proposed Project..

d) As discussed in Sections IV.b and IV.c, zoning districts affected by the proposed Project are not located on wildlife dispersal routes such as riparian corridors, and potential future development associated with special needs would not be expected to contribute to habitat fragmentation which would interfere with wildlife migration. Therefore, *no impact* to wildlife movement corridors would occur.

e) Chapter 2 of the City's Municipal Code is known as the "Tree Maintenance and Protection Ordi-

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
nance of the City of Milpitas" to preserve, when feasible, all trees and plantings on City property, and all protected plantings of significant size, age, and/or benefit to the community at large. If potential future development under the proposed Project were to impact an approved tree, it would be required to comply with the City's Tree Maintenance and Protection Ordinance before any tree could be removed. Tree removal permits would be secured before any qualifying tree removal action occurred. Potential future housing development permitted under the proposed Project would have to comply with this City ordinance. With adherence to the General Plan policies described in Section IV.a and this ordinance, no conflicts are anticipated, and impacts would be considered *less than significant*. f) There are no habitat conservation plans or natural community conservation plans within the city limits, therefore implementation of the proposed Project will not conflict with any. Consequently, there would be *no impact*.				

V. CULTURAL RESOURCES

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in Section15064.5?	❒	❒	❒	■
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	❒	❒	❒	■
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	❒	❒	❒	■
d) Disturb any human remains, including those interred outside of formal cemeteries?	❒	❒	❒	■

DISCUSSION:

a)-d) As described in the City's General Plan Open Space and Conservation Element, there are 15 sites officially designated and locally registered as Milpitas Cultural Resources. Cultural resources and historic districts are designated by the City Council on the advice of the Parks, Recreation, and Cultural Resources Commission. Procedures to identify and designate historical and cultural resources and to guide their preservation are outlined in the City's Municipal Code Chapter, Cultural Resources Preservation Program.[7] In addition, Cultural resources are protected by federal and State regulations and standards, including, but not limited to the National Historic Preservation Act, the California Public Resources Code, and CEQA. Given the largely built-out nature of Milpitas, the possibility is low that undiscovered archeological and unique paleontological resources or human remains may be found in the course of construction activities under the proposed Project. Any future development that would occur under the proposed Project would be required to comply with the City's Municipal Code and State and federal regulations. For example, future potential development carried out under the proposed Project would be

[7] City of Milpitas General Plan, Chapter 4, Open Space and Conservation Element, page 4-17.

obligated to cease construction or other activities, and report any discovery of potentially significant resources in compliance with State law (Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code). Compliance with the City's Municipal Code as well as federal and State laws, would ensure *no impact* would occur to cultural resources associated with potential future development under the proposed Project.

VI. GEOLOGY AND SOILS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving: i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? ii) Strong seismic ground shaking? iii) Seismic-related ground failure, including liquefaction? iv) Landslides, mudslides or other similar hazards?	❒	❒	■	❒
b) Result in substantial soil erosion or the loss of topsoil?	❒	❒	■	❒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	❒	❒	■	❒
d) Be located on expansive soil, as defined in Section 1803.5.3 of the California Building Code (2010), creating substantial risks to life or property.	❒	❒	■	❒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?	❒	❒	❒	■

DISCUSSION:

a) i.-iv) As described in Chapter 5, Seismic and Safety Element of the City's General Plan and shown on General Plan Figure 5-2, Seismic and Geotechnical Evaluation Requirements, shows the state-defined Special Studies Zone for Milpitas that traverses the center of the city in a north-south direction. Portions of the Zoning Districts affected by the proposed Project (i.e. Residential, Commercial and Mixed Use). Figure 5-2 also identifies the requirements for undertaking studies prior to development in areas with potential geotechnical hazards such as liquefaction and landslides. Title II, Building Regulations of the Municipal Code, includes the standards for building in Milpitas. The City has formally adopted the 2010 Edition of the California Building Code, Volumes 1 and 2, California Building Standards Code, known as the California Code of Regulations, Title 24, Part 2, in Chapter 3, Building Code, Section II-3-1.01. Potential future development would be subject to these standards that would minimize the potential risk of ground

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

shaking, ground failure, liquefaction, landslides mudslides, or similar hazards posed to people or structures. In addition, the following General Plan policies would apply to future development in Milpitas:

Policy 5.a-I-1 Require all projects within the Alquist-Priolo Special Studies Zone to have geologic investigations performed to determine the locations of active fault traces before structures for human occupancy are built.

Policy 5.a-I-2 Require applications of all projects in the Hillside Area and the Special Studies Zone to be accompanied by geotechnical reports ensuring safety from seismic and geologic hazards.

Policy 5.a-I-3 Require projects to comply with the guidelines prescribed in the City's *Geotechnical Hazards Evaluation* manual.

Compliance with existing federal, State, and local regulations and the policies listed above would ensure that the impacts associated with seismic hazards are minimized to the maximum extent practicable. Consequently, overall, associated seismic hazards impacts would be *less than significant*.

b) Substantial soil erosion or loss of topsoil during construction could undermine structures and minor slopes, and this could be a concern future development in the City. However, compliance with existing regulatory requirements, such as implementation of erosion control measures as specified in Municipal Code Title II, Chapter 13, Section II-13-10, Erosion Control, includes requirements for control of erosion and sedimentation during grading and construction. Compliance with this Section would reduce impacts from erosion and the loss of topsoil. Therefore, through adherence to existing regulatory requirements impacts associated with substantial erosion and loss of topsoil during potential future development under the proposed Project would be *less than significant*.

c), d) Unstable geologic units and expansive soils are known to be present within city and mapped in General Plan Figure 5-1, Geotechnical Hazards, of the Seismic and Safety Element. This map shows that portions of the Zoning Districts affected by the proposed Project are identified as having unstable soils. However, compliance with General Plan Policy 5.a-I-3, which requires projects to comply with the guidelines prescribed in the City's Geotechnical Hazards Evaluation manual, would reduce the potential impacts to future development from an unstable geologic unit or soil to a *less-than-significant* level.

e) Potential future development under the proposed Project will only affect zones in the existing built environment in areas were residential and transient uses are currently permitted. Connection to the sewer system is available in these areas; therefore, *no impact* regarding the capacity of the soil in the area to accommodate septic tanks or alternate wastewater disposal systems would occur.

VII. GREENHOUSE GAS EMISSIONS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment?	❒	❒	■	❒
b) Conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing GHGs?	❒	❒	■	❒

DISCUSSION:

a), b) In 2006, California adopted Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006. AB 32 established a statewide GHG emissions reduction goal to reduce statewide GHG emissions levels to 1990 levels by 2020. AB 32 established a legislative short-term (2020) mandate for state agencies in order to set the State on a path toward achieving the long-term GHG reduction goal of Executive Order S-03-05 to stabilize carbon dioxide (CO_2) emissions by 2050. The City of Milpitas adopted a qualified *Climate Action Plan* (CAP) – A Qualified Greenhouse Gas Reduction Strategy to ensure consistency with statewide efforts to reduce GHG emissions under AB 32 on May 7, 2013.

The Zoning Ordinance is a regulatory document that establishes various districts within the boundaries of the city and restrictions for erecting, constructing, altering, or maintaining certain buildings, identifying certain trades or occupations, and makes certain uses of lands. The Zoning Ordinance includes performance standards that set forth the height and bulk limits of buildings, the open spaces limits that shall be required about buildings and other appropriate regulations to be enforced in each districts. The Zoning Ordinance does not directly result in development in and of itself. Before any development can occur in the city, all such development is required to be analyzed for conformance with the General Plan, Zoning Ordinance, and other applicable local and State requirements; comply with the requirements of CEQA; and obtain all necessary clearances and permits.

Future development in Milpitas could contribute to global climate change through direct and indirect emissions of GHG from transportation sources, energy (natural gas and purchased energy), water/wastewater use, waste generation, and other off-road equipment (e.g. landscape equipment, construction activities). Potential future development under the proposed Project would not increase development potential in Milpitas beyond what was considered in the General Plan and the 2010 Housing Element. Consequently, implementation of the proposed Project would result in a *less-than-significant* impact related to contributing to GHG emissions that could have a significant effect on the environment and conflicting with an applicable plan adopted for the purpose of reducing GHG emissions.

VIII. HAZARDS AND HAZARDOUS MATERIALS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?	❒	❒	■	❒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	❒	❒	■	❒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school?	❒	❒	■	❒
d) Be located on a site which is included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment?	❒	❒	❒	■
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	❒	❒	❒	■
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	❒	❒	❒	■
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	❒	❒	❒	■
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	❒	❒	■	❒

DISCUSSION:

a) State-level agencies, in conjunction with the U.S. Environmental Protection Agency (U.S. EPA) and Occupational Safety and Health Administration (OSHA) regulate removal, abatement, and transport procedures for asbestos-containing materials. Asbestos-containing materials ("ACM") are materials that contain asbestos, a naturally-occurring fibrous mineral that has been mined for its useful thermal properties and tensile strength. Releases of asbestos from industrial, demolition, or construction activities are prohibited by these regulations and medical evaluation and monitoring is required for employees performing activities that could expose them to asbestos. Additionally, the regulations include warnings that must be heeded and practices that must be followed to reduce the risk for asbestos emissions and exposure. Finally, federal, State, and local agencies must be notified prior to the onset of demolition or construction activities with the potential to release asbestos.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

Lead-based paint ("LBP"), which can result in lead poisoning when consumed or inhaled, was widely used in the past to coat and decorate buildings. Lead poisoning can cause anemia and damage to the brain and nervous system, particularly in children. Like ACM, LBP generally does not pose a health risk to building occupants when left undisturbed; however, deterioration, damage, or disturbance will result in hazardous exposure. In 1978, the use of LBP was federally banned by the Consumer Product Safety Commission. Therefore, only buildings built before 1978 are presumed to contain LBP, as well as buildings built shortly thereafter, as the phase-out of LBP was gradual.

The U.S. EPA prohibited the use of Polychlorinated Biphenyls (PCBs) in the majority new electrical equipment starting in 1979, and initiated a phase-out for much of the existing PCB-containing equipment. The inclusion of PCBs in electrical equipment and the handling of those PCBs are regulated by the provisions of the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. (TSCA). Relevant regulations include labeling and periodic inspection requirements for certain types of PCB-containing equipment and outline highly specific safety procedures for their disposal. The State of California likewise regulates PCB-laden electrical equipment and materials contaminated above a certain threshold as hazardous waste; these regulations require that such materials be treated, transported, and disposed accordingly. At lower concentrations for non-liquids, regional water quality control boards may exercise discretion over the classification of such wastes.
The California Division of Occupational Safety and Health's (Cal OSHA) Lead in Construction Standard is contained in Title 8, Section 1532.1 of the California Code of Regulations. The regulations address all of the following areas: permissible exposure limits (PELs); exposure assessment; compliance methods; respiratory protection; protective clothing and equipment; housekeeping; medical surveillance; medical removal protection (MRP); employee information, training, and certification; signage; record keeping; monitoring; and agency notification.

In the event of a hazardous material emergency several agencies are responsible for timely response, depending on the extent, and type of the incident. The Santa Clara County Hazardous Materials Response Team is composed of representatives of the Santa Clara County Fire Department, California Department of Forestry, and member cities and responds to large-scale, emergency hazardous material incidents within the city. The Milpitas Fire Department is responsible for non-emergency hazardous materials reports within the city. If and when these non-emergency incidents become a threat to groundwater supplies, the Regional Water Quality Control Board takes control of the case. The Milpitas Fire Department also monitors above ground and underground storage tanks and combustible and flammable liquids for leaks and spills.

Potentially hazardous building materials (i.e. ACM, lead-based paint, PCBs, mercury) may be encountered during the demolition of existing structures. The removal of these materials (if present) by contractors licensed to remove and handle these materials in accordance with existing federal, State, and local regulations would insure that risks associates with the transport, storage, use, and disposal of such materials would be *less than significant*.

Common cleaning substances, building maintenance products, paints and solvents, and similar items would likely be stored, and used, at the future residential developments that could occur under the proposed Project. These potentially hazardous materials, however, would not be of a type or occur in sufficient quantities to pose a significant hazard to public health and safety or the environment. Consequently, associated impacts from implementation of the Plan Components would be *less than significant*.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

b) As described in Section VIII.a above, the storage and use of common cleaning substances, building maintenance products, paints and solvents in the potential development planned for under the proposed Project could likely occur; however, these potentially hazardous substances would not be of a type or occur in sufficient quantities on-site to pose a significant hazard to public health and safety or the environment. Consequently, overall, associated hazardous materials impacts would be *less than significant*.

c) While the majority of schools in Milpitas are within ¼-mile of a zone affected by the proposed Project, the changes merely allow for new residential uses in Residential, Commercial, and Mixed Use zones. As such there would be no increase in the risk of hazardous emissions as discussed above in Sections VIII.a and VIII.b above. As a result impacts to schools would be a *less than significant*.

d) There are no Department of Toxic Substance Control sites within the city included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.[8] Therefore, *no impact* would result.

e), f) The nearest public use airport to the city is the Norman Y. Mineta San José International Airport, located in San José, California approximately 2 miles southwest of the city. The Comprehensive Land Use Plan for this airport indicates that portions of the city fall within the noise restriction area, height restriction area, and safety restriction areas of the Airport Influence Area.[9] The two closest private air facilities to Milpitas are the Flea Port Heliport the City of San Jose and McCandless Towers Heliport in the City of Santa Clara. However, neither of these facilities is considered in close proximity to the city. Nonetheless, potential future development under the proposed Project would involve special needs housing within the existing built environment in areas where residential and transient uses are currently permitted and would not negatively affect operation of an airport trough resulting height, light interference, or land use incompatibility. Therefore, *no impact* would occur.

g) The City participates in the ABAG Local Hazards Plan and adopted the 2005 City of Milpitas Emergency Plan.[10] The City maintains the Emergency Plan to deal with natural or man-made disasters. The objectives of the Emergency Plan are to prepare for and facilitate coordinated and effective responses to emergencies within the city and to provide assistance to other jurisdictions as needed. The Emergency Plan specifies actions for the coordination of operations, management and resources, and responsibilities of the different departments and governmental agencies during emergency events. Evacuation routes are to be determined as appropriate depending on the nature of the emergency.[11] Future potential development associated with the proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. The type of anticipated development associated with special needs housing would primarily be restricted to the existing built environment in areas where residential and transient uses are currently permitted; therefore, it would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Consequently, *no impact* would occur.

[8] Department of Toxic Substances Control, http://www.envirostor.dtsc.ca.gov/public, accessed September 4, 2013.

[9] Comprehensive Land Use Plan, Santa Clara County, Norman Y. Mineta San José International Airport, adopted May 25, 2011.

[10] City of Milpitas http://www.abag.ca.gov/bayarea/eqmaps/mitigation/Milpitas-Annex.pdf accessed September 4, 2013.

[11] City of Milpitas General Plan, Chapter 5, Seismic and Safety Element, pages 5-12 and 5-13.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
h) The California Department of Forestry and Fire Hazard Protection (CAL FIRE) is responsible for the identification of very high fire hazard severity zones and transmission of these maps to local government agencies. According to maps prepared by CAL FIRE's, the entire city is categorized as a Non-Very High Fire Hazard Severity Zone under both Local Responsibility Area and State or Federal Responsibility Area.[12] Additionally, as discussed in Section VIII.g above, potential future development under the proposed Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. The type of special needs housing associated with the proposed Project would occur within the highly urbanized areas of Milpitas and would not be surrounded by woodlands or vegetation that would provide fuel load for wildfires. Because the city is not designated as having high, very high, or extreme fire threat, as determined by CAL FIRE's Wildlife Urban Interface Fire Threat data, and any potential future development would be constructed pursuant to the standards set forth in Chapter 3, Building Code, Section II-3-1.01 for the City's Municipal Code, the California Fire Code and the Milpitas Fire Department Code, impacts would be *less than significant*.				

IX. HYDROLOGY AND WATER QUALITY

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	❒	❒	■	❒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a significant lowering of the local groundwater table level?	❒	❒	■	❒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	❒	❒	■	❒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	❒	❒	■	❒
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm-water drainage systems?	❒	❒	■	❒

[12] Cal Fire http://frap.cdf.ca.gov/webdata/maps/santa_clara/fhszl_map.43.pdf accessed September 4, 2013.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Otherwise substantially degrade water quality?	❒	❒	■	❒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	❒	❒	■	❒
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	❒	❒	■	❒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	❒	❒	■	❒
j) Inundation by seiche, tsunami, or mudflow?	❒	❒	■	❒

DISCUSSION:

a) The City collects and disposes its stormwater via a storm drainage network consisting of catch basins, conveyance piping, pump stations, and outfalls to creeks. The City has 123 miles of storm pipe, 3,000 catch basins, approximately 4 miles of drainage ditches and creeks, and stormwater pump stations. Stormwater collection efforts are guided by the Floodplain Management Plan, which is a compilation of different management sources, and is designed to be a flexible and growing instrument.[13]

Thirteen cities and towns in the Santa Clara Valley, Santa Clara County, and the Santa Clara Valley Water District, bound by a Memorandum of Agreement (MOA), formed the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) to regulate, monitor, and improve Santa Clara Valley water quality and implement the National Pollutant Discharge Elimination System (NPDES) Municipal Storm Water Permit for the area. The City of Milpitas is a member of SCVURPPP, which works with participating cities and towns and the San Francisco Regional Water Quality Control Board (SFRWQCB) on solutions for controlling runoff quality, in compliance with NPDES Municipal Storm Water Permit.[14]

Title XI, Chapter 16 of the City's Municipal Code provides regulations and give legal effect to certain requirements of the Waste Discharge Requirements and NPDES permit for the discharge of stormwater runoff from the City's municipal separate storm sewer (MS4), issued by the SFRWQCB to the City of Milpitas. Title II, Chapter 13 of the Municipal Code includes requirements for control of erosion and sedimentation during grading and construction Additionally, the following General Plan policies identified in Chapter 4, Open Space and Conservation Element protect water quality in Milpitas:

Policy 4.d-P-1 Implement a comprehensive municipal stormwater pollution-prevention program in compliance with requirements of the Water Board's stormwater NPDES permit.

Policy 4.d-P-3 Work cooperatively with other cities, towns, and the Santa Clara Valley Water District to comply with regulations, reduce pollutants in runoff, and protect and enhance water resources in the Santa Clara Basin.

Policy 4.d-P-4 Where consistent with other policies, preserve, create, or restore riparian corridors and wetlands. Where possible, set back development from these areas sufficiently to maximize habitat values.

[13] City of Milpitas General Plan, Chapter 2, Seismic and Safety Element, page 5-9 and 5-10.

[14] Santa Clara Valley Urban Runoff Pollution Prevention Program, About SCVURPPP, http://www.scvurppp-w2k.com/about_scvurppp.shtml, accessed on August 30, 2013.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

Policy 4.d-P-5 Where feasible, conform developments to natural landforms, avoid excessive grading and disturbance of vegetation and soils, retain native vegetation and significant trees, and maintain natural drainage patterns.

Policy 4.d-P-6 Where possible, avoid new outfalls to natural or earthen channels.

Policy 4.d-P-7 Applicable projects shall minimize directly connected impervious area by limiting the overall coverage of paving and roofs, directing runoff from impervious areas to adjacent pervious areas, and selecting permeable pavements and surface treatments.

Policy 4.d-P-8 Applicable projects shall incorporate facilities (BMPs) to treat stormwater before discharge from the site. The facilities shall be sized to meet regulatory requirements.

Policy 4.d-P-9 Applicable projects shall control peak flows and duration of runoff where required to prevent accelerated erosion of downstream watercourses.

Policy 4.d-P-12 Construction sites shall incorporate measures to control erosion, sedimentation, and the generation of runoff pollutants to the maximum extent practicable. The design, scope and location of grading and related activities shall be designed to cause minimum disturbance to terrain and natural features. (Title II, Chapter 13 of the Municipal Code includes requirements for control of erosion and sedimentation during grading and construction.)

Potential future development under the proposed Project would be subject to the oversight and review processes, and standards that are envisioned by the General Plan, established within the Municipal Code, and/or otherwise required by the State/federal regulations. Therefore, compliance with these existing regulations would result in *less than significant* water quality impacts.

b) Potential future development under the proposed Project would have a significant environmental impact if it would result in a net deficit in aquifer volume or a lowering of the local groundwater table level. As shown above in Section IX.a above, General Plan Policy 4.d-P-7 states that applicable projects shall minimize directly connected impervious areas by limiting the overall coverage of paving and roofs, directing runoff from impervious areas to adjacent pervious areas, and selecting permeable pavements and surface treatments. Other physical changes that could occur as a result of implementing the proposed Project would occur within the existing built environment in areas where residential and transient uses are currently permitted and would not interfere with groundwater recharge. The proposed Project would not result in any additional development potential in the city beyond what was considered in the 2010 Housing Element and no additional water demand would occur. Consequently, impacts would be *less than significant.*

c), d) The proposed Project would result in a significant environmental impact if it would require modifications to drainage patterns that could lead to substantial erosion of soils, siltation, or flooding. Such drainage pattern changes could be caused by grade changes, the exposure of soils for periods of time during which erosion could occur, or alterations to creekbeds. Potential future development as a result of the

[15] City of Milpitas General Plan, Chapter 2, Seismic and Safety Element, page 5-9 and 5-10.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

proposed Project would occur within the built environment and would not involve the direct modification of any watercourse. If unforeseen excessive grading or excavation were required, then pursuant to the State Water Quality Control Board (SWQCB) Construction General Permit, a Storm Water Pollution Prevention Plan (SWPPP) would be required to be prepared and implemented for the qualifying projects under the proposed Project, which would ensure that erosion, siltation, and flooding is prevented to the maximum extent practicable during construction. Overall, construction associated with potential future development permitted under the proposed Project would not result in substantial erosion, siltation, or flooding either on- or off-site, and associated impacts would be *less than significant*.

e) Physical changes that could occur as a result of implementing the proposed Project could increase impervious surfaces that could create of contribute to runoff water that would exceed the City's stormwater drainage systems. However, the type of anticipated development associated with special needs housing would primarily be restricted to the existing built environment in areas where residential and transient uses are currently permitted. Additionally, regulations in the General Plan including Policy 4.d-P-7 serve to minimize impermeable surfaces and decrease runoff. The combination of these two factors would ensure that impacts related to stormwater drainage runoff would be less than significant.

f) A principal source of water pollutants is stormwater runoff containing petrochemicals and heavy metals from parking lots and roadways. Given that the proposed Project would not create such surfaces or increase vehicular use of existing parking lots and roadways, implementation of the proposed Project would not contribute to these types of water pollutants. As discussed under Section IX.c and IX.d, where excessive construction related grading or excavation is required, pursuant to the SWQCB Construction General Permit, a SWPPP would be required to be prepared and implemented for the qualifying projects under the proposed Project, which would reduce polluted runoff to the maximum extent practicable during construction phases. Furthermore, implementation of the proposed Project would be subject to the oversight and review processes and standards that are envisioned by the General Plan. As such, compliance with these existing regulations would result in *less-than-significant* water quality impacts.

g), h) Milpitas is located within the East Zone of the Flood Control benefit Assessment District, the proceeds of which go to the Santa Clara Valley Water District to provide maintenance and an increased level of flood protection by accelerating construction projects throughout the County, some of which are in Milpitas. As shown on General Plan Figure 5-3, About half of the City's Planning Area Valley Floor lies within one of the Special Flood Hazard. Almost all land west of the Southern Pacific Railroad lies within the 100-year Flood Zone and all land west of Highway 680 is part of the 500-year Flood Zone. Zoning districts affected by implementing the proposed Project are within these identified flood zones.

The type of anticipated development associated with special needs housing would primarily be restricted to the existing built environment in areas were residential and transient uses are currently permitted. Criteria for protection from a 100-year flood hazard is provided in Title XI, Chapter 15, Floodplain Management Regulations, of the Municipal Code. The following General Plan policies protect housing within the 100-year Flood Zone and restrict the placement of structures which would impede or redirect flood flows:

Policy 5.b-I-1 Ensure that new construction or substantial improvements to any existing structure result in adequate protection from flood hazards. This includes ensuring that:

- New residential development within the 100-year Flood Zone locate the lowest floor, including

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

basement, above the base flood elevation; and

- New non-residential development locate the lowest floor, including basement, above the base flood elevation or incorporate flood-proofing and structural requirements as spelled out in the Municipal Code (Title XI Chapter 15).

Policy 5.b-I-2 Require all structures located within the 100-year Flood Zone to provide proof of flood insurance at the time of sale or transfer of title.

Policy 5.b-I-3 Ensure that encroachment into designated floodways does not result in any increase in flooding hazards.

Potential future development under the proposed Project would be required to comply with these existing regulations. Consequently, implementation of the proposed Project would result in *less-than-significant* impacts.

i) According to the State Office of Emergency Services for Santa Clara County, parts of the City along the Calaveras Road area east of I-680 could be inundated by failure of the 38-foot high Sandy Wool Lake Dam, located in Ed Levine Park. This is shown on Figure 5-3 of the City's General Plan in Chapter 5, Seismic and Safety Element. The area could be inundated in as soon as 15 minutes from the time of dam failure, affecting a population of about 4,900. The Office of Emergency Services maintains an evacuation plan in the unlikely event that a failure of the dam were to occur.[15] As discussed above in Section VIII.c, the City maintains an Emergency Plan to deal with natural or man-made disasters. Evacuation routes are to be determined as appropriate depending on the nature of the emergency. Compliance with the General Plan Policy 5.b-I-4 calls for the City to continue working with the Office of Emergency Services to update and maintain the Sandy Wool Lake Dam failure evacuation plan. General Plan policies and regulations identified in Section IX.g and IX.h above would ensure impacts from damn failure would be *less than significant*.

j) The city is not located close to a large body of water, tidal, or otherwise that could result in inundation by seiche or tsunami. The city is located approximately 30 miles east of the Pacific Ocean, approximately 5 miles south of San Francisco Bay, approximately 5 miles west of the Calaveras Reservoir, and 2 miles west of Sandy Wool Lake Dam, located in Ed Levine Park. Given its distance from these bodies of water, the city is not at risk of inundation in the event of tsunami or seiche and impacts would be *less than significant*.

X. LAND USE AND PLANNING

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community?	❒	❒	❒	■

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	❒	❒	■	❒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	❒	❒	❒	■

DISCUSSION:

a) Implementation of the proposed Project would not involve any structures, land use designations or other features (i.e. freeways, railroad tracks) that would physically divide an established community. The type of anticipated development associated with special needs housing would primarily be restricted to the existing built environment in areas were residential and transient uses are currently permitted. Therefore *no impact* would result.

b) As previously described in the Project Description above, the purpose of the proposed Project is to amend Chapter 10 (Zoning) of Title XI (Zoning, Planning, and Annexation) of the Milpitas Municipal Code to allow for special needs housing including emergency shelters, transitional and supportive housing, single room occupancy units and reasonable accommodations consistent with the City's 2010 General Plan Housing Element. Therefore, impacts regarding conflicts with applicable plans, policies, or regulations would be *less than significant*.

c) As discussed above in Section IV.f above, there are no habitat conservation plans or natural community conservation plans within the city limits, therefore implementation of the proposed Project will not conflict with any. Consequently, there would be *no impact*.

XI. MINERAL RESOURCES

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	❒	❒	❒	■
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	❒	❒	❒	■

DISCUSSION:

a), b) The Planning Area considered in the Milpitas General Plan includes four areas identified by the State Geologist as containing Regionally Significant Construction Aggregate Resources. However, these areas are located outside of the city limits. The proposed Project will only have the potential to affect areas that are incorporated into the city of Milpitas. Therefore, the proposed project will have no impact with respect to know mineral resources.

XII. NOISE

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	❒	❒	■	❒
b) Expose persons to or generate excessive ground-borne vibration or ground borne noise levels?	❒	❒	■	❒
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	❒	❒	■	❒
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	❒	❒	■	❒
e) If located within an airport land use plan or where such a plan has not been adopted, within two miles of a public airport or public use airport, expose people residing or working in the project area to excessive noise levels?	❒	❒	■	❒
f) If within the vicinity of a private airstrip, expose people residing or working in the project area to excessive noise levels?	❒	❒	■	❒

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

DISCUSSION:

a)-f) The type of anticipated development associated with special needs housing would primarily be restricted to the existing built environment in areas where residential and transient uses are currently permitted. The 2010 Housing Element and its Mitigated Negative Declaration anticipated and directly stipulated the proposed amendments to the Zoning Ordinance. The provisions of the proposed Project would not contravene any aspects of the General Plan, including land use designations, noise limits, or other restrictions that address noise impacts. Though future potential development permitted under the proposed Project may potentially be noise-generating during construction phases, all potential future development pursued under the proposed Project would be subject to the oversight and review processes and standards that are envisioned by the General Plan, established within the City Municipal Code, and/or otherwise required by the state and federal regulations.

Title V (Public Health, Safety and Welfare), Chapter 213 (Noise Abatement) regulates excessive sound and vibration in residential areas of the City of Milpitas. Additionally, General Plan Chapter 6, Noise Element, includes policy statements to guide public and private planning to attain and maintain acceptable noise levels. For example, Policy 6-I-3 prohibits new construction where the exterior noise exposure is considered "clearly unacceptable" for the use proposed and Policy 6-I-5. All new residential development (single-family and multi-family) and lodging facilities must have interior noise levels of 45 decibels (dB) Day-Night Noise Level (DNL) or less. Mechanical ventilation will be required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels. Compliance with these existing regulations would ensure that the proposed Project would neither cause new noise impacts nor exacerbate any existing ones. Accordingly, noise impacts associated with implementing the proposed Project would be *less than significant*.

XIII. POPULATION AND HOUSING

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	❒	❒	■	❒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	❒	❒	❒	■
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	❒	❒	❒	■

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

DISCUSSION:

a) The proposed Project would be considered to result in a substantial and unplanned level of growth if estimated buildout exceeded local and regional growth projections (e.g., by proposing new homes or businesses). Implementation of the proposed Project would not result in any additional housing beyond what was considered in the 2010 General Plan Housing Element and thus would not directly induce substantial population growth. The proposed Project makes minor modifications to the uses currently permitted in the existing Zoning Districts in the city to allow for Emergency Shelters, SRO, and Supportive and Transitional housing, where other similar transient land uses are currently permitted. Additionally, the proposed Project would not extend roads or other infrastructure, and thus would not indirectly induce substantial population growth. Thus, a *less-than-significant* impact would occur in relation to population growth.

b), c) Because the proposed Project only involves changes to the permitting of uses and in no way increases the restrictiveness of the Code, nothing in the Code would serve to displace housing or people. The proposed Zoning Ordinance Amendment prescribes standards, but doesn't mandate the exact use of the land. Therefore, market conditions and a variety of other factors will be the primary determinates of the increase or decrease in the number of housing units and residents in Milpitas. Consequently, impacts with respect to displacing housing units or residents would be *less than significant*.

XIV. PUBLIC SERVICES

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	❒	❒	❒	■
Police protection?	❒	❒	❒	■
Schools?	❒	❒	❒	■
Parks?	❒	❒	❒	■
Other public facilities	❒	❒	❒	■

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

DISCUSSION:

a) The primary purpose of a public services impact analysis is to examine the impacts associated with physical improvements to public service facilities required to maintain acceptable service ratios, response times or other performance objectives. Public service facilities need improvements (i.e. construction of new, renovation or expansion of existing) as demand for services increases. Increased demand is typically driven by increases in population. The proposed Project would have a significant environmental impact if it would exceed the ability of public service providers to adequately serve the residents of the city, thereby requiring construction of new facilities or modification of existing facilities. As discussed in Section XII, Population and Housing, above, the proposed Project would not directly or indirectly result in population growth. The proposed Project does not include the construction of any new public service facilities or expansion of existing facilities. The proposed Project will not increase development potential beyond what was considered in the 2010 General Plan Housing Element. Further, the provisions of the proposed Project would not contravene any aspects of the General Plan, including land use designations and allowed building intensities that could impact demand for City services. Implementation of the proposed Project would therefore neither cause new impacts in regard to provision of City services nor exacerbate any existing ones; thus, *no impact* would occur.

XV. RECREATION

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impac t
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	❒	❒	❒	■
b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	❒	❒	❒	■

DISCUSSION:

a), b) Because implementation of the proposed Project would not directly or indirectly result in population growth as discussed in Section XII, Population and Housing, above, it also would not increase the use of existing parks or facilities. Additionally, implementation of the proposed Project does not include nor require the construction or expansion of recreational facilities. For these reasons, implementation of the proposed Project would have *no impact* on recreation.

XVI. TRANSPORTATION/TRAFFIC

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	❒	❒	■	❒
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the County Congestion Management Agency for designated roads or highways?	❒	❒	■	❒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	❒	❒	❒	■
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	❒	❒	❒	■
e) Result in inadequate emergency access?	❒	❒	❒	■
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	❒	❒	❒	■

DISCUSSION:

a), b) The proposed Project will have no effect on the circulation system of Milpitas as it will not increase development potential and would not directly or indirectly result in population growth. As such, implementation of the proposed Project would not conflict with any applicable plan, ordinance or policy which establishes measures of effectiveness for the performance of the circulation system. Potential future development permitted as a result of the proposed Project will allow for special needs housing in Residential, Commercial and Mixed-Use Zoning designations where residential and transient uses are currently permitted. Consequently, impacts would be *less than significant*.

c) The proposed Project does not include any strategy or measure that would directly or indirectly affect air traffic patterns. Therefore, *no impact* would result.

d) The proposed Project does not include any strategy that would promote the development of hazardous road design features or incompatible uses. Rather, the proposed Project will allow for special needs housing in Residential, Commercial and Mixed Use Zoning designations where residential and transient uses are currently permitted. Therefore, *no impact* would occur.

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
e) No part of the proposed Project would result in the development of uses or facilities that would degrade emergency access. Therefore, there would be *no impact*.				
f) The proposed Project will have no impact on policies, plans or programs regarding public transit, bicycle, or pedestrian facilities. While the proposed Project does include provisions that are dependent on the location of public transit stops, potential future development permitted as a result of the proposed Project will only be reactive to the location of bus stops and will have no effect on the placement of bus stops or any other aspect of the public transportation system. Therefore, *no impact* will occur.				

XVII. UTILITIES AND SERVICE SYSTEMS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	❒	❒	■	❒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	❒	❒	■	❒
c) Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	❒	❒	■	❒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	❒	❒	■	❒
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	❒	❒	■	❒
f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?	❒	❒	■	❒
g) Comply with federal, State, and local statutes and regulations related to solid waste?	❒	❒	■	❒

DISCUSSION:

a)-c), e) The Milpitas Sanitary Sewer Collection System is owned and maintained by the City of Milpitas. Wastewater from the City of Milpitas is treated at the San Jose/Santa Clara Water Pollution Control Plant, located near Alviso. The City of Milpitas is contractually allowed a sanitary sewer flow of 14.25 mil-

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
lion gallons per day.[16] The proposed Project would allow for special needs housing in Residential, Commercial and Mixed Use Zoning designations where residential and transient uses are currently permitted and would not increase development potential beyond what was anticipated in the 2010 General Plan Housing Element. Therefore, construction and operation resulting from potential future development permitted under the proposed Project would have *less-than-significant* impacts with regard to the wastewater treatment requirements of the SFRWQCB and the capacity of the San Jose/Santa Clara Water Pollution Control Plant to serve the projected General Plan demand in addition to its existing commitments. Additionally, it would not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.				
d) The proposed Project would allow for special needs housing in Residential, Commercial and Mixed Use Zoning designations where residential and transient uses are currently permitted and would not increase development potential beyond what was anticipated in the 2010 General Plan Housing Element. Given no additional demand to water supply would occur, impacts to water supply as a result of implementing the proposed Project would be *less than significant*.				
f), g) The City of Milpitas and Santa Clara County Integrated Waste Management Plans (IWMP) comply with state-mandated waste reduction goals specified in Public Resources Code (PRC) 40500 (Assembly Bill 939). PRC 40500 requires local agencies to implement source reduction, recycling, and composting activities to reduce solid waste generation by 25 percent by the year 1995, and by 50 percent by the year 2000. As a part of PRC 40500, each city and county is required to prepare a Source Reduction and Recycling Element (SRRE) and a Household Hazardous Waste Element (HHWE). Together, the SRRE and HHWE comprise the City's IWMP.[17] Newby Island landfill, located on Dixon Landing Road in San Jose serves the City. It is a Class III landfill, with an estimated lifespan of an additional 11 years (to 2021). However, the proposed Project would not increase development potential beyond what was anticipated in the 2010 General Plan Housing Element; accordingly, no additional demand on solid waste capacity would occur and impacts would be *less than significant*.				

[16] The City of Milpitas Waterstone EIR, http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_WaterStone_draft_a.pdf. Accessed September 3, 2013.

[17] The City of Milpitas General Plan, Chapter 4Environmental Open Space and Conservation Element, page 4-21.

MANDATORY FINDINGS OF SIGNIFICANCE

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	❒	❒	■	❒
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	❒	❒	■	❒
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	❒	❒	■	❒

DISCUSSION:

a)-c) The 2010 Housing Element and its Mitigated Negative Declaration anticipated and directly stipulated the proposed amendments to the Zoning Ordinance. The provisions of the proposed Project would not contravene any aspects of the General Plan, including land use designations and allowed building intensities, that would lead to increased population or development, impacts to wildlife, cumulative effects, or other substantial adverse effects on human beings. All structures, programs, and projects pursued under the proposed Project would adhere to the vision established within the General Plan and all subsequent land use and zoning designations. Implementation of the proposed Project would therefore neither cause new impacts in regard to these issues nor would it exacerbate any existing impacts. Therefore, through mandatory regulatory compliance and consistency with General Plan policies, implementation of the proposed Project would have a *less-than-significant* impact with the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory, nor have impacts that are individually limited, but cumulatively considerable, nor does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

McHarris responded there is no project before the Commission tonight but in a future development project in the town center, there could be a mix of commercial and residential either above the commercial (vertical) or possibly horizontal where stand-alone commercial buildings are integrated with residential in close proximity into what we also refer to as "mixed-use".

Commissioner Luk commented that the whole intent of this revision is to allow mixed-use urban environment for this important corridor in Milpitas with its close proximity to Calaveras and Interstate 680. He believes that a higher minimum density makes sense and the proposed town center designation amendment would be a good urban element for the City's commercial component that we lack.

Chair Mandal opened the public hearing for comments and heard none.

Motion: to close the public hearing after hearing no comments.

Motion/Second: Commissioner Mohsin / Alternate Member Morris

AYES: 6

NOES: 0

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Chair Mandal asked for any other clarification questions from the Commissioners. Commissioner Madnawat asked about the California Public Utilities Commission letter. Principal Housing Planner Felix Reliford replied that it is related to the next public hearing agenda item.

Motion: to adopt Resolution No. 13-028 recommending the City Council adopt General Plan Amendment No. GP13-0004 and Zoning Amendment No ZA13-0005 to adjust the allowable residential density range from 1-40 housing units per gross acre to 21-40 housing units per gross acre for the Town Center Zoning District.

Motion/Second: Alternate Member Morris / Commissioner Mohsin

AYES: 4 Chair Mandal, Commissioners Mohsin and Luk and Alternate Member Morris

NOES: 2 Commissioners Madnawat / Commissioner Barbadillo

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Commissioner Madnawat commented that Town Center is the heart of the City and opposed to having developer come in and put condominiums instead of mixed commercial/residential properties in this particular zoned district that's why he is opposed to the motion.

IX-2 **ZONING TEXT AMENDMENT NO. ZA13-0004:** request to amend the City's Zoning Code to add provision regarding "emergency shelters," "single room occupancies," "supportive housing," "transitional housing," and reasonable accommodations to be consistent with California Law. Definitional entries, and operational and development standards are proposed. Other ancillary amendments re necessary to implement the changes are proposed; and a Negative Declaration for the

project proposed.

Principal Housing Planner Felix Reliford explained that what's before the commission is a series of zoning ordinance amendments to comply with the State's statutory requirements pertaining to Milpitas Housing Element and also in regards to recertification that would be taking place next year.

Mr. Reliford gave an overview and brief background of the Housing Element and its requirements. He informed them that the Housing Element has to be adopted by the City Council and certified by the State. He is scheduled to bring the fourth Housing Element's adoption next year to the City Council.

To be eligible, cities must comply with State Law relating to emergency shelters, transitional and supportive housing, and reasonable accommodations. Mr. Reliford would like to note for the Commissioners that staff is recommending excluding SRO (single room occupancies) for the MXD zoning districts that is different to what is submitted in the Commission's packet. The reason being is that the City has sufficient zoning districts to allow those types of uses within the City that would meet the statutory requirement of the State. He then turned the presentation over to the City's consultant Ben Noble of the Planning Center.

Mr. Noble reviewed the statutory requirements and concept clarifications for the Commission. He reiterated that there are three specific land uses that these amendments are being addressed. They are: a) emergency shelters; b) transitional and supportive housing; and c) single room occupancies.

Mr. Noble started with emergency shelters by stating that they are defined as housing with minimal support services for homeless individuals and families that have limited occupancy period of 6 months or less. No individual or household may be denied emergency shelter because of an inability to pay.

He then moved to define Transitional Housing as temporary housing intended to move residents to permanent housing for up to two years and be self-sufficient. An important feature of this type of housing is the availability of supportive services to ease transition for self-sufficiency. This type of housing often provide for emancipated foster youth, veterans, former homeless individuals and families, and individuals moving forward after mental or substance abuse treatment.

Supportive Housing is permanent housing enabling residents to maintain stable housing and lead fuller lives. This type of housing is available to individuals and families with disabilities, chronic physical and mental illness, chronic homelessness and substance abuse problems. Services to these individuals and families may be provided on-site or through home visits scattered-site homes.

The final land use type being addressed in these amendments is the Single-Room Occupancies. These are multi-tenant buildings that house 1-2 people in a room and often have shared bathrooms and kitchens and are rented either weekly or monthly. These are very small units (generally less than 350 square feet) and are affordable to extremely low income households.

Mr. Noble briefly reviewed the proposed amendments that are mandated primarily by State law, the legislature decided to pre-empt local governments' land use authority for the mentioned types of land uses so the ability of local governments to make their own decisions for this land use authority is limited by State law.

The amendment for emergency shelters for consideration at tonight's meeting is to allow by right emergency shelters in the Commercial/Highway Services if they meet Special Use standards. The proposed amendment for the Transitional and Supportive Housing is to allow by right this type of housing in the residential zoning districts and mixed-use zoning districts and must be treated the same as other residential uses of the same type. The Single-Room Occupancy amendments being considered tonight is to allow Conditional Use Permit in the R3, R4, R5, Highway Services, and Mixed-Use (MXD, MXD2, MXD3) zoning districts and to require compliance with basic standards of location, size, and amenities. Finally, Reasonable Accommodations amendments relate to both State and Federal Laws that says jurisdiction needs to accommodate a persons with disabilities to make sure that they are able to live in housing just like for people who do not have disabilities. This establishes clarity on procedure by which the City can approve aviation from development standards in order to accommodate persons with disabilities; an example is to allow setback for wheelchair accommodations.

Commissioner Morris asked Mr. Reliford to clarify exclusion of SROs if it is by government standards. Mr. Reliford replied that with the discretion of the City, State does not require statutory requirements for SROs and that any deviations from standards we need Conditional Use Permit.

Commissioner Madnawat raised a question about the PUC letter and for staff to inform the Commission what PUC wants. Mr. Reliford responded that this is a comment from Public Utility Commission when the City sent out the Negative Declaration and mainly stating that any future projects before the Planning Commission and City Council PUC wants to make sure that any safety issues of highway-rail crossings or facilities that they regulate that the City has development status to address those safety issues for any land uses being proposed near their facilities. Commissioner Madnawat's concern is that the project will take longer if we have to get PUC's approval. Mr. Reliford clarified that that is not the case; it is mainly to address the safety issues.

Commissioner Madnawat queried about the meaning of the underlined text on page 3 of the resolution in regards to emergency shelters. He read the one line he had a question of: "No individual or household may be denied of emergency shelter because of inability to pay as set forth in the house code." Mr. Noble replied that it means emergency shelters can not charge a fee for a person to stay. Commissioner Madnawat asked if there are any emergency shelters in the City of Milpitas. Mr. Reliford replied that there are neither emergency shelters within the City nor any applications for emergency shelters; there are only two emergency shelters: one in Sunnyvale (that is ready to close) and another one in Gilroy. Commissioner Madnawat asked what area are we designating emergency shelters. Mr. Reliford replied that the areas need to have access to highway services, transportation, goods, and so forth. Staff has identified two sites within a vacant industrial area where this type of land use could potentially be located by the railroad and south of Fremont. The Commission has to zone it to allow this land use.

Commissioner Barbadillo asked if the proposal is to make amendments to the provisions of the ordinance to be State-compliant; Principal Housing Planner Reliford answered yes. Commissioner Barbadillo asked if the City presently is not compliant with the State law. Mr. Reliford replied that his statement is correct; staff originally thought that the City has until January 1 to comply with Sate law however after contacting the section head of HCD, who reviews the Housing Element, as long as the City complies before the Housing Element is certified next year.

Chair Mandal would like to understand if R3, R4, R5 designation is only for the Transitional and Supportive Housing. Mr. Reliford said no in regards to this type of land use. R3, R4, R5 districts are for SROs; rationale behind these zoning districts is those are multi-family housing districts not single-family housing districts. Would MXD apply to Town Center and Transit Area? Mr. Reliford replied it will not apply to Town Center.

Chair Mandal opened the public hearing for comments and heard none.

Motion: to close the public hearing after hearing no comments.

Motion/Second: Commissioner Madnawat / Commissioner Mohsin

AYES: 6

NOES: 0

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Chair Mandal asked fellow Commissioners for any discussion. Commissioner Madnawat commented that this is something required by State law; however, he understands that it does not mean the City needs to provide services that is just zoning amendments being considered here. State is not forcing the City to provide services.

Motion: to adopt Resolution No, 13-023 recommending the City Council adopts an ordinance amending the zoning code to include provision relating to emergency shelters, single room occupancy (excluding from Mixed Use district) residences, supporting housing, transitional housing, ad reasonable accommodation based on the findings set as amended by excluding SROs from Mixed-Used district and adopt a Negative Declaration for the project.

Motion/Second: Commissioner Madnawat / Commissioner Luk

AYES: 6

NOES: 0

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Chair Mandal inquired of staff how far the City has met the State requirements in 2010. Mr. Reliford required that we have met all the requirements besides the items that are being proposed right now.

IX-3 DEVELOPMENT AGREEMENT NO, DA13-0001: request for a Disposition and Development Agreement between the Milpitas Housing Authority and South Main Senior Lifestyles LLC, involving the purchase of 5.94 acres and the development of up to 389 housing units (Senior Congregate Care and Independent Living), located at 1504-1620 South Main Street (APNs: 86-22-027, -028, -033, -041, and -042) zoned multi-family residential, very high density with site and architectural overlay (R4-S).

Principal Housing Planner gave an overview of the project to the Commission stating that the site is owned by Milpitas Housing Authority and pursuant to the Department of Finance, the MHA funds and site must be used for housing with affordable units . It is a conformance of finding with the Milpitas General Plan and Milpitas Specific Plan.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DENYING GENERAL PLAN AMENDMENT NO. GP12-0003, ZONING AMENDMENT NO. ZA12-0004, SITE DEVELOPMENT PERMIT NO. SD12-0002, PLANNED UNIT DEVELOPMENT NO. PD12-0001, AND MAJOR VESTING TENTATIVE MAP NO. TM12-0001 ("WATERSTONE RESIDENTIAL PROJECT") REQUESTING CHANGES TO THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS FROM INDUSTRIAL PARK TO RESIDENTIAL FOR DEVELOPMENT OF AN 84-UNIT RESIDENTIAL SUBDIVISION ON 10.7 ACRES, A PENITENCIA CREEK PEDESTRIAN BRIDGE AND A SUPPLEMENTAL REQUEST TO CHANGE THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS ON SIX OTHER PARCELS FROM INDUSTRIAL PARK TO GENERAL COMMERCIAL AND RESIDENTIAL FOR A TOTAL 18.5 ACRES OF DEVELOPED PROPERTY LOCATED AT 1494-1600 CALIFORNIA CIRCLE

WHEREAS, on May 23, 2012, an application was submitted by Trumark Homes, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506, for a development proposal to allow General Plan and Zoning Amendments to change the land use designation from Industrial Park to Residential for an 84-unit residential subdivision on a 10.7 acre site, construction of a Penitencia Creek pedestrian bridge, and a supplemental land use and zoning amendment on six other parcels (the "Project"). The properties are located within the Industrial Park Zoning District with Site and Architectural Overlay at 1494 California Circle (APN: 22-37-011), 1600 California Circle (APN 22-37-012), 1424-1436 California Circle (APN 22-37-019), 1501 California Circle (APN 22-37-047), 1521 California Circle (APN 22-37-046), 1533 California Circle (APN 22-37-045), 1543-1547 California Circle (APN 22-37-049), and 1551 California Circle (APN 22-337-040); and

WHEREAS, on May 7, 2013, the applicant conducted a community meeting on the proposed Project, wherein several California Landing residential community residents opposed the proposed pedestrian bridge landing adjacent to their private street; and

WHEREAS, on June 23, 2013, staff conducted a study session with the Planning Commission on the California Circle Area to review land uses, opportunities and constraints, and receive input for future planning of this area in which the Planning Commission directed staff to proceed with vision planning for this area; 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 March 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR. The Draft EIR (SCH No.2013032005) was circulated between June 21, 2013 and August 5, 2013; and

WHEREAS, on October 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. Based on the full record before the Planning Commission, the Planning Commission unanimously adopted Resolution No. 13-025 recommending that the City Council deny the application requesting a change in land use designation from Industrial Park to Single Family Residential Moderate Density for the construction of 84 dwelling units (GP12-0003, ZA12-0004, SD12-0002, PD12-0001, TM12-0001; and

WHEREAS, on November 19, 2013, the City Council held a duly noticed public hearing to consider the Planning Commission's recommendation and evidence regarding the Project.

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

1. 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.

2. The project's environmental impacts are addressed in the project's Final EIR. The City Council has reviewed and considered the EIR for the proposed Project. As set forth below, the City Council denies the application to convert industrial land to residential for the development of 84 single-family residential units and no action is required by the City Council on the EIR.

3. **General Plan Amendment Findings** [Milpitas Municipal Code Section XI-57.02 (G)(1)]:

   a. *The proposed general plan amendment is internally inconsistent with those portions of the Milpitas General Plan which are not being amended in that the following Guiding Principles and Implementing Policies of the Milpitas General Plan are not met by the proposed project.*

Land Use Guiding Principles

- **2.a-G-2:** Maintain a relatively compact form. Emphasize mixed use development to the extent feasible to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

- **2.a-G-8 :** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

- **2.a-G-9:** The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- **2.a-G- 10:** Consider long-term planning and strong land use policy in managing the City's fiscal position.

- **2.a-G- 11:** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Analysis: Denial of the proposed Project is consistent with the stated above Guiding Principles in that the proposed single family homes do not maximize density to achieve a compact form nor does the project emphasize mixed use development that maximizes job development or commercial or industrial opportunities. Further, the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. The proposed land use conversion from employment generating land uses to uses that increase the residential population absent City comprehensive planning and analysis, especially considering that the City is currently studying the overall California Circle area, is considered premature. Given the land use policy and planned growth for the Transit Area and Midtown areas of the City, conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Policies

Development Intensity

- **2.a-I-2:** Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% build-out in the Midtown and Transit Area Specific Plans.

- **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.

- **2.a-I-9:** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Analysis: Denial of the proposed Project is consistent with stated polices on development intensity because the Transit Area and Midtown have not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is contrary to Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, has the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Finally, the conversion of these sites to residential will introduce residential uses in close proximity to industrial uses and the impacts of those uses, such as semi-truck/trailer activity, diesel exhaust, noise and odors. Introduction of residential and sensitive uses near pre-existing industrial uses can also compromise the day-to-day operation and activity of the existing industrial uses and hamper their economic production. It could also provide a barrier to attracting more industrial uses to the area.

Economic Development

- **2.a-I-10:** Maintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands.

- **2.a-I-13:** When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

Analysis: Denial of the proposed Project is consistent with the stated polices on economic development because of the policy directive to maintain an adequate supply of industrial lands and only consider land use conversions to residential when contemplation of substantial economic benefit. There is no substantial economic benefit provided by the project that would justify the conversion of prime business park property with direct visibility and access to Interstate 880. These types of conversions, if considered, should only be contemplated after more comprehensive land use, design, market and economic analysis. Given the short-term trend in market and economic fluctuation, a more comprehensive and long-term fiscally sustainable approach is warranted.

Fiscally Beneficial Land Use

- **2.a-I-15** Maintain and expand the total amount of land with industrial designations. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas.

Analysis: Denial of the proposed Project is consistent with the stated polices on fiscally beneficial land use because this policy seeks to maintain and expand the City's industrial land base rather than allow conversion to a non-industrial land use.

b. *The proposed general plan amendment <u>will</u> have an adverse effect on public health, safety, and welfare.*

The proposed general plan amendment will have an adverse effect on public health, safety, and welfare due to the uncertainty with what Base Flood Elevation (BFE) level to use for the project's site design. According the applicant's consultant memo dated 9/26/13, the VTA flood analysis is based on a complex set of hydrology and hydraulic assumption and methodology which has not been reviewed by either the Santa Clara Valley Water District or FEMA. The flood elevation is dependent upon various factors such as the volume and timing of the flows and the capacity of the City stormwater pump station and culverts that drain to the detention pond. A relatively small change in the flow modeling during the review process could have a significant effect on the flood elevation at the site. Redesigning the project at this time may expose it to a potential risk of a floodplain map revision change in the future or run the risk of building the project below the elevation of the overland release to the detention basin and the creek channel. However, if the project is built using the 18-feet NAVD, the project site would need to be raised approximately 6-feet in height and require tall retaining wall conditions which are generally discouraged and are not considered good site design or form. For these reasons, a finding cannot be made that the proposed amendment will not adversely affect the public health, safety, and welfare.

4. **Zoning Amendment Findings** [Milpitas Municipal Code Section XI-57.02 (G)(3)]:

   a. *The proposed zoning amendment is inconsistent with the Milpitas General Plan.*

   As explained in detail above, the proposed Project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed project.

   b. *The proposed zoning amendment will have an adverse effect on public health, safety, and welfare.*

   As explained in detail above, the proposed Project will have an adverse effect on public health, safety, and welfare due to the uncertainty related to the BFE required for flood protection and management.

5. **Major Tentative Map Findings** (Milpitas Municipal Code Section XI-1-4.03):

   a. *The Planning Commission determines the proposed Tentative Map is inconsistent with the Milpitas General Plan.*

   The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. As explained in detail above, the proposed Project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed Project.

6. **Site Development Permit Findings** [Milpitas Municipal Code Section XI-10-57-03(F)]:

   a. The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:

   - The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
   - The project's site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.
   - The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
   - Given the proposed Project's proximity to a major gateway into the City, it does not provide any enhanced treatment to provide the area with a special and/or distinct identification.

   b. The proposed Project is inconsistent with the Milpitas General Plan as explained in detail above.

   c. *The proposed Project is inconsistent with the Milpitas Zoning Ordinance.*

The proposed project does not meet the intent of the Zoning Ordinance (Section 1.02) that ensures the most appropriate use of land throughout the city; to stabilize and conserve the value of property to provide adequate light, air and reasonable access; to secure safety from fire and other dangers and in general to promote the public health, safety, peace, morals, comfort and welfare.

7. **Planned Unit Development Findings** [Milpitas Municipal Code Section XI-10-54.07 (B) (6)]:

   a. *The proposed Project is inconsistent with the Milpitas General Plan as explained in detail above.*

   b. *The layout of the site and design of the proposed Project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:*

   - The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
   - The proposed project's site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.
   - The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such the site physically and visually detracts from the surrounding development.
   - The I-880/California Circle location is identified as a "Gateway Site" in the City's Streetscape Master Plan, requiring enhanced design and identification.

8. Based on the findings set forth herein, the City Council of the City of Milpitas hereby denies General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001.

PASSED AND ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

ATTACHMENT A

RESOLUTION NO. 13-025

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING DENIAL TO THE CITY COUNCIL OF GENERAL PLAN AMENDMENT NO. GP12-0003, ZONING AMENDMENT NO. ZA12-0004, SITE DEVELOPMENT PERMIT NO. SD12-0002, PLANNED UNIT DEVELOPMENT NO. PD12-0001, AND MAJOR VESTING TENTATIVE MAP NO. TM12-0001 ("WATERSTONE RESIDENTIAL PROJECT") REQUESTING CHANGES TO THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS FROM INDUSTRIAL PARK TO RESIDENTIAL FOR DEVELOPMENT OF AN 84-UNIT RESIDENTIAL SUBDIVISION ON 10.7 ACRES, A PENITENCIA CREEK PEDESTRIAN BRIDGE AND A SUPPLEMENTAL REQUEST TO CHANGE THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS ON SIX OTHER PARCELS FROM INDUSTRIAL PARK TO GENERAL COMMERCIAL AND RESIDENTIAL FOR 18.5 ACRES OF DEVELOPED PROPERTY LOCATED AT 1494-1600 CALIFORNIA CIRCLE

WHEREAS, on May 23, 2012, an application was submitted by Trumark Homes, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506 for a development proposal to allow for a General Plan and Zoning Amendment to change the land use designation from Industrial Park to Residential for an 84-unit residential subdivision on a 10.7 acre site, construction of a Penitencia Creek pedestrian bridge, and a supplemental land use and zoning amendments on six other parcels. The properties are located within the Industrial Park Zoning District with Site and Architectural Overlay at 1494 California Circle (APN: 22-37-011) 1600 California Circle (APN 22-37-012), 1424-1436 California Circle (APN 22-37-019), 1501 California Circle (APN 22-37-047), 1521 California Circle (APN 22-37-046) 1533 California Circle (APN 22-37-045), 1543-1547 California Circle (APN 22-37-049) and 1551 California Circle (APN 22-337-040); and;

WHEREAS, on May 7, 2013, the applicant conducted a community meeting for the proposed project. Several California Landing residential community residents opposed the proposed pedestrian bridge landing adjacent to their private street, favoring a more southerly public street location; and

WHEREAS on June 23, 2013, staff conducted a study session with the Planning Commission on the California Circle Area to review land uses, opportunities and constraints, and receive input for future planning of this area in which the Planning Commission directed staff to proceed with vision planning for this area; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine and determined that an Environmental Impact Report (EIR) would be required for the project and circulated a Notice of Preparation dated March 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR. The Draft EIR (SCH No.2013032005) was circulated between June 21, 2013 and August 5 2013; and

WHEREAS, on October 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.

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

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project's environmental impacts are addressed in the project's Final EIR. The Planning Commission has reviewed and considered the EIR for the proposed project. The Planning Commission recommends denial of the proposed project to the City Council and no further action is required by the Planning Commission on the EIR.

Section 3: General Plan Amendment Findings [Milpitas Municipal Code Section XI-57.02 (G)(1)]:

a. *The proposed general plan amendment is internally inconsistent with those portions of the Milpitas General Plan which are not being amended in that the following Guiding Principles and Implementing Policies of the Milpitas General Plan are not met by the proposed project.*

Land Use Guiding Principles

- **2.a-G-2:** Maintain a relatively compact form. Emphasize mixed use development to the extent feasible to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

- **2.a-G-8 :** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

- **2.a-G-9:** The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- **2.a-G- 10:** Consider long-term planning and strong land use policy in managing the City's fiscal position.

- **2.a-G- 11:** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or

significantly increase the City's service costs to the City without offsetting increases in revenue.

Analysis: A recommendation of denial to the City Council is consistent with the stated above Guiding Principles in that the proposed single family homes do not maximize density to achieve a compact form nor does the project emphasize mixed use development that maximizes job development or commercial or industrial opportunities. Further, the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. The proposed land use conversion from employment generating land uses to uses that increase the residential population absent City comprehensive planning and analysis, especially considering that the City is currently studying the overall California Circle area, is considered pre-mature. Given the land use policy and planned growth for the Transit Area and Midtown areas of the City, conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Policies

Development Intensity

- **2.a-I-2:** Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% build-out in the Midtown and Transit Area Specific Plans.

- **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.

- **2.a-I-9:** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Analysis: A recommendation of denial to the City Council is consistent with stated polices on development intensity because the Transit Area and Midtown have not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is in contrary with Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, has the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Finally, the conversion of these sites to residential will introduce residential uses in close proximity to industrial uses and the impacts of those uses, such as semi-truck/trailer activity, diesel exhaust, noise and odors. Introduction of residential and sensitive uses near pre-existing industrial uses can also compromise the day-to-day operation and activity of the existing industrial uses and hamper their economic production. It could also provide a barrier to attracting more industrial uses to the area.

Economic Development

- **2.a-I-10:** Maintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands.

- **2.a-I-13:** When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

Analysis: A recommendation of denial to the City Council is consistent with the stated polices on economic development because of the policy directive to maintain an adequate supply of industrial lands and only consider land use conversions to residential when contemplation of substantial economic benefit. There is no substantial economic benefit provided by the project that would justify the conversion of prime business park property with direct visibility and access to Interstate 880. These types of conversions, if considered, should only be contemplated after more comprehensive land use, design, market and economic analysis. Given the short-term trend in market and economic fluctuation, a more comprehensive and long-term fiscally sustainable approach is warranted.

Fiscally Beneficial Land Use

- **2.a-I-15** Maintain and expand the total amount of land with industrial designations. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas.

Analysis: A recommendation of denial to the City Council is consistent with the stated polices on fiscally beneficial land use because this policy seeks to maintain and expand the City's industrial land base rather than allow conversion to a non-industrial land use.

b. *The proposed general plan amendment will have an adverse effect on public health, safety, and welfare.*

The proposed general plan amendment will have an adverse effect on public health, safety, and welfare due to the uncertainty with what Base Flood Elevation (BFE) level to use for the project's site design. According the applicant's consultant memo dated 9/26/13, the VTA flood analysis is based on a complex set of hydrology and hydraulic assumption and methodology which has not been reviewed by either the Santa Clara Valley Water District or FEMA. The flood elevation is dependent various factors such as the volume and timing of the flows and the capacity of the City stormwater pump station and culverts that drain to the detention pond. A relatively small change in the flow modeling during the review process could have a significant effect on the flood elevation at the site. Redesigning the project at this time may expose it to a potential risk of a floodplain map revision change in the future or run the risk of building the project below the elevation of the overland release to the detention basin and the creek channel. However, if the project is built using the 18-feet NAVD, the project site would need to be raise approximately 6-feet in height and require tall retaining wall conditions which are

generally discouraged and are not consider as good site design or form. For these reasons, a finding cannot be made that the proposed amendment will not adversely affect the public health, safety, and welfare.

Section 4: Zoning Amendment Findings [Milpitas Municipal Code Section XI-57.02 (G)(3)]:

a. *The proposed zoning amendment is inconsistent with the Milpitas General Plan.*

As explained in detail above, the proposed project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed project.

b. *The proposed zoning amendment will have an adverse effect on public health, safety, and welfare.*

As explained in detail above, the proposed project will have an adverse effect on public health, safety, and welfare due to the uncertainty related to the BFE required for flood protection and management.

Section 5: Major Tentative Map Findings (Milpitas Municipal Code Section XI-1-4.03):

a. *The Planning Commission determines the proposed Tentative Map is inconsistent with the Milpitas General Plan.*

The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. As explained in detail above, the proposed project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed project.

Section 6: Site Development Permit Findings [Milpitas Municipal Code Section XI-10-57-03(F)]:

a. *The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:*

- The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
- The project's site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.

- The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the proposed project's proximity to a major gateway into the City, it does not provide any enhance treatment to provide the area with a special and/or distinct identification.

b. *The proposed project is inconsistent with the Milpitas General Plan as explained in detail above.*

c. *The proposed project is inconsistent with the Milpitas Zoning Ordinance.*

The proposed project does not meet the intent of the Zoning Ordinance (Section 1.02) that ensures the most appropriate use of land throughout the city; to stabilize and conserve the value of property to provide adequate light, air and reasonable access; to secure safety from fire and other dangers and in general to promote the public health, safety, peace, morals, comfort and welfare.

Section 7: Planned Unit Development Findings [Milpitas Municipal Code Section XI-10-54.07 (B) (6)]:

a. *The proposed project is inconsistent with the Milpitas General Plan as explained in detail above.*

b. *The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:*

- The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
- The proposed project's site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.
- The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such the site physically and visually detracts from the surrounding development.
- Given the project's proximity to a major gateway into the City, it does not provide any enhance treatment to provide the area with a special and/or distinct identification.

Section 8: Based on the findings set forth herein, the Planning Commission of the City of Milpitas hereby recommends the City Council deny General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2013.

_____
Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on October 23, 2013 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				

SITE DEVELOPMENT PERMIT
WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

LEGEND

PROPOSED	DESCRIPTION	EXISTING
	TRACT BOUNDARY	
	LOT LINE	
	RIGHT OF WAY	
	CENTER LINE	
	RETAINING WALL	
	EASEMENT LINE	
12"SD	STORM DRAIN	EX 12"SD
8"SS	SANITARY SEWER	EX 8"SS
8"W	WATER	EX 8"W
	CURB & GUTTER	EX FC
	SIDEWALK	
	STORM WATER INLET	
	FIELD INLET	
	DIRECTION OF FLOW	
	MANHOLE	
	FIRE HYDRANT	
	SAVE TREE	
	REMOVE TREE	
	CONTOUR ELEVATIONS	130
x 525.2	SPOT ELEVATION	x525.2
0.5%	SLOPE	

ABBREVIATIONS

AB	AGGREGATE BASE	PL	PROPERTY LINE
AC	ASPHALT CONCRETE	PSDE	PRIVATE STORM DRAIN EASEMENT
BW	BOTTOM OF WALL	PSSE	PRIVATE SANITARY SEWER EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	PSUE	PUBLIC SERVICE UTILITY EASEMENT
EX	EXISTING	PPAE	PRIVATE PEDESTRIAN ACCESS EASEMENT
FC	FACE OF CURB	PWLE	PRIVATE WATER LINE EASEMENT
FF	FINISH FLOOR	RET	CURB RETURN
FG	FINISHED GRADE	RW	RIGHT OF WAY
FI	FIELD INLET	SWI	STORM WATER INLET
FL	FLOW LINE	SWK	SIDEWALK
GB	GRADE BREAK	TC	TOP OF CURB
GE	GARAGE ELEVATION	TG	TOP OF GRATE
GR	GRATE	TW	TOP OF WALL
HP	HIGH POINT		
HOA	HOMEOWNER'S ASSOCIATION		
INV	INVERT ELEVATION		
LP	LOW POINT		
MH	MANHOLE		

VICINITY MAP
NOT TO SCALE

LOCATION MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: TRUMARK COMPANIES, LLC
4185 BLACKHAWK PLAZA CIRCLE, SUITE 200
DANVILLE, CA 94506
(925) 309-2503
CONTACT: MR. CHRIS DAVENPORT

2. DEVELOPER: TRUMARK COMPANIES, LLC
4185 BLACKHAWK PLAZA CIRCLE, SUITE 200
DANVILLE, CA 94506
(925) 309-2503
CONTACT: MR. CHRIS DAVENPORT

3. CIVIL ENGINEER: RUGGERI-JENSEN-AZAR
4690 CHABOT DRIVE, SUITE 200
PLEASANTON, CA 94588
(925) 227-9100
CONTACT: MR. JARED FREY

4. ARCHITECT: KTGY
580 SECOND STREET, SUITE 200
OAKLAND, CA 94607
(510) 272-2910
CONTACT: MS. JILL WILLIAMS

5. LANDSCAPE ARCHITECT: VAN DORN ABED LANDSCAPE ARCHITECTS, INC.
81 14TH STREET
SAN FRANCISCO, CA 94103
(415) 864-1921
CONTACT: MS. SHARI VAN DORN

6. ASSESSOR'S PARCEL NUMBERS: 022-37-011 AND 022-37-012
7. CURRENT USE: INDUSTRIAL
8. CURRENT GENERAL PLAN DESIGNATION: PUD-31
9. PROPOSED USE: RESIDENTIAL
10. EXISTING ZONING: INDUSTRIAL PARK (MP)
11. PROPOSED ZONING: PLANNED DEVELOPMENT
12. GROSS SITE AREA: 10.7 ACRES
13. NET DEVELOPMENT AREA: (INCLUDING PUBLIC OPEN SPACE) 7.5 ACRES
14. OPEN SPACE: 0.9 ACRES (LOTS A-G)
15. TOTAL NUMBER OF PROPOSED LOTS: 84
16. PROPOSED GROSS SITE DENSITY: 7.9 DU/AC
17. PROPOSED NET SITE DENSITY: 11.2 DU/AC
18. MINIMUM LOT SIZE: 1,842 SF
19. ALL PROPOSED STREETS & COURTS ARE PRIVATELY OWNED AND MAINTAINED.
20. ALL PROPOSED UTILITIES WITHIN THE SUBDIVISION ARE PRIVATELY OWNED AND MAINTAINED
21. UTILITIES:
    a. WATER: CITY OF MILPITAS
    b. SANITARY SEWER: CITY OF MILPITAS
    c. STORM DRAIN CITY OF MILPITAS
    d. FIRE MILPITAS FIRE DEPARTMENT
    e. GAS AND ELECTRIC PACIFIC GAS & ELECTRIC
    f. TELEPHONE AT&T
    g. CABLE TV AT&T BROADBAND
22. THIS PROPERTY LIES WITHIN FLOOD ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), AND WITHIN ZONE AH (FLOOD DEPTHS OF 1 TO 3 FEET USUALLY AREAS OF PONDING; BASE FLOOD ELEVATIONS DETERMINED. (ELEVATION 15, BASED ON NAV88 DATUM), AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 58 OF 830, MAP NO. 06085C0058H AND WITHIN ZONE A (AREAS DETERMINED WITHIN 1% ANNUAL FLOOD; 100-YEAR FLOOD; THIS SPECIAL FLOOD HAZARD ZONE IS SUBJECT TO 1% ANNUAL CHANCE OF FLOODING. ZONE A LIES WITHIN LOWER PENITENCIA CREEK PROTECTED BY A LEVEE.
23. TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED ON AERIAL TOPOGRAPHIC SURVEY PROVIDED BY TETRATECH, OCTOBER, 2011.
24. BENCHMARK: CITY OF MILPITAS BENCHMARK DIX-RR, BRASS DISK IN MONUMENT WELL, DIXON LANDING ROAD 120 FEET EAST OF WPRR TRACKS. NGVD ELEV: 17.323
25. THE VESTING TENTATIVE MAP IS BASED ON NGVD29 DATUM. IMPROVEMENT PLANS SHALL BE CONVERTED TO NAVD88 DATUM. CONVERSION NGVD29 + 2.78' = NAVD88.
26. THERE ARE NO EXISTING ON-SITE WELLS.
27. STREET TREES SHALL BE INSTALLED PER CITY STANDARD NO. 448 & MAINTAINED BY HOA.
28. STREET LIGHTS ON PRIVATE STREETS/COURTS SHALL BE MAINTAINED BY THE HOA.
29. PAVEMENT DESIGN SHALL BE BASED ON STATE OF CALIFORNIA "R" VALUE METHOD USING A MINIMUM TI OF 5.
30. EXISTING ADA/HANDICAP RAMPS FROM PROJECT FRONTAGE TO MILMONT DRIVE, INCLUDING MILMONT/DIXON LANDING INTERSECTION SHALL BE REMOVED AND REPLACED TO COMPLY WITH ADA REQUIREMENTS.

SHEET INDEX

CIVIL PLANS

SHEET NO.	DESCRIPTION
C-1	TITLE & GENERAL NOTES
C-2	SITE DEVELOPMENT PLAN
C-3	SITE DEVELOPMENT PLAN
C-4	EMERGENCY VEHICLE ACCESS PLAN
C-5	SOLID WASTE MANAGEMENT PLAN
C-6	TREE REMOVAL DISPOSITION PLAN

ARCHITECTURAL PLANS

SHEET NO.	DESCRIPTION
A-0.1	STREET SCENE
A-0.2	STREET SCENE
A-0.3	STREET SCENE
A-1.0	PLAN 1 FLOOR PLAN
A-1.0.1	PLAN 1 FLOOR PLANS
A-1.1	PLAN 1 FRONT ELEVATIONS
A-1.1-1	PLAN 1 FRONT ELEVATIONS (CORNER LOTS)
A-1.2	PLAN 1 SIDE ELEVATIONS
A-1.2.1	PLAN 1 SIDE ELEVATIONS (CORNER LOTS)
A-1.3	PLAN 1 REAR ELEVATION AND ROOF PLAN (CORNER LOTS)
A-1.4	PLAN 1 SIDE ELEVATIONS
A-1.4.1	PLAN 1 SIDE ELEVATIONS (CORNER LOTS)
A-1.5	PLAN 1 REAR ELEVATION AND ROOF PLAN
A-1.6	PLAN 1 SIDE ELEVATIONS
A-1.7	PLAN 1 REAR ELEVATION AND ROOF PLAN
A-2.0	PLAN 2 FLOOR PLAN
A-2.0.1	PLAN 2 FLOOR PLANS
A-2.1	PLAN 2 FRONT ELEVATIONS
A-2.2	PLAN 2 SIDE ELEVATIONS
A-2.3	PLAN 2 REAR ELEVATION AND ROOF PLAN
A-2.4	PLAN 2 SIDE ELEVATIONS
A-2.5	PLAN 2 REAR ELEVATION AND ROOF PLAN
A-2.6	PLAN 2 SIDE ELEVATIONS
A-2.7	PLAN 2 REAR ELEVATION AND ROOF PLAN
A-3.0	PLAN 3 FLOOR PLAN
A-3.0.1	PLAN 3 FLOOR PLANS
A-3.1	PLAN 3 FRONT ELEVATIONS
A-3.2	PLAN 3 SIDE ELEVATIONS
A-3.3	PLAN 3 REAR ELEVATION AND ROOF PLAN
A-3.4	PLAN 3 SIDE ELEVATIONS
A-3.5	PLAN 3 REAR ELEVATION AND ROOF PLAN
A-3.6	PLAN 3 SIDE ELEVATIONS
A-3.7	PLAN 3 REAR ELEVATION AND ROOF PLAN
A-4.0	COLOR & MATERIALS

LANDSCAPE PLANS

SHEET NO.	DESCRIPTION
L 1.0	CONCEPTUAL SITE PLAN
L 1.1	CONCEPTUAL SITE PLAN
L 1.2	OPEN SPACE ENLARGEMENTS
L 1.3	CONCEPTUAL PLANTING PALETTE AND IMAGERY
L 1.4	REPLACEMENT TREE PLAN
L 1.5	CONCEPTUAL SITE AMENITIES
L 1.6	CONCEPTUAL SITE AMENITIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

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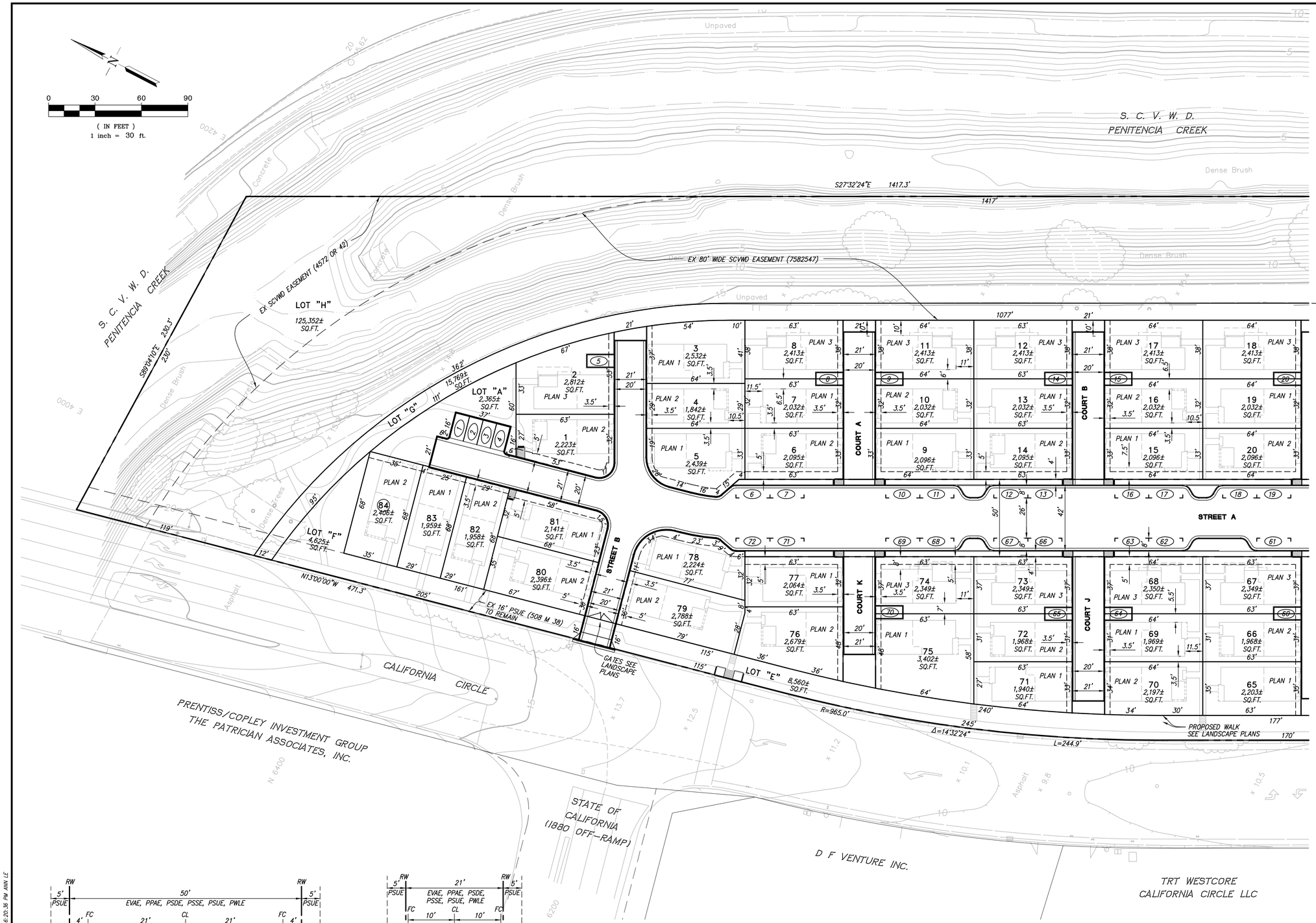
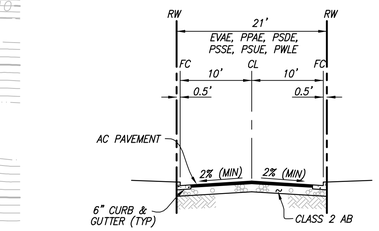
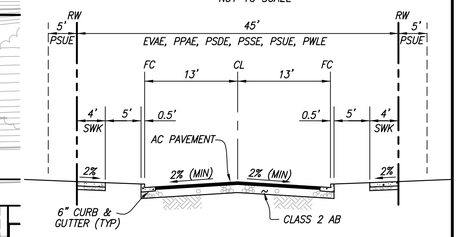




STREET B
NOT TO SCALE



STREET C
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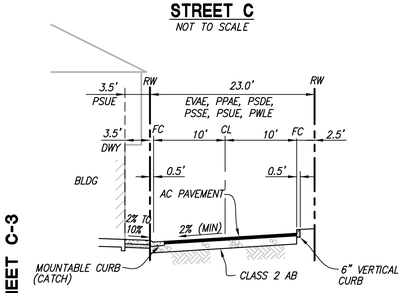

STREET D (LOTS 42-44)
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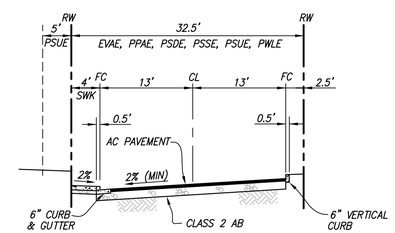

STREET D (LOTS 45-46)
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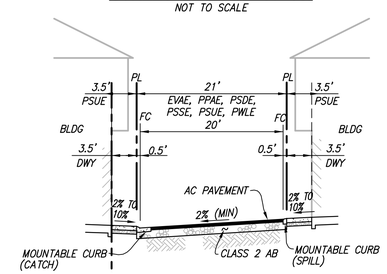
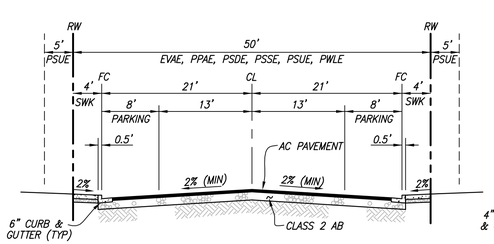


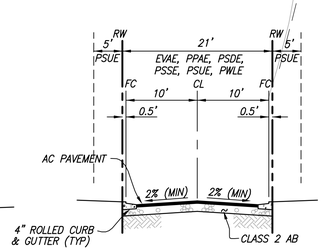
PRIVATE COURTS
NOT TO SCALE

NOTE: PARKING STALLS WITHIN PRIVATE COURTS SHALL HAVE A PARKING EASEMENT

SEE SHEET C-3



STREET A WITH SIDEWALK
NOT TO SCALE



STREET A WITHOUT SIDEWALK
NOT TO SCALE

SITE DEVELOPMENT PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-2

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PARKING SUMMARY

REQUIRED COVER PARKING SPACES	168
COVERED SPACES PROVIDED	168
COVERED SURPLUS	0
(SHORTFALL)	0
REQUIRED GUEST PARKING (20% OF REQUIRED TOTAL)	39
REQUIRED UN-COVERED RESIDENT PARKING	25
TOTAL REQUIRED UN-COVERED PARKING	64
UN-COVERED PARKING PROVIDED	72
UN-COVERED SURPLUS	8
(SHORTFALL)	0
GARAGE SPACES PROVIDED	168
GUEST PARKING PROVIDED	72
TOTAL PROVIDED	240

BICYCLE PARKING SUMMARY

REQUIRED BICYCLE PARKING	= # OF UNITS x 5%
REQUIRED BICYCLE PARKING	= 4.2 SPACES
BICYCLE PARKING PROVIDED	= 6 SPACES
(SEE LANDSCAPE PLANS FOR LOCATION)	

PARKING BREAKDOWN

PLAN TYPE	NUMBER OF BEDROOMS	NUMBER OF UNITS	COVERED PARKING	UN-COVERED PARKING	REQUIRED COVERED PARKING	REQUIRED UN-COVERED PARKING	TOTAL REQUIRED PARKING
1	3	29	2	–	58	–	58
2	3	30	2	–	60	–	60
3	4	25	2	1	50	25	75
				TOTAL REQUIRED	168	25	193

SITE DEVELOPMENT PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

FOR: TRUMARK COMPANIES

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RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-3

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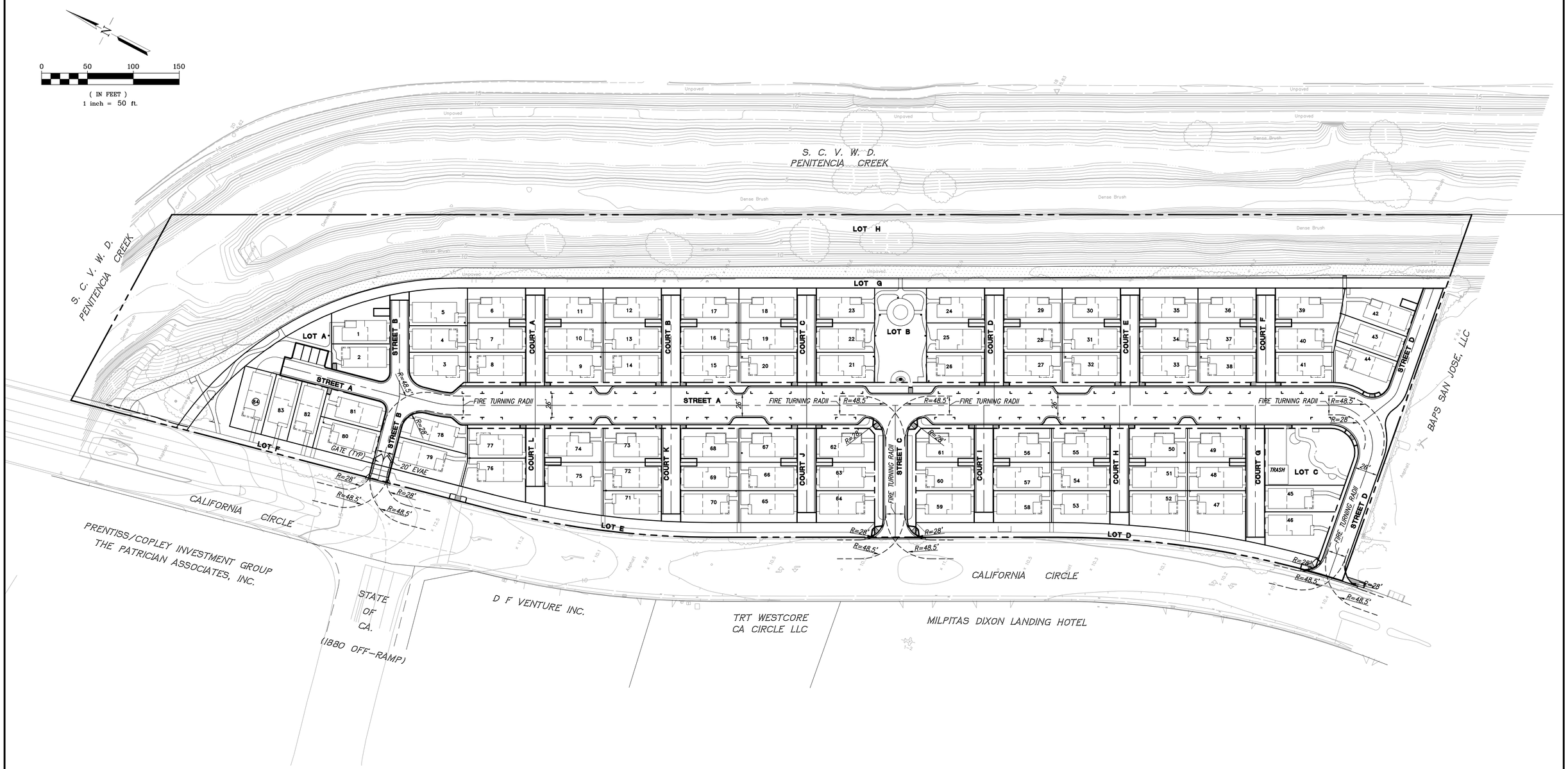

EMERGENCY VEHICLE ACCESS PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-4

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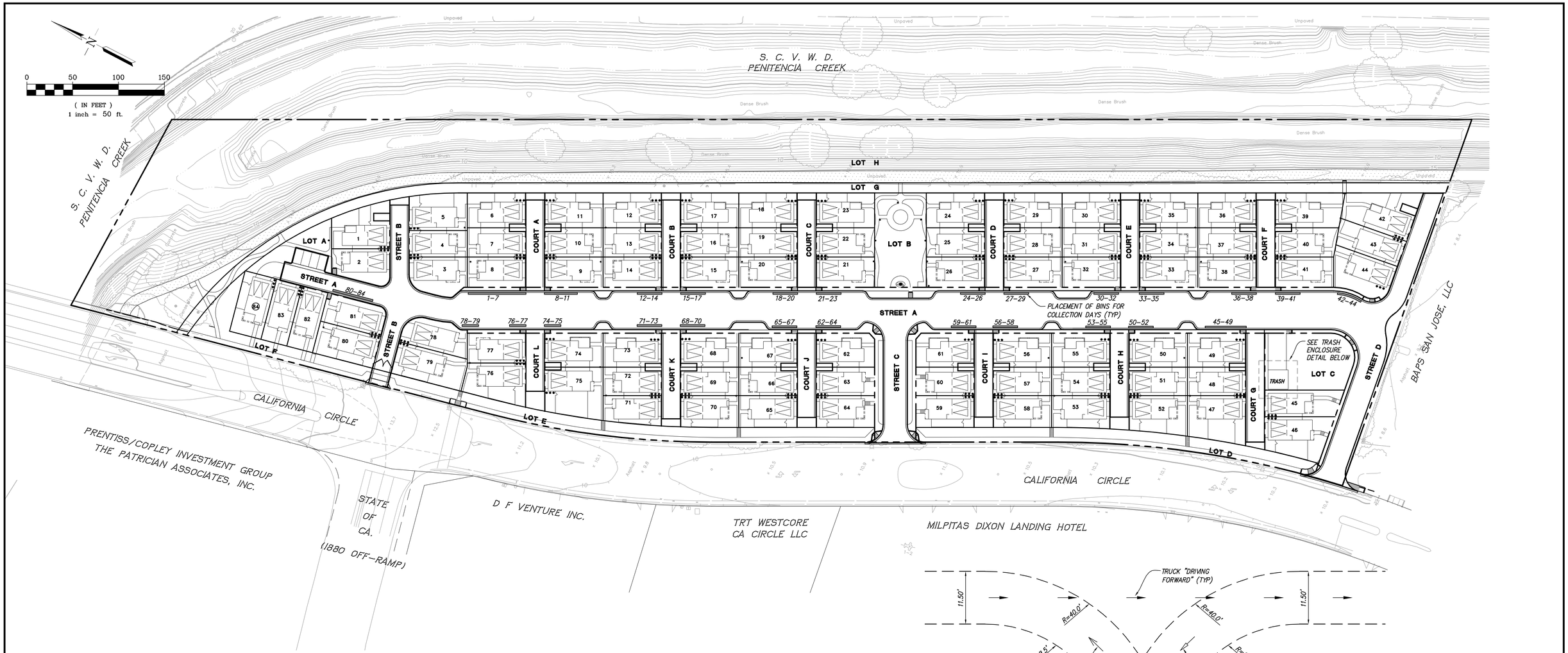

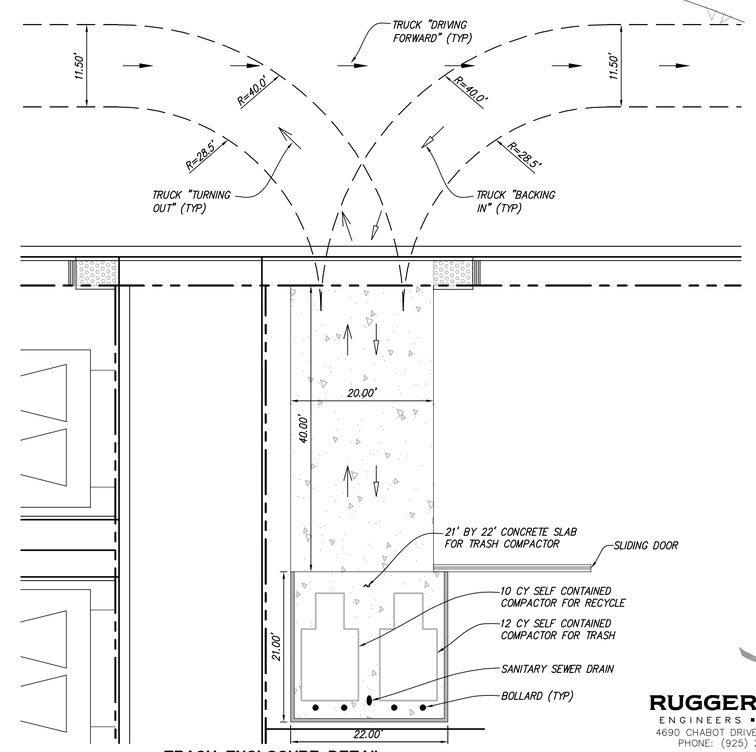

TRASH ENCLOSURE DETAIL

SCALE: 1" = 10'

LEGEND:

●●● TRASH, YARD WASTE AND RECYCLING BINS

▬ DESIGNATED AREA FOR BIN COLLECTION

NOTES:

1. NO ON-STREET PARKING ALLOWED ON COLLECTION DAYS, TO BE COORDINATED BY THE HOA.

SOLID WASTE MANAGEMENT PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

FOR: TRUMARK COMPANIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-5

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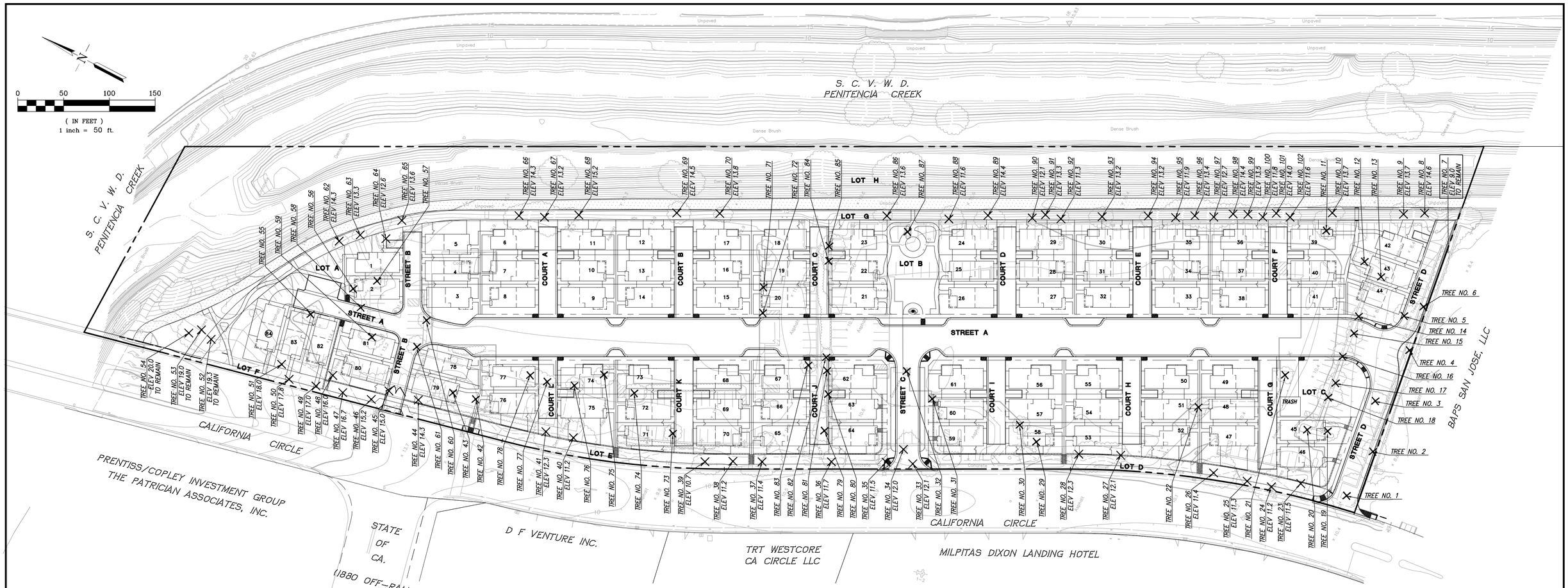


LEGEND

- EX TREE TO REMAIN
- EX TREE TO BE REMOVED
- EX TREE TAG NO.
- EX TREE ELEVATION

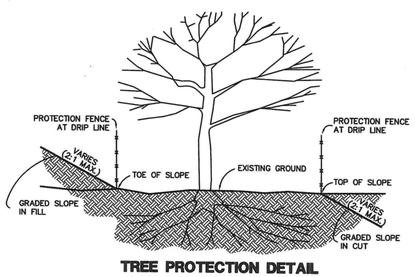
NOTE

1. TREE DISPOSITION TABLE PER ARBORIST REPORT DATED AUGUST 2012 PREPARED BY HORTSCIENCE INC.

TREE DISPOSITION TABLE

Tag #	Species	Diameter	Protected?	Remove/ Preserve	Disposition	Tag #	Species	Diameter	Protected?	Remove/ Preserve	Disposition	Tag #	Species	Diameter	Protected?	Remove/ Preserve	Disposition
1	Blackwood acacia	31	Yes	R	Remove, within development	35	Blackwood acacia	16	Yes	R	Remove, within grading	69	Nichol's gum	15	Yes	R	Remove per SCVWD
2	Raywood ash	15	Yes	R	Remove, within development	36	Blackwood acacia	16	Yes	R	Remove, within grading	70	Nichol's gum	9	No	R	Remove per SCVWD
3	Raywood ash	9	No	R	Remove, within development	37	Blackwood acacia	25	Yes	R	Remove, impacted by new entry	71	Brisbane box	5	No	R	Remove, within development
4	Raywood ash	8	No	R	Remove, within development	38	Blackwood acacia	22	Yes	R	Remove, within grading	72	Brisbane box	7	No	R	Remove, within development
5	Raywood ash	9	No	R	Remove, within development	39	Blackwood acacia	19	Yes	R	Remove, within grading	73	Chinese pistache	7	No	R	Remove, within development
6	Raywood ash	7	No	R	Remove, within development	40	Blackwood acacia	24	Yes	R	Remove, poor suitability	74	Flowering cherry	14	Yes	R	Remove, within development
7	Silver dollar gum	14	Yes	P	Preserve, off-site.	41	Blackwood acacia	21	Yes	R	Remove, within grading	75	Flowering cherry	13	Yes	R	Remove, within development
8	Myoporum	8,8,7,4,3,3	No	R	Remove per SCVWD	42	Blackwood acacia	15	Yes	R	Remove, within development	76	Flowering cherry	11	No	R	Remove, within development
9	Myoporum	8,7,6,6,5,5	No	R	Remove per SCVWD	43	Blackwood acacia	20	Yes	R	Remove, within development	77	Flowering cherry	11	No	R	Remove, within development
10	Myoporum	6,5,5,5,4,4	No	R	Remove per SCVWD	44	Blackwood acacia	22	Yes	R	Remove, within development	78	Flowering cherry	11	No	R	Remove, within development
11	Raywood ash	12	Yes	R	Remove, within development	45	Blackwood acacia	23	Yes	R	Remove, within development	79	Raywood ash	16	Yes	R	Remove, within development
12	Raywood ash	12	Yes	R	Remove, within development	46	Blackwood acacia	26	Yes	R	Remove, poor suitability	80	Raywood ash	9	No	R	Remove, within development
13	Raywood ash	16	Yes	R	Remove, within development	47	Blackwood acacia	22	Yes	R	Remove, within grading	81	Raywood ash	7	No	R	Remove, within development
14	Raywood ash	13	Yes	R	Remove, within development	48	Blackwood acacia	15	Yes	R	Remove, within development	82	Raywood ash	7	No	R	Remove, within development
15	Raywood ash	13	Yes	R	Remove, within development	49	Blackwood acacia	23	Yes	R	Remove, within grading	83	Chinese pistache	6	No	R	Remove, within development
16	Raywood ash	13	Yes	R	Remove, within development	50	Blackwood acacia	15	Yes	R	Remove, within grading	84	Silver dollar gum	13	Yes	R	Remove, within development
17	Raywood ash	15	Yes	R	Remove, within development	51	Blackwood acacia	29	Yes	R	Remove, within development	85	Silver dollar gum	18	Yes	R	Remove, within development
18	Raywood ash	15	Yes	R	Remove, within development	52	Nichol's gum	25	Yes	P	Preserve, maintain ex. sidewalk	86	Myoporum	6,5,5,4,4	No	R	Remove per SCVWD
19	Raywood ash	14	Yes	R	Remove, within development	53	Nichol's gum	22	Yes	R	Remove, poor suitability	87	Silver dollar gum	18	Yes	R	Remove, within development
20	Raywood ash	15	Yes	R	Remove, within development	54	Nichol's gum	25	Yes	P	Preserve, outside impacts	88	Silver dollar gum	14	Yes	R	Remove per SCVWD
21	Flax leaf paperbark	13	Yes	R	Remove, within development	55	European alder	10	No	R	Remove, within development	89	Myoporum	6,5,5,4,4	No	R	Remove per SCVWD
22	Raywood ash	12	Yes	R	Remove, within development	56	European alder	11	No	R	Remove, within development	90	Calif. pepper	9	No	R	Remove per SCVWD
23	Blackwood acacia	21	Yes	R	Remove, within development	57	Callery pear	10	No	R	Remove, within development	91	Calif. pepper	10	No	R	Remove per SCVWD
24	Blackwood acacia	30	Yes	R	Remove, within grading	58	European alder	8	No	R	Remove, within development	92	Calif. pepper	10	No	R	Remove per SCVWD
25	Blackwood acacia	14	Yes	R	Remove, impacted by new entry	59	Callery pear	12	Yes	R	Remove, within development	93	Myoporum	9,5,5,5,4,4	No	R	Remove per SCVWD
26	Blackwood acacia	27	Yes	R	Remove, impacted by new entry	60	African fern pine	9	No	R	Remove, within development	94	Myoporum	8,6,4,4,4,3	No	R	Remove per SCVWD
27	Blackwood acacia	20	Yes	R	Remove, within development	61	Callery pear	12	Yes	R	Remove, within development	95	Silver dollar gum	18	Yes	R	Remove per SCVWD
28	Blackwood acacia	25	Yes	R	Remove, within development	62	Calif. pepper	10	No	R	Remove per SCVWD	96	Silver dollar gum	16	Yes	R	Remove per SCVWD
29	Blackwood acacia	23	Yes	R	Remove, within development	63	Calif. pepper	7	No	R	Remove per SCVWD	97	Silver dollar gum	18	Yes	R	Remove, within pedestrian bridge
30	Flax leaf paperbark	11	No	R	Remove, within development	64	Callery pear	10	No	R	Remove, within development	98	Myoporum	6,5,4,3,3,3	No	R	Remove, within pedestrian bridge
31	Flax leaf paperbark	10	No	R	Remove, within development	65	Calif. pepper	13	Yes	R	Remove per SCVWD	99	Myoporum	8,6,4,3,3	No	R	Remove per SCVWD
32	Flax leaf paperbark	10	No	R	Remove, within development	66	Italian stone pine	19	Yes	R	Remove per SCVWD	100	Calif. pepper	10	No	R	Remove per SCVWD
33	Blackwood acacia	24	Yes	R	Remove, within grading	67	Italian stone pine	20	Yes	R	Remove per SCVWD	101	Calif. pepper	10	No	R	Remove per SCVWD
34	Blackwood acacia	24	Yes	R	Remove, within development	68	Black pine	10	No	R	Remove per SCVWD	102	Calif. pepper	14	Yes	R	Remove per SCVWD

NOTE:
NO TREE SHALL BE REMOVED UNLESS THEY ARE SHOWN AND NOTED TO BE REMOVED ON THE GRADING PLANS. ALL TREES CONFLICTING WITH GRADING, UTILITIES OR OTHER IMPROVEMENTS, OR OVERHANGING A DRIVEWAY, TRAIL OR PAVEMENT SO AS TO FORM A NUISANCE OR HAZARD, SHALL BE TRIMMED AND PROPERLY TREATED AND SEALED.



TREE PROTECTION DETAIL

N.T.S.

TREE REMOVAL DISPOSITION PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

FOR: TRUMARK COMPANIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-6

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VESTING TENTATIVE MAP
WATERSTONE

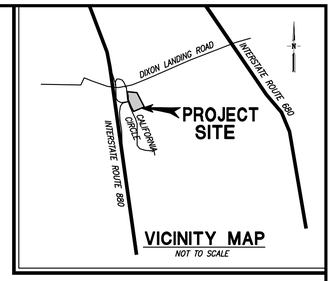
CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

LEGEND

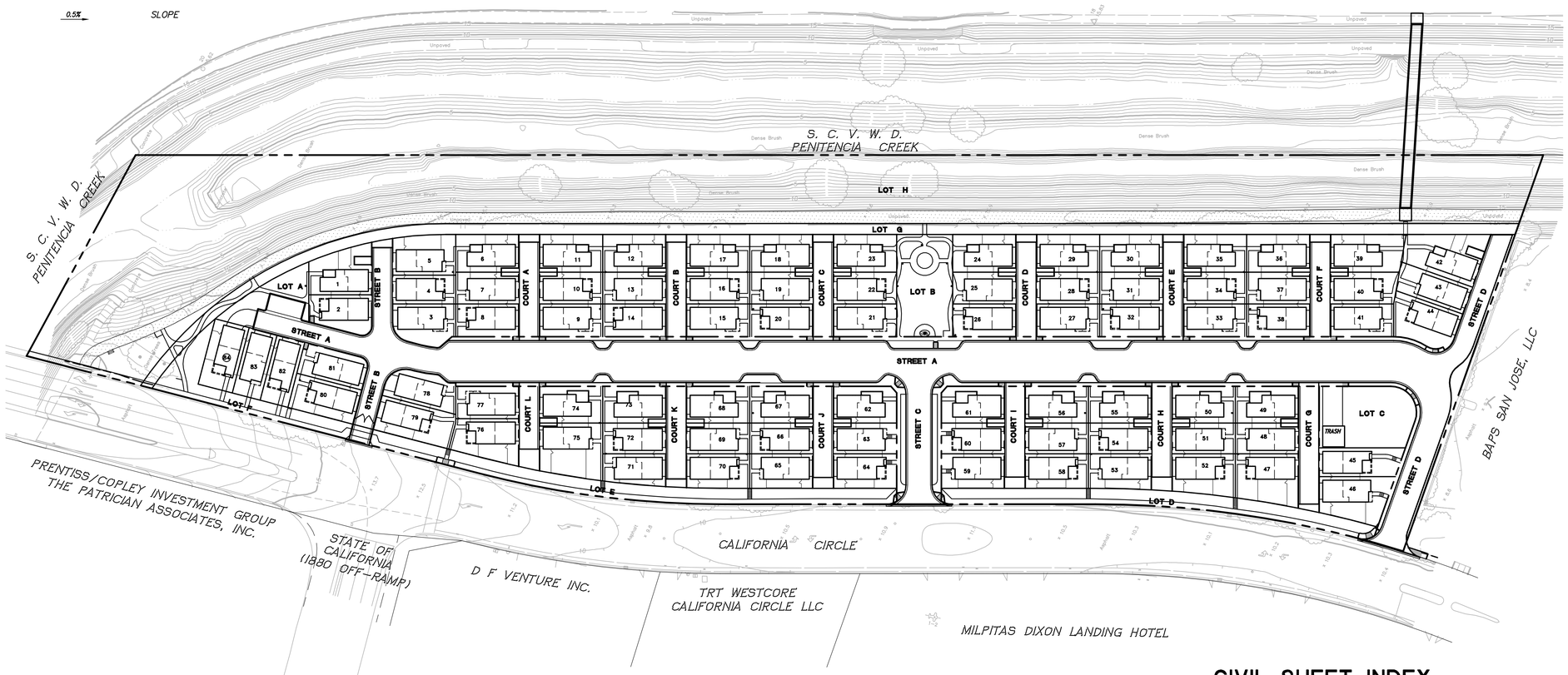
PROPOSED	DESCRIPTION	EXISTING
	TRACT BOUNDARY	
	LOT LINE	
	RIGHT OF WAY	
	CENTER LINE	
	RETAINING WALL	
	EASEMENT LINE	
12"SD	STORM DRAIN	EX 12"SD
8"SS	SANITARY SEWER	EX 8"SS
8"W	WATER	EX 8"W
	CURB & GUTTER	EX FC
	SIDEWALK	
	STORM WATER INLET	
	FIELD INLET	
	DIRECTION OF FLOW	
	MANHOLE	
	FIRE HYDRANT	
	SAVE TREE	
	REMOVE TREE	
	CONTOUR ELEVATIONS	130
x 525.2	SPOT ELEVATION	x525.2
0.5%	SLOPE	

ABBREVIATIONS

AB	AGGREGATE BASE	MH	MANHOLE
AC	ASPHALT CONCRETE	PL	PROPERTY LINE
BFE	BASE FLOOD ELEVATION	PSDE	PRIVATE STORM DRAIN EASEMENT
BW	BOTTOM OF WALL	PSSE	PRIVATE SANITARY SEWER EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT	PSUE	PUBLIC SERVICE UTILITY EASEMENT
EX	EXISTING	PPAE	PRIVATE PEDESTRIAN ACCESS EASEMENT
FC	FACE OF CURB	PWLE	PRIVATE WATER LINE EASEMENT
FF	FINISH FLOOR	RET	CURB RETURN
FG	FINISHED GRADE	RW	RIGHT OF WAY
FI	FIELD INLET	SWI	STORM WATER INLET
FL	FLOW LINE	SWK	SIDEWALK
GB	GRADE BREAK	TC	TOP OF CURB
GE	GARAGE ELEVATION	TG	TOP OF GRATE
GR	GRATE	TW	TOP OF WALL
HP	HIGH POINT		
HOA	HOMEOWNER'S ASSOCIATION		
INV	INVERT ELEVATION		
LP	LOW POINT		
MH	MANHOLE		



VICINITY MAP
NOT TO SCALE



LOCATION MAP
NOT TO SCALE

CIVIL SHEET INDEX

SHEET NO.	DESCRIPTION
C-1	TITLE AND GENERAL NOTES
C-2	EXISTING SITE CONDITIONS PLAN
C-3	PRELIMINARY SITE PLAN
C-4	PRELIMINARY SITE PLAN
C-5	TYPICAL SECTIONS & DETAILS
C-6	PRELIMINARY GRADING AND DRAINAGE PLAN
C-7	PRELIMINARY GRADING AND DRAINAGE PLAN
C-8	PRELIMINARY GRADING SECTIONS
C-9	PRELIMINARY UTILTIY PLAN
C-10	PRELIMINARY UTILITY PLAN
C-11	PRELIMINARY STORMWATER TREATMENT PLAN
C-12	PRELIMINARY STORMWATER TREATMENT PLAN
C-13	PRELIMINARY PEDESTRIAN CIRCULATION PLAN
C-14	FIRE APPARATUS ACCESS PLAN
C-15	FIRE APPARATUS ACCESS PLAN
C-16	FIRE APPARATUS ACCESS PLAN

GENERAL NOTES:

1. OWNER: TRUMARK COMPANIES, LLC
4185 BLACKHAWK PLAZA CIRCLE, SUITE 200
DANVILLE, CA 94506
(925) 309-2503
CONTACT: MR. CHRIS DAVENPORT

2. DEVELOPER: TRUMARK COMPANIES, LLC
4185 BLACKHAWK PLAZA CIRCLE, SUITE 200
DANVILLE, CA 94506
(925) 309-2503
CONTACT: MR. CHRIS DAVENPORT

3. CIVIL ENGINEER: RUGGERI-JENSEN-AZAR
4690 CHABOT DRIVE, SUITE 200
PLEASANTON, CA 94588
(925) 227-9100
CONTACT: MR. JARED FREY

4. ARCHITECT: KTGY
580 SECOND STREET, SUITE 200
OAKLAND, CA 94607
(510) 272-2910
CONTACT: MS. JILL WILLIAMS

5. LANDSCAPE ARCHITECT: VAN DORN ABED LANDSCAPE ARCHITECTS, INC.
81 14TH STREET
SAN FRANCISCO, CA 94103
(415) 864-1921
CONTACT: MS. SHARI VAN DORN

6. ASSESSOR'S PARCEL NUMBERS: 022-37-011 AND 022-37-012
7. CURRENT USE: INDUSTRIAL
8. CURRENT GENERAL PLAN DESIGNATION: PUD-31
9. PROPOSED USE: RESIDENTIAL
10. EXISTING ZONING: INDUSTRIAL PARK (MP)
11. PROPOSED ZONING: PLANNED DEVELOPMENT
12. GROSS SITE AREA: 10.7 ACRES
13. NET DEVELOPMENT AREA: (INCLUDING PUBLIC OPEN SPACE) 7.5 ACRES
14. OPEN SPACE: 0.9 ACRES (LOTS A-G)
15. TOTAL NUMBER OF PROPOSED LOTS: 84
16. PROPOSED GROSS SITE DENSITY: 7.9 DU/AC
17. PROPOSED NET SITE DENSITY: 11.2 DU/AC
18. MINIMUM LOT SIZE: 1,842 SF
19. ALL PROPOSED STREETS & COURTS ARE PRIVATELY OWNED AND MAINTAINED.
20. ALL PROPOSED UTILITIES WITHIN THE SUBDIVISION ARE PRIVATELY OWNED AND MAINTAINED
21. UTILITIES:
    a. WATER: CITY OF MILPITAS
    b. SANITARY SEWER: CITY OF MILPITAS
    c. STORM DRAIN CITY OF MILPITAS
    d. FIRE MILPITAS FIRE DEPARTMENT
    e. GAS AND ELECTRIC PACIFIC GAS & ELECTRIC
    f. TELEPHONE AT&T
    g. CABLE TV AT&T BROADBAND
22. THIS PROPERTY LIES WITHIN FLOOD ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN), AND WITHIN ZONE AH (FLOOD DEPTHS OF 1 TO 3 FEET USUALLY AREAS OF PONDING; BASE FLOOD ELEVATIONS DETERMINED. (ELEVATION 15, BASED ON NAV88 DATUM), AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 58 OF 830, MAP NO. 06085C0058H AND WITHIN ZONE A (AREAS DETERMINED WITHIN 1% ANNUAL FLOOD; 100-YEAR FLOOD; THIS SPECIAL FLOOD HAZARD ZONE IS SUBJECT TO 1% ANNUAL CHANCE OF FLOODING. ZONE A LIES WITHIN LOWER PENITENCIA CREEK PROTECTED BY A LEVEE.
23. TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED ON AERIAL TOPOGRAPHIC SURVEY PROVIDED BY TETRATECH, OCTOBER, 2011.
24. BENCHMARK: CITY OF MILPITAS BENCHMARK DIX-RR, BRASS DISK IN MONUMENT WELL, DIXON LANDING ROAD 120 FEET EAST OF WPRR TRACKS. NGVD ELEV: 17.232
25. THE VESTING TENTATIVE MAP IS BASED ON NGVD29 DATUM. IMPROVEMENT PLANS SHALL BE CONVERTED TO NAVD88 DATUM. CONVERSION NGVD29 + 2.78' = NAVD88.
26. THERE ARE NO EXISTING ON-SITE WELLS.
27. STREET TREES SHALL BE INSTALLED PER CITY STANDARD NO. 448 & MAINTAINED BY HOA.
28. STREET LIGHTS ON PRIVATE STREETS/COURTS SHALL BE MAINTAINED BY THE HOA.
29. PAVEMENT DESIGN SHALL BE BASED ON STATE OF CALIFORNIA "R" VALUE METHOD USING A MINIMUM TI OF 5.
30. EXISTING ADA/HANDICAP RAMPS FROM PROJECT FRONTAGE TO MILMONT DRIVE, INCLUDING MILMONT/DIXON LANDING INTERSECTION SHALL BE REMOVED AND REPLACED TO COMPLY WITH ADA REQUIREMENTS.

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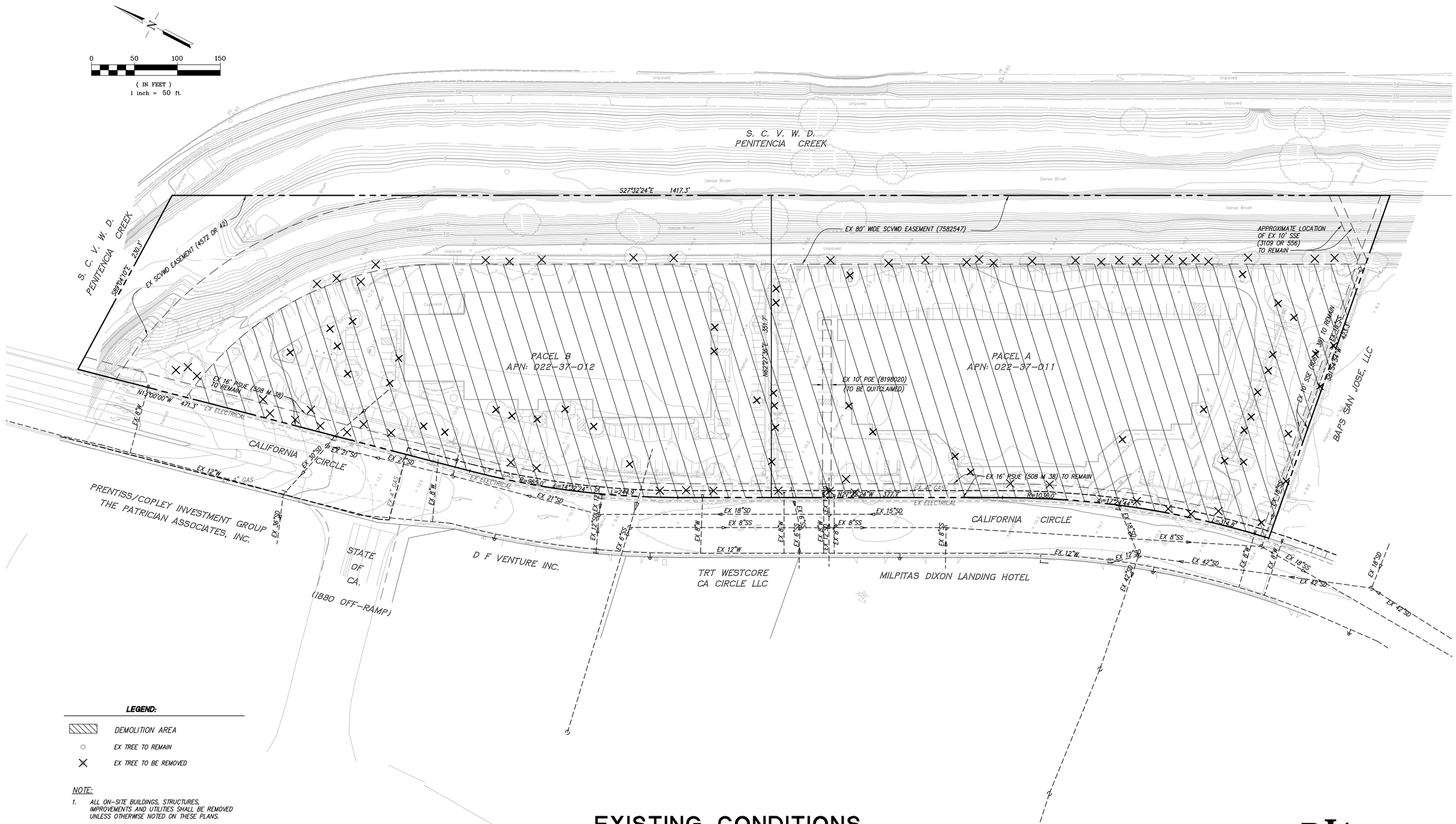

LEGEND:

- DEMOLITION AREA
- EX TREE TO REMAIN
- EX TREE TO BE REMOVED

NOTE:

1. ALL ON-SITE BUILDINGS, STRUCTURES, IMPROVEMENTS AND UTILITIES SHALL BE REMOVED UNLESS OTHERWISE NOTED ON THESE PLANS.
2. THE EXISTING 80' WIDE SCVWD EASEMENT (7582547) & THE EXISTING SCVWD EASEMENT (4572 OR 42) WILL BE DEDICATED IN FEE TO THE SANTA CLARA VALLEY WATER DISTRICT (SCVWD).

EXISTING CONDITIONS

WATERSTONE

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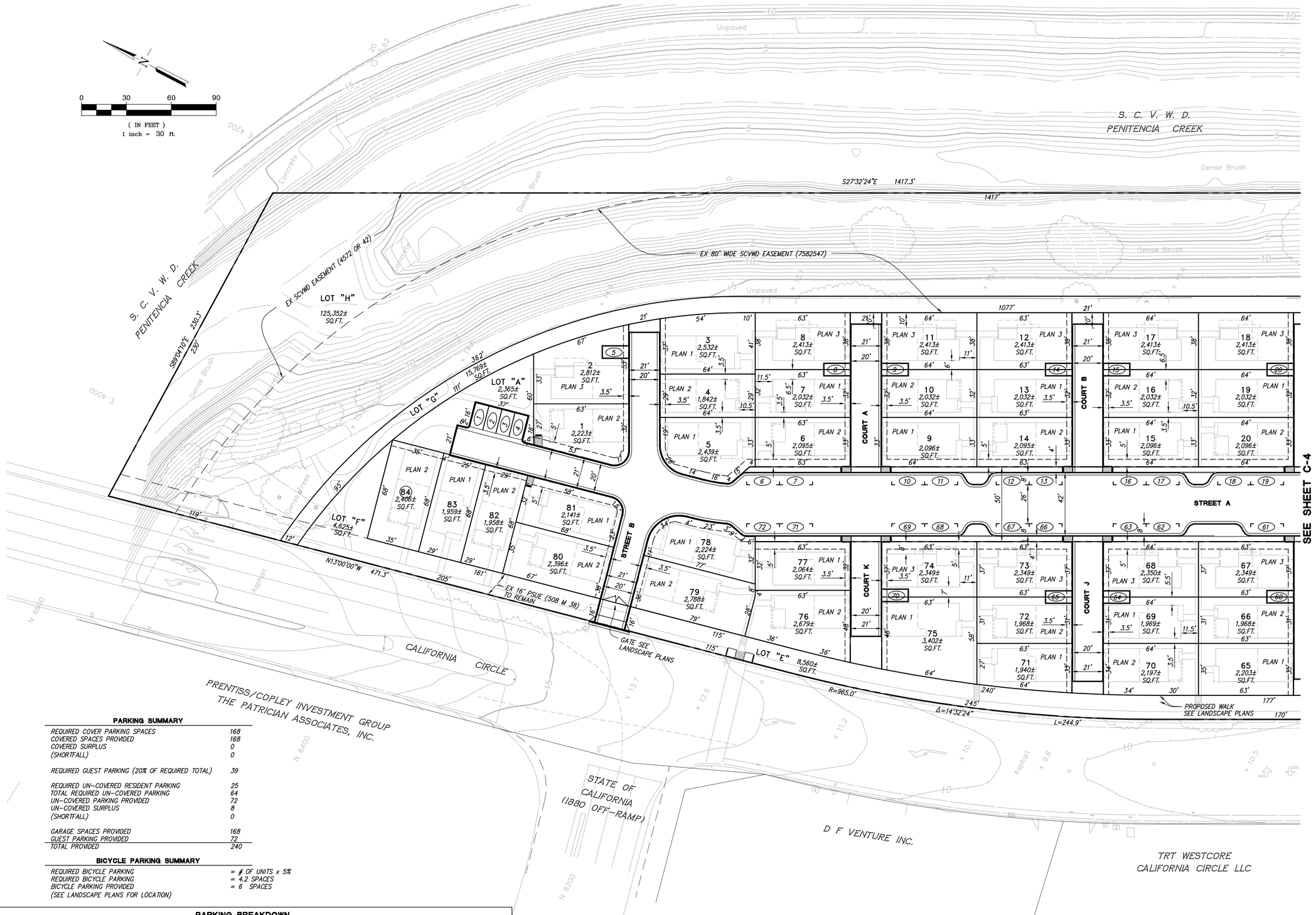

PARKING SUMMARY

REQUIRED COVER PARKING SPACES	168
COVERED SPACES PROVIDED	168
COVERED SURPLUS	0
(SHORTFALL)	0
REQUIRED GUEST PARKING (20% OF REQUIRED TOTAL)	39
REQUIRED UN-COVERED RESIDENT PARKING	25
TOTAL REQUIRED UN-COVERED PARKING	64
UN-COVERED PARKING PROVIDED	72
UN-COVERED SURPLUS	8
(SHORTFALL)	0
GARAGE SPACES PROVIDED	168
GUEST PARKING PROVIDED	72
TOTAL PROVIDED	240

BICYCLE PARKING SUMMARY

REQUIRED BICYCLE PARKING	= # OF UNITS x 5%
REQUIRED BICYCLE PARKING	= 4.2 SPACES
BICYCLE PARKING PROVIDED	= 6 SPACES
(SEE LANDSCAPE PLANS FOR LOCATION)	

PARKING BREAKDOWN

PLAN TYPE	NUMBER OF BEDROOMS	NUMBER OF UNITS	COVERED PARKING	UN-COVERED PARKING	REQUIRED COVERED PARKING	REQUIRED UN-COVERED PARKING	TOTAL REQUIRED PARKING
1	3	29	2	–	58	–	58
2	3	30	2	–	60	–	60
3	4	25	2	1	50	25	75
				TOTAL REQUIRED	168	25	193

PRELIMINARY SITE PLAN

WATERSTONE

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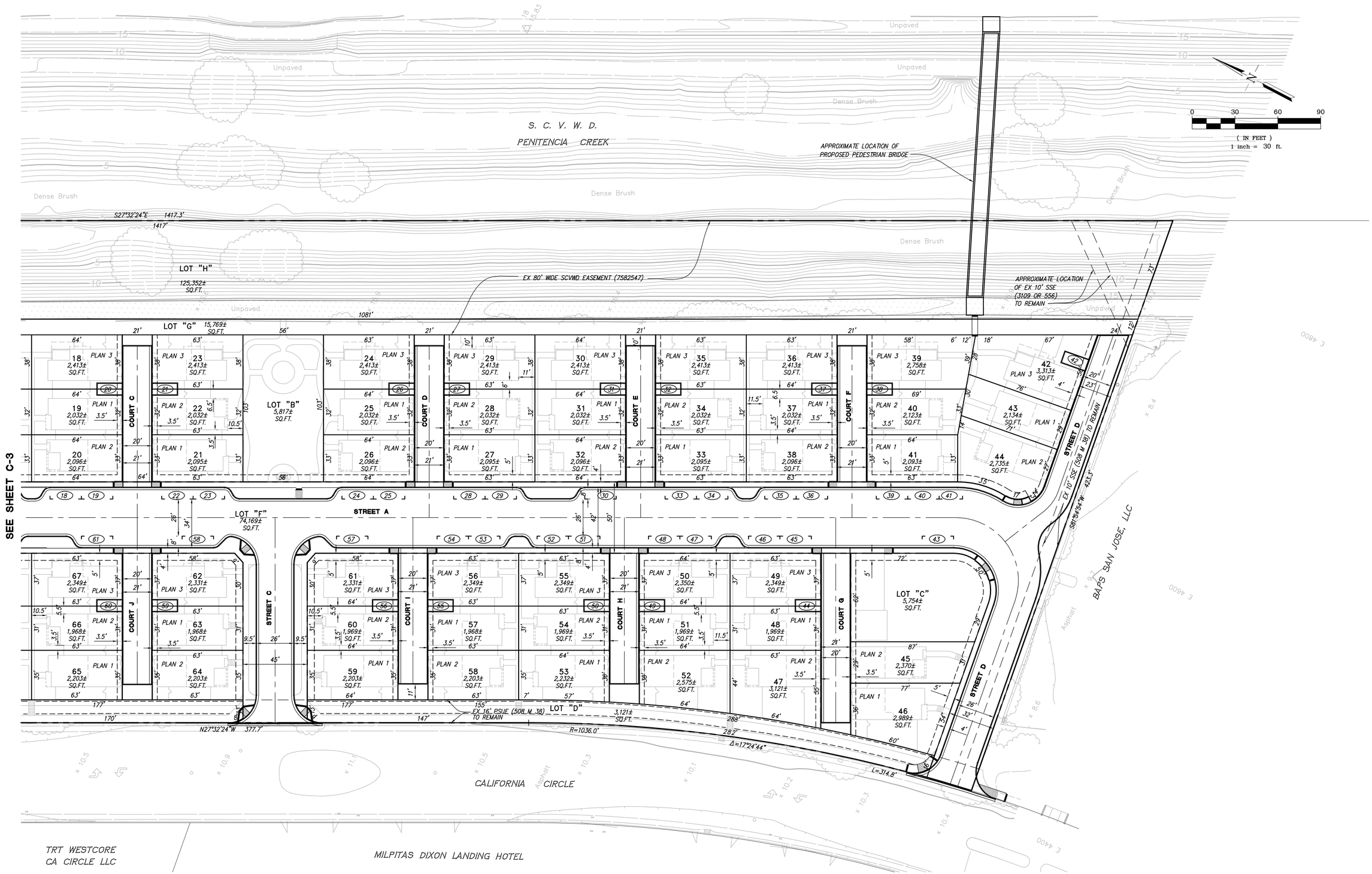

PRELIMINARY SITE PLAN

WATERSTONE

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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-4

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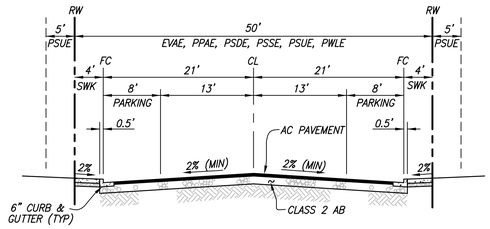
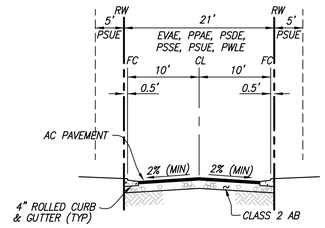
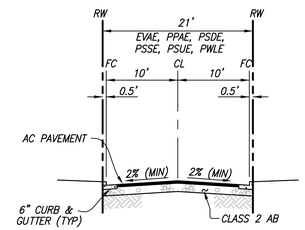


STREET A WITH SIDEWALK
NOT TO SCALE



STREET A WITHOUT SIDEWALK
NOT TO SCALE



STREET B
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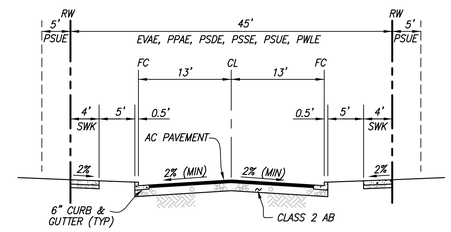
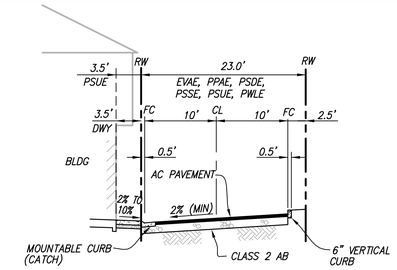
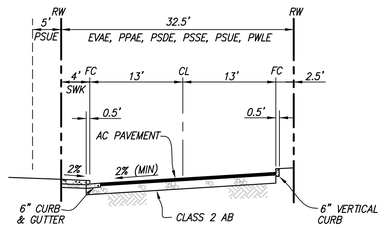


STREET C
NOT TO SCALE



STREET D (LOTS 42-44)
NOT TO SCALE



STREET D (LOTS 45-46)
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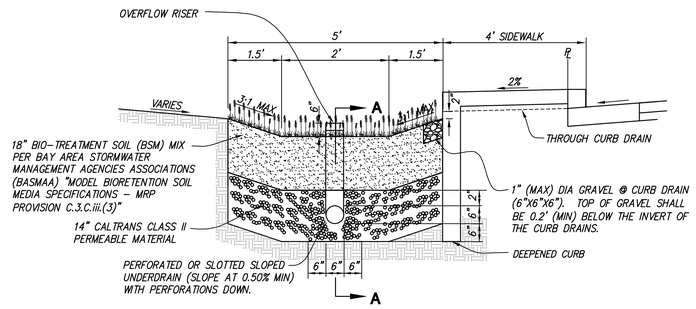
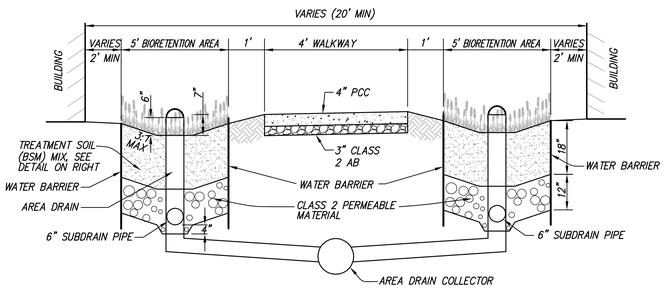
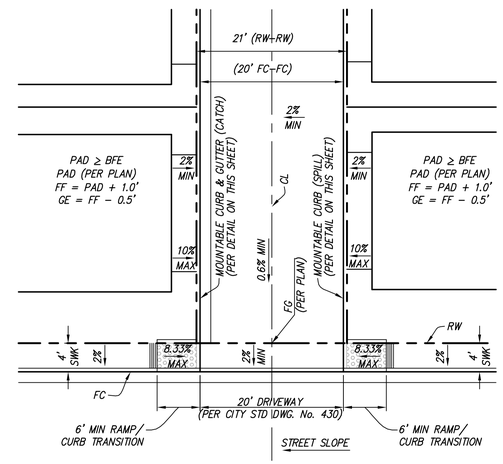


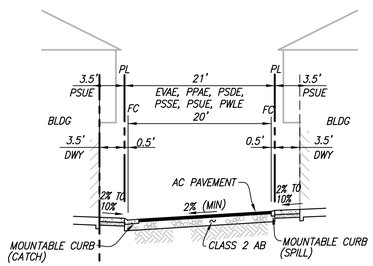
ADJACENT TO SIDEWALK



BIORETENTION AREA AT PASEOS
NOT TO SCALE

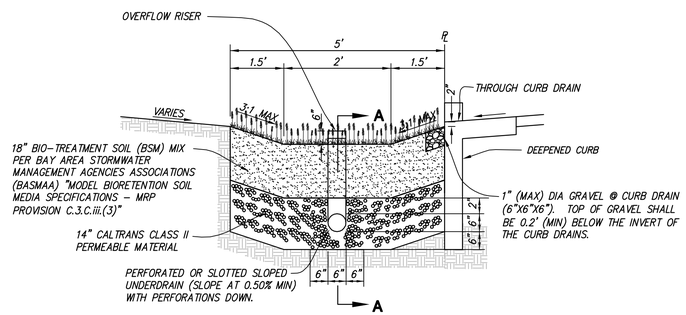


TYPICAL COURT DRIVEWAY DETAIL
SCALE 1"=10'



PRIVATE COURTS
NOT TO SCALE

NOTE: PARKING STALLS WITHIN PRIVATE COURTS SHALL HAVE A PARKING EASEMENT



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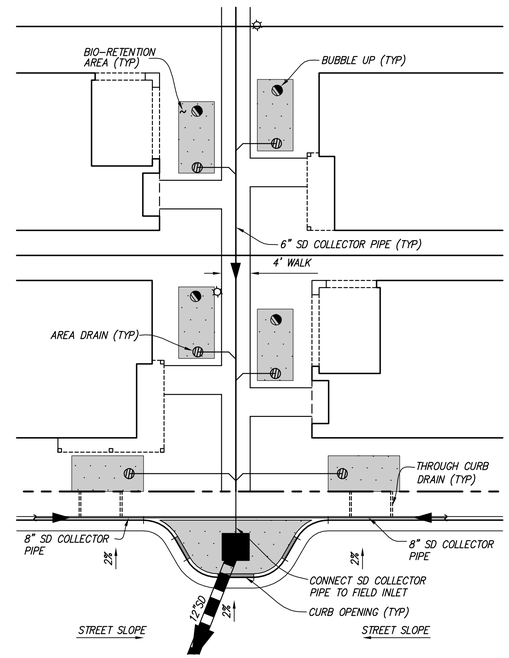
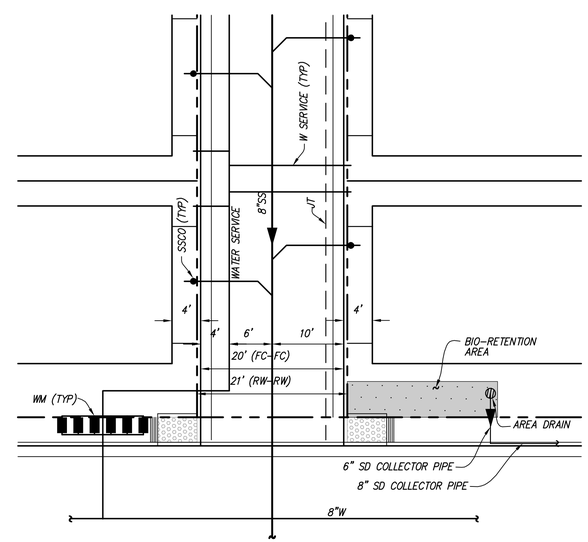
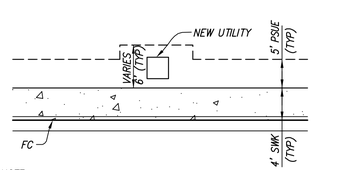


TYPICAL PASEO STORMWATER TREATMENT DETAIL
SCALE 1"=10'



TYPICAL COURT UTILITY DETAIL
SCALE 1"=10'

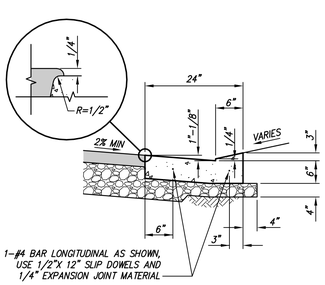


NOTE:
1. WHERE REQUIRED THE PUE SHALL BE WIDENED AT PROPOSED UTILITIES.

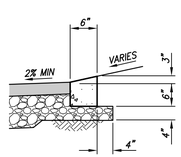
TYPICAL PSUE AT NEW UTILITY DETAIL
NOT TO SCALE

SECTION A-A
NOT TO SCALE

BIO-RETENTION ADJACENT TO CURB AND SIDEWALK
NOT TO SCALE



PRIVATE COURT MOUNTABLE CURB AND GUTTER AT DRIVEWAY (CATCH)
NOT TO SCALE



MOUNTABLE CURB AT DRIVEWAY (SPILL)
NOT TO SCALE

DETAILS & SECTIONS

WATERSTONE

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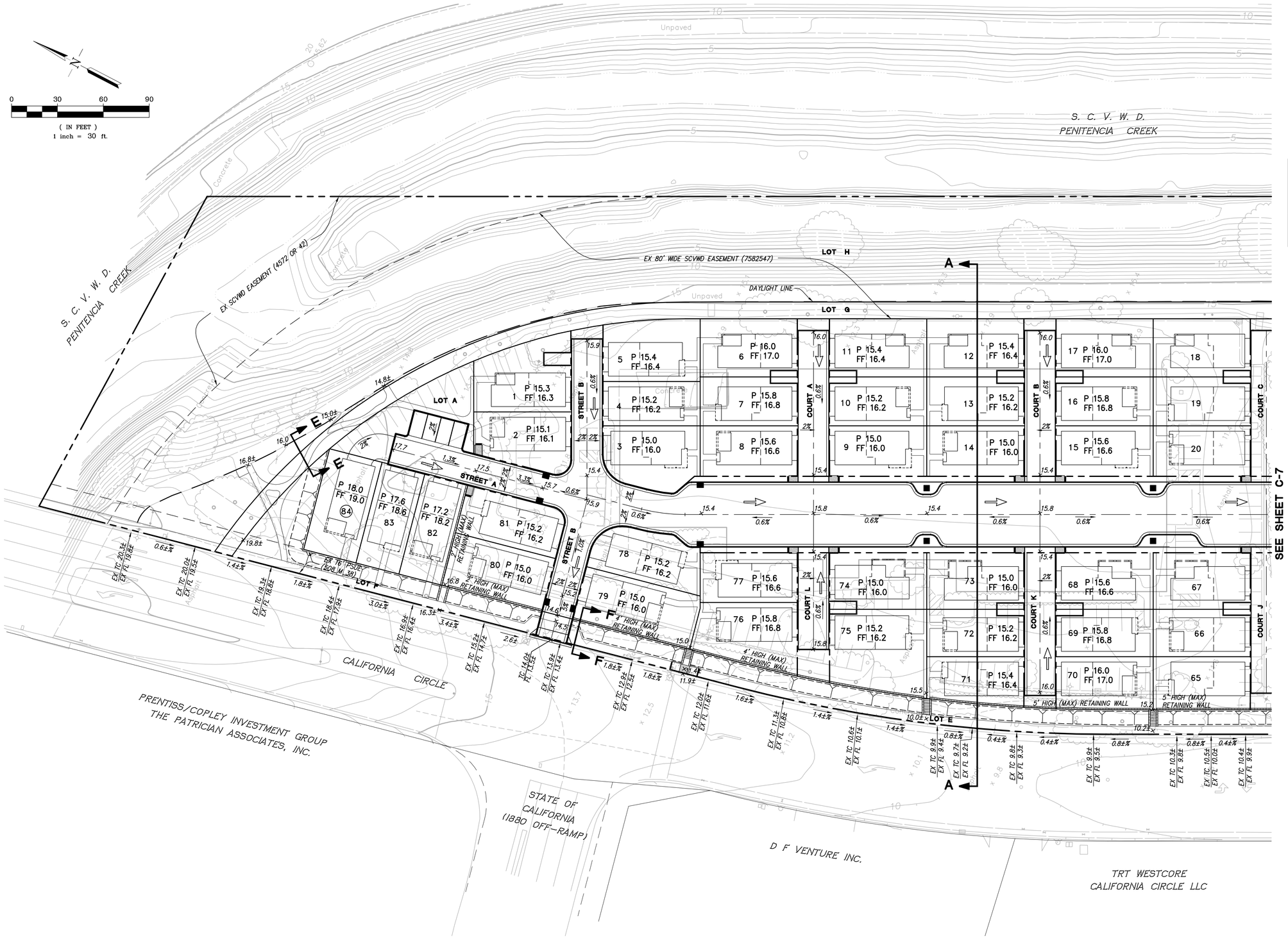

ESTIMATED EARTHWORK QUANTITIES

ITEMS	CUT (C.Y.)	FILL (C.Y.)
LOTS	30	29,420
STREETS	50	8,690
OPEN SPACE PARCELS	30	4,020
BIO-RETENTION SPOILS	1,010	–
TRENCH SPOILS	3,390	–
SHRINKAGE (10% ASSUMED)	–	4,210
TOTAL	4,510	46,340
	IMPORT	41,830

NOTE:
ALL QUANTITIES SHOWN ON THIS PLAN ARE APPROXIMATE. CALCULATED CUT AND FILL ARE TO "ROUGH GRADE" AND EXISTING GROUND. THE ACTUAL AMOUNT OF EARTH MOVED IS VARIABLE DEPENDENT ON COMPACTION, CONSOLIDATION, STRIPPING REQUIREMENTS, AND THE CONTRACTOR'S METHOD OF OPERATION.

LEGEND:

OVERLAND RELEASE FLOW DIRECTION

NOTE:

1. 100 YEAR FLOOD ELEVATION = 15.0 (DATUM NGVD29)

PRELIMINARY GRADING & DRAINAGE PLAN

WATERSTONE

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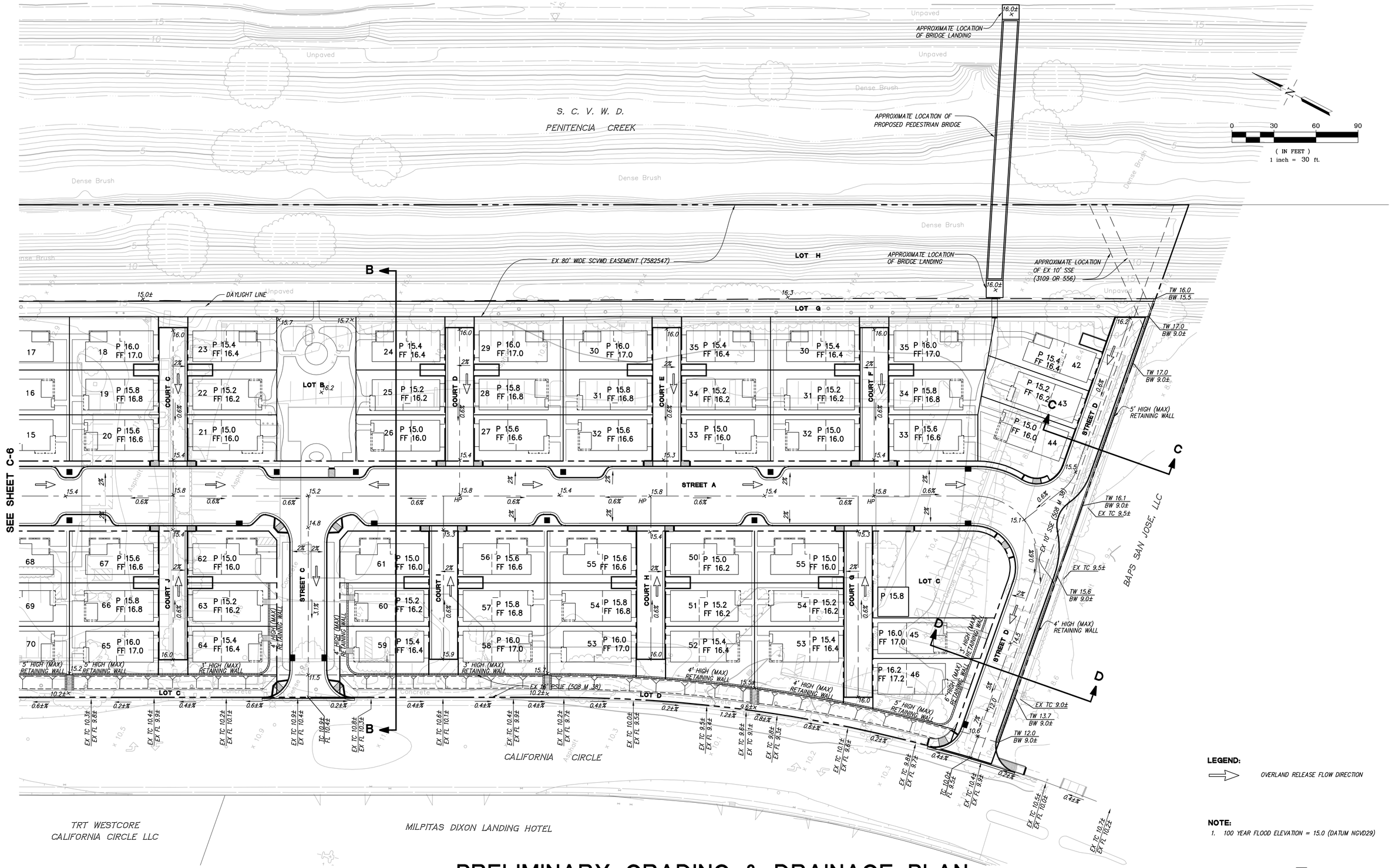

LEGEND:

⇨ OVERLAND RELEASE FLOW DIRECTION

NOTE:

1. 100 YEAR FLOOD ELEVATION = 15.0 (DATUM NGVD29)

PRELIMINARY GRADING & DRAINAGE PLAN

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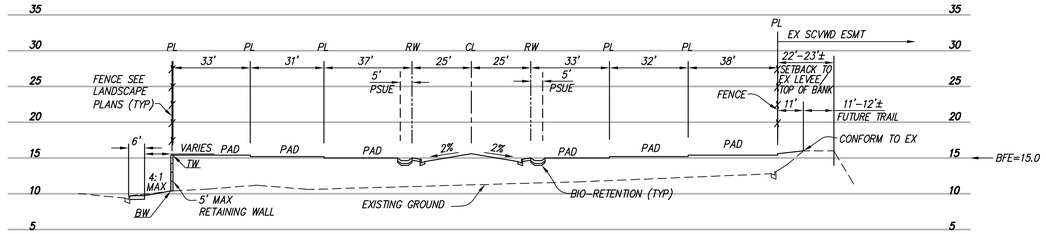
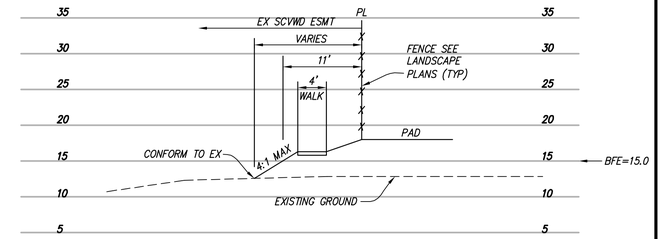
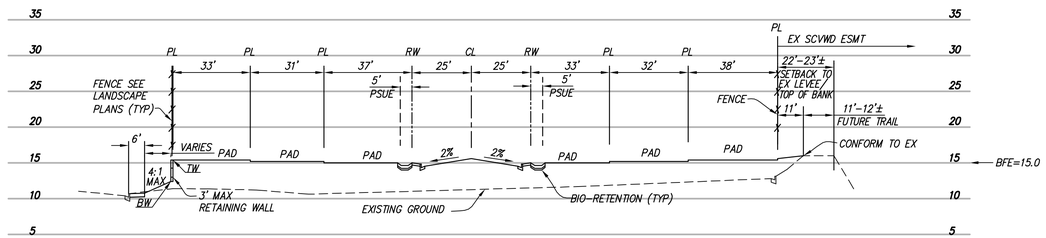


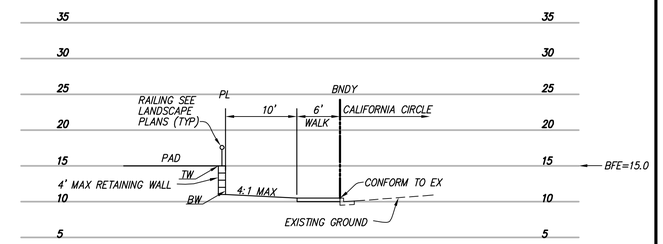
SECTION A-A
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'



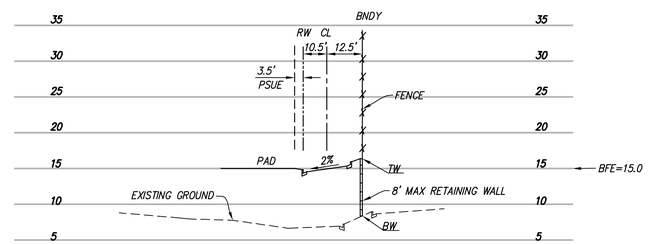
SECTION E-E
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'



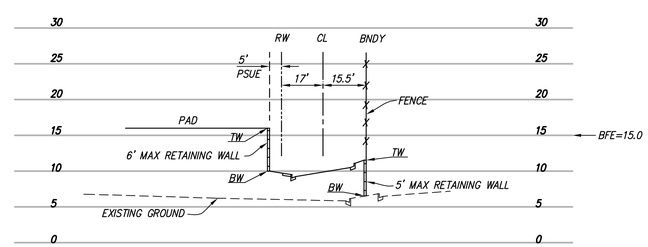
SECTION B-B
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'



SECTION F-F
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'



SECTION C-C
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'



SECTION D-D
HORIZONTAL: 1"=30'
VERTICAL: 1"=10'

PRELIMINARY GRADING SECTIONS

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-8

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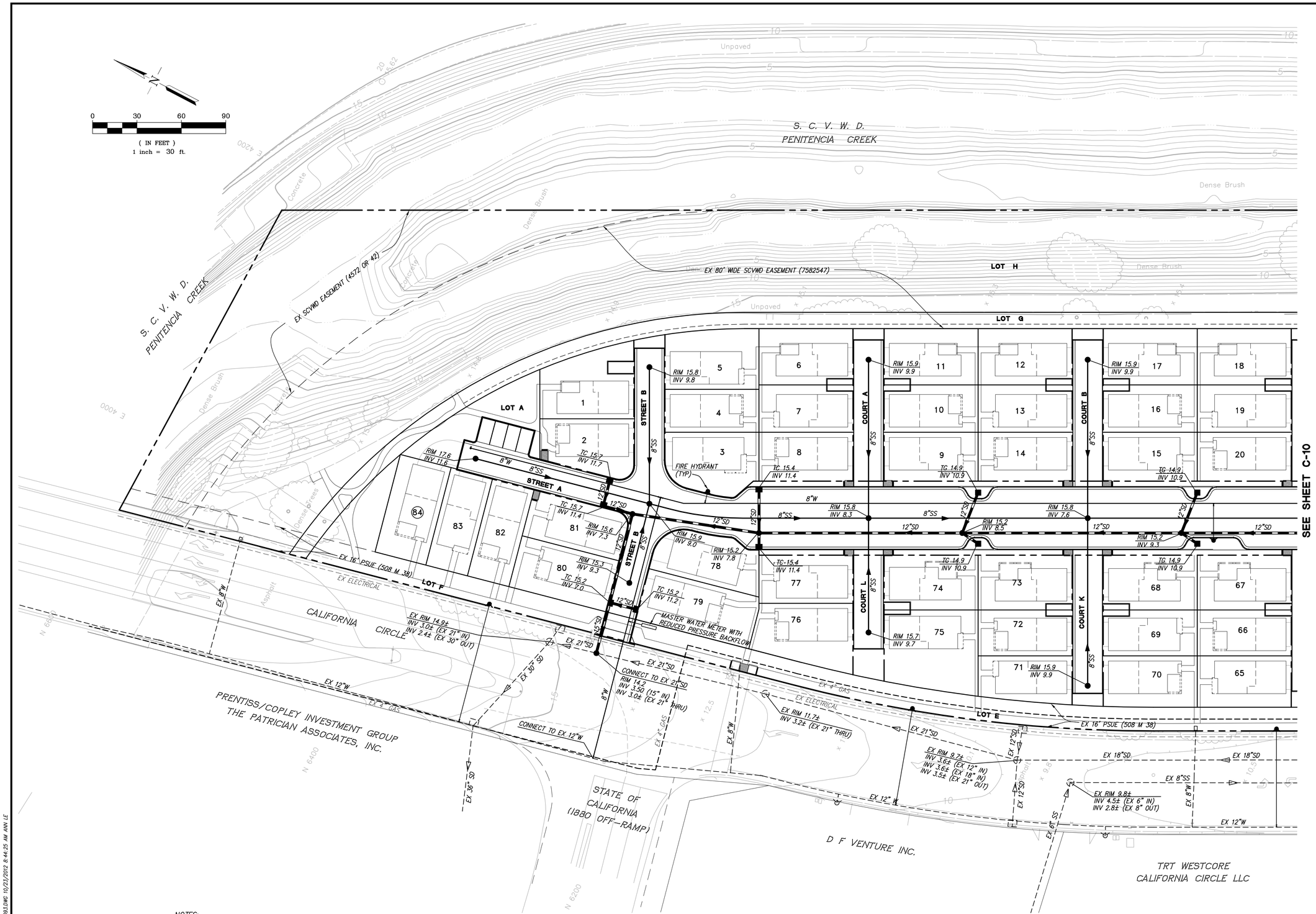

NOTES:

1. ALL SANITARY SEWER, STORM DRAIN AND WATER LINES SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE HOA.
2. SEE DETAIL ON SHEET C-5 FOR TYPICAL UTILITIES WITHIN THE COURTS.

PRELIMINARY UTILITY PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

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4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-9

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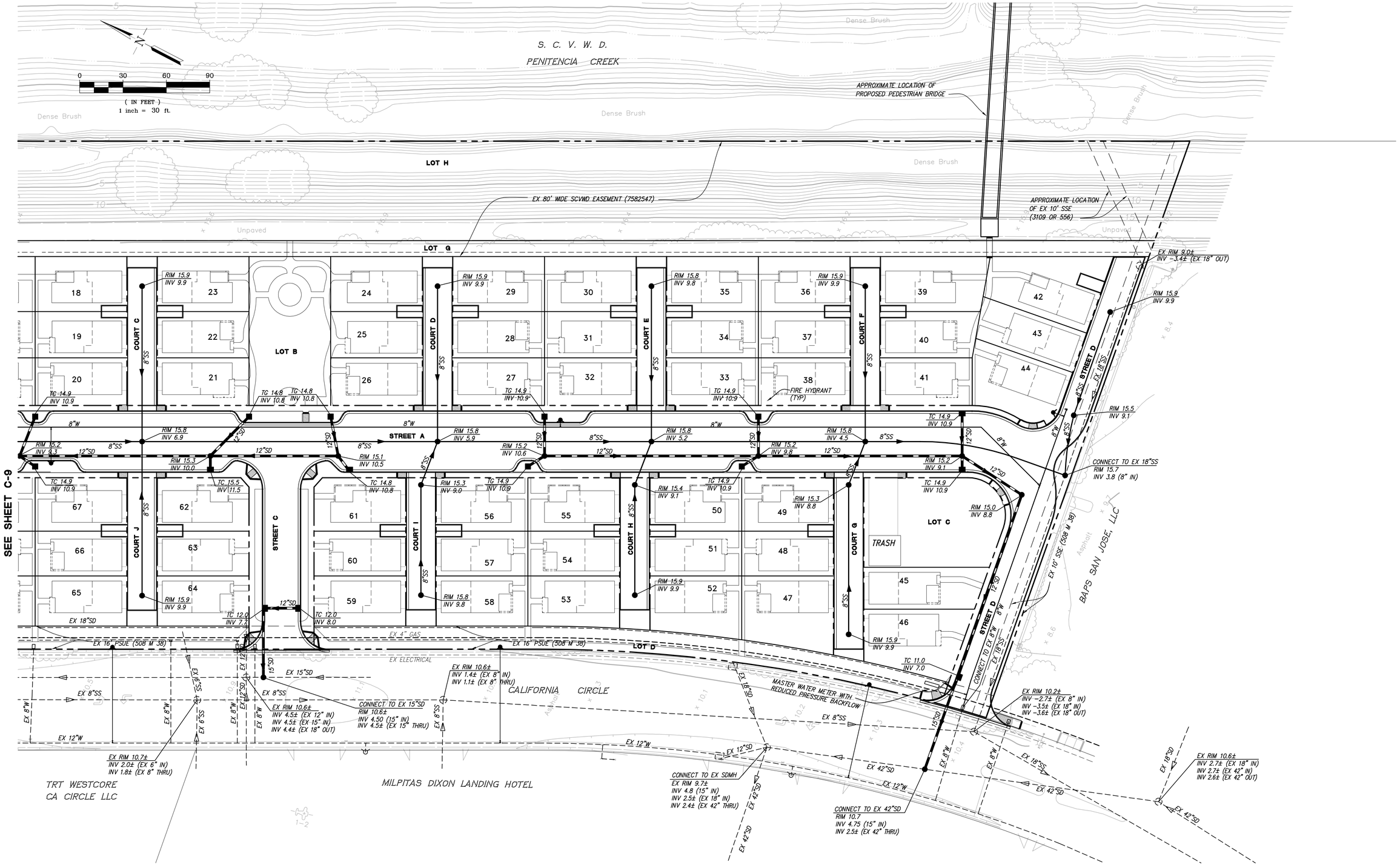

NOTES:

1. ALL SANITARY SEWER, STORM DRAIN AND WATER LINES SHALL BE PRIVATELY OWNED AND MAINTAINED BY THE HOA.
2. SEE DETAIL ON SHEET C-5 FOR TYPICAL UTILITIES WITHIN THE COURTS.

PRELIMINARY UTILITY PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

FOR: TRUMARK COMPANIES

RUGGERI-JENSEN-AZAR
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PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-10

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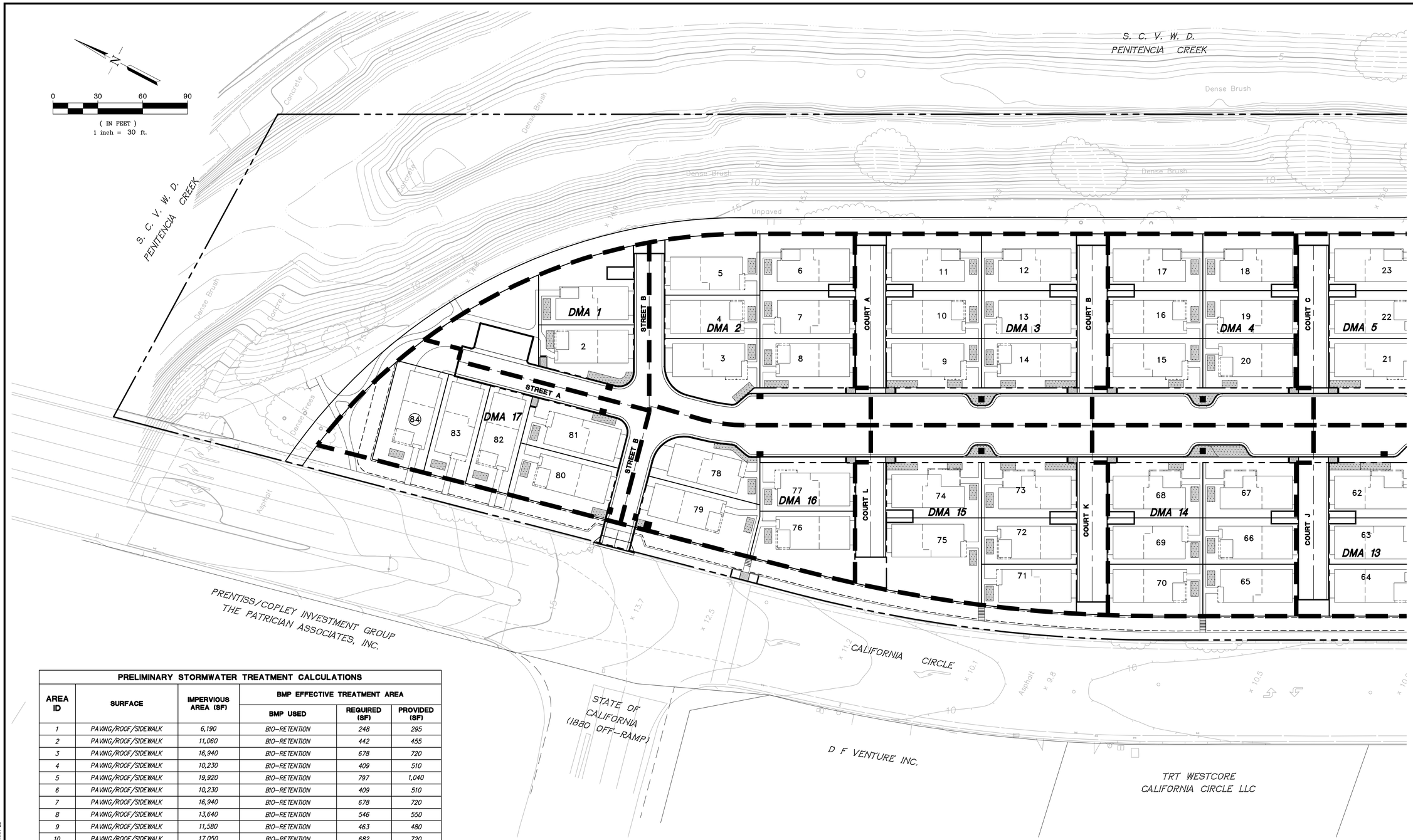

PRELIMINARY STORMWATER TREATMENT CALCULATIONS					
AREA ID	SURFACE	IMPERVIOUS AREA (SF)	BMP EFFECTIVE TREATMENT AREA		
			BMP USED	REQUIRED (SF)	PROVIDED (SF)
1	PAVING/ROOF/SIDEWALK	6,190	BIO-RETENTION	248	295
2	PAVING/ROOF/SIDEWALK	11,060	BIO-RETENTION	442	455
3	PAVING/ROOF/SIDEWALK	16,940	BIO-RETENTION	678	720
4	PAVING/ROOF/SIDEWALK	10,230	BIO-RETENTION	409	510
5	PAVING/ROOF/SIDEWALK	19,920	BIO-RETENTION	797	1,040
6	PAVING/ROOF/SIDEWALK	10,230	BIO-RETENTION	409	510
7	PAVING/ROOF/SIDEWALK	16,940	BIO-RETENTION	678	720
8	PAVING/ROOF/SIDEWALK	13,640	BIO-RETENTION	546	550
9	PAVING/ROOF/SIDEWALK	11,580	BIO-RETENTION	463	480
10	PAVING/ROOF/SIDEWALK	17,050	BIO-RETENTION	682	720
11	PAVING/ROOF/SIDEWALK	10,420	BIO-RETENTION	417	510
12	PAVING/ROOF/SIDEWALK	10,920	BIO-RETENTION	437	460
13	PAVING/ROOF/SIDEWALK	10,930	BIO-RETENTION	437	455
14	PAVING/ROOF/SIDEWALK	10,420	BIO-RETENTION	417	510
15	PAVING/ROOF/SIDEWALK	14,640	BIO-RETENTION	586	620
16	PAVING/ROOF/SIDEWALK	8,820	BIO-RETENTION	353	360
17	PAVING/ROOF/SIDEWALK	8,960	BIO-RETENTION	358	380

NOTES:

1. THE CALCULATIONS ARE BASED ON THE CITY OF MILPITAS STORMWATER C.3 GUIDEBOOK, 3RD EDITION, OCTOBER 6, 2005.
   a. 0.2 INCHES/HOUR RAINFALL INTENSITY ON 100% IMPERVIOUS AREA.
   b. SOIL FOR TREATMENT MEDIUM WITH A 5 INCHES/HOUR INFILTRATION RATE.
   c. A TREATMENT MEDIUM OF 0.04 SIZING FACTOR FOR BIORETENTION AREAS.
2. SIZING FACTOR OF 0.04 NOTED ABOVE IS CALCULATED BASED ON THE FOLLOWING CRITERIA:
   a. SIZING FACTOR=(0.2 IN/HR)/(5 IN/HR)=0.04
3. PROPOSED IMPERVIOUS SURFACE (199,400 SF) IS LESS THAN EXISTING IMPERVIOUS SURFACE (268,900 SF) THEREFORE HYDROMODIFICATION IS NOT REQUIRED.

PRELIMINARY STORMWATER TREATMENT PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-11

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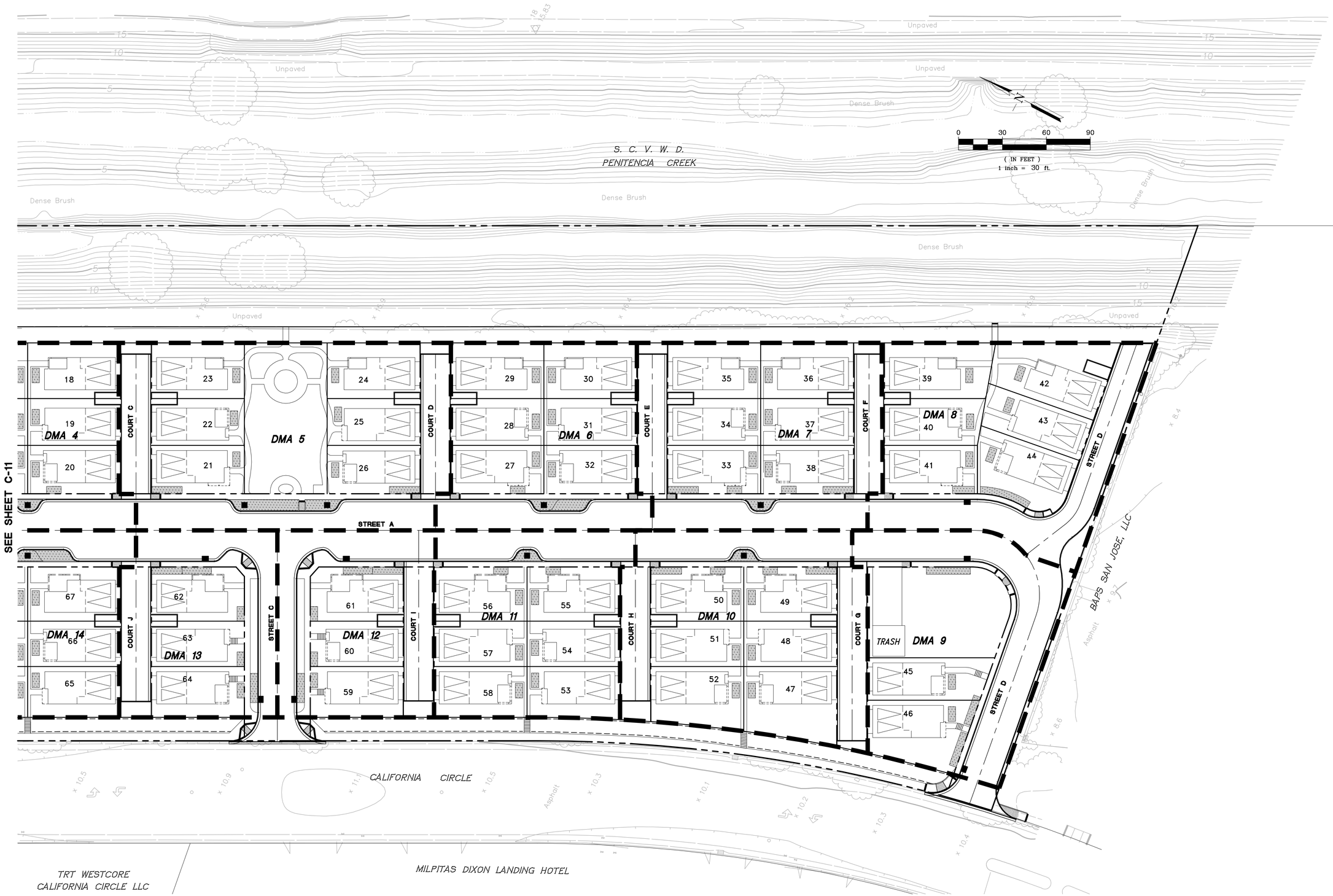

PRELIMINARY STORMWATER TREATMENT PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-12

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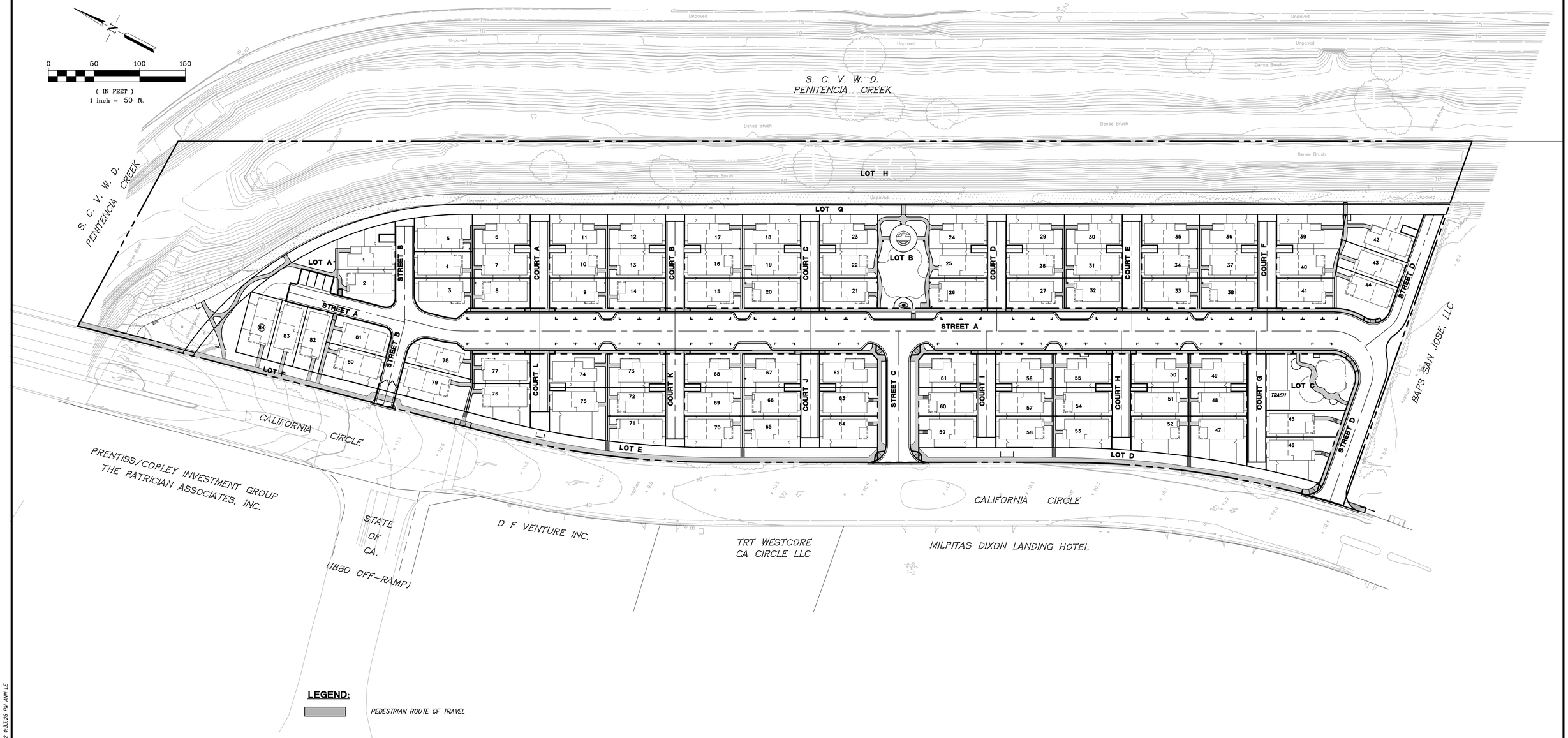

PEDESTRIAN CIRCULATION PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-13

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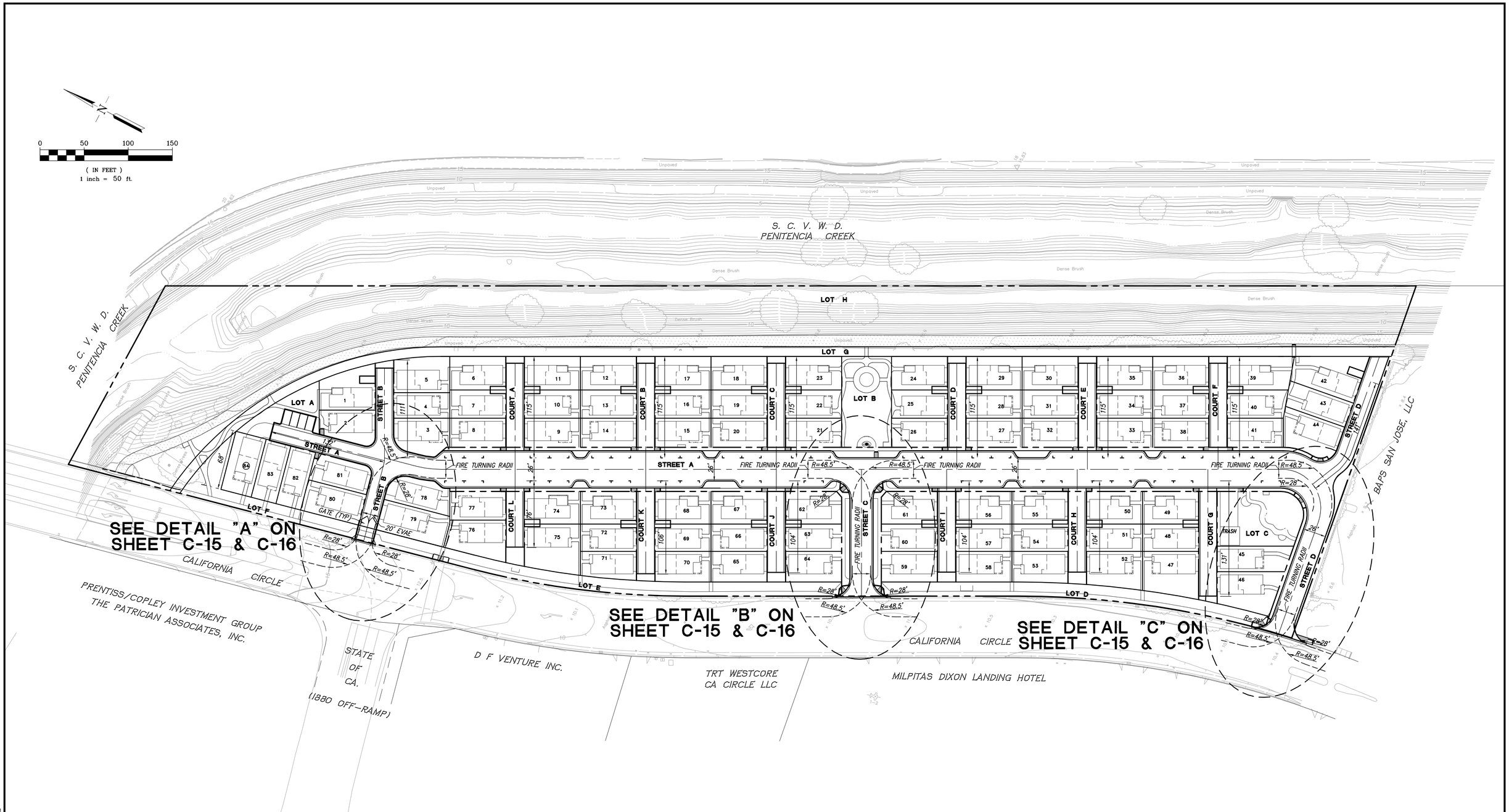

FIRE APPARATUS ACCESS PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-14

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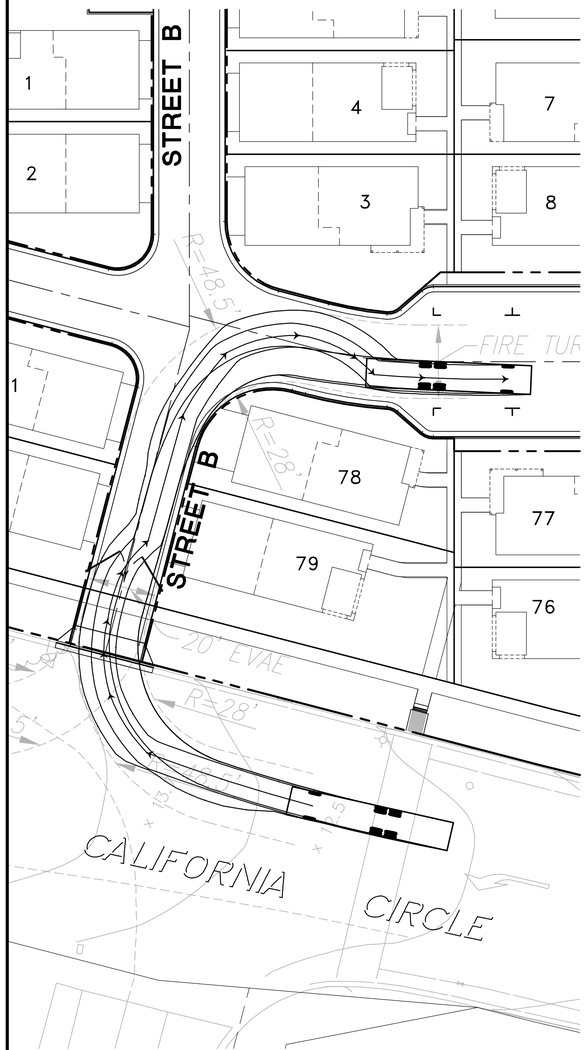
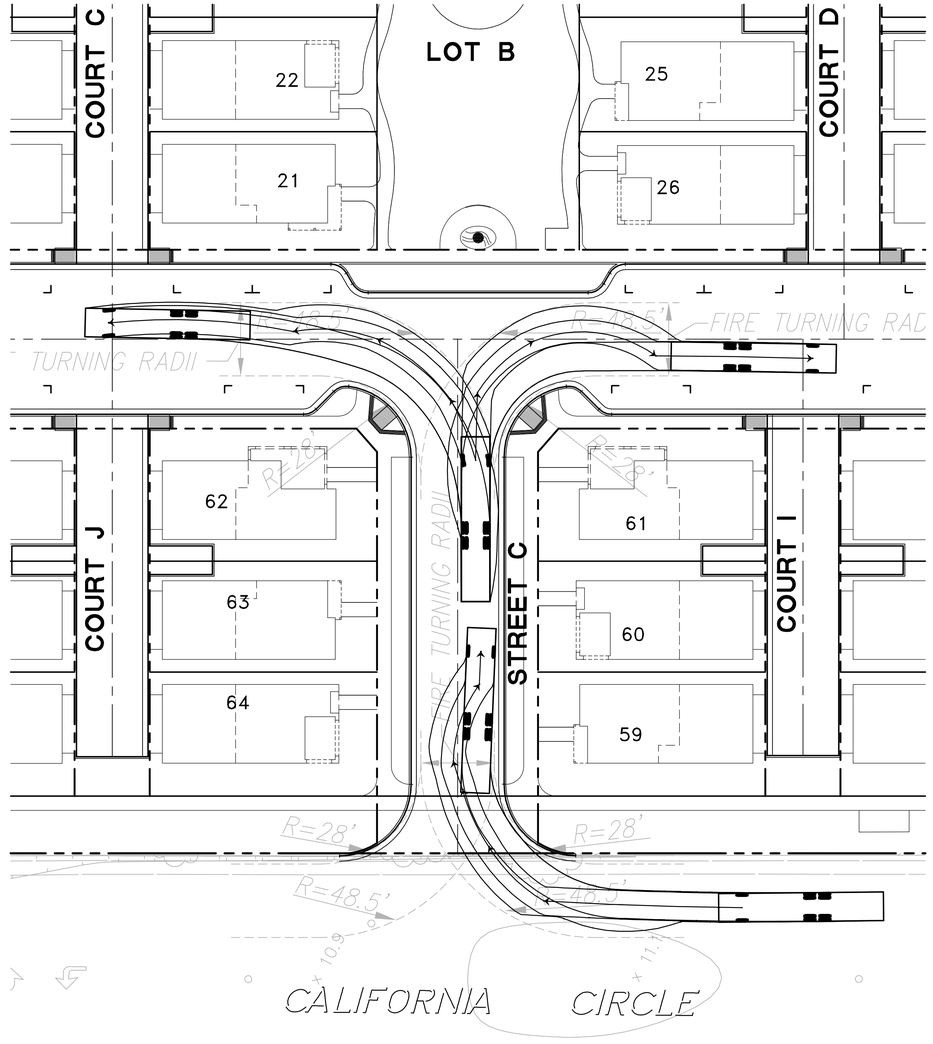
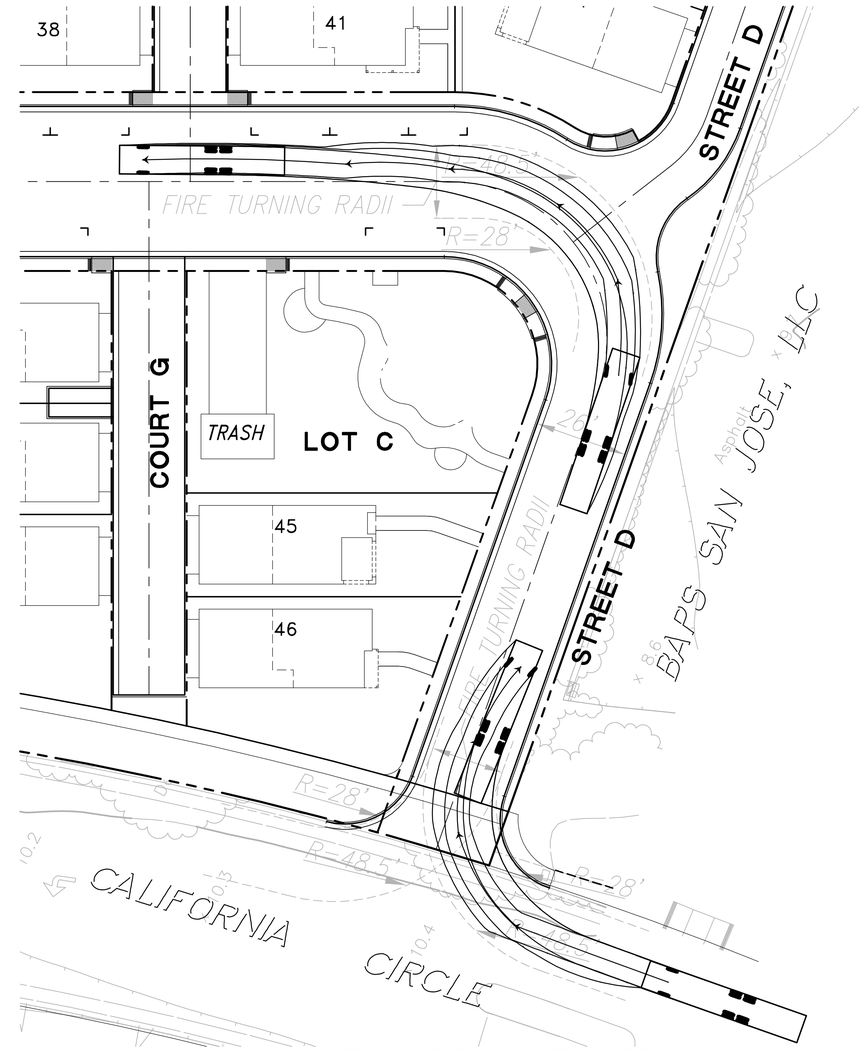


TRUCK TURNING INTO SITE
DETAIL "A"
SCALE 1"=20'



TRUCK TURNING INTO SITE
DETAIL "B"
SCALE 1"=20'



TRUCK TURNING INTO SITE
DETAIL "C"
SCALE 1"=20'

FIRE APPARATUS ACCESS PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

0 20 40 60
(IN FEET)
1 inch = 20 ft.

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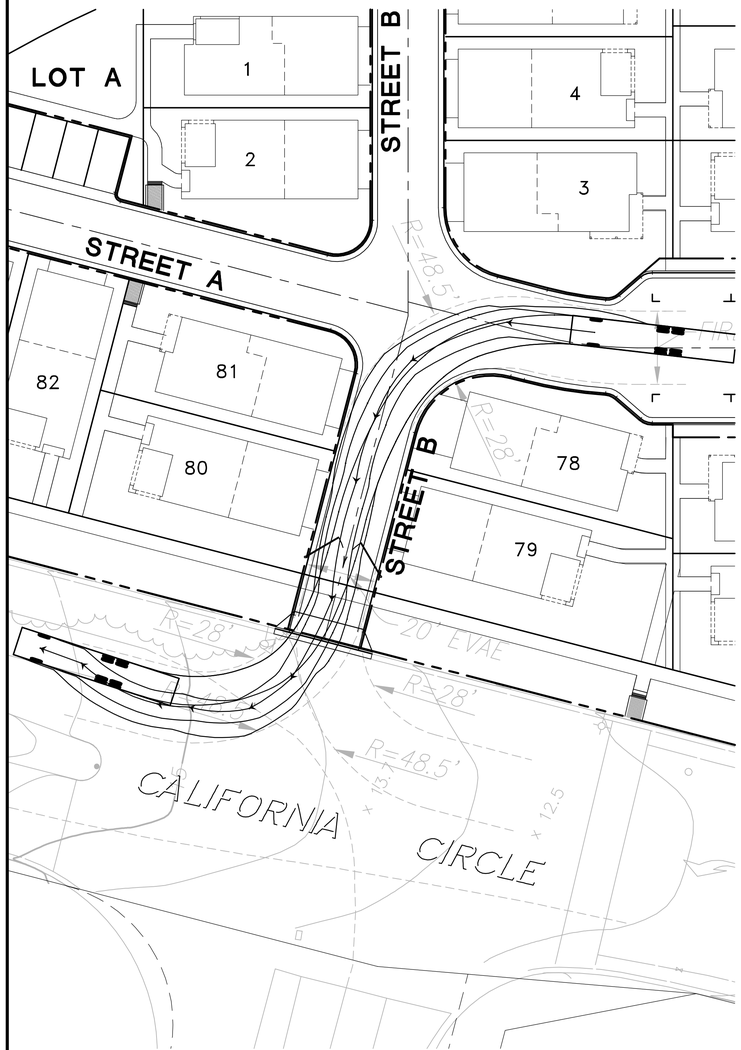
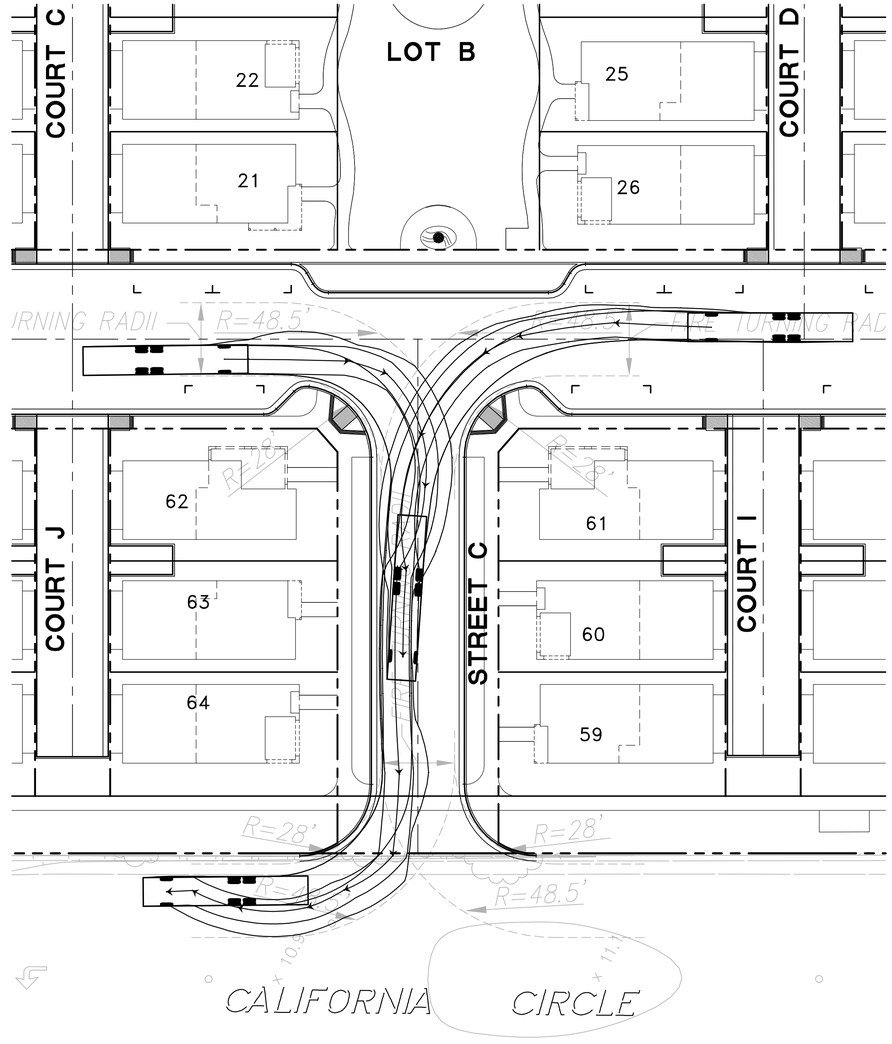
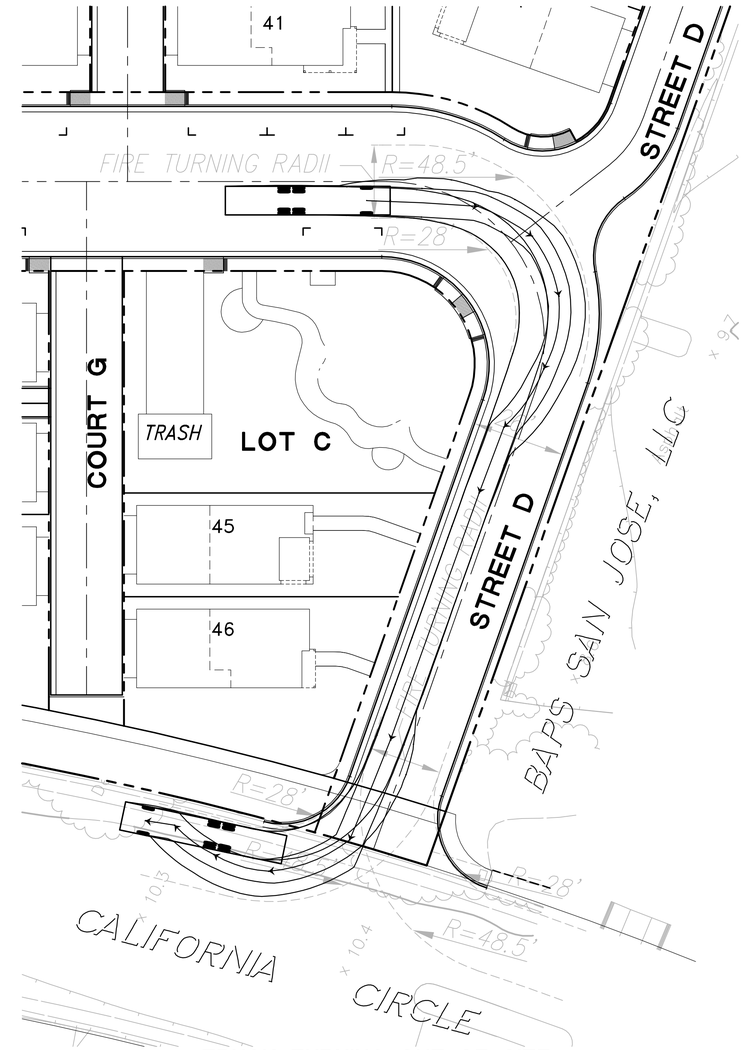


TRUCK TURNING OUT OF SITE
DETAIL "A"
SCALE 1"=20'



TRUCK TURNING OUT OF SITE
DETAIL "B"
SCALE 1"=20'



TRUCK TURNING OUT OF SITE
DETAIL "C"
SCALE 1"=20'

FIRE APPARATUS ACCESS PLAN

WATERSTONE

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA
FOR: TRUMARK COMPANIES

0 20 40 60
(IN FEET)
1 inch = 20 ft.

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RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
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DATE: APRIL 1, 2013 JOB NO. 111093 SHEET C-16

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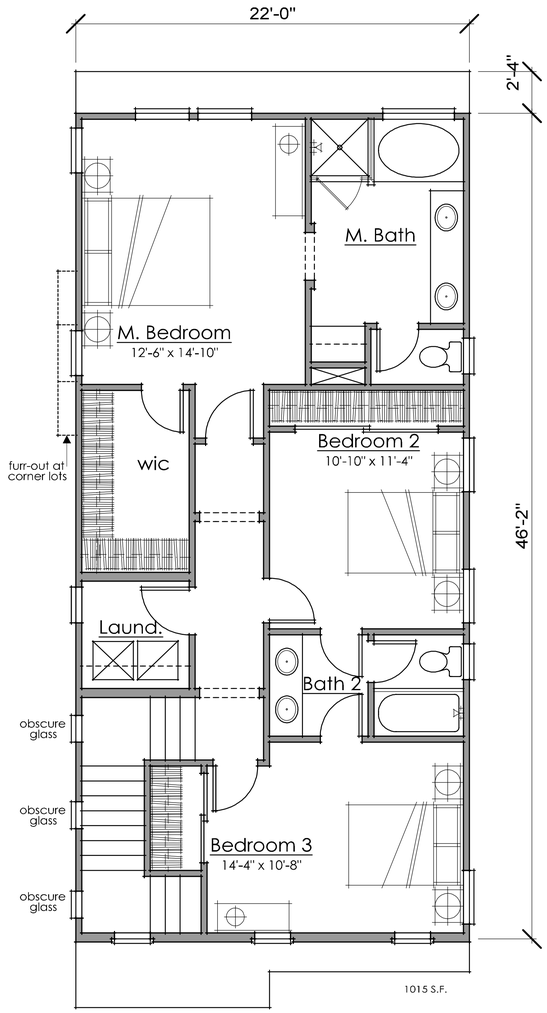
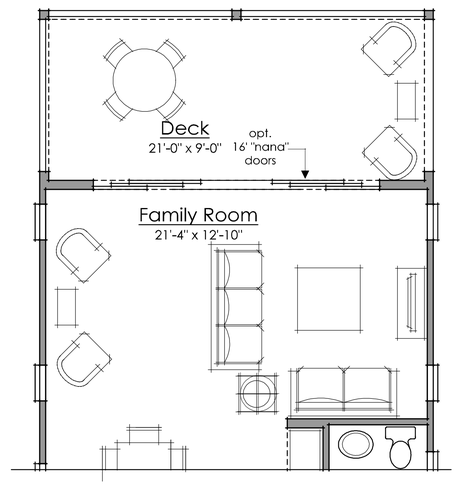
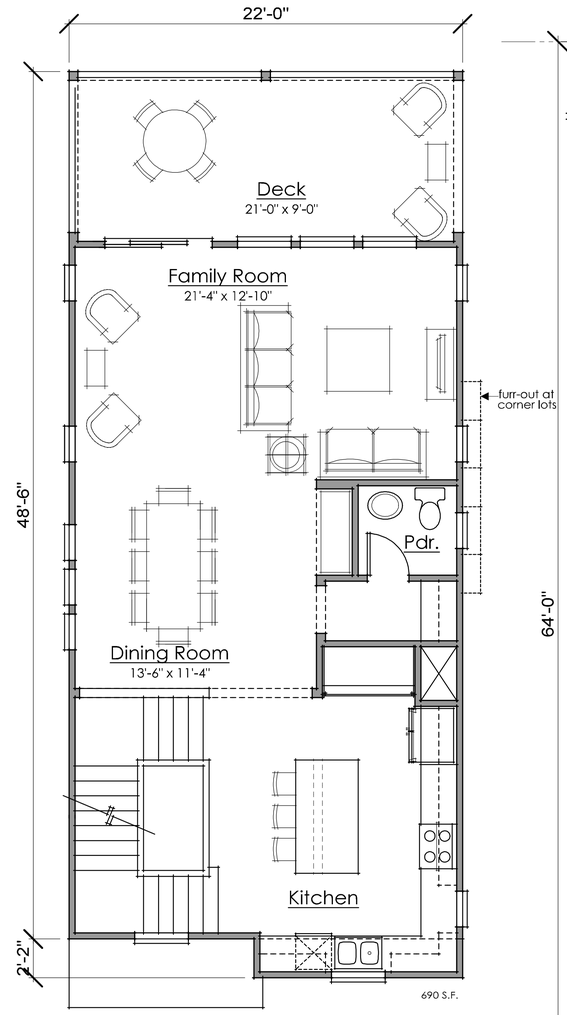


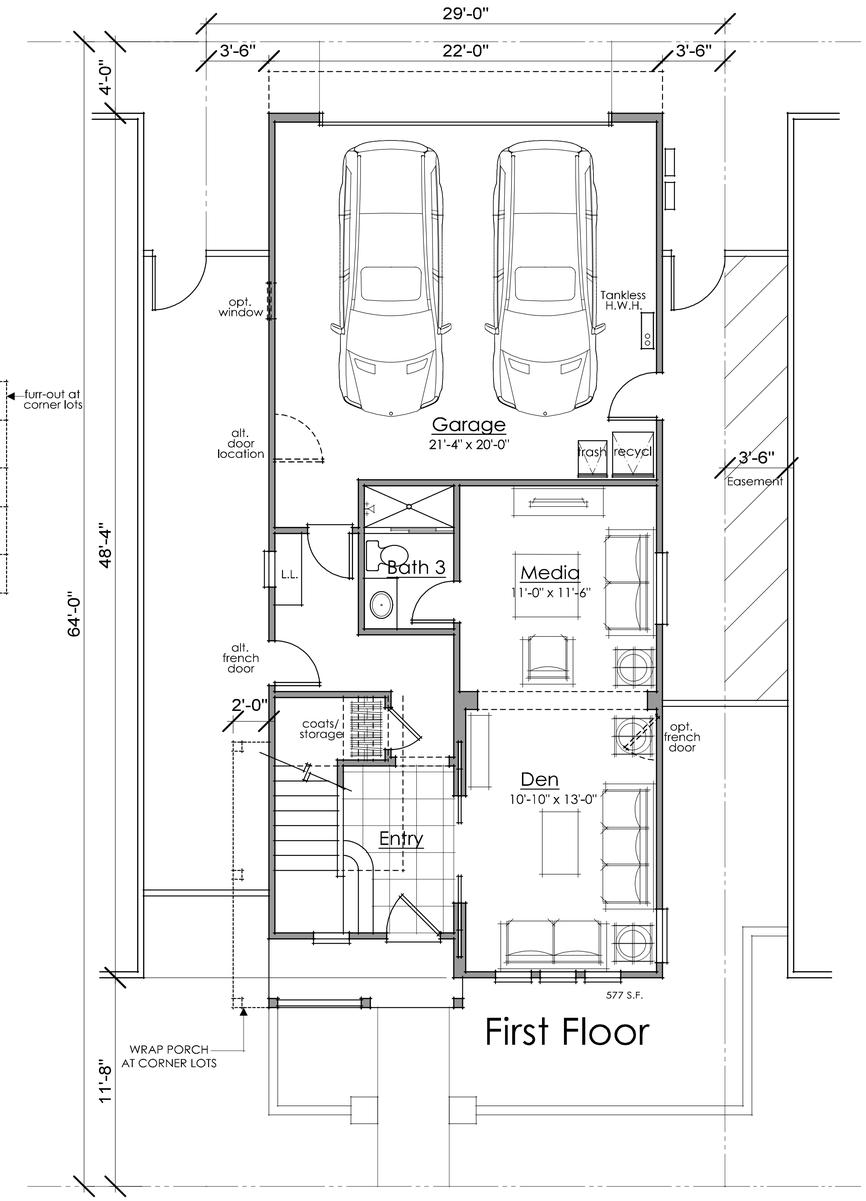
Third Floor



Optional Deck Doors



Second Floor



First Floor

Floor Plan
3 Bedrooms + Den +
Loft
3.5 Baths
2374 sf

Plan 1A Floor Plan (Cottage)

A1.0

Trumark Companies

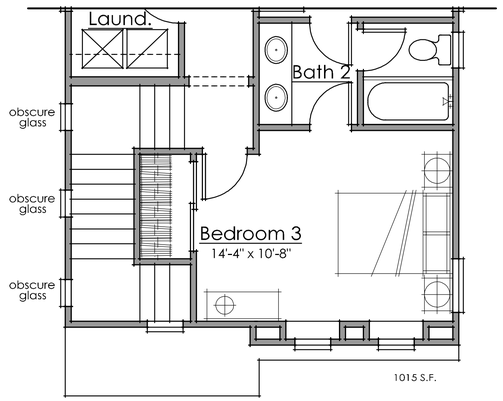
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

KTGY NO. 2012-0079 April 4, 2013

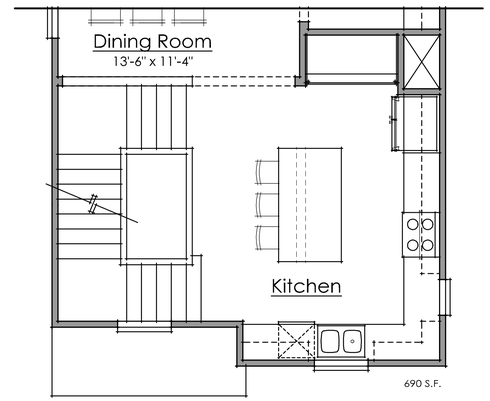
Waterstone

Milpitas, California

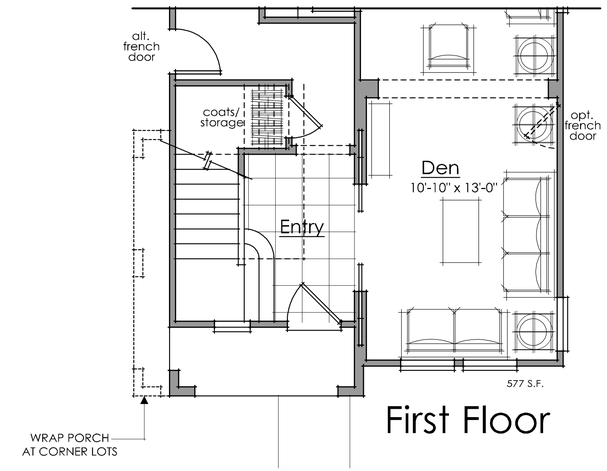
KTGY Group INC.
Architecture+Planning
580 Second Street, Suite 200
Oakland, California 94607
ktgy.com
510 272 2910



Third Floor

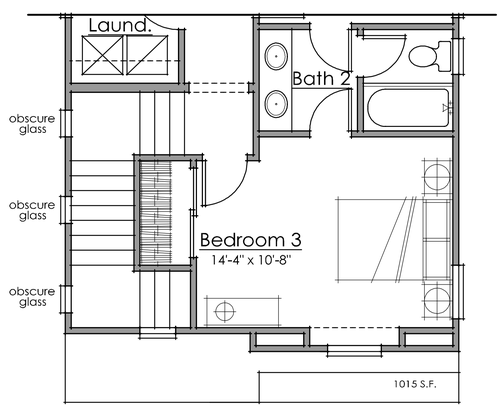


Second Floor

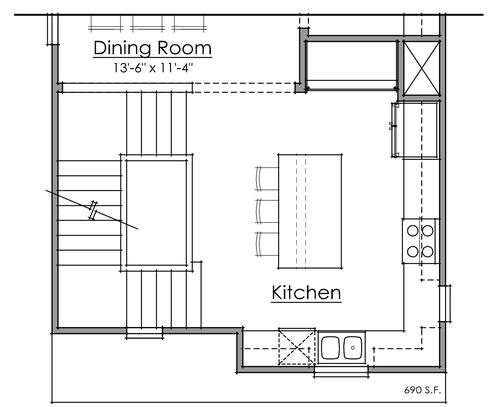


First Floor

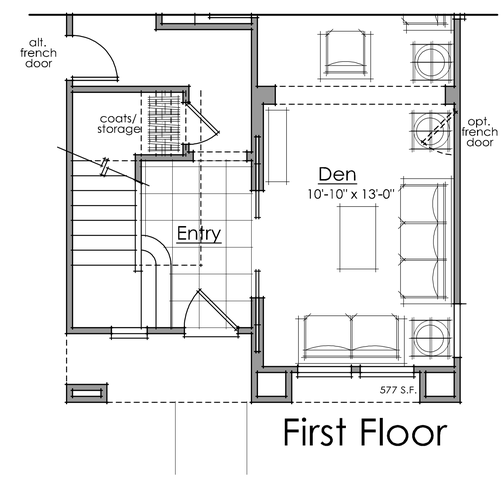
Plan 1B Floor Plan (Beach Cottage)



Third Floor



Second Floor



First Floor

Plan 1C Floor Plan (Southern Cottage)

A1.0-1

Trumark Companies

4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

KTGY NO. 2012-0079 April 4, 2013

Waterstone

Milpitas, California

KTGY Group INC.
Architecture+Planning
580 Second Street, Suite 200
Oakland, California 94607
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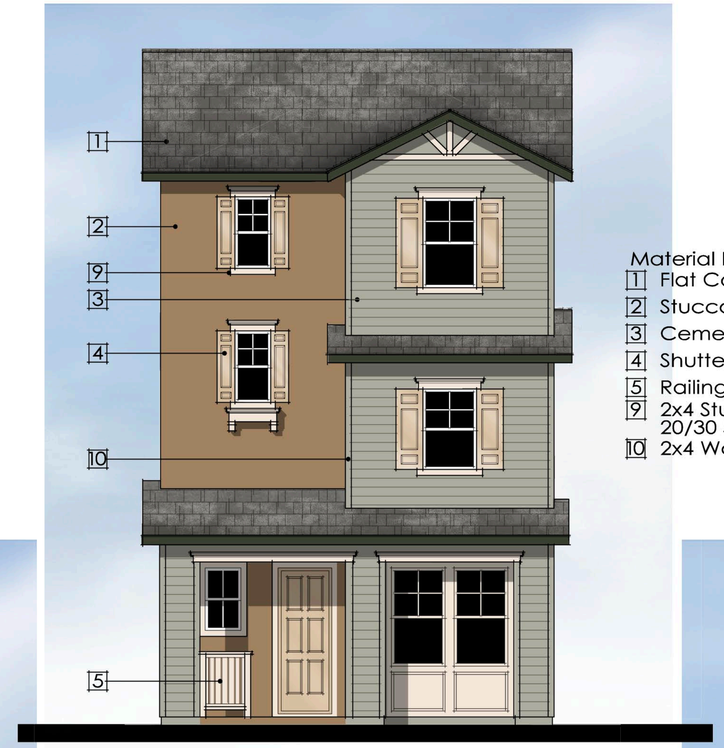
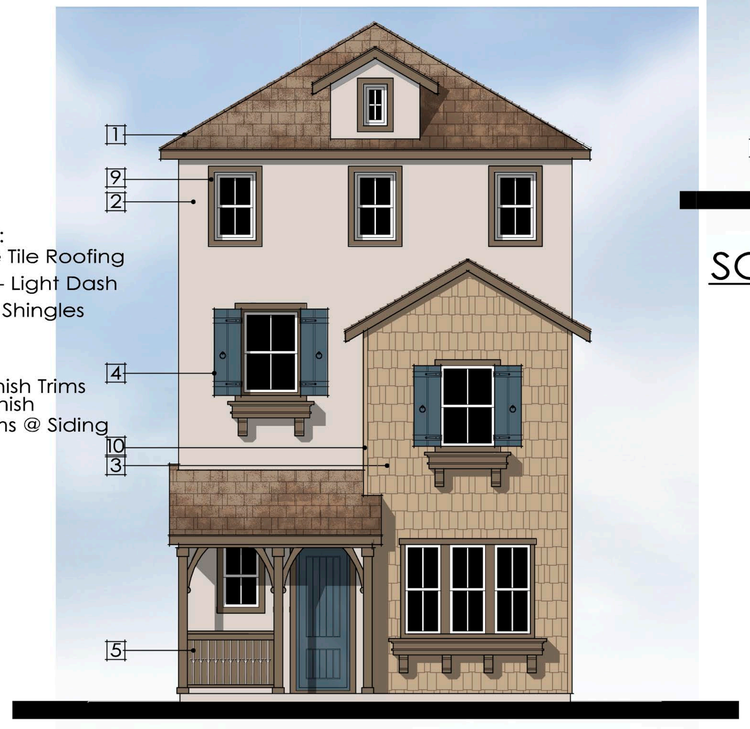
510 272 2910



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Siding
4 Shutters
5 Railing
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

SOUTHERN COTTAGE PLAN 1C

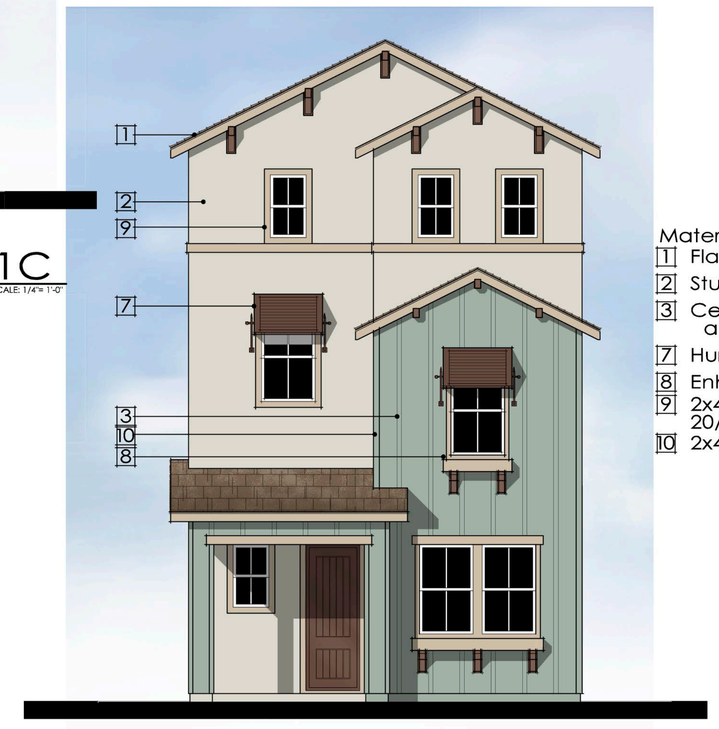
SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Shingles
4 Shutters
5 Railing
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

COTTAGE PLAN 1A

SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Board and Batten Siding
7 Hurricane Shutters
8 Enhanced Sills
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

BEACH COTTAGE PLAN 1B

SCALE: 1/4"= 1'-0"

Plan 1 Front Elevations

A1.1

Trumark Companies

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Milpitas, California

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Architecture+Planning
580 Second Street, Suite 200
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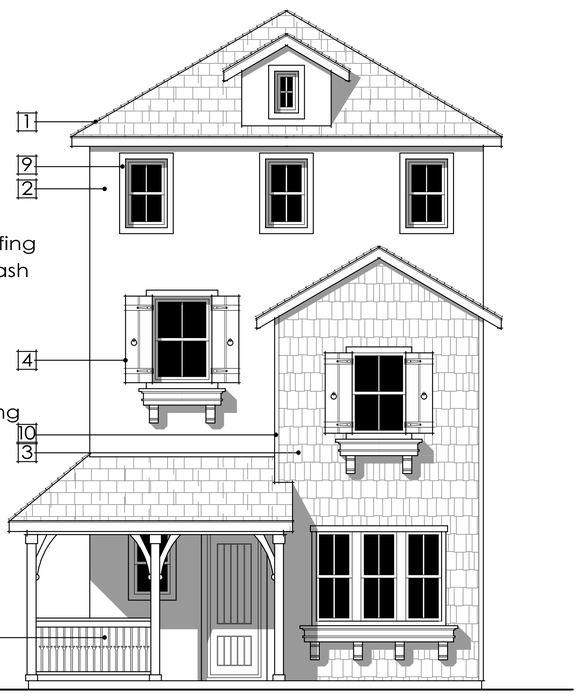
ktgy.com
510 272 2910

Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Siding
4 Shutters
5 Railing
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

SOUTHERN COTTAGE PLAN 1C

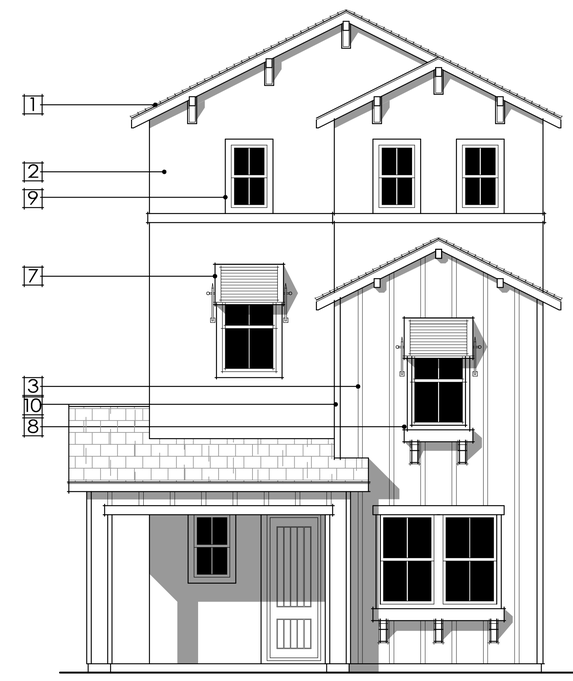
SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Shingles
4 Shutters
5 Railing
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

COTTAGE PLAN 1A
(CORNER LOT)

SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Board and Batten Siding
7 Hurricane Shutters
8 Enhanced Sills
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

BEACH COTTAGE PLAN 1B
(CORNER LOT)

SCALE: 1/4"= 1'-0"

Plan 1 Front Elevations (Corner Lots)

A1.1-1

Trumark Companies

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Danville, CA 94506 (925) 648-8300

KTGY NO. 2012-0079 April 4, 2013

Waterstone

Milpitas, California

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510 272 2910

RIGHT COTTAGE

SCALE: 1/4"= 1'-0"

LEFT COTTAGE

SCALE: 1/4"= 1'-0"

Plan 1A Side Elevations

A1.2

Trumark Companies

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RIGHT
(CORNER LOT)

COTTAGE

SCALE: 1/4"= 1'-0"

LEFT
(CORNER LOT)

COTTAGE

SCALE: 1/4"= 1'-0"

Plan 1A Side Elevations (Corner Lots)

A1.2-1

Trumark Companies

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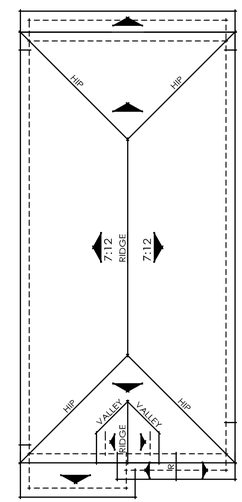
REAR COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Cottage

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

Plan 1A Rear Elevation and Roof Plan

A1.3

Trumark Companies

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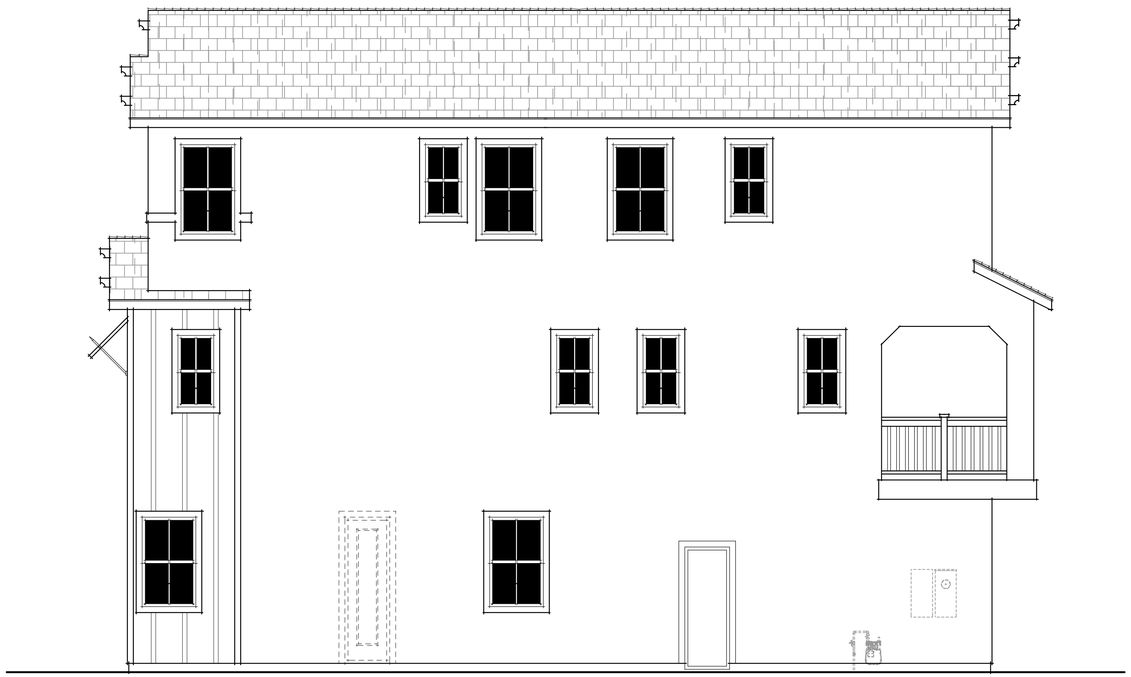
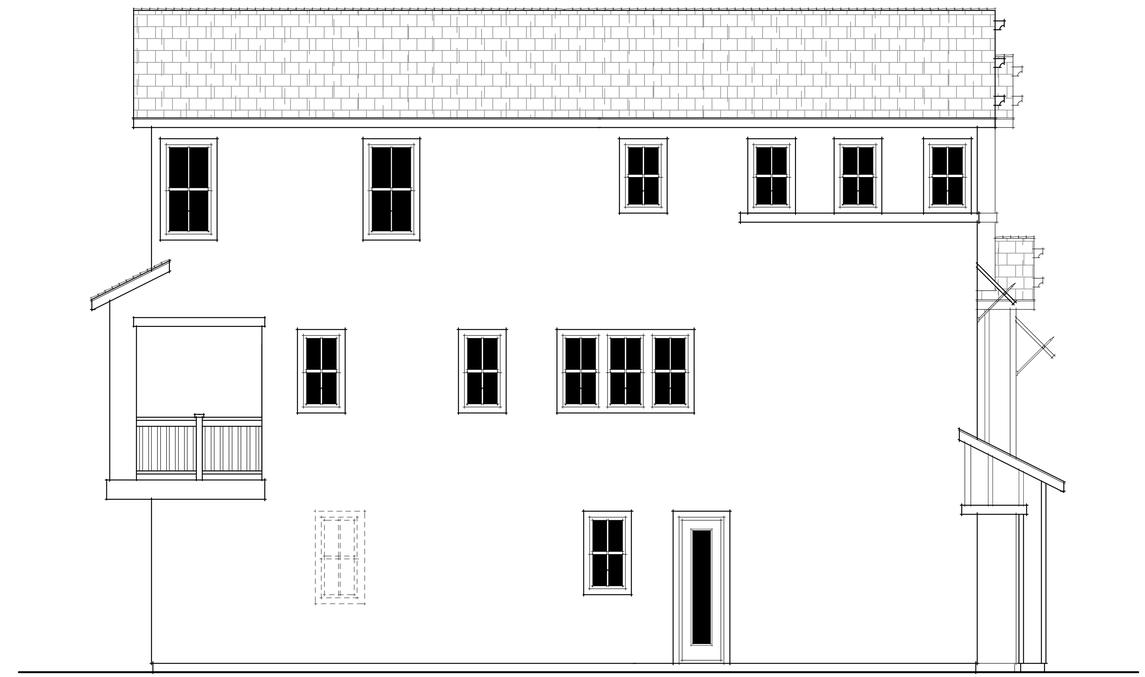


RIGHT BEACH COTTAGE

SCALE: 1/4"= 1'-0"



LEFT BEACH COTTAGE

SCALE: 1/4"= 1'-0"

Plan 1B Side Elevations

A1.4

Trumark Companies

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RIGHT
(CORNER LOT)

BEACH COTTAGE

SCALE: 1/4"= 1'-0"

LEFT
(CORNER LOT)

BEACH COTTAGE

SCALE: 1/4"= 1'-0"

Plan 1B Side Elevations (Corner Lots)

A1.4-1

Trumark Companies

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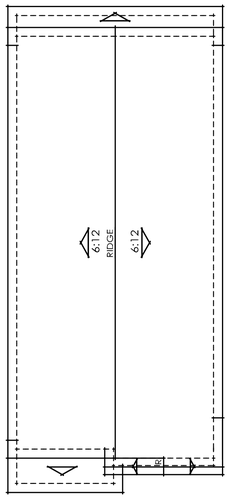
REAR BEACH COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Beach Cottage

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

Plan 1B Rear Elevation and Roof Plan

A1.5

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RIGHT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

LEFT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

Plan 1C Side Elevations

A1.6

Trumark Companies

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RIGHT
(CORNER LOT)

SOUTHERN COTTAGE
SCALE: 1/4"= 1'-0"

LEFT
(CORNER LOT)

SOUTHERN COTTAGE
SCALE: 1/4"= 1'-0"

Plan 1C Side Elevations (Corner Lots)

A1.6-1

Trumark Companies

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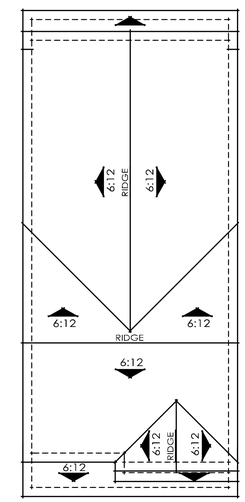
REAR SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Southern Cottage

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

Plan 1C Rear Elevation and Roof Plan

A1.7

Trumark Companies

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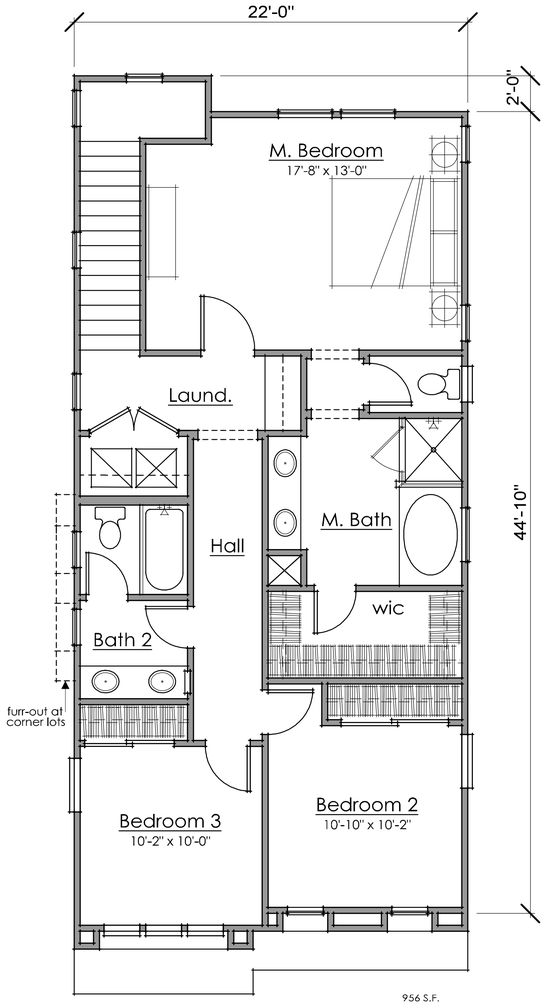
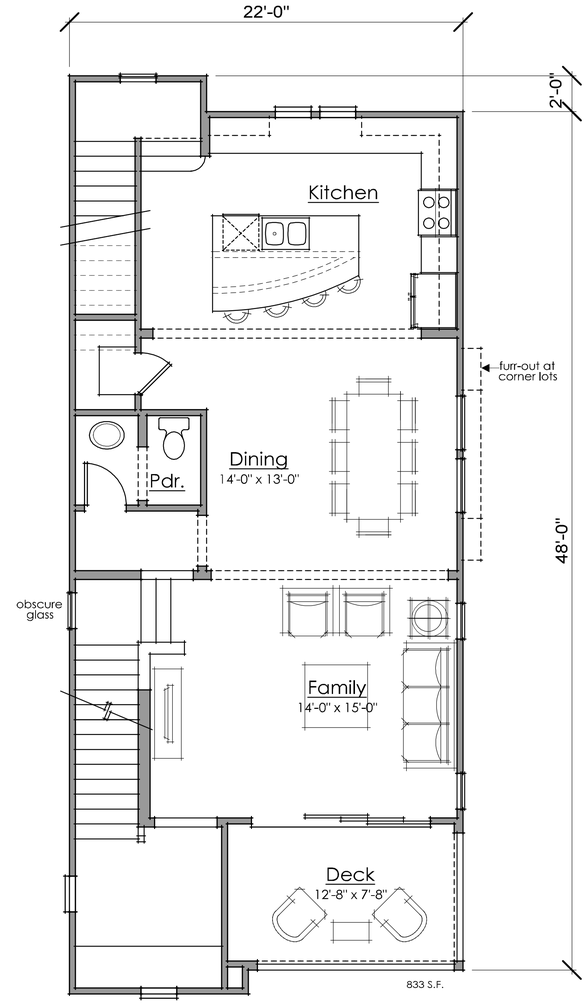
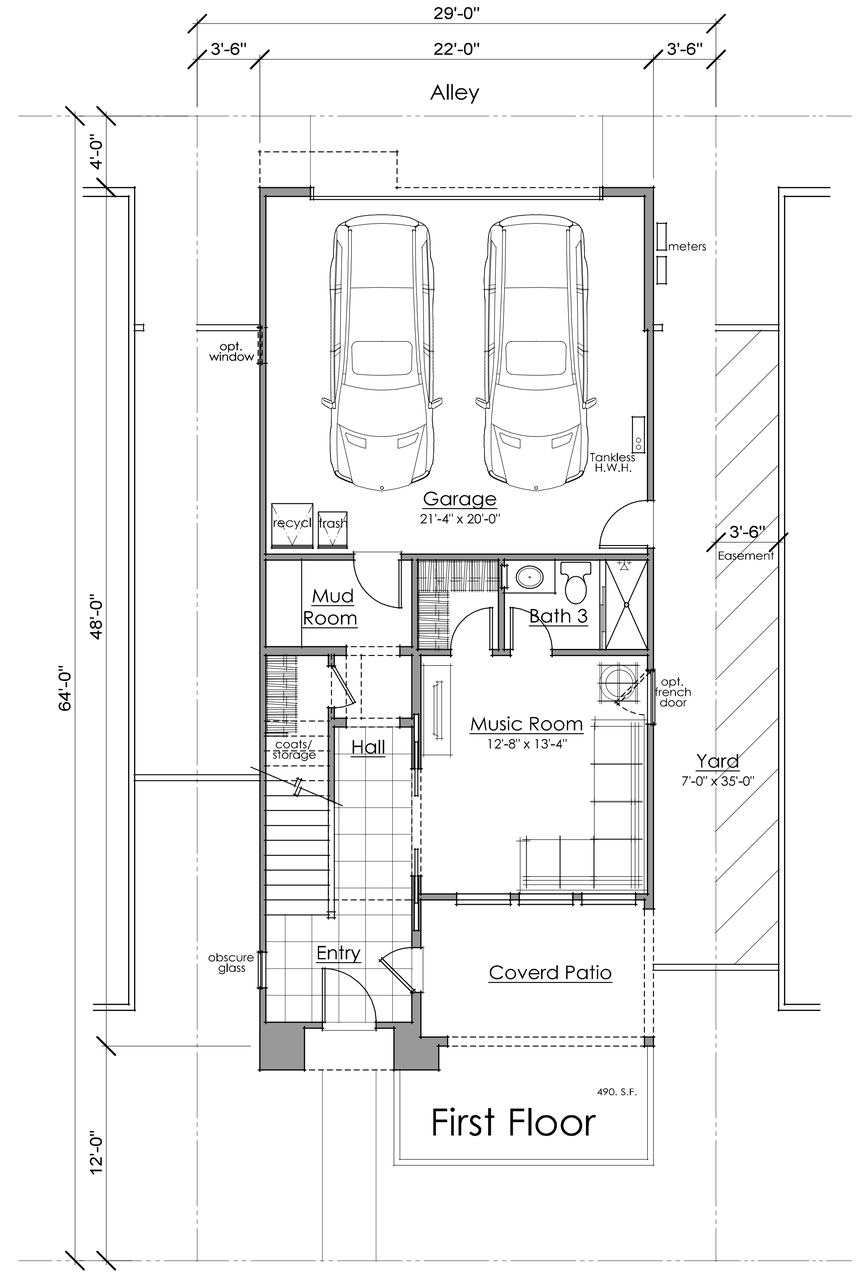


Third Floor



Second Floor



First Floor

Floor Plan
3 Bedrooms + Den
+ Loft
3.5 Baths
2279 sf

Plan 2A Floor Plan (Cottage)

A2.0

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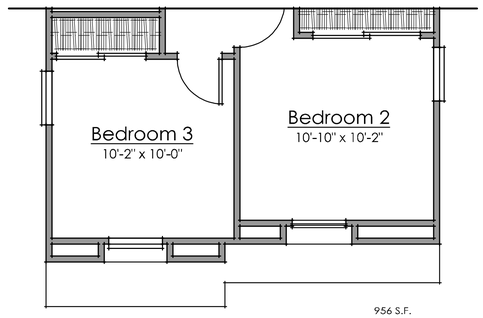
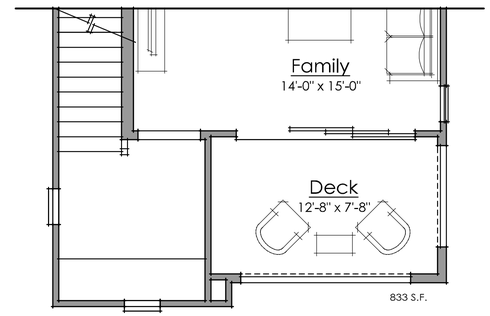
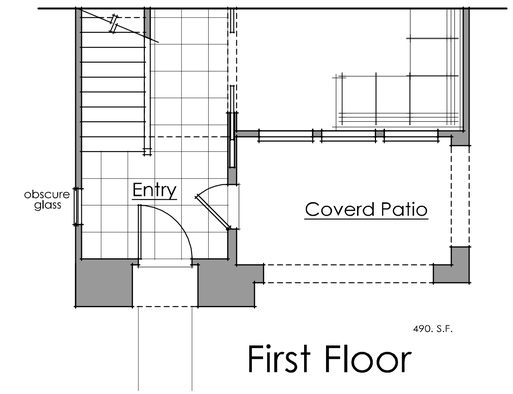


Third Floor

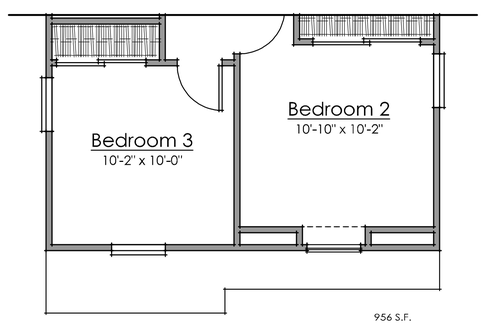


Second Floor

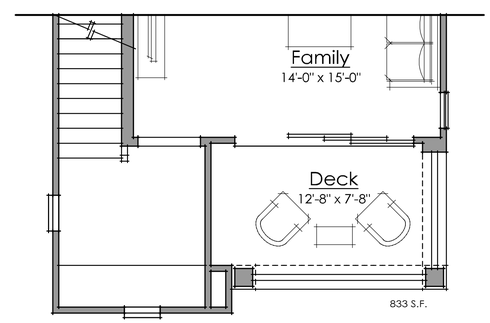


First Floor

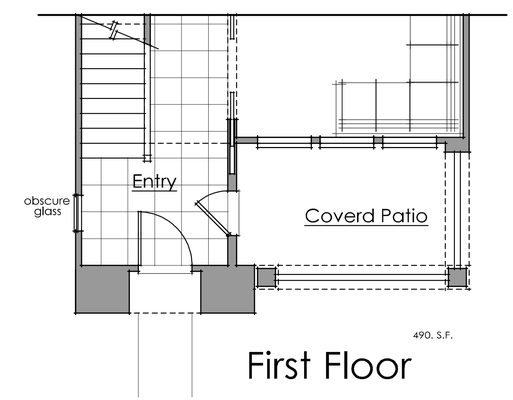
Plan 2B Floor Plan (Beach Cottage)



Third Floor



Second Floor



First Floor

Plan 2C Floor Plan (Southern Cottage)

A2.0-1

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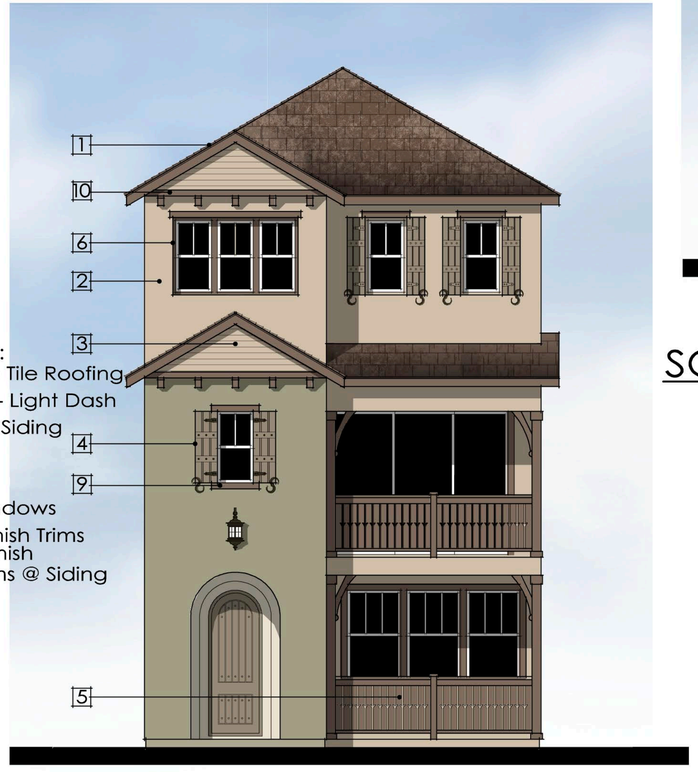
Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Siding
4 Shutters
5 Railing
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

SOUTHERN COTTAGE PLAN 2C

SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Siding
4 Shutters
5 Railing
6 Recessed Windows
9 2x4 Stucco Finish Trims 20/30 Sand Finish
10 2x4 Wood Trims @ Siding

COTTAGE PLAN 2A

SCALE: 1/4"= 1'-0"

Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish - Light Dash
3 Cementitious Siding
5 Railing
6 Recessed Windows
7 Hurricane Shutters
8 Enhanced Sills
10 2x4 Wood Trims @ Siding

BEACH COTTAGE PLAN 2B

SCALE: 1/4"= 1'-0"

Plan 2 Front Elevations

A2.1

Trumark Companies

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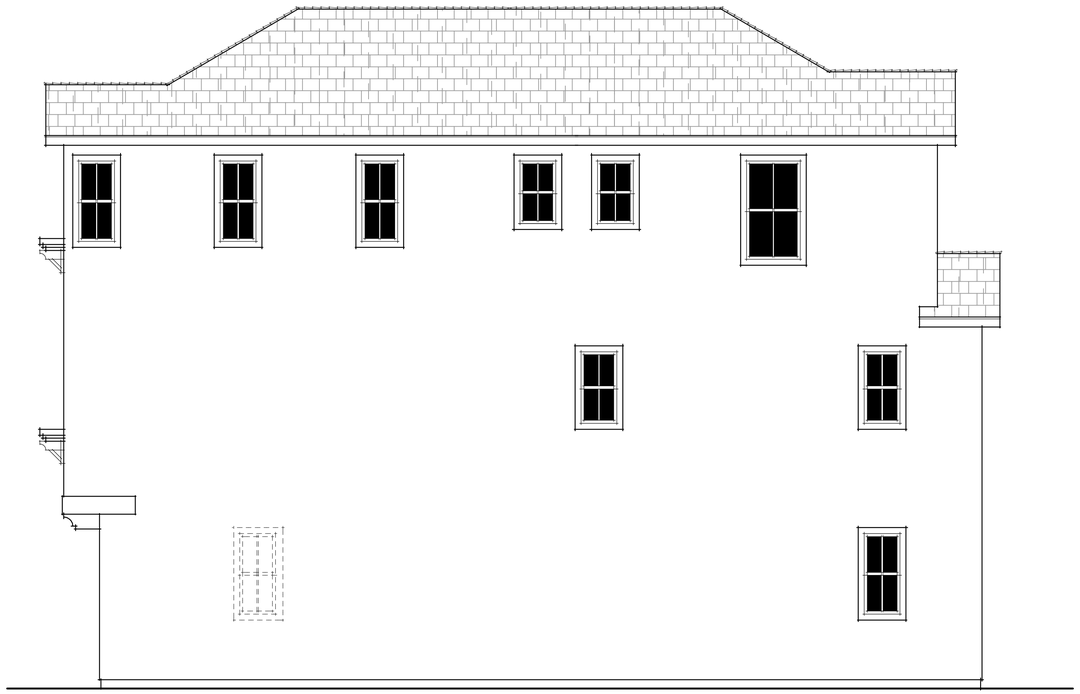
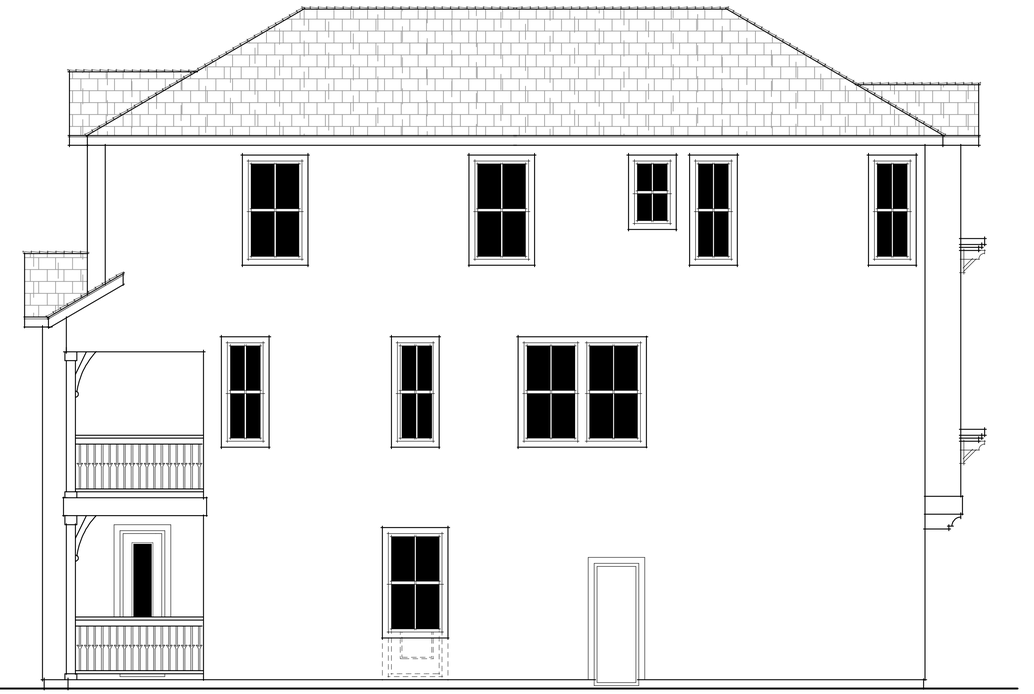


LEFT COTTAGE

SCALE: 1/4"= 1'-0"



RIGHT COTTAGE

SCALE: 1/4"= 1'-0"

Plan 2A Side Elevations

A2.2

Trumark Companies

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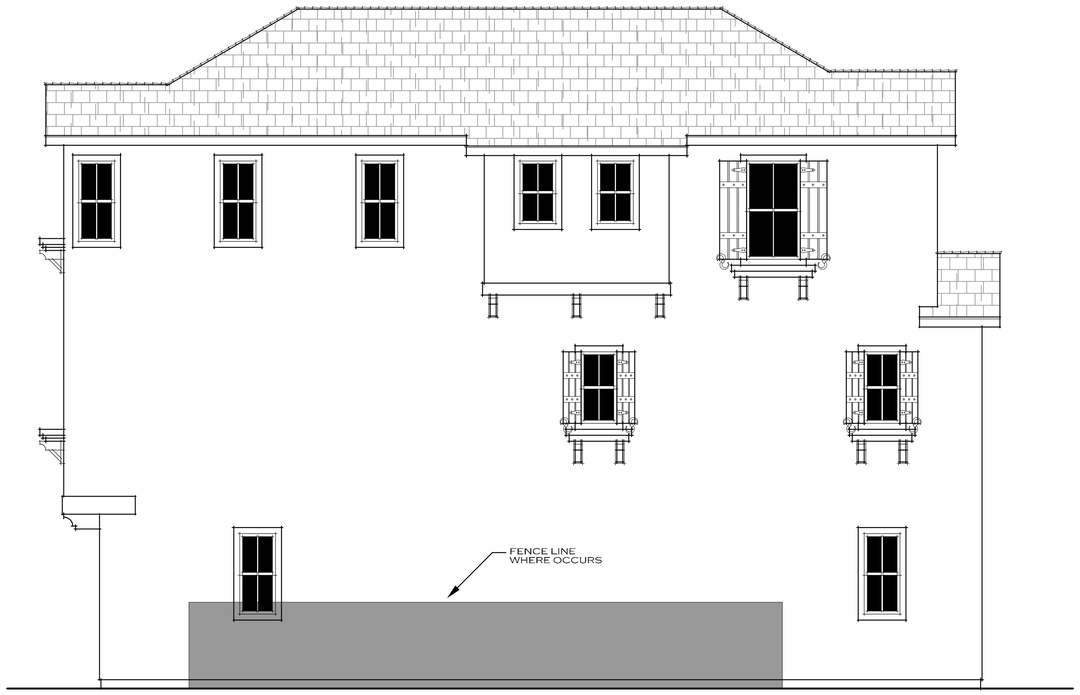

LEFT COTTAGE
(CORNER LOT)
SCALE: 1/4"= 1'-0"

RIGHT COTTAGE
(CORNER LOT)
SCALE: 1/4"= 1'-0"

Plan 2A Side Elevations (Corner Lots)

A2.2-1

Trumark Companies

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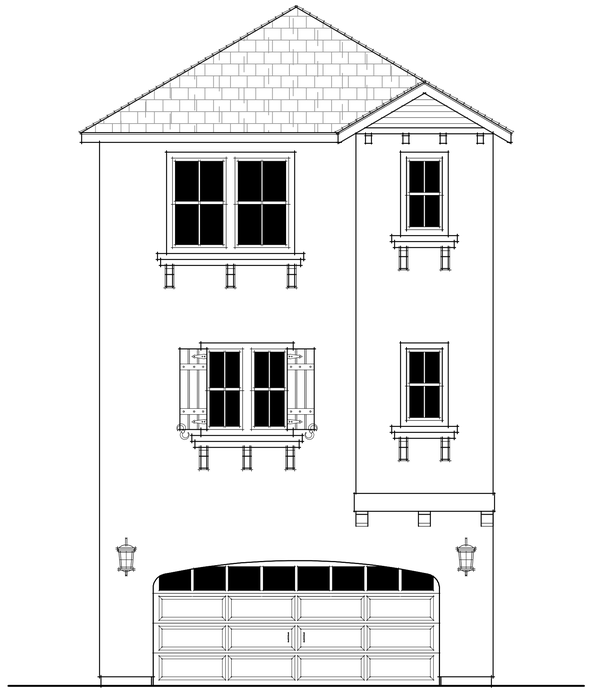
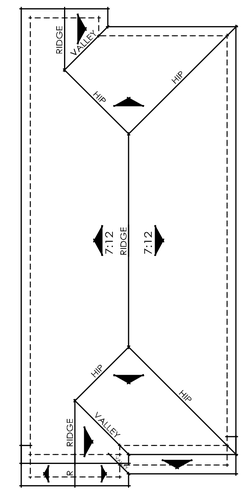


REAR COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Cottage

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

Plan 2A Rear Elevation and Roof Plan

A2.3

Trumark Companies

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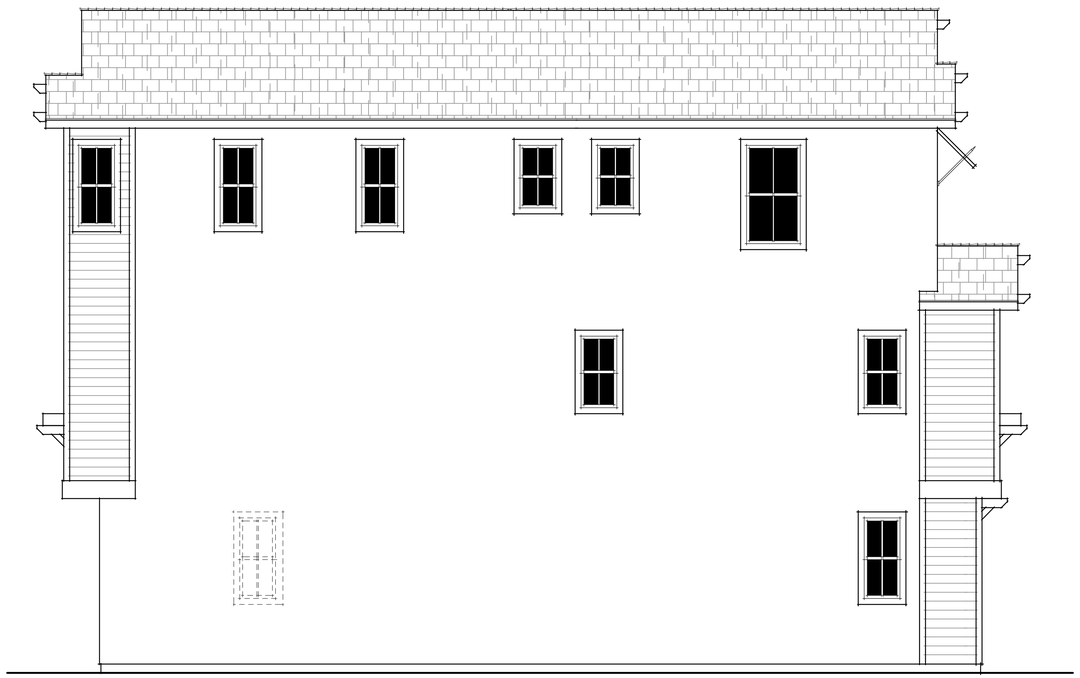
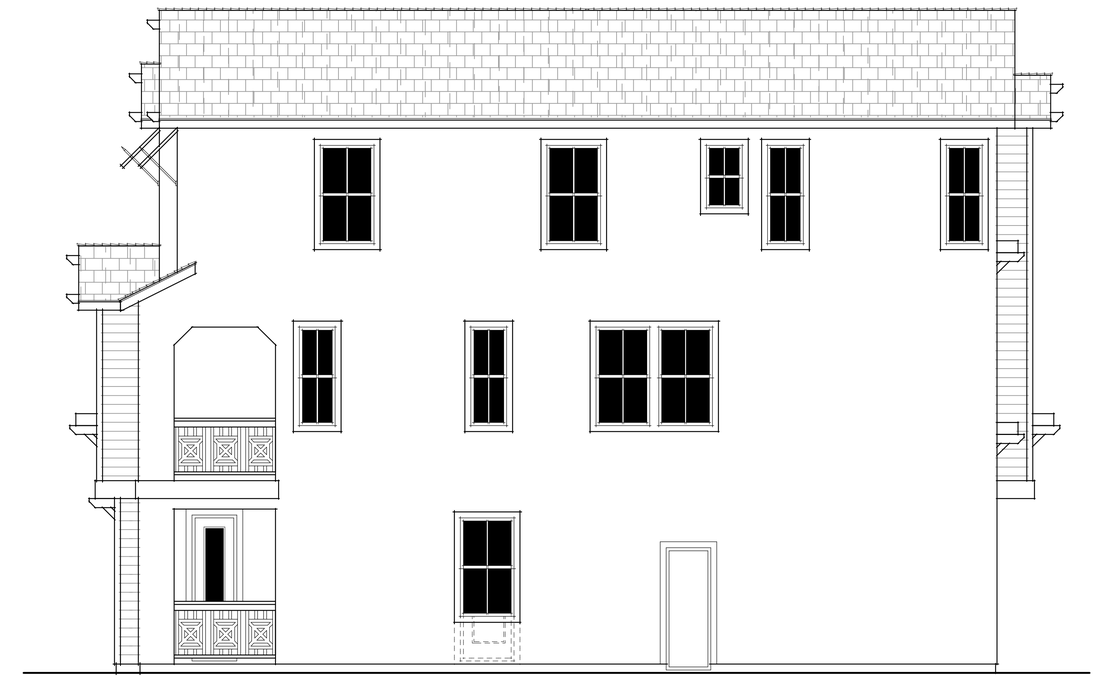


LEFT BEACH COTTAGE

SCALE: 1/4"= 1'-0"



RIGHT BEACH COTTAGE

SCALE: 1/4"= 1'-0"

Plan 2B Side Elevations

A2.4

Trumark Companies

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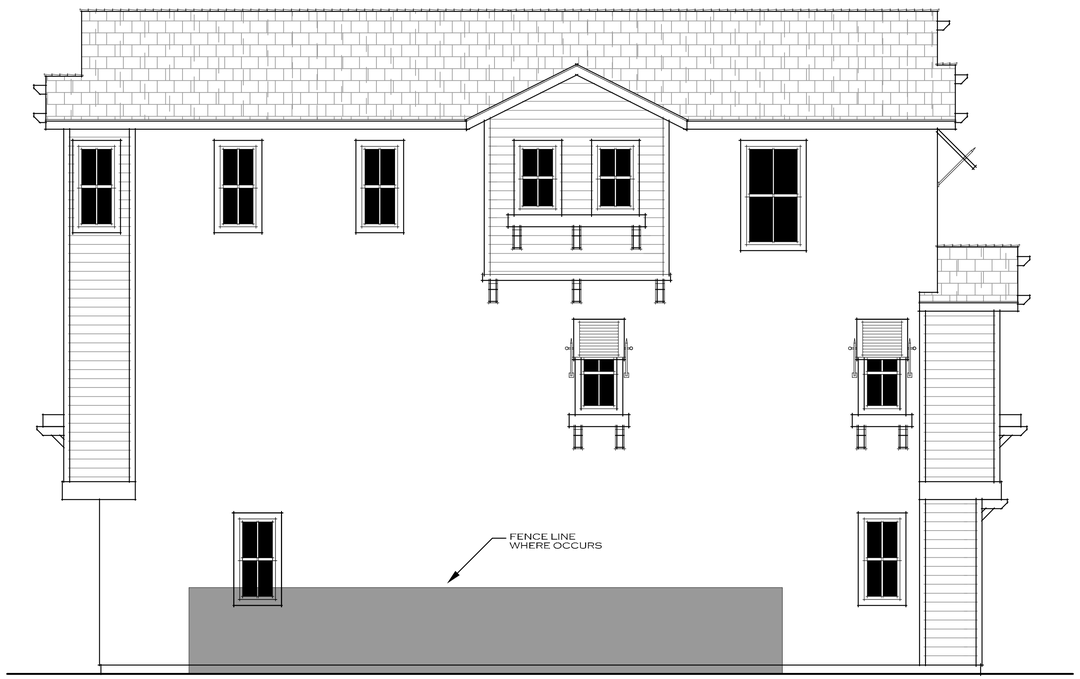

LEFT
(CORNER LOT)

BEACH COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT
(CORNER LOT)

BEACH COTTAGE

SCALE: 1/4"= 1'-0"

Plan 2B Side Elevations (Corner Lots)

A2.4-1

Trumark Companies

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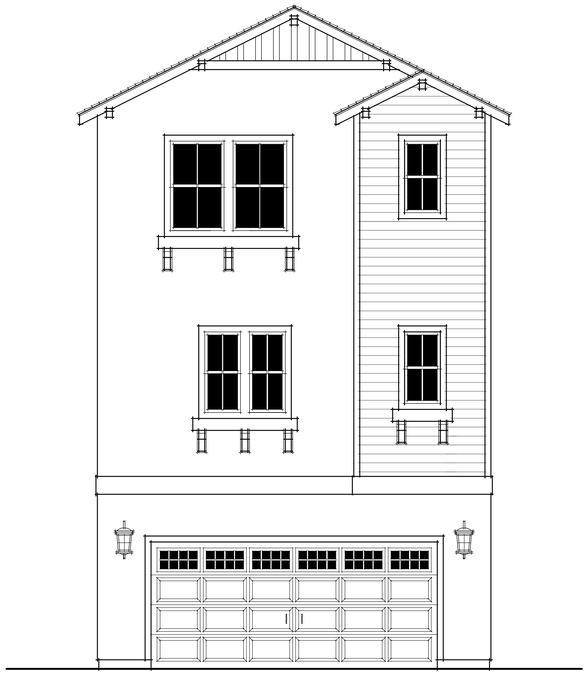
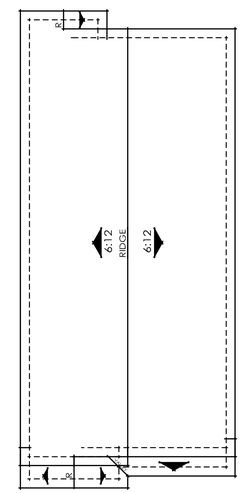


REAR BEACH COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Beach Cottage

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

Plan 2B Rear Elevation and Roof Plan

A2.5

Trumark Companies

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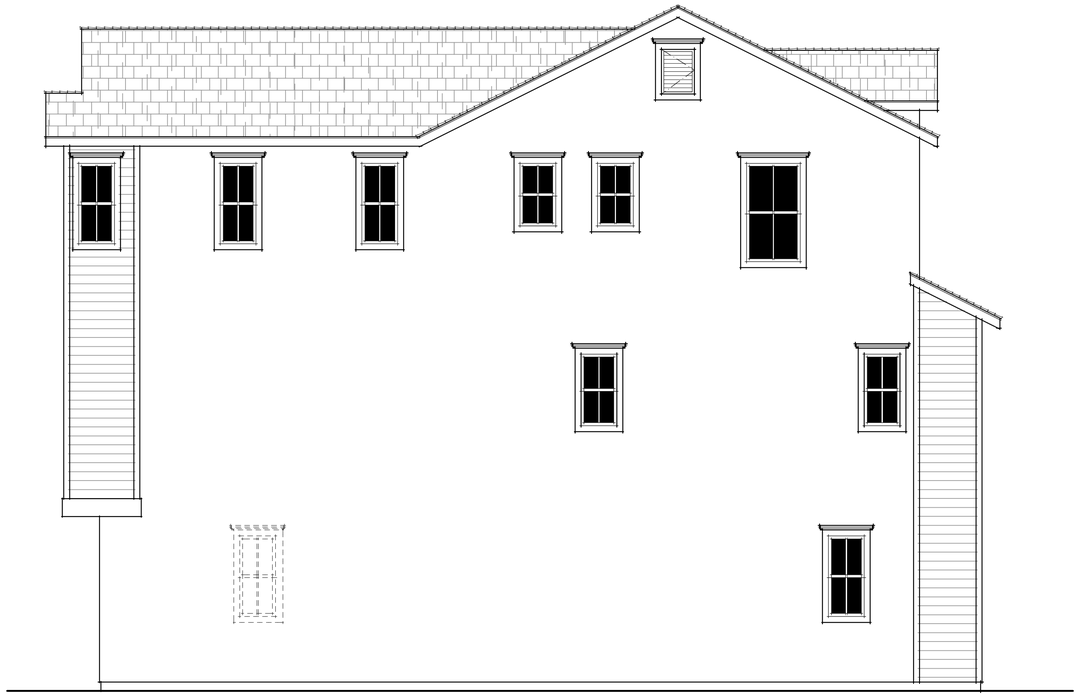

LEFT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

Plan 2C Side Elevations

A2.6

Trumark Companies

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LEFT
(CORNER LOT)

SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT
(CORNER LOT)

SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

Plan 2C Side Elevations (Corner Lots)

A2.6-1

Trumark Companies

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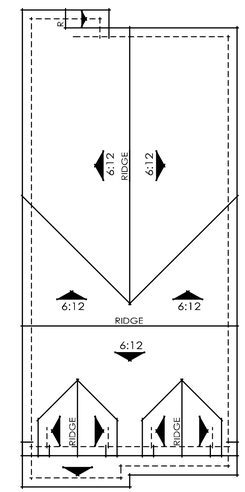
REAR SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Southern Cottage

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

Plan 2C Rear Elevation and Roof Plan

A2.7

Trumark Companies

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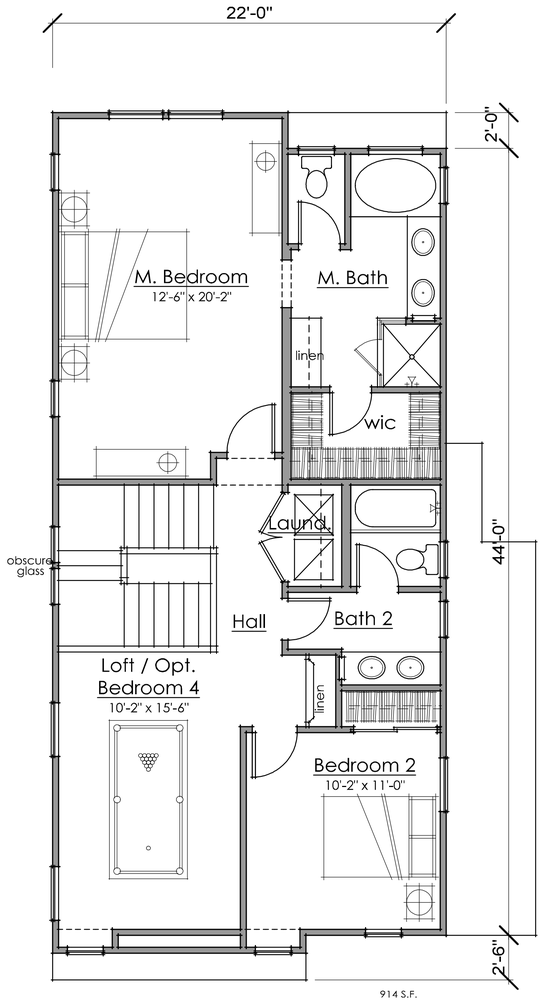
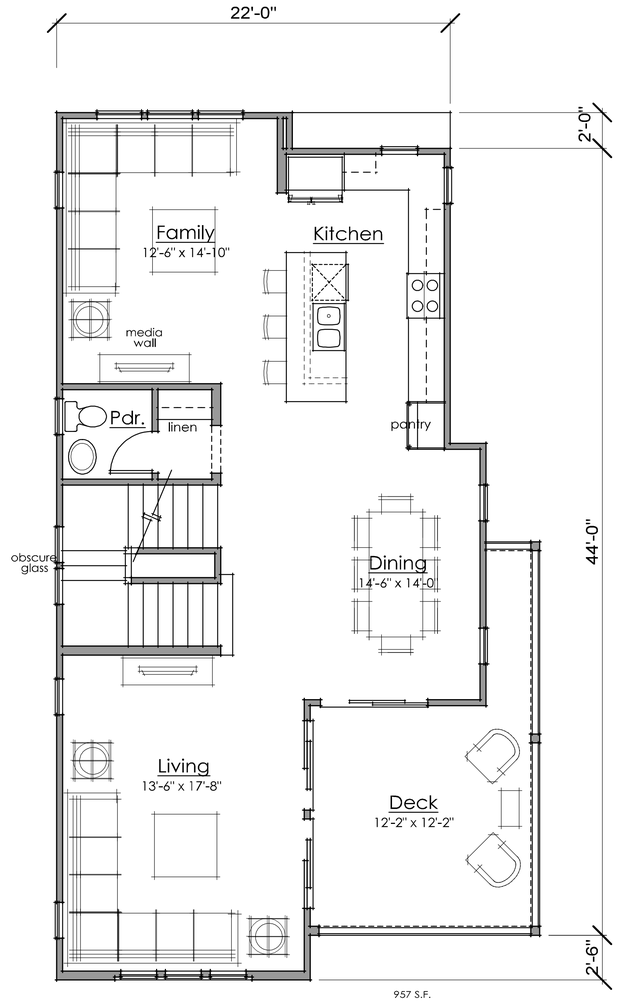
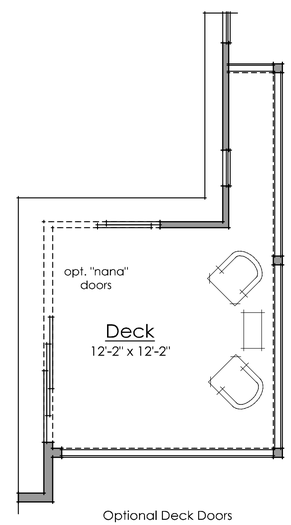


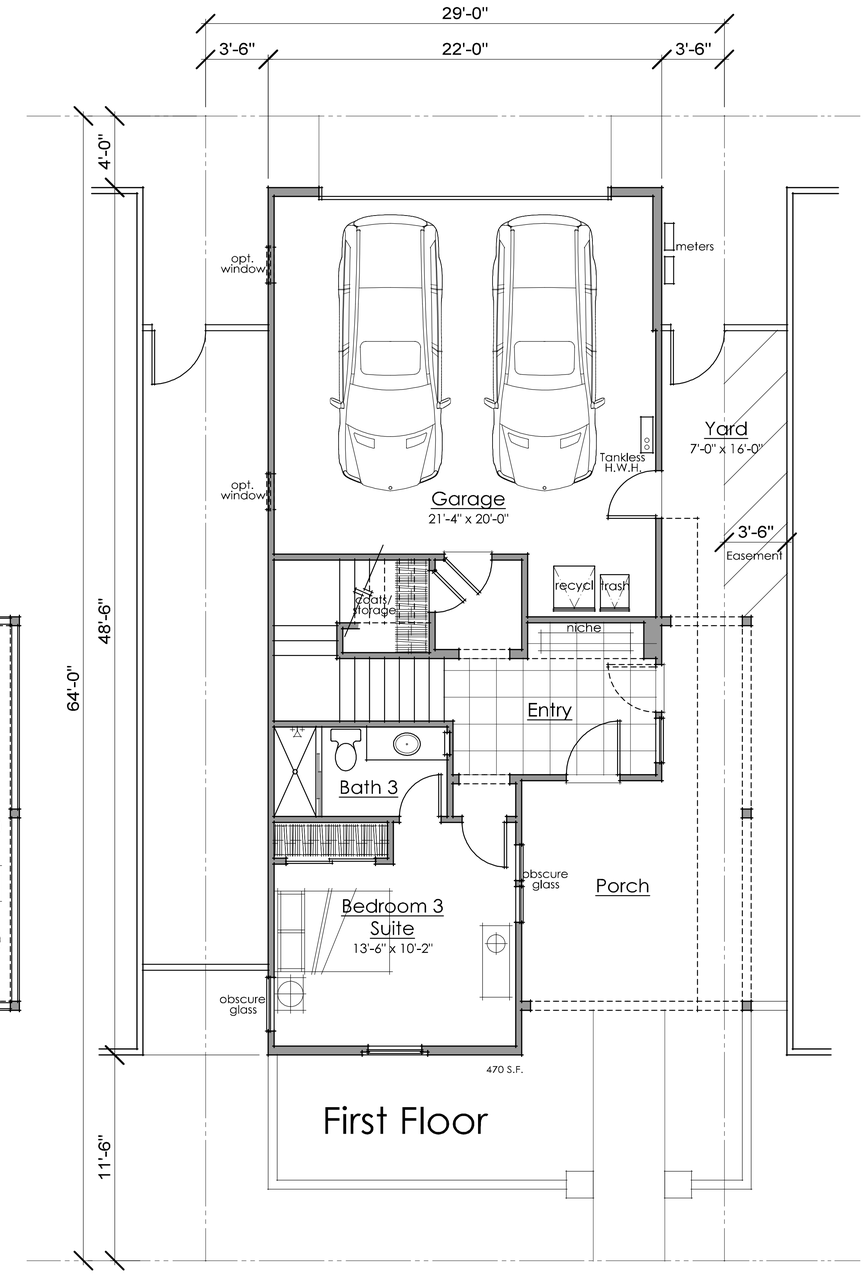
Third Floor



Second Floor



Optional Deck Doors



First Floor

Plan 3A Floor Plan (Cottage)

Floor Plan
4 Bedrooms
3.5 Baths
2341 sf

A3.0

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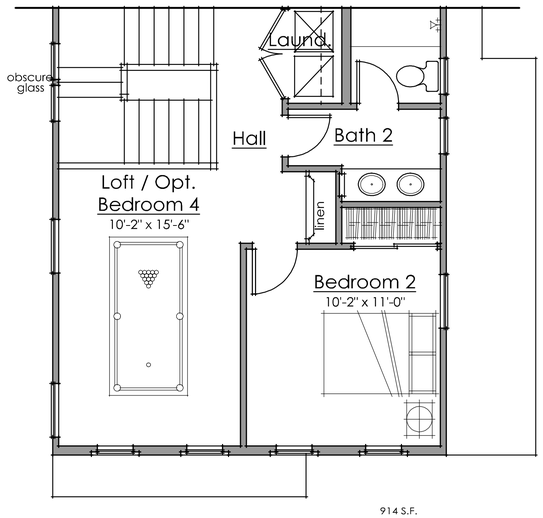
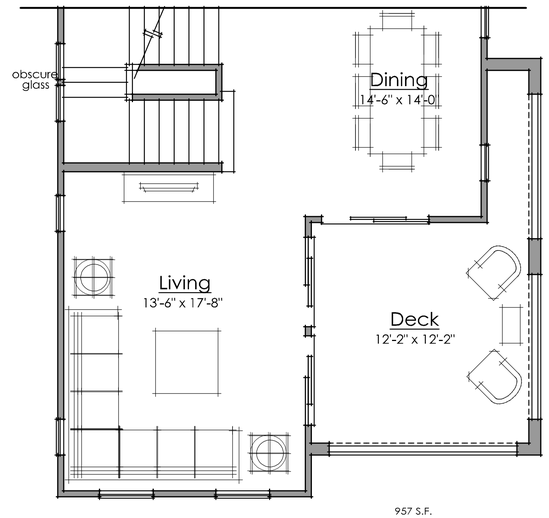


Third Floor



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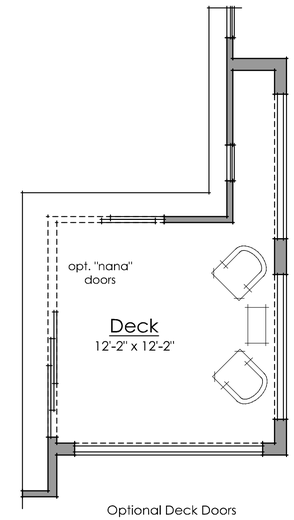
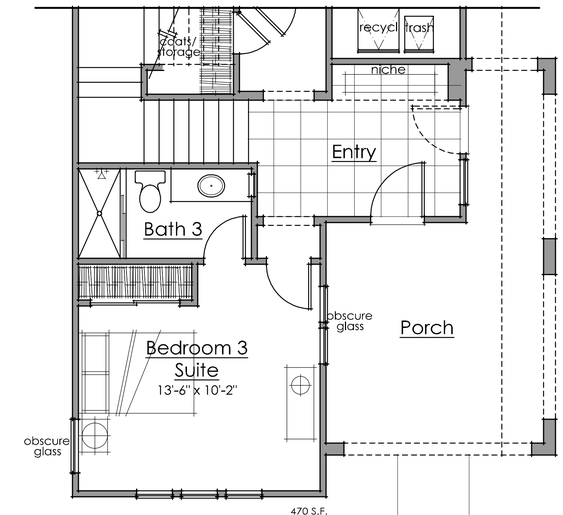
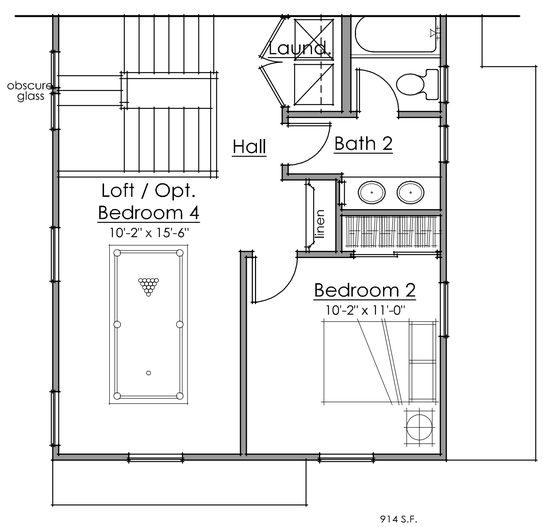


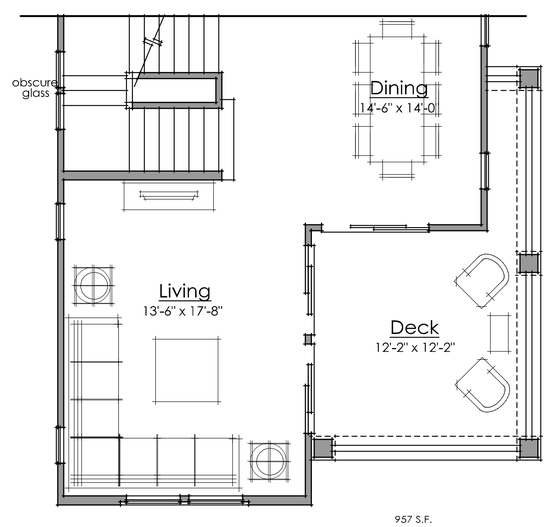


First Floor

Plan 3B Floor Plan (Beach Cottage)



Third Floor



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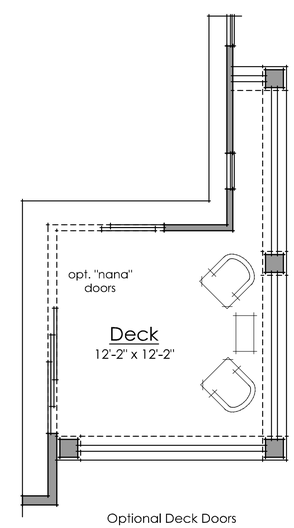

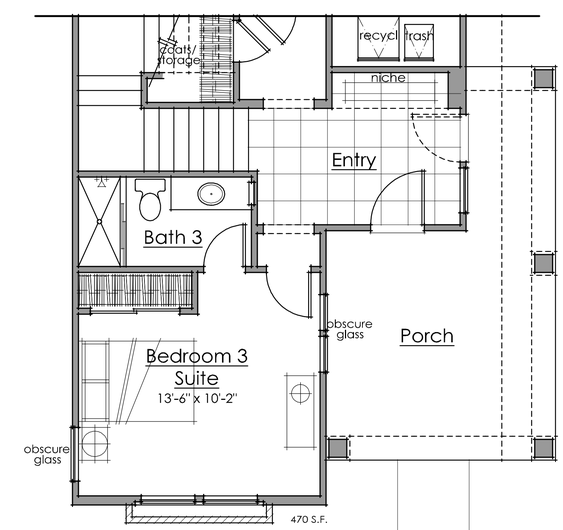

First Floor

Plan 3C Floor Plan (Southern Cottage)

A3.0-1

Trumark Companies

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Danville, CA 94506 (925) 648-8300

KTGY NO. 2012-0079 April 4, 2013

Waterstone

Milpitas, California

KTGY Group INC.
Architecture+Planning
580 Second Street, Suite 200
Oakland, California 94607
ktgy.com
510 272 2910

Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish
3 Cementitious Siding
4 Shutters
5 Railing
6 Recessed Windows

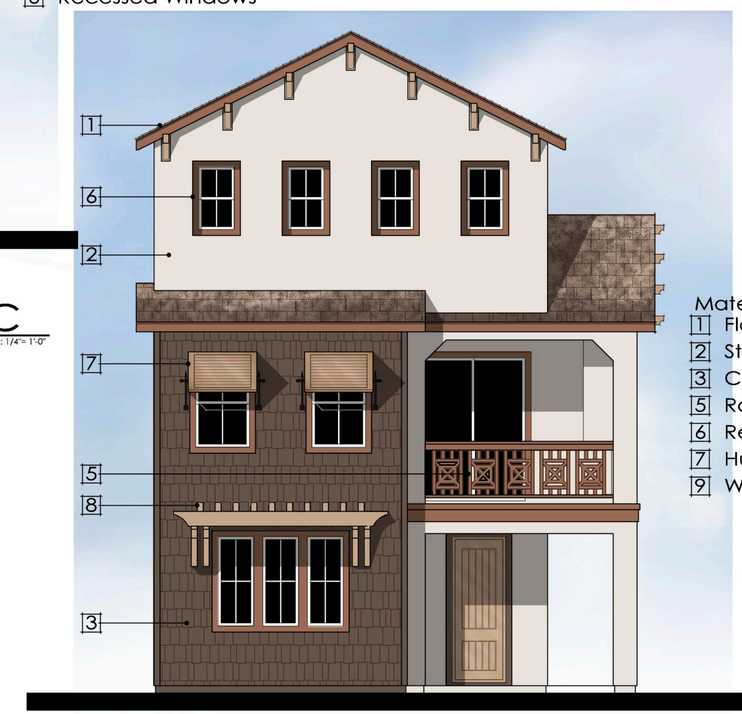
SOUTHERN COTTAGE PLAN 3C

SCALE: 1/4"= 1'-0"

Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish
3 Cementitious Siding
4 Shutters
5 Railing
6 Recessed Windows

COTTAGE PLAN 3A

SCALE: 1/4"= 1'-0"



Material Legend:
1 Flat Concrete Tile Roofing
2 Stucco Finish
3 Cementitious Shingles
5 Railing
6 Recessed Windows
7 Hurricane Shutters
9 Wood Trellis

BEACH COTTAGE PLAN 3B

SCALE: 1/4"= 1'-0"

Plan 3 Front Elevations

A3.1

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LEFT COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT COTTAGE

SCALE: 1/4"= 1'-0"

Plan 3A Side Elevations

A3.2

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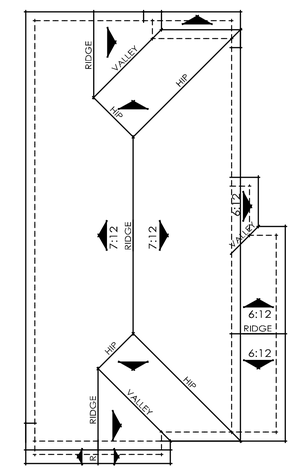
REAR COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Cottage

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

Plan 3A Rear Elevation and Roof Plan

A3.3

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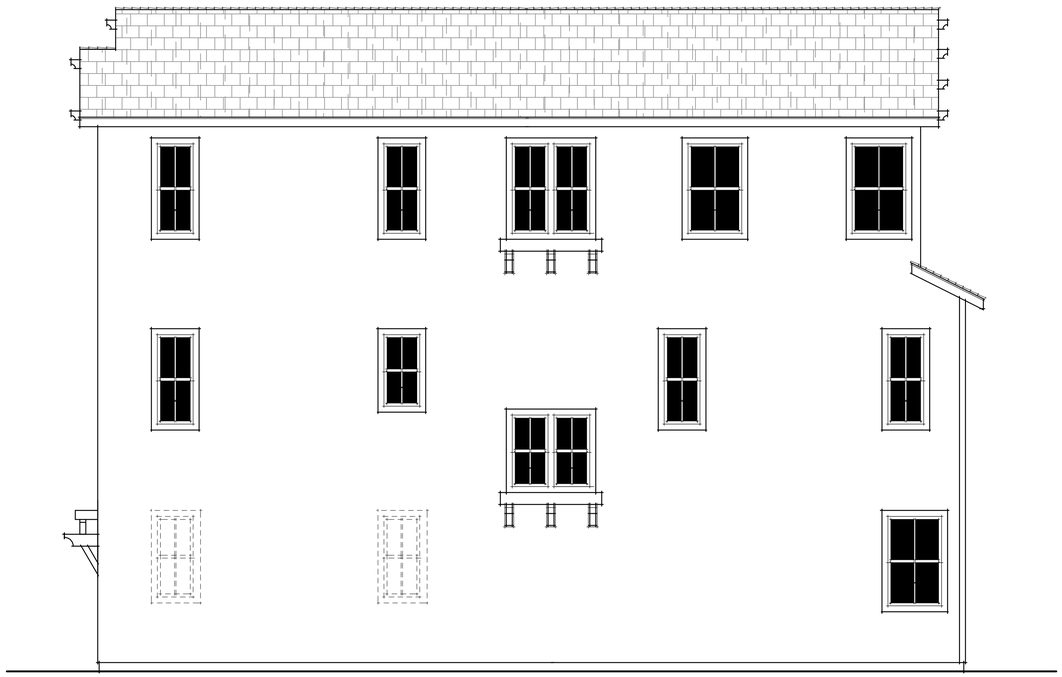

LEFT BEACH COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT BEACH COTTAGE

SCALE: 1/4"= 1'-0"

Plan 3B Side Elevations

A3.4

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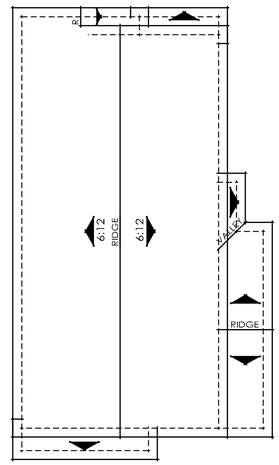
REAR BEACH COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Beach Cottage

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

Plan 3B Rear Elevation and Roof Plan

A3.5

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LEFT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

RIGHT SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"

Plan 3C Side Elevations

A3.6

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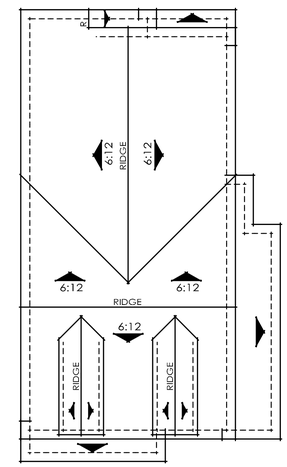
REAR SOUTHERN COTTAGE

SCALE: 1/4"= 1'-0"



ROOF PLAN
Southern Cottage

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

Plan 3C Rear Elevation and Roof Plan

A3.7

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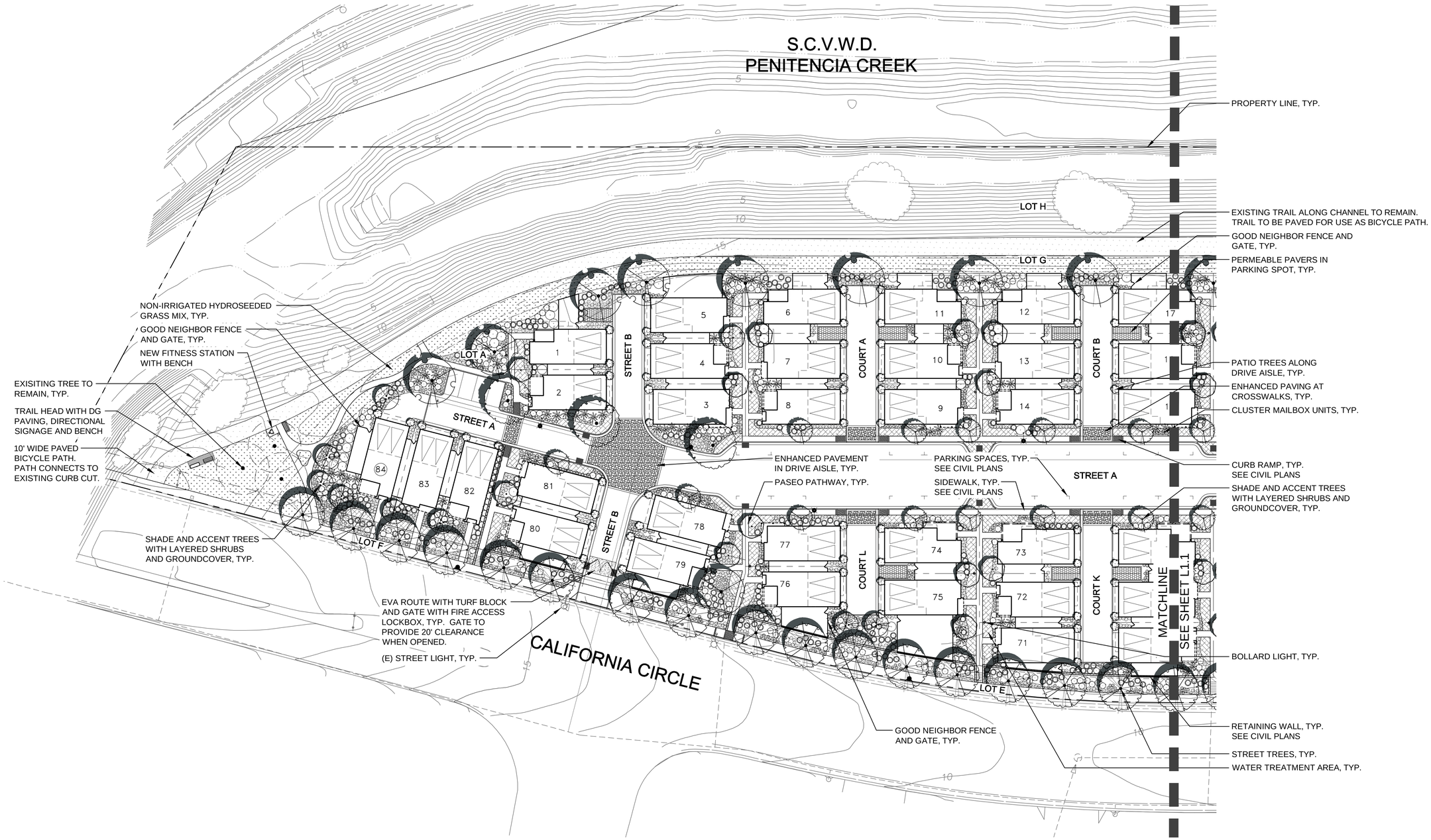

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81 14TH STREET, SAN FRANCISCO, CA
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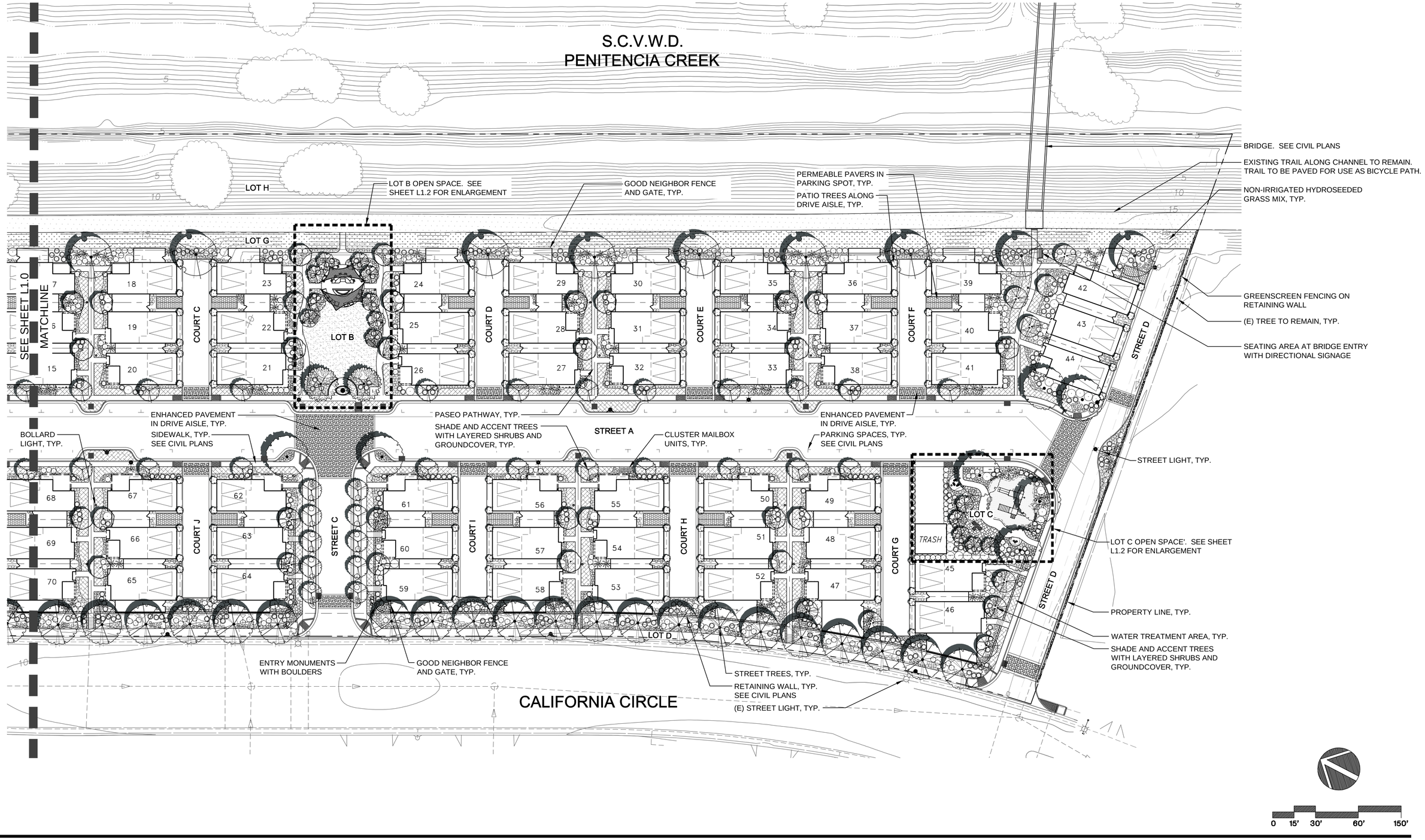
WATERSTONE

Milpitas, California

CONCEPTUAL SITE PLAN

L1.0

4/1/13



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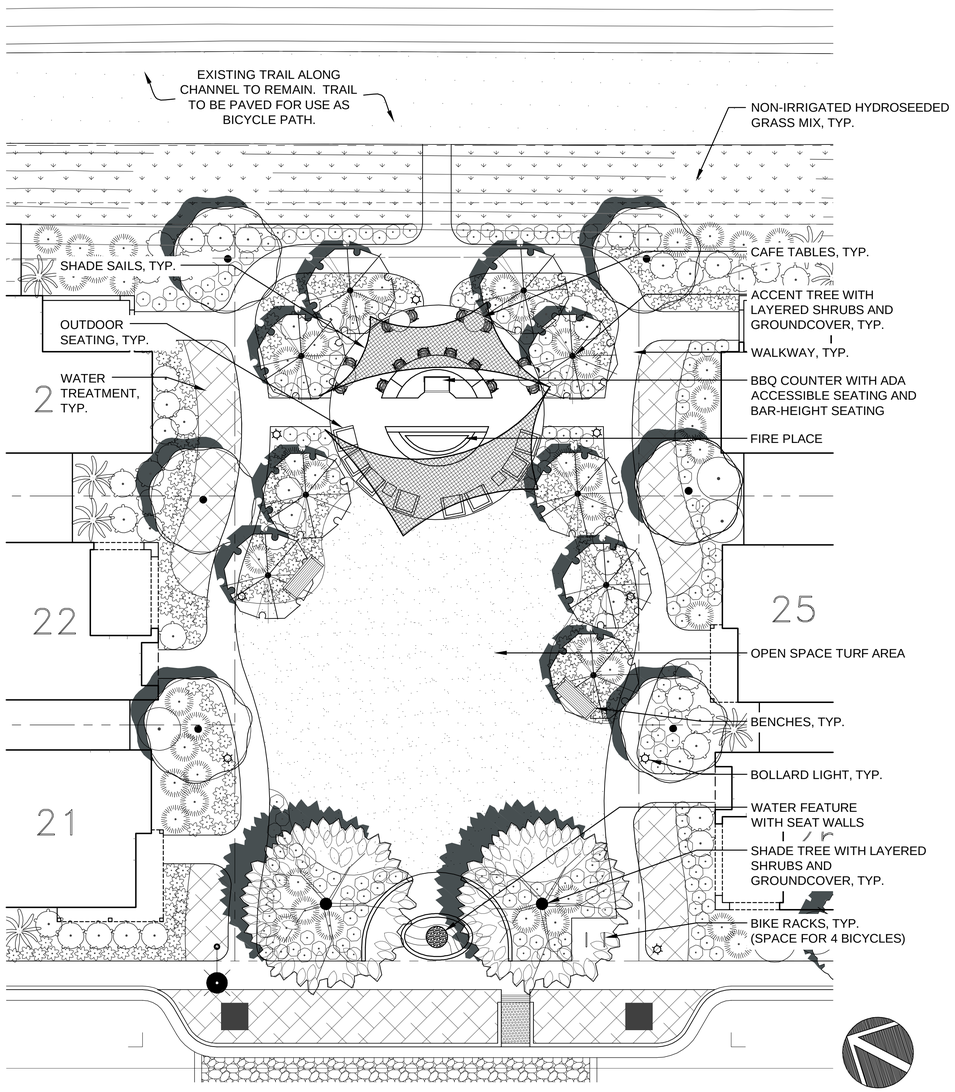
WATERSTONE

Milpitas, California

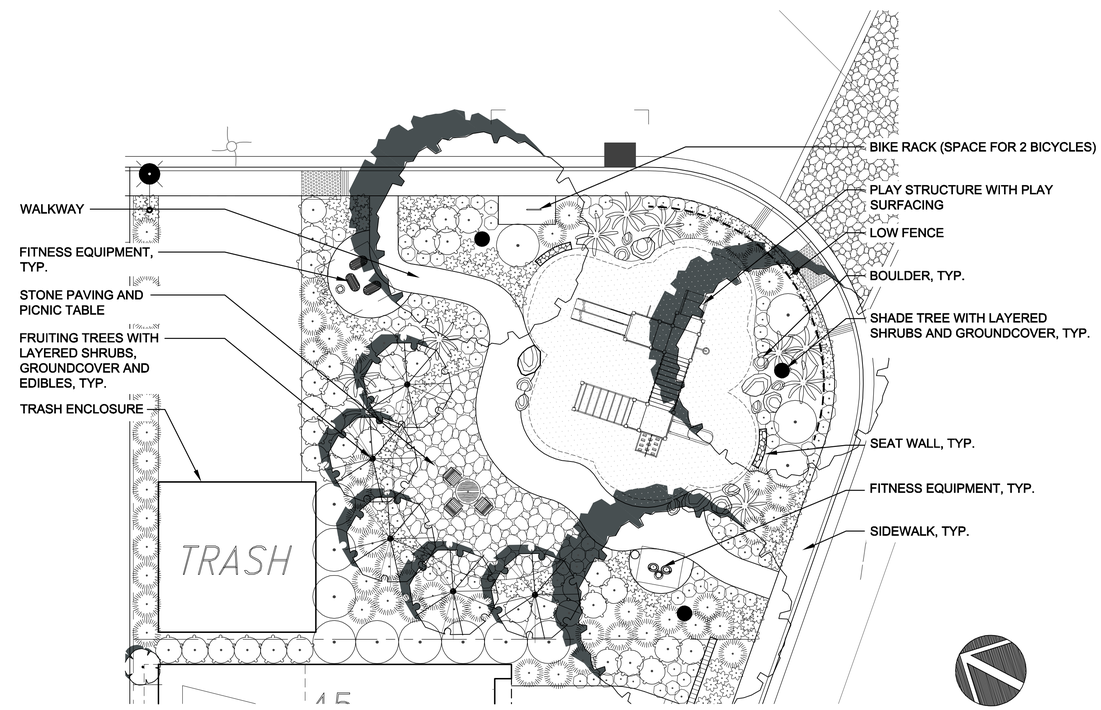
CONCEPTUAL SITE PLAN

L1.1

4/1/13



LOT B OPEN SPACE



LOT C OPEN SPACE

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WATERSTONE

Milpitas, California

OPEN SPACE ENLARGMENTS

L1.2

4/1/13

TREE PALETTE

SYMBOL	BOTANICAL NAME	COMMON NAME	WATER USE
LARGE SHADE TREE			
	ACACIA MELANOXYLON	BLACKWOOD ACACIA	VL
	ACER RUBRUM	RED MAPLE	M
	FRAXINUS OXYCARPA	RAYWOOD ASH	M
	MAGNOLIA GRANDIFLORA	SOUTHERN MAGNOLIA	M
	QUERCUS AGRIFOLIA	LIVE OAK	VL
	QUERCUS ILEX	HOLLY OAK	L
	ULMUS PARVIFOLIA	ELM	M
ACCENT TREE			
	ACER PALMATUM 'SANGO KAKU'	CORAL BARK MAPLE	M
	AESCULUS X CARNEA	RED HORSECHESTNUT	M
	CHITALPA TASHKENTENSIS	CHITALPA	L
	HYMENOSPORUM FLAVUM	SWEETSHADE	M
	LAGERSTROEMIA 'MUSKOGEE'	CRAPE MYRTLE	L
	LOPHOSTEMON CONFERTUS	BRISBANE BOX	M
	MAGNOLIA VIRGINIANA	SWEET BAY	M
	PRUNUS YEDOENSIS `AKEBONO`	FLOWERING CHERRY	M
	PYRUS CALLERYANA `CHANTICLEER`	CHANTICLEER PEAR	M
	ROBINIA 'PURPLE ROBE'	LOCUST	L
SMALL ACCENT/FRUITING TREE			
	APPLE 'FUJI'	FUJI APPLE	M
	ARBUTUS 'MARINA'	STRAWBERRY TREE	M
	CERCIS OCCIDENTALIS	WESTERN REDBUD	VL
	CITRUS 'IMPROVED MEYER'	MEYER LEMON	M
	CITRUS 'VALENCIA'	DWARF VALENCIA ORANGE	M
	GINKGO BILOBA 'PRICETON SENTRY'	MAIDENHAIR TREE	M
	MAGNOLIA GRANDIFLORA 'EDITH BOGUE'	EDITH BOGUE MAGNOLIA	M
	MAGNOLIA X SOULANGEANA 'LILLIPUTIAN'	SAUCER MAGNOLIA	M
SMALL TREES AT GARAGES			
	CAMELLIA JAPONICA	CAMELLIA STANDARD	M
	PODOCARPUS MACROPHYLLUS 'MAKI'	SHRUBBY YEW PINE	M
	RHAPHIOLEPIS 'MAJESTIC BEAUTY'	RHAPIOLEPIS STANDARD	L
	SOLANUM RAN. `ROYAL ROBE`	PARAGUAY NIGHTSHADE STANDARD	M
	TIBUCHINA URVILLEANA	PRINCESS FLOWER STANDARD	M

SHRUB PALETTE

SYMBOL	BOTANICAL NAME	COMMON NAME	WATER USE
LARGE			
	ABELIA X GRANDIFLORA	GLOSSY ABELIA	L
	ABUTILON HYBRIDUM `VESUVIUS RED`	RED FLOWERING MAPLE	M
	CHOISYA TERNATA	MEXICAN ORANGE	M
	HETEROMELES ARBUTIFOLIA	TOYON	VL
	LAVATERA ASSURGENTIFLORA	MALLOW	L
	LIGUSTRUM JAPONICA 'TEXANUM'	TEXAS PRIVET	M
	NANDINA DOMESTICA	HEAVENLY BAMBOO	L
	PHOTINIA X FRASERI	PHOTINIA	M
	PITTOSPORUM TOBIRA 'VARIAGATA'	VARIAGATED TOBIRA	L
	PRUNUS CAROLINIANA 'BRIGHT 'N TIGHT'	CAROLINA LAUREL	L
	RHAMNUS CALIFORNICA	CALIFORNIA COFFEE BERRY	L

PLANTING AND WATER USE DESIGN INTENT STATEMENT

The planting design utilizes primarily drought tolerant, low and medium water use plant materials located in separate hydrozones. Shade tolerant, medium water use plants will be utilized on the North facing sides of the project. Low and medium water use plants will be used in all other perimeter plant areas and in the paseos. The plants will be selected utilizing the State of California's Model Water Efficient Landscape Ordinance plant list and ET Calc water management computer software. A minimum of 2" of bark mulch will be placed in all shrub and groundcover areas.

IRRIGATION SYSTEM WATER USE DESIGN INTENT STATEMENT

The irrigation system will be a fully automatic, low gallon system with matched precipitation rate heads or emitters on each circuit. This system will design with head to head coverage and minimum overspray. The low, medium and high water use hydrozones will be on separate valve circuits. All new trees will have separate drip or bubbler circuits. The remote control valves will have integral pressure regulators to prevent fluctuations and ensure constant application rates to minimize over or under watering. The electronic irrigation controller will be weather based and make automatic adjustments based on current climate along with multiple programs and application cycles/start times. A rain switch will be installed to prevent irrigation during rainy periods. A flow sensor and master valve will be connected to the controller to allow automatic shut off of any valve circuit or main line in the event of a pipe brake to prevent water waste.

WATER USE LEGEND

VL = VERY LOW WATER USE
L = LOW WATER USE
M = MEDIUM WATER USE
H = HIGH WATER USE

SHRUB PALETTE

SYMBOL	BOTANICAL NAME	COMMON NAME	WATER USE
MEDIUM			
	ANIGOZANTHOS HYBRIDS `BIG RED`	BIG RED KANGAROO PAW	L
	ANISODONTEA X HYPOMANDARUM	CAPE MALLOW	M
	BACCHARIS PILULARIS	DWARF COYOTE BRUSH	L
	BUXUS MICROPHYLLA JAPONICA	JAPANESE BOXWOOD	M
	COLEONEMA PULCHRUM	PINK BREATH OF HEAVEN	M
	COTONEASTER MICROPHYLLUS	ROCKSPRAY COTONEASTER	L
	DIETES BICOLOR	FORTNIGHT LILY	L
	ERYSIMUM HYBRIDS `BOWLES MAUVE`	LAVENDER WALLFLOWER	L
	ESCALLONIA 'COMPAKTA'	ESCALLONIA	M
	FESTUCA MAIREI	ATLAS FESCUE	L
	FUCHSIA HYBRIDA `GARTENMEISTER BONSTEDT`	FUCHSIA	M
	GREVILLEA 'NOELII'	GREVILLEA	L
	HEBE 'VERONICA LAKE'	HEBE	M
	KNIPHOFIA UVARIA `SPRINGTIME`	RED HOT POKER	M
	LAVANDULA ANGUSTIFOLIA	ENGLISH LAVENDER	L
	LIMONIUM PEREZII	STATICE	L
	MIMULUS AURANTIACUS	STICKY MONKEY FLOWER	L
	NEPHROLEPIS CORDIFOLIA	SOUTHERN SWORD FERN	M
	OSMANTHUS HETEROPHYLLUS `GOSHIKI`	GOSHIKI HOLLY OLIVE	M
	PHORMIUM HYBRIDS	FLAX	L
	PITTOSPORUM TOBIRA 'WHEELER'S DWARF'	DWARF TOBIRA	M
	RHAPIOLEPIS INDICA 'SPRINGTIME'	INDIAN HAWTHORN	L
	RIBES CALIFORNICUM	HILLSIDE GOOSEBERRY	L
	ROSA CALIFORNICA	CALIFORNIA WILD ROSE	L
	ROSA 'FLOWER CARPET PINK'	GROUNDCOVER ROSE	M
	ROSA FLORIBUNDAS 'ICEBERG'	ICEBERG ROSE	M
	ROSMARINUS OFFICINALIS `TUSCAN BLUE`	ROSEMARY	L
	SYMPHORICARPOS ALBUS	COMMON WHITE SNOWBERRY	L
	VIBURNUM DAVIDII	DAVID VIBURNUM	M
	WESTRINGIA FRUTICOSA `MORNING LIGHT`	COASTAL ROSEMARY	L
SMALL			
	AGAPANTHUS SPECIES	LILY OF THE NILE	M
	ARCTOSTAPHYLOS 'EMERALD CARPET'	EMERALD CARPET MANZANITA	L
	ARCTOSTAPHYLOS HOOKERI `MONTEREY CARPET`	HOOKER`S MANZANITA	L
	CEANOTHUS GRISEUS HORIZONTALIS	CARMEL CREEPER	VL
	ERIGERON KARVINSKIANUS	FLEABANE	L
	FESTUCA OVINA GLAUCA	BLUE FESCUE	L
	HEMEROCALLIS HYBRID	DAYLILY	M
	HEUCHERA SANGUINEA `SANTA ANA CARDINAL`	CORAL BELLS	M
	LANTANA 'DWARF YELLOW	DWARF LANTANA	L
	LIRIOPE GIGANTEA	GIANT LIRIOPE	M
	LIRIOPE MUSCARI	LILYTURF	M
	NEPETA X FAASSENII	CATMINT	L
	OPHIOPOGON JAPONICUS	MONDO GRASS	M
	PHORMIUM HYBRIDS 'TONY TIGER'	FLAX	L
	SANTOLINA PINNATA `EDWARD BOWLES`	LAVENDER COTTON	L
	SISYRINCHIUM BELLUM	BLUE-EYED GRASS	VL
	SUTERA CORDATA `SNOWFLAKE`	WHITE BACOPA	M
	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	M
	VERBENA TENUISECTA `EDITH`	EDITH MOSS VERBENA	L
VINES			
	CLEMATIS ARMANDII	EVERGREEN CLEMATIS	M
	CLYTOSTOMA CALLISTEGIOIDES	VIOLET TRUMPET VINE	M
	HARDENBERGIA VIOLACEA 'HAPPY WANDERER'	LILAC VINE	M
	JASMINUM POLYANTHUM	JASMINE	M

TURF

SYMBOL	BOTANICAL NAME	COMMON NAME	WATER USE
	FESTUCA ELATOR 'MEDALLION'	DWARF TALL FESCUE	H

NON-IRRIGATED GRASS MIX

SYMBOL

GREEN TO GOLD BLEND (55LBS/ACRE) - MIX OF ANNUAL GRASSES, WITH ROSE AND SUB CLOVERS. EXCELLENT WINTER COVER. SEED IN FALL FOR GERMINATION DURING RAINY SEASON. MIX AVAILABLE THROUGH PACIFIC COAST SEED (925) 373-4417.

WATER TREATMENT

SYMBOL	BOTANICAL NAME	COMMON NAME	WATER USE
	CAREX PRAEGACILIS	FIELD SEDGE	M
	DESCHAMPSIA CESPITOSA	TUFTED HAIRGRASS	L
	FESTUCA IDAHOENSIS	IDAHOE FESCUE	L
	FESTUCA 'NO MOW'	NO MOW FESCUE	M
	LEYMUS TRITICOIDES	CREEPING WILDRYE	VL
	SISYRINCHIUM BELLUM	WESTERN BLUE-EYED GRASS	VL

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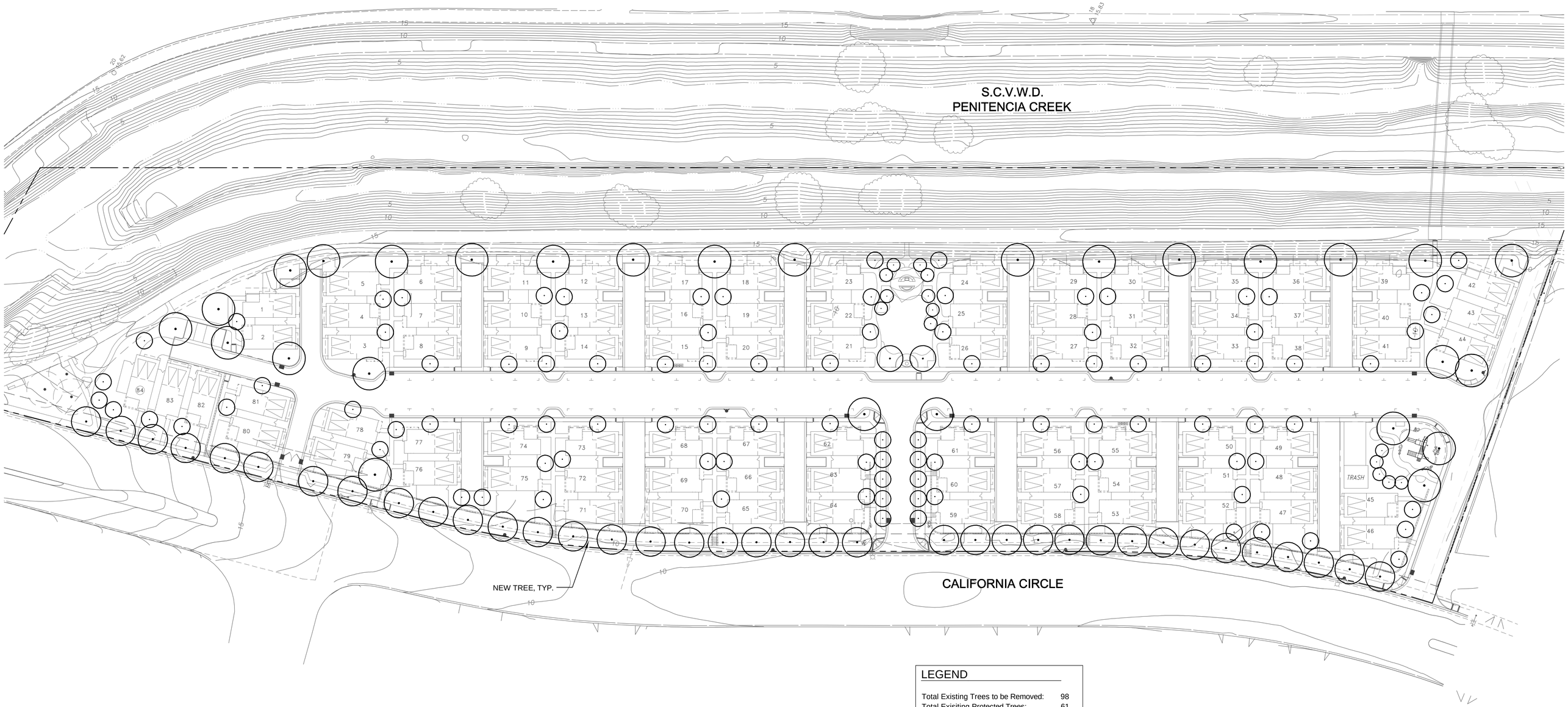
WATERSTONE

Milpitas, California

CONCEPTUAL PLANTING PALETTE AND IMAGERY

L1.3

4/1/13



LEGEND

Total Existing Trees to be Removed:	98
Total Exisiting Protected Trees:	61
Total Protected Trees to be Removed:	57
Total New Trees:	184

NOTES:

1. REFER TO CIVIL DRAWING, EXISTING TREE PLAN, C-6 FOR EXISTING TREES TO BE REMOVED.
2. REFER TO ARBORIST REPORT FOR TREE ASSESSMENT.

0 20' 40' 80' 120'

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WATERSTONE

Milpitas, California

REPLACEMENT TREE PLAN

L1.4

4/1/13

HealthBeat FITNESS EQUIPMENT

MATERIAL: Steel

MODEL: A. Tai Chi
B. Pull-Up/Dip
C. Welcome Sign
D. Plyometrics

COLORS: TBD

www.playslsi.com

FITNESS STATIONS
NTS

BRIDGE

MODEL: Pratt Truss with Arches

www.excelbridge.com

NOTE: See Civil Plans for more information.

BRIDGE
NTS

SHADE SAILS

COLORS: TBD

www.pacificshadesails.com

SHADE SAILS
NTS

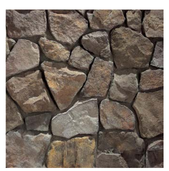
ENHANCED PAVING

MODEL: Lithotex Pavecrafters River Pebble with Concrete Band

COLOR: TBD

www.scofield.com

ENHANCED PAVING AT CROSSWALKS
NTS



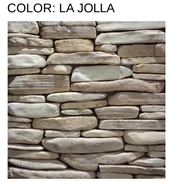
ELDORADO STONE

STYLE: RUSTIC RUBBLE
COLOR: POLERMO

-OR-

ELDORADO STONE

STYLE: COASTAL LEDGE
COLOR: LA JOLLA

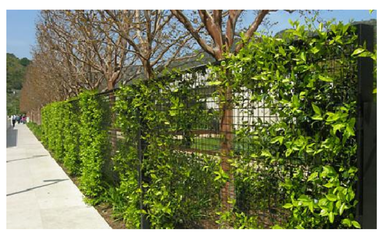


-OR-

ELDORADO STONE

STYLE: HILLSTONE
COLOR: LUCERA

STONE VENEER OPTIONS
NTS



GREENSCREEN

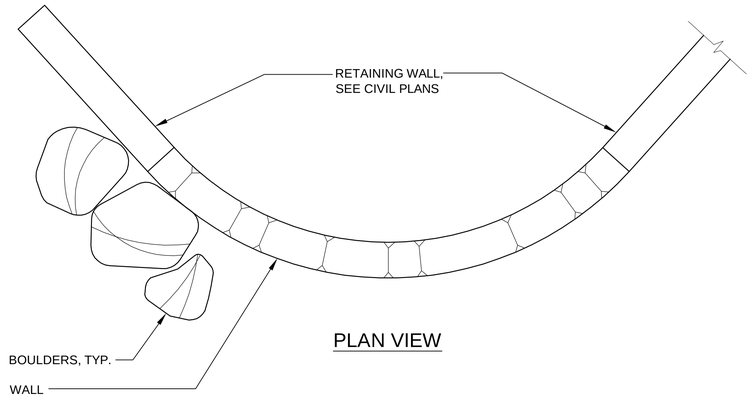
MODEL: 6' High Fence

COLOR: TBD

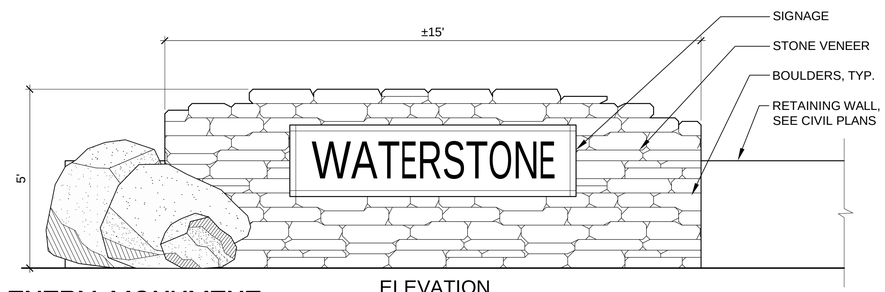
NOTE: Screen to be planted with evergreen vine.

www.greenscreen.com

GREENSCREEN FENCING
NTS



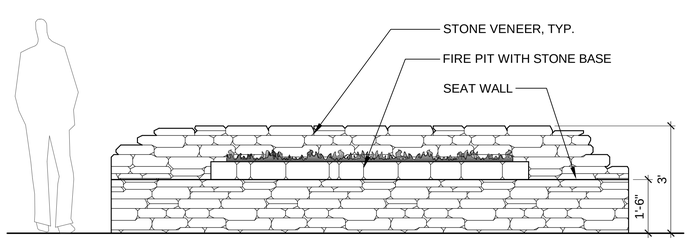
PLAN VIEW



ELEVATION

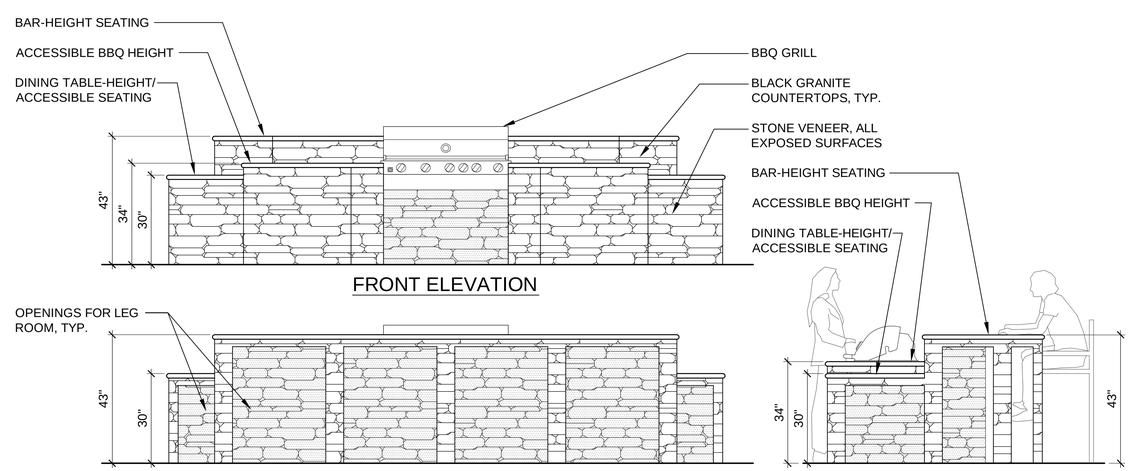
ENTRY MONUMENT
NTS

WATER FEATURE
1/2"=1'-0"



FRONT ELEVATION

FIRE PLACE
1/2"=1'-0"



FRONT ELEVATION

REAR ELEVATION

SIDE ELEVATION

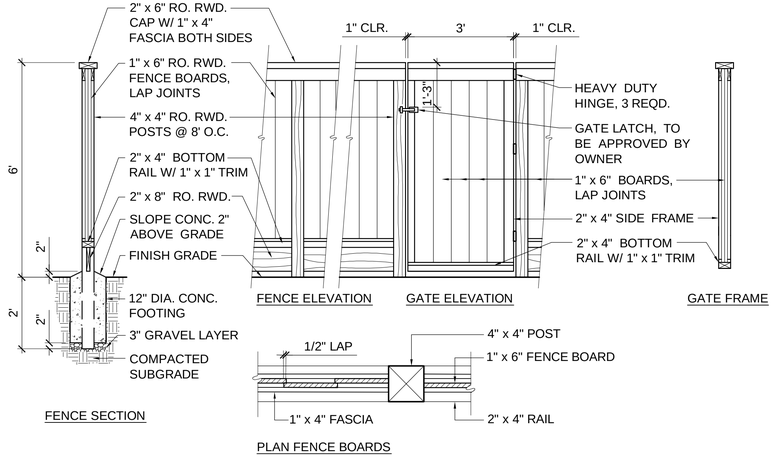
BUILT-IN BBQ WITH COUNTER
1/2"=1'-0"

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

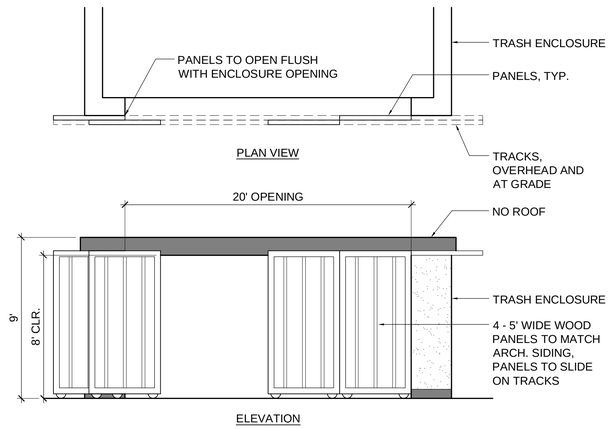
WATERSTONE
Milpitas, California

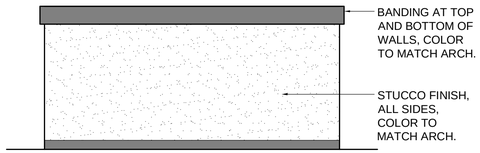
CONCEPTUAL SITE AMENITIES
L1.5
4/1/13



GOOD NEIGHBOR FENCE AND GATE

NTS





TRASH ENCLOSURE

1/4"=1'-0"

PICNIC TABLE

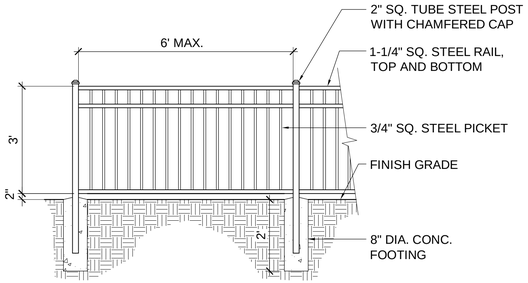
MATERIAL: Ipe and steel

MODEL: Dumor 76-23I, 3 seats, ADA accessible

www.dumor.com

PICNIC TABLE

NTS



NOTE:
PAINT FENCE WITH 2 COATS WITH SEMI-GLOSS BRONZE PAINT.
SUBMIT COLOR SAMPLE OWNER FOR APPROVAL.

LOW FENCE

1/2"=1'-0"

BENCH:

MATERIAL: Solid Teak

MODEL: 6' Foxhall

LITTER RECEPTACLES:

MATERIAL: Solid Teak

MODEL: Pyramid Receptacle

www.countrycasual.com

BENCH AND LITTER RECEPTACLE

NTS

LOUNGE FURNITURE:

MATERIAL: Solid Teak

MODEL: Calypso Sectional Lounge Seating

DINING FURNITURE:

MATERIAL: Solid Teak

MODEL: Foxhall Cafe Collection and Barstools

CUSHION COLOR: TBD

www.countrycasual.com

OUTDOOR DINING AND LOUNGE FURNITURE

NTS

PLAY STRUCTURES

MODEL: TIMBERFORM MODEL #4864-TF

COLORS: TBD

www.timberforms.com

PLAY STRUCTURE

NTS

LIGHTING

MODEL: Domus Series Light Standard and Bollard

COLOR: TBD

www.lumec.com

STREET LIGHT

NTS

CLUSTER MAILBOX UNIT

MATERIAL: Aluminum

MODEL: Regency Decorative Series, 2- Type 2 (12 door) and 4- Type 3 (16 door)

COLORS: Bronze

www.mailboxes.com

CLUSTER MAILBOX UNITS

NTS

BIKE RACK

MATERIAL: Steel

MODEL: Ring

COLORS: TBD

www.landscapeforms.com

BIKE RACK

NTS

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

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LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

WATERSTONE

Milpitas, California

CONCEPTUAL SITE AMENITIES

L1.6

4/1/13

Trumark Companies

Project Name: WaterStone
Location: 1494-1600 California Circle, Milpitas, CA

Project Description:

The California Circle Industrial Park area presents a tremendous opportunity to meet the high demand for housing by transforming a portion of an older underutilized industrial area into a residential neighborhood, complimenting the existing adjacent California Circle residential areas and improving the existing housing to jobs balance. After extensive market analysis, Trumark believes there is an over-supply of new higher density attached housing coming on-line. Therefore, in order to increase the diversity of housing options, we are proposing this 84-home single-family detached neighborhood. Redeveloping the site will include demolition of the existing office buildings and associated asphalt parking areas. Most of the existing trees fronting California Circle (within 20' of the street approximately) will remain in order to maintain the existing street character, public sidewalk and utilities. Existing trees within the parking areas and near the existing buildings will be removed however to accommodate new homes, parks, circulation and site grading. In order to raise the new homes out of the flood zone, the entire site will be raised approximately 1' at the North end of the site, 2' in the middle, and 3' at the South end, and gradually sloped from the levy toward California Circle. New trees will be planted throughout the new neighborhood. The existing trees in the Western slope of the levy bordering the Berryessa Creek channel will not be impacted by the new development and may, or may not remain depending on Army Corps of Engineer review.

Proposed park areas within the new neighborhood will include pedestrian access to the existing trail on top of the existing levy. No new improvements or plantings are planned on the levy except for a new pedestrian bridge spanning Berryessa Creek. The bridge will span from the West bank to the East bank without any mid-span supports to minimize impacts to the creek. The bridge will rest on top of each side's levy with new concrete landings intended to not impact the trail. The concrete landings will be designed to improve the integrity of the levy. The pedestrian bridge will be located toward the Southern edge of the neighborhood generally half way between the existing Berryessa Creek/California Circle street crossings. The bridge will be

Trumark Companies

approximately 10' wide and constructed primarily of steel in an open box-frame style with durable, simulated wood planks.

PROPOSED GENERAL STATISTICS:

Home Count: 84 Total New Homes; Single Family Detached
Project Size: Approximately 7.5 acres +/- (not including creek easement)
Proposed Density Range: 11.2 homes per acre density

Conceptual Unit Mix: Phase-1:

SFD 1	3+den, 3.5-ba	2,262 sq. ft.	31 du
SFD 2	3+loft, 3.5-ba	2,279 sq. ft.	28 du
SFD 3	4-bed, 3.5-ba	2,450 sq. ft.	25 du

Parking:
168 total two-car attached direct access side-by-side garages spaces
25 un-covered assigned spaces next to each Plan 3's
44 total open guest parking spaces
237 Total Parking Spaces
2.82 total parking spaces per home ratio

Open Space:
13,263 square feet Common useable park-like open space amenity area
0.30-acres useable Common Useable park-like open space amenity area
157.9 square feet Common useable open space per home ratio
Note: all homes also include private yard, porch and deck areas
42,869 square feet Total Private yard, porch and deck areas provided
510 square feet Average Private yard, porch and deck area per home ratio

Building Height: Approximately 39'

Construction: Type-V: 3-Story Detached Single Family Homes

RECEIVED
MAY 23 2012
CITY OF MILPITAS
PLANNING DIVISION

Attachment D

Draft Final
Environmental Impact Report

Waterstone Residential Project

City of Milpitas

September 2013

PREFACE

This document, together with the Draft Environmental Impact Report (DEIR), constitutes the Final Environmental Impact Report (FEIR) for the Waterstone Residential project. The DEIR was circulated to affected public agencies and interested parties for a 45-day review period from June 21 to August 5, 2013. This volume consists of comments received by the Lead Agency on the DEIR during the public review period, responses to those comments, and revisions to the text of the DEIR.

In conformance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR is intended to be used by the City and any Responsible Agencies in making decisions regarding the project. The CEQA Guidelines advise that, while the information in the FEIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the DEIR by making written findings for each of those significant effects.

According to the State Public Resources Code (Section 21081), no public agency shall one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with CEQA and the CEQA Guidelines, the FEIR will be made available to the public prior to consideration of the Environmental Impact Report. All documents referenced in this FEIR

are available for public review in the Milpitas City Hall at 455 E. Calaveras Boulevard, on weekdays during normal business hours.

TABLE OF CONTENTS

PREFACE…… i

Section 1.0 LIST OF AGENCIES AND ORGANIZATIONS TO WHOM THE DRAFT EIR WAS SENT……...1

Section 2.0 LIST OF THE COMMENT LETTERS RECEIVED ON THE DRAFT EIR…….2

Section 3.0 RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR……3

Section 4.0 REVISIONS TO THE TEXT OF THE DRAFT EIR……..13

Section 5.0 COPIES OF COMMENT LETTERS RECEIVED ON THE DRAFT EIR…... 14

SECTION 1.0 LIST OF AGENCIES AND ORGANIZATIONS TO WHOM THE DRAFT EIR WAS SENT

State Agencies

California Air Resources Board
California Department of Fish and Wildlife – Region 3
California Department of Parks and Recreation
California Department of Water Resources
California Department of Transportation – District 4
California Highway Patrol
Department of Toxic Substances Control
Native American Heritage Commission
Office of Historic Preservation
US Army Corps of Engineers

Regional Agencies

Bay Area Air Quality Management District
Regional Water Quality Control Board – Region 2
San Francisco Bay Conservation and Development Commission
Santa Clara County Department of Roads and Airports
Santa Clara County Open Space Authority
Santa Clara County Planning Development
Santa Clara Valley Transportation Authority
Santa Clara Valley Water District

Local Agencies

City of Fremont
City of San Jose

Other Agencies, Organizations, and Businesses

AT&T
Ione Bank of Miwok Indians
Milpitas Unified School District
Pacific Gas & Electric

State Agencies

A.	California Public Utilities Commission	July 24, 2013
B.	California Department of Transportation	July 26, 2013

Regional Agencies

C.	County of Santa Clara Department of Environmental Health	July 23, 2013
D.	Santa Clara Valley Transportation Authority	August 5, 2013

SECTION 3.0 RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

The following section includes all the comments on the DEIR that were received by the City in letters and emails during the 45-day review period. The comments are organized under headings containing the source of the letter and the date submitted. The specific comments from each of the letters or emails are presented as "Comment" with each response to that specific comment directly following. Each of the letters and emails submitted to the City of Milpitas are attached in their entirety (with any enclosed materials) in Section V of this document.

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this document lists all of the recipients of the DEIR.

The four comment letters received are from public agencies, none of whom could be Responsible Agencies under CEQA for the proposed project. The CEQA Guidelines require that:

> A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state that:

> Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decisions, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

The CEQA Guidelines state that the Lead Agency shall evaluate comments on the environmental issues received from persons who reviewed the DEIR and shall prepare a written response to those comments. The lead agency is also required to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. This FEIR contains written responses to all comments made on the DEIR received during the advertised 45-day review period. Copies of this FEIR have been supplied to all persons and agencies that submitted comments.

A. RESPONSE TO COMMENTS FROM THE CALIFORNIA PUBLIC UTILITIES COMMISION, JULY 24, 2013:

Comment A-1: As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. New developments and improvements to existing facilities may increase vehicular traffic volumes, not only on streets and at intersections, but also at at-grade highway-rail crossings. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

The proposed development will impact the following at-grade highway-rail crossing:

- Dixon Landing Road, DOT # 750076A, CPUC # 001DA-8.60

The proposed residential development is located approximately half a mile from the Union Pacific Railroad (UP) Warm Springs Subdivision tracks. There are approximately 8 freight trains per day on this track traveling 10 mph. Numerous commercial plazas and strip malls are located on North Milpitas Boulevard, east of the Dixon Landing Road rail crossing. In addition, Dixon Landing Road is used as a connector between Highway 680 and Highway 880. As such, the Waterstone Residential project may generate additional vehicular and pedestrian traffic over the Dixon Landing Road rail crossing. Due to the risk of additional traffic at the crossing, the following safety measures are recommended by CPUC:

- Install Commission Standard 8's (flashing light signal assemblies) in the northwest and southeast quadrants to provide additional warning for pedestrians.
- The City should investigate future grade separation of the crossing alongside the Bay Area Rapid Transit (BART) tracks. The Silicon Valley Rapid Transit (SVRT) project is currently under construction, creating grade separated BART tracks adjacent to the Dixon Landing Road UP rail crossing. Grade separating all rail will greatly improve safety off motorists and pedestrians and improve traffic circulation in the region.

In order to make alterations to any crossing a GO 88-B application must be submitted with the California Public Utilities Commission. Information about this application process can be found at our website at http://www.cpuc.ca.gov/crossing.

Response A-1: In accordance with the above request and project consistency with General Plan Policy No. 3.b-I-5[1], City staff will request that the City Council require the applicant to construct additional train warning signals for pedestrians at the Dixon Landing Road rail crossing to ensure safe and efficient travel as a Condition of Approval. If the City Council

[1] Create a balanced multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable in respect to the community context of the general plan.

conditions the project to include construction of additional train warning signals, the applicant will be required to file and obtain approval from the CPUC.

B. RESPONSE TO COMMENTS FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, JUNE 20M 2013:

Comment B-1: Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. We have reviewed the Draft Environmental Impact Report (DEIR) and the appended Traffic Impact Analysis (TIA) and offer the following comments:

Trip Generation

Changes in the project's description and proposed land uses have occurred since the original Traffic Impact Analysis was completed in January of 2012, which has led to changes in the project's trip generation rates. The DEIR states that these changes will result in "slightly more trips" than the original proposal but the number of additional trips "…would be too few to materially change the level of service results in the original TIA…" We request that any numeric changes to the quantitative assessment of the project's impacts be described quantitatively. Please provide Caltrans with a quantitative response prior to certification of the EIR.

Response B-1: Based on the ITE rates, the original project description (46 single-family houses and 62 townhouses) would generate 800 daily vehicle trips (62 in the AM Peak Hour and 79 in the PM Peak Hour). The project analyzed in the Draft EIR (84 single-family houses) would generate 803 daily vehicle trips of which 63 would occur in the AM Peak Hour and 85 would occur in the PM Peak Hour. Consequently, the project would generate one additional AM Peak Hour trip and six additional PM Peak Hour trips as shown in the table below. Given the acceptable levels of service at the study intersections around the project site, the additional traffic would not degrade any intersection LOS to an unacceptable level or increase the average delay or V/C to a level of significance based on the City of Milpitas and VTA guidelines.

Trip Generation Comparison												
Land Use	**Size**	**ITE Code**	**Daily**		**AM Peak Hour**				**PM Peak Hour**			
			Rate	**Total**	**Rate**	**Total**	**In**	**Out**	**Rate**	**Total**	**In**	**Out**
Prior Use												
Single family	46	210	9.57	440	0.75	35	9	26	1.01	46	29	17
Townhouses	62	230	5.81	360	0.44	27	5	22	0.52	32	22	10
	108			800		62	14	48		79	51	28
Single family	84	210	9.57	803	0.75	63	16	47	1.01	85	53	32
Difference				**3**		**1**	**2**	**-1**		**6**	**2**	**4**

Rate based on the ITE *Trip Generation* Manual, 8th edition, 2008

Comment B-2: ***Ramp Metering***

The following freeway on-ramps are expected to be significantly impacted by the proposed project during ramp metering hours:

- Northbound (NB) Interstate 880 (I-880) diagonal on-ramp at Dixon Landing Road;

- NB I-880 loop on-ramp at Dixon Landing Road;
- Southbound (SB) I-880 diagonal on-ramp at Dixon Landing Road;
- SB I-880 at loop on-ramp Dixon Landing Road;
- Westbound (WB) State Route (SR) 237 diagonal on-ramp at McCarthy Boulevard.

The existing on-ramp queues will likely be lengthened with additional traffic demand and may impact traffic operations on the local streets. We request that the applicant be required to provide additional storage on the on-ramps and/or local streets and High Occupancy Vehicle (HOV) preferential lanes for the freeway on-ramps to prevent secondary impacts from ramp-meter queues.

Caltrans has existing Traffic Operations Systems (TOS) and ramp metering equipment along I-880 and SR 237. This equipment must be maintained and kept operational during all phases of the proposed project. Should they be impacted as a result of the proposed project, including project mitigation, the applicant or the entity responsible for mitigating the project's impacts will need to obtain Caltrans approval for equipment relocation and/or replacement.

Response B-2: The proposed project would add peak hour traffic to the aforementioned segments as follows:

- NB I-880 diagonal on-ramp at Dixon Landing Road – no peak hour trips. It would be faster to use the loop ramp as vehicles would encounter two traffic signals instead of one to use this diagonal ramp.
- NB I-880 loop on-ramp at Dixon Landing Road – 13 AM Peak Hour trips and seven PM Peak Hour trips.
- SB I-880 diagonal on-ramp at Dixon Landing Road – no peak hour trips. This ramp serves the eastbound direction at Dixon Landing Road, and project traffic would be heading westbound on Dixon Landing Road.
- SB I-880 loop on-ramp at Dixon Landing Road – 19 AM Peak Hour trips and 11 PM Peak Hour trips.
- WB SR 237 diagonal on-ramp at McCarthy Boulevard – No peak hour trips. This on-ramp is more than three miles using surface streets from the project site. Most vehicle traffic would access I-880 via the Dixon Landing on-ramp to access SR 237.

The traffic study used very conservative (i.e., high) trip generation assumptions and did not assume any trip credits for the uses that are currently on the project site (i.e., constituting the environmental baseline). The existing use entitlements include 106,700 square feet of industrial park uses. This generates approximately 743 daily trips, including 90 AM Peak Hour trips and 92 PM Peak Hour trips. When these uses are considered as the baseline condition, the net trip generation on the NB I-880 loop on-ramp at Dixon Landing Road and SB I-880 loop on-ramp at Dixon Landing Road would be as follows:

NB I-880 loop on-ramp at Dixon Landing Road – Nine AM Peak Hour trips and -11 PM Peak Hour trips.

SB I-880 loop on-ramp at Dixon Landing Road – 12 AM Peak Hour trips and -25 PM Peak Hour trips.

Therefore, when both peak hours are considered, the project would generate fewer peak hour trips at the existing ramp meters than the existing entitlement use. During the AM Peak Hour when the net peak hour trips added to the ramps would be positive, the rate at which the proposed project would add traffic would be one new trip per five minutes (or less). This would have a negligible effect on the ramp meter operations.

Comment B-3: ***Travel Demand Management***
In order to reduce impacts on Interstate 880, we suggest that this development plan include Transportation Demand Management (TDM) measures that encourage the use of walking, bicycling, and public transit. The TDM program could include bicycle sharing, vehicle sharing, and improving the pedestrian and bicycle facilities in the project area (with lighting, signage, and refreshing crosswalk and bike lane restriping). Our information, from May 2011, indicates that the Class II – Bike Lane on California Circle and the Class III – Bike Route designation on Dixon Landing have not been completed as shown in Figure 6 (page 36) of the DEIR. If the referenced bicycle facilities have not been constructed then we encourage the City of Milpitas to build them as documented in both Figures 6 and in the "Existing Bicycle Network" map (Figure 3-2) in the Milpitas Bikeway Master Plan Update.

Response B-3: The proposed housing sites are located near existing services and transit as discussed in the Draft EIR. No TDM Plan is currently proposed. The proposed project will not have a significant impact on the local transportation network, so no mitigation is required or proposed. The project will, however, make improvements to the adjacent creek trail.

The bike lane on California Circle has been installed and signs are posted. Bicycle route signs are also posted on Dixon Landing Road.

Comment B-4: ***Lead Agency***
As the lead agency, the City of Milpitas 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.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the County work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see end of this letter for more information regarding encroachment permits.

Response B-4: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed, therefore, there is no need for an encroachment permit. All identified mitigation measures for other resources areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment B-5: ***Mitigation Reporting Guidelines***
The California Environmental Quality Act (CEQA) requires the adoption of reporting or monitoring programs when public agencies include environmental impact mitigation as a condition of project approval. Reporting or monitoring takes place after project approval to ensure implementation of the project in accordance with mitigation adopted during the CEQA review process.

Some of the information requirements detailed in the attached Guidelines for Submitting Transportation Information from a Reporting Program include the following:

- Name, address, and telephone number of the CEQA lead agency contact responsible for mitigation reporting.
- Type of mitigation, specific location, and implementation schedule for each transportation impact mitigation measure, and
- Certification section to be signed and dated by the lead agency certifying that the mitigation measures agreed upon and identified in the checklist have been implemented, and all other reporting requirements have been adhered to, in accordance with Public Resources Code Sections 21081.6 and 21081.7.

Further information is available online at: http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html

Response B-5: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed. All identified mitigation measures for other resource areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment B-6: ***Cultural Resources***
Caltrans requires that a project environmental document include documentation of a current archaeological record search from the Northwest Information Center of the California Historical Resources Information System if construction activities are proposed within State right-of-way. Current record searches must be no more than five years old. Caltrans requires the records search, and if warranted, a cultural resource study by a qualified, professional archaeologist, and evidence of Native American consultation to ensure compliance with the California Environmental Quality Act (CEQA), Section 5024.5 and 5097 of the California Public Resources Code, and Volume 2 of Caltrans' Standard Environmental Reference (http://www.dot.ca.gov/ser/vol2/vol2.html). These requirements, including applicable mitigation, must be fulfilled before an encroachment permit can be issued for project-related work in State ROW; these requirements also apply to National Environmental Policy Act (NEPA) documents when there is a federal action on a project. Work subject to these requirements includes, but is not limited to: lane widening, channelization, auxiliary lanes, and/or modification of existing features such as slopes, drainage features, curbs, sidewalks and driveways within or adjacent to State ROW.

Response B-6: The project does not propose any work within a State right-of-way. For the area of disturbance, an archaeological record search was completed at the Northwest Information Center and is on file at the City. The project does not include any Federal action requiring NEPA.

This comment does not speak to any aspect of the Draft EIR. No additional response is needed.

Comment B-7: ***Encroachment Permit***

Please be advised that any work of traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See the Department's website for more information: http://www.dot.ca.gov/hq/traffops/developserv/permits.

Response B-7: It is not anticipated that this project would require an encroachment permit. If it is determined that one is required, the applicant will follow all applicable procedures and regulations.

C. RESPONSE TO COMMENTS FROM COUNTY OF SANTA CLARA DEPARTMENT OF ENVIRONMENTAL HEALTH, JULY 23, 2013

Comment C-1: 1. It appears that the site at 1551 California Circle may be included in the project. It is unclear if Lots 1, 2, and 3 are included in the overall scope. Appendix A Section 2.8 Hazards and Hazardous Materials clearly states that "No records or evidence of hazardous materials usage on Lots 2 and 3 were found." This is an incorrect statement since there is an active retail Chevron-branded gasoline station on Lot 3. Due to the nature of the business, if and when this station is removed, contamination from the underground storage tanks may be found.

> **Response C-1:** The project addresses the proposed development on Lot 1 and the proposed General Plan amendments on Lots 1, 2, and 3. As noted on page 35 of Appendix A of the Initial Study, the Phase I was prepared for Lot 1 but also addressed possible off-site sources of contamination that could impact Lot 1. Therefore, any documented hazardous conditions on Lots 2 and 3 would have been discovered in the Lot 1 Phase I report.
>
> The reference noted in the comment above that "no records or evidence of hazardous materials usage on Lots 2 and 3 were found" has been corrected. While it is true, and disclosed in the Draft EIR, that there is a gas station on Lot 3, there are no documentation of any incidents of release or other environmental conditions that would impact future development proposed by the project. The fact that Lot 3 has an operational gas station on-site is not, by itself, a significant environmental condition. Please see Section 4.0 for the updated text.

D. RESPONSES TO COMMENTS FROM THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, AUGUST 5, 2013

Comment D-1: Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR for 84 single family homes located south of Dixon Landing Road, on either side of California Circle. We have the following comments.

Pedestrian Bridge

VTA commends the applicant for including a new pedestrian bridge across Penitencia Creek and trail amenities. From the site plans provided, it is unclear whether this improvement will provide direct pedestrian access to the residential area and Dixon Landing Park on the other side of the creek. The trail appears to be fenced off along the California Landing residential development directly across the creek from the Waterstone site. Providing direct access would make walking for employment, shopping and recreational reasons more attractive for residents and employees on both sides of the creek. VTA encourages the City to work with the applicant as well as the owner of California Landing to build a complete pedestrian crossing between the two neighborhoods.

> **Response D-1:** The VTA is correct that there is an existing fence between the existing creek trail and the California Landing residential development. The homeowners association for this development installed a fence to preclude non-residents from accessing the property from the creek trail. To accommodate the proposed pedestrian bridge and pedestrian traffic from both sides of the creek, the bridge will align with Aspenridge Drive, immediately south of the California Landing development. Aspenridge Drive is a public roadway and will provide full access to/from the pedestrian bridge.

Comment D-2: Bicycle Accommodations

VTA agrees with the recommendation in the TIA that "Bike parking spaces are not shown on the current plans. These should be placed in accessible, secure, and well-lit locations" (pg. 29). VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the project, including bicycle lockers for long-term parking and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from http://www.vta.ca.gov/bike_information/bicycle_technical_guidelines.html.

> **Response D-2:** The City of Milpitas acknowledges VTA's recommendations for the placement of bicycle parking on the project site. These comments will be included with the information presented to the City Council during project consideration. While not common/guest bicycle storage will be provided, individual units will include storage spaces for resident's bicycles.

SECTION 4.0 REVISIONS TO THE TEXT OF THE DRAFT EIR

The following section contains revisions/additions to the text of the *Draft Environmental Impact Report, Waterstone Residential Project,* dated June 2013. Revised or new language is underlined. All deletions are shown ~~with a line through the text.~~

Appendix A – Page 35

Section 2.8.2.1, On-Site Hazardous Materials Impacts; the second paragraph will be **REVISED** as follows:

While the Phase I Environmental Site Assessment was prepared for Lot 1, it also addressed possible off-site sources of contamination that could impact Lot 1. Therefore, if any hazardous conditions were previously documented or currently existing on Lot 2 or 3, it would have been discovered in the Lot 1 Phase I report. No records or evidence of hazardous materials ~~usage~~ incident or release on Lots 2 and 3 were found.

SECTION 5.0 COPIES OF THE COMMENT LETTERS RECEIVED ON THE DRAFT EIR

STATE OF CALIFORNIA Edmund G. Brown Jr., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 24, 2013

Cindy Hom
City of Milpitas
455 East Calaveras Boulevard,
Milpitas, CA 95035

Re: Waterstone Residential Project
SCH # 2013032005

Dear Ms. Hom,

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. New developments and improvements to existing facilities may increase vehicular traffic volumes, not only on streets and at intersections, but also at at-grade highway-rail crossings. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

The proposed development will impact the following at-grade highway-rail crossing:

- Dixon Landing Road, DOT # 750076A, CPUC # 001DA-8.60

The proposed residential development is located approximately half a mile from the Union Pacific Railroad (UP) Warm Springs Subdivision tracks. There are approximately 8 freight trains per day on this track traveling at 10 mph. Numerous commercial plazas and strip malls are located on North Milpitas Boulevard, east of the Dixon Landing Road rail crossing. In addition, Dixon Landing Road is used as a connector between Highway 680 and Highway 880. As such, the Waterstone Residential project may generate additional vehicular and pedestrian traffic over the Dixon Landing Road rail crossing. Due to the risk of additional traffic at the crossing, the following safety measures are recommended by CPUC:

- Install Commission Standard 8's (flashing light signal assemblies) in the northwest and southeast quadrants to provide additional warning for pedestrians.
- The City should investigate future grade separation of the crossing alongside the Bay Area Rapid Transit (BART) tracks. The Silicon Valley Rapid Transit (SVRT) project is currently under construction, creating grade separated BART tracks adjacent to the Dixon Landing Road UP rail crossing. Grade separating all rail will greatly improve safety of motorists and pedestrians and improve traffic circulation in the region.

In order to make alterations to any crossing a GO 88-B application must be submitted with the

California Public Utilities Commission. Information about this application process can be found at our website at http://www.cpuc.ca.gov/crossing.

Thank you for your consideration of these comments. If you have any questions in this matter, please call me at (415) 703-3722 or email me at felix.ko@cpuc.ca.gov.

Sincerely,

Felix Ko
Utilities Engineer
Safety and Enforcement Division
Rail Crossings Engineering Section
505 Van Ness Ave
San Francisco, CA 94102

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P.O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5900
FAX (510) 286-5903
TTY 711
www.dot.ca.gov

Flex your power!
Be energy efficient!

July 26, 2013

SCL880242
SCL/880/PM 10.41
SCH# 2013032005

Ms. Cindy Hom
Planning Division
City of Milpitas
455 E. Calaveras Blvd
Milpitas, CA 95035

Dear Ms. Hom:

Waterstone Residential Project – DEIR

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. We have reviewed the Draft Environmental Impact Report (DEIR) and the appended Traffic Impact Analysis (TIA) and offer the following comments:

Trip Generation
Changes in the project's description and proposed land uses have occurred since the original Traffic Impact Analysis was completed in January of 2012, which has led to changes in the project's trip generation rates. The DEIR states that these changes will result in "slightly more trips" than the original proposal but the number of additional trips "...would be too few to materially change the level of service results in the original TIA..." We request that any numeric changes to the quantitative assessment of the project's impacts be described quantitatively. Please provide Caltrans with a quantitative response prior to certifying the EIR.

Ramp Metering
The following freeway on-ramps are expected to be significantly impacted by the proposed project during ramp metering hours:

- Northbound (NB) Interstate 880 (I-880) diagonal on-ramp at Dixon Landing Road;
- NB I-880 loop on-ramp at Dixon Landing Road;
- Southbound (SB) I-880 diagonal on-ramp at Dixon Landing Road;
- SB I-880 at loop on-ramp Dixon Landing Road;
- Westbound (WB) State Route (SR) 237 diagonal on-ramp at McCarthy Boulevard.

The existing on-ramp queues will likely be lengthened with additional traffic demand and may impact traffic operations on the local streets. We request that the applicant be required to provide

additional storage on the on-ramps and/or local streets and High Occupancy Vehicle (HOV) preferential lanes for the freeway onramps to prevent secondary impacts from ramp-meter queues.

Caltrans has existing Traffic Operation Systems (TOS) and ramp metering equipment along I-880 and SR 237. This equipment must be maintained and kept operational during all phases of the proposed project. Should they be impacted as a result of the proposed project, including project mitigation, the applicant or the entity responsible for mitigating the project's impacts will need to obtain Caltrans approval for equipment relocation and/or replacement.

Travel Demand Management
In order to reduce impacts on Interstate 880, we suggest that this development plan include Transportation Demand Management (TDM) measures that encourage the use of walking, bicycling, and public transit. The TDM program could include bicycle sharing, vehicle sharing, and improving the pedestrian and bicycle facilities in the project area (with lighting, signage, and refreshing crosswalk and bike lane striping). Our information, from May 2011, indicates that the Class II - Bike Lane on California Circle and the Class III - Bike Route designation on Dixon Landing have not been completed as shown in Figure 6 (page 36) of the DEIR. If the referenced bicycle facilities have not been constructed then we encourage the City of Milpitas to build them as documented in both Figure 6 and in the "Existing Bicycle Network" map (Figure 3-2) in the Milpitas Bikeway Master Plan Update.

Lead Agency
As the lead agency, the City of Milpitas 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.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the County work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see end of this letter for more information regarding encroachment permits.

Mitigation Reporting Guidelines
The California Environmental Quality Act (CEQA) requires the adoption of reporting or monitoring programs when public agencies include environmental impact mitigation as a condition of project approval. Reporting or monitoring takes place after project approval to ensure implementation of the project in accordance with mitigation adopted during the CEQA

review process.

Some of the information requirements detailed in the attached Guidelines for Submitting Transportation Information from a Reporting Program include the following:

- Name, address, and telephone number of the CEQA lead agency contact responsible for mitigation reporting
- Type of mitigation, specific location, and implementation schedule for each transportation impact mitigation measure, and
- Certification section to be signed and dated by the lead agency certifying that the mitigation measures agreed upon and identified in the checklist have been implemented, and all other reporting requirements have been adhered to, in accordance with Public Resources Code Sections 21081.6 and 21081.7.

Further information is available online at:
<http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html>.

Cultural Resources

Caltrans requires that a project environmental document include documentation of a current archaeological record search from the Northwest Information Center of the California Historical Resources Information System if construction activities are proposed within State right-of-way. Current record searches must be no more than five years old. Caltrans requires the records search, and if warranted, a cultural resource study by a qualified, professional archaeologist, and evidence of Native American consultation to ensure compliance with the California Environmental Quality Act (CEQA), Section 5024.5 and 5097 of the California Public Resources Code, and Volume 2 of Caltrans' Standard Environmental Reference (http://www.dot.ca.gov/ser/vol2/vol2.htm). These requirements, including applicable mitigation, must be fulfilled before an encroachment permit can be issued for project-related work in State ROW; these requirements also apply to National Environmental Policy Act (NEPA) documents when there is a federal action on a project. Work subject to these requirements includes, but is not limited to: lane widening, channelization, auxiliary lanes, and/or modification of existing features such as slopes, drainage features, curbs, sidewalks and driveways within or adjacent to State ROW.

Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the following address: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See the website linked below for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits>.

Should you have any questions regarding this letter, please contact Jesse Robertson of my staff at 510-286-5535 or <jesse_robertson@dot.ca.gov>.

Sincerely,

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: Scott Morgan, State Clearinghouse

From: Balliet, Michael [mailto:Michael.Balliet@deh.sccgov.org]
Sent: Tuesday, July 23, 2013 4:47 PM
To: Cindy Hom
Subject: Waterstone Residential Project - Comments

I would like to provide the following comments on the proposed project:

1. It appears that the site at 1551 California Circle may be included in the project. It is unclear if Lots 1, 2, and 3 are included in the overall scope. Appendix A Section 2.8 Hazards and Hazardous Materials clearly states that "No records or evidence of hazardous materials usage on Lots 2 and 3 were found." This is an incorrect statement since there is an active retail Chevron-branded gasoline station on Lot 3. Due to the nature of the business, if and when this station is removed, contamination from the underground storage tanks may be found.

Please feel free to contact me if there are any questions.

Michael Balliet
Program Manager
Solid Waste and Site Mitigation Programs
County of Santa Clara
Department of Environmental Health
1555 Berger Drive Suite #300
San Jose, CA 95112
(408) 918-1976 – Phone
(408) 280-6479 – Fax
www.ehinfo.org

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SANTA CLARA
Valley Transportation Authority

August 5, 2013

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

Attention: Cindy Hom

Subject: Waterstone Residential Project

Dear Ms. Hom:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR for 84 single family homes located south of Dixon Landing Road, on either side of California Circle. We have the following comments.

Pedestrian Bridge
VTA commends the applicant for including a new pedestrian bridge across Penitencia Creek and trail amenities. From the site plans provided, it is unclear whether this improvement will provide direct pedestrian access to the residential area and Dixon Landing Park on the other side of the creek. The trail appears to be fenced off along the California Landing residential development directly across the creek from the Waterstone site. Providing direct access would make walking for employment, shopping and recreational reasons more attractive for residents and employees on both sides of the creek. VTA encourages the City to work with the applicant as well as the owner of California Landing to build a complete pedestrian crossing between the two neighborhoods.

Bicycle Accommodations
VTA agrees with the recommendation in the TIA that "Bike parking spaces are not shown on the current plans. These should be placed in accessible, secure, and well-lit locations" (pg. 29). VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the project, including bicycle lockers for long-term parking and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from
http://www.vta.org/bike_information/bicycle_technical_guidelines.html.

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

Sincerely,

Roy Molseed
Senior Environmental Planner

ML1204

Draft Environmental Impact Report

Waterstone Residential Project

City of Milpitas

June 2013

PREFACE

The document has been prepared by the City of Milpitas as the Lead Agency, in conformance with the California Environmental Quality Act (CEQA). The purpose of this Environmental Impact Report (EIR) is to inform decision makers and the general public of the environmental effects of the proposed project.

This document provides environmental review appropriate for the approval of the proposed WaterStone Residential Project in accordance with CEQA Guidelines Sections 15121, 15145, and 15151.

Purpose of the EIR

In accordance with CEQA, this EIR provides objective information regarding the environmental consequences of the proposed project to the decision makers who will be considering and reviewing the proposed project. The CEQA Guidelines contain the following general information on the role of an EIR and its contents:

> **§15121(a). Informational Document**. An EIR is an informational document, which will inform public agency decision makers, and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR, along with other information that may be presented to the agency.
>
> **§15145. Speculation.** If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.
>
> **§15151. Standards for Adequacy of an EIR**. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that intelligently considers environmental consequences. An evaluation of the environmental effects of the proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good-faith effort at full disclosure.

Focusing The EIR

The City of Milpitas prepared an Initial Study (provided in Appendix A of this EIR) that determined that preparation of an EIR was needed for the proposed project. The Initial Study concluded that the EIR should focus on Land Use, Transportation, Air Quality, Greenhouse Gas

Emissions, and Biology. Analysis of the following resources areas in the Initial Study determined that the project's impacts would be less than significant: Aesthetics, Agricultural and Forestry Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, and Utilities and Service Systems. These resource areas are not addressed further in the EIR. In addition to Land Use, Transportation, Air Quality, Greenhouse Gas Emissions, and Biological Resources, the EIR also analyzes energy impacts, which is not a required element of an Initial Study but is a required element of an EIR.

In accordance with Section 15082 of the CEQA Guidelines, a Notice of Preparation (NOP) was circulated to the public and responsible agencies for input regarding the analysis in this EIR. This EIR addresses those issues which were raised by the public and responsible agencies in response to the NOP where relevant. Specific responses to the comment letters are provided in Section 11.0.

The NOP and copies of the comments letters received are provided in Appendix K of this EIR.

This EIR and all documents referenced in it are available for public review in the Planning Department at Milpitas City Hall, 455 E. Calaveras Boulevard, during normal business hours.

TABLE OF CONTENTS

PREFACE……...i
SUMMARY…… v

Section 1.0 – Introduction and Purpose……... 1
1.1 OVERVIEW…… 1
1.2 PROJECT LOCATION…… 1
1.3 PROJECT OBJECTIVES…… 1
1.4 USES OF THE EIR…….. 4

Section 2.0 – Description of the Proposed Project…….. 6

Section 3.0 – Consistency with Plans and Policies……...11

Section 4.0 – Environmental Setting, Impacts, and Mitigation Measures……17
4.1 LAND USE……17
4.2 BIOLOGICAL RESOURCES……...22
4.3 TRANSPORTATION..……. 34
4.4 AIR QUALITY……..46
4.5 GREENHOUSE GAS EMISSIONS……. 64
4.6 ENERGY……...…… 71

Section 5.0 – Cumulative Impacts…….79

Section 6.0 – Alternatives to the Proposed Project……. 84

Section 7.0 – Significant Unavoidable Impacts of the Project……... 89

Section 8.0 – Irreversible Environmental Changes and Irretrievable Commitment of Resources……... 90

Section 9.0 – Growth Inducing Impacts of the Project…….……. 91

Section 10.0 – Responses to Notice of Preparation Comment Letters…….. 92

Section 11.0 – Authors and Consultants…….. 102

Section 12.0 – References……...103

FIGURES

Figure 1 Regional……...……... 2
Figure 2 Vicinity…….....3
Figure 3 Site Plan……..…… 8
Figure 4 Aerial…….……..18
Figure 5 Tree Map……27
Figure 6 Bicycle Facilities……36
Figure 7 Transit Services……..……..……..……... 37
Figure 8 Study Intersections…..……...……..…….. 40

TABLES

Table 1 Land Use Changes Proposed by the Project..……. 6
Table 2 Land Use Changes Proposed by the Project..……. 20
Table 3 Tree Survey……28
Table 4 Existing Transit Service……..38
Table 5 Intersection Level of Service Definitions Based on Delay……38
Table 6 Study Intersections Level of Service – Existing Conditions…...……39
Table 7 Study Intersections Level of Service – Background Conditions..... 41
Table 8 Project Trip Generation Estimates – Lot 1..……43
Table 9 Study Intersections Level of Service – Existing Plus Project Conditions...….. 43
Table 10 Study Intersections Level of Service – Background Plus Project Conditions.... 44
Table 11 Major Criteria Pollutants…….....48
Table 12 Ambient Air Quality Standards……...49
Table 13 Number of Ambient Air Quality Standards Violations and Highest Concentrations (2009 – 2011)……53
Table 14 Thresholds of Significance Used in Air Quality Analyses……. 56
Table 15 Annual Project GHG Emissions in Metric Tons for Lot 1….……69
Table 16 Annual Energy Use from Lot 1…….……..77
Table 17 Year 2030 Trip Generation…….…… 81

APPENDICES

A – Initial Study
B – Tree Survey
C – Biological Investigation
D – Transportation Impact Analysis/Supplemental Traffic Analysis
E – Community Risk Analysis
F – Greenhouse Gas Emissions Analysis
G – Preliminary Geotechnical Investigation
H – Phase I Environmental Site Assessment
I – Floodplain Analysis
J – Noise Assessment
K – Notice of Preparation & Comment Letters

SUMMARY

The project proposes to demolish two large industrial buildings and construct 84 single-family houses. The project also proposes General Plan Amendments of eight parcels.

The following is a summary of the significant impacts and mitigation measures addressed within this EIR, including the Initial Study in Appendix A. The project description and discussion of impacts and mitigation measures can be found in *Section 2.0 Description of the Proposed Project, Section 4.0 Environmental Setting, Impacts, & Mitigation, and Section 5.0 Cumulative Impacts* of this EIR and Appendix A.

Significant Impacts	Mitigation Measures
Biological Resources – Section 4.2 of the EIR	
Construction activities could result in nest abandonment and/or loss of reproductive effort cause by disturbance which is considered a "take" by the CDFW.	If possible, construction and tree removal should be scheduled between September 1 and January 31 (inclusive) to avoid the bird nesting season. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to identify active bird nests that may be disturbed during project implementation. Between February and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for bird nests. If an active raptor nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the CDFW, designate a construction-free buffer zone (typically 250 feet) around the nest. A report indicating the results of the survey and any designated buffer zones will be prepared and submitted to the Director of Planning and Neighborhood Services prior to the initiation of tree removal or grading. **Less Than Significant With Mitigation**

Significant Impacts	Mitigation Measures
Air Quality – Section 4.3 of the EIR	
Placement of residential land uses on the proposed project site would expose residents to odors from the existing daily operations of the nearby landfill.	There is no feasible mitigation that would reduce the identified odor impact in that the landfill is not under the control of the applicant of the City of Milpitas. **Significant and Unavoidable Impact**

Significant Impacts	Mitigation Measures
Noise – Section 2.12 of the Initial Study (Appendix A)	
Exterior noise levels will exceed City of Milpitas noise standards for single-family residential development.	The residential project on Lot 1 shall construct six- to eight-foot tall noise barriers along the side yards nearest to, and with direct line-of-site to California Circle. The noise barrier heights shall be measured relative to the roadway elevation or yard elevation, whichever is higher. The barriers shall solid. The final noise barrier design will be included in the Acoustical Analysis that will be prepared for the site as described in MM NOI-2.1 below. Installation of solid noise barriers will reduce noise at the identified residential properties to 65 dBA L_{dn} or less. Future residential development on Lot 2 under the proposed General Plan Amendment must complete a site-specifc accoustical analysis. If public and/or private open space areas are indentified that will exceed the City's normally acceptable noise limits, site-specific mitiation measures will be identified that would reduce the impact to a less than signficiant level. If the impact cannot be mitigated to less than significant, the site plan will need to be revised to ensure accepatble exterior noise levels for all open space areas. **Less Than Significant Impact With Mitigaiton**
Implementation of the proposed project would expose future residents on Lots 1 and 2 to interior noise levels in excess of acceptable City and State standards.	A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction on Lots 1 and 2 to calculate expected interior noise levels as required by City policies and State noise regulations. Project-specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 *Mitigation continued on next page*

Significant Impacts	Mitigation Measures
Noise – Section 2.12 of the Initial Study (Appendix A)	
	dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project. All houses will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the residents to reduce exposure from outside noise sources.

Cumulative Impacts

Implementation of the proposed project would not result in any cumulative impacts. Please see Section 5.0 of this EIR for a full discussion of the project's cumulative effects.

Alternatives to the Proposed Project

No Project Alternative:
Since the project site is developed, one alternative would be to maintain the entire site as is. If the project site were to remain as is with industrial buildings on the eastern half of the site and commercial businesses of the western portion of the site, there would be no new impacts. This alternative would avoid the significant unavoidable odor impacts and significant noise impacts identified in this EIR but would not meet the objectives of the project. Please see Section 6.1 of this EIR for a full discussion of the No Project Alternative.

Location Alternative:
In an effort to avoid the significant odor and noise impacts that would result from the proposed project but still provide new housing within the City of Milpitas, an alternative location could be considered. Substantive due diligence would be required to find a specific development site that reduced the projects identified impacts to a less than significant level and did not result in new significant impacts. If a location alternative were to be found, the proposed General Plan Amendments on Lots 2 and 3 would not proceed as they are directly

related to the redevelopment of Lot 1 with housing. Please see Section 6.2 of this EIR for a full discussion of the Reduced Density Alternative.

Areas of Known Controversy

Residents on the east side of Penitencia Creek have stated that the do not want the pedestrian bridge and do not think it is a necessary component of the project.

SECTION 1.0 INTRODUCTION AND PURPOSE

1.1 OVERVIEW

The project is comprised of eight parcels that are currently designated *Industrial Park* and are developed with a mix of small commercial shops, a hotel, two office buildings, and three large industrial buildings. The existing land uses have been constructed over the last 30 years and two of the three industrial buildings have been vacant for the last seven years.

There are three components to the proposed project: 1) redevelopment of two existing industrial parcels with housing, 2) General Plan Amendments on eight parcels (including the two parcels slated for redevelopment), and 3) installation of a pedestrian bridge over Penitencia Creek. For the purposes of this analysis, the two parcels proposed to be redeveloped with housing will be collectively referred to as Lot 1. A third parcel proposed to be residentially designated will be referred to as Lot 2. The remaining parcels, which are proposed to be commercially designated, will be collectively referred to as Lot 3. All eight parcels combined will be referred to as the "project site".

This EIR has been prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) and the City of Milpitas. The purpose of this EIR is to provide objective information regarding the environmental consequences of the proposed residential project and General Plan Amendments to the decision makers who will be reviewing and considering the proposed project. The City of Milpitas is the Lead Agency for this project. The Santa Clara Valley Water District is a Responsible Agency.

1.2 PROJECT LOCATION

Redevelopment Project

The approximately 10.7-acre project site is comprised of two parcels located on east side of California Circle Drive, just east of Highway 880 in the City of Milpitas, (refer to Figures 1 and 2).

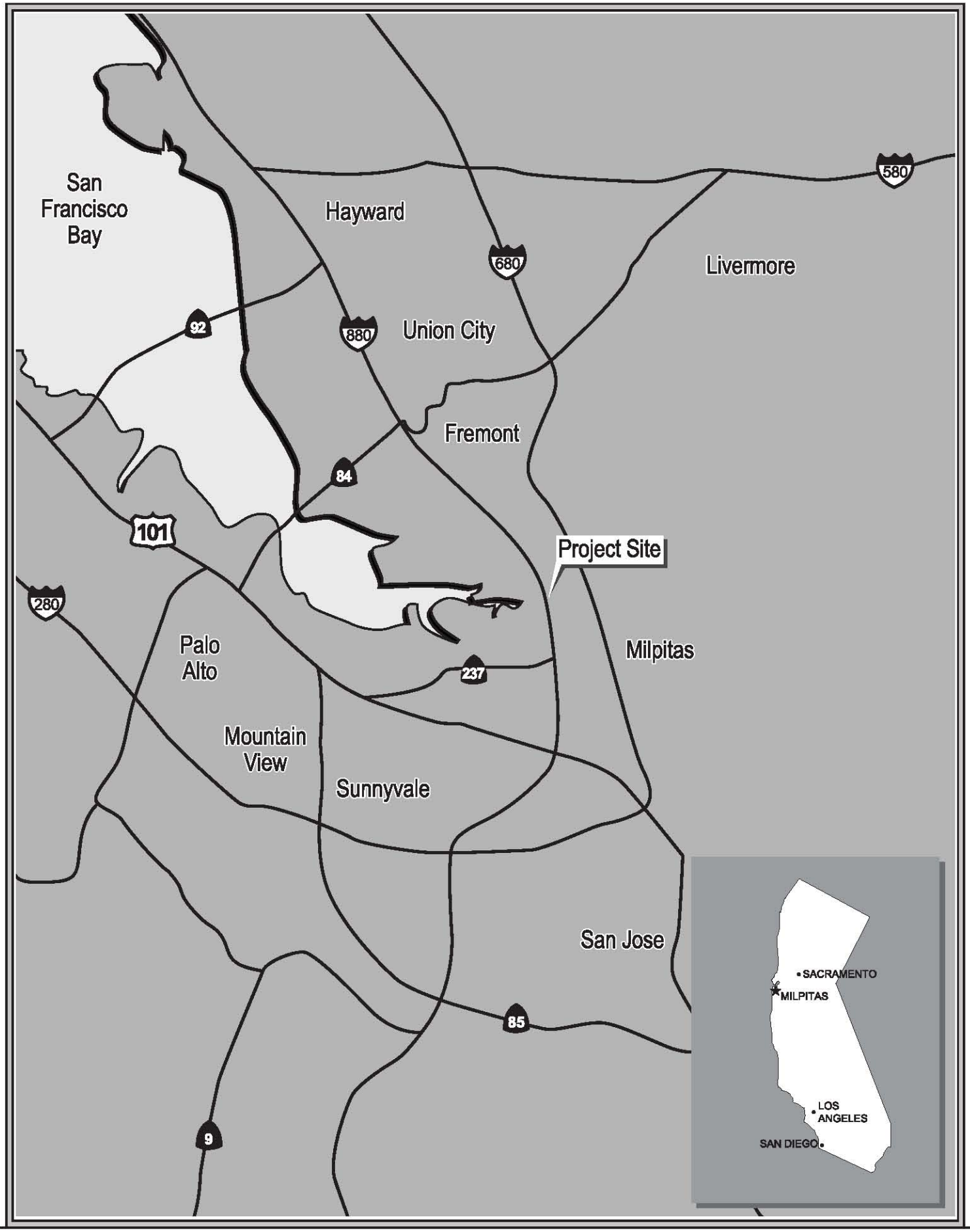
General Plan Amendments

The six commercial/industrial parcels proposed for General Plan Amendments are located south and west of the redevelopment site. These parcels include one parcel located south of the project site and five parcels located west of the project site.

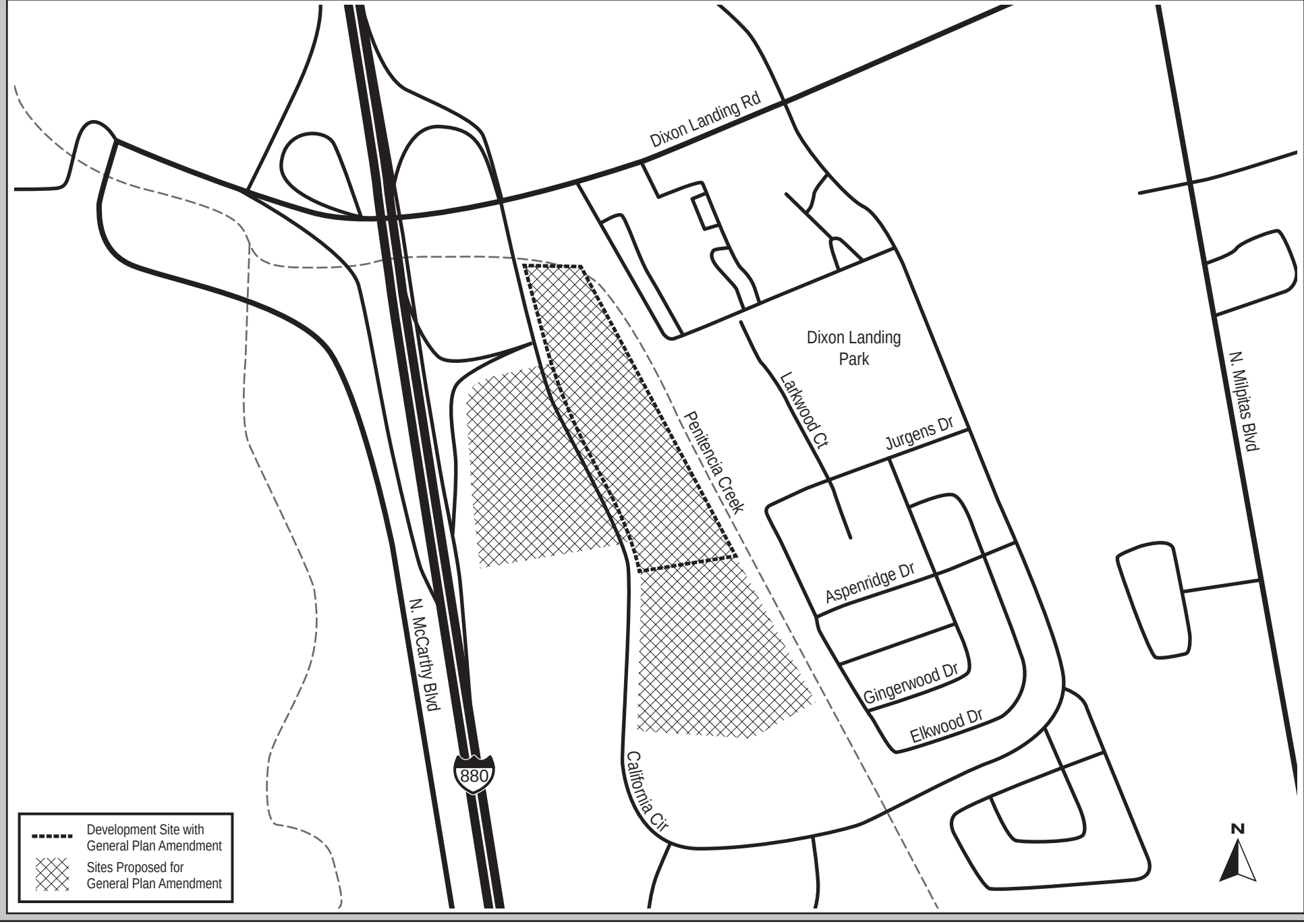
1.3 PROJECT OBJECTIVES

Pursuant to CEQA Guidelines Section 15124, the EIR must identify the objectives sought by the proposed project.

The stated objectives of the project proponent are to:



REGIONAL MAP FIGURE 1



VICINITY MAP

FIGURE 2

1. Convert three existing office-use properties from industrial-use to residential General Plan and Zoning land-use categories in order to; (1) improve the diversity of for-sale housing opportunities in Milpitas.

2. Convert two existing office-use properties and construct a high-quality, medium-low density, market-rate, for-sale residential subdivision of approximately 84 single-family homes adjacent to existing residential neighborhoods, trails and a community park.

3. Provide medium-low density housing which supports convenient living that is close to shopping, services, and transportation yet transitions sensitively with adjacent industrial and commercial uses.

4. Improve and encourage pedestrian and bicycle usage along Penitencia Creek.

The stated objectives of the City are to:

1. Promote and encourage high quality residential development, trails/bike path connectivity, parks and recreation development, and other quality-of-life assets that will set the tone for potential planning and transition of the surrounding area along California Circle as a vibrant mix of residential and commercial type use, well-connected and identifiable neighborhood.

2. Develop, plan, and encourage a mix of new commercial retail, service, and office as well as maintaining existing industrial developments to increase the sales tax base and employment opportunity in the City of Milpitas.

3. Encourage potential for additional commercial uses and future commercial or mixed use development along the east side of the Interstate 880 corridor.

4. Maintain remaining viable commercial property for commercial and industrial uses for sustainable economic development.

5. Provide a direct pedestrian and bicycle connection between the proposed residential and adjacent properties as well as the existing multi-family residential community across the Penitencia Creek.

6. Provide an appropriate residential design, density, circulation, and public benefit that can be integrated in future area planning and land use along California Circle.

1.4 USES OF THE EIR

This EIR is intended to provide the City of Milpitas, other public agencies, and the general public with the relevant environmental information needed in considering the proposed project.

The City of Milpitas anticipates that discretionary approvals by the City, including but not limited to the following, will be required to implement the project addressed in this EIR:

- Approval of proposed General Plan Amendments
- Approval of proposed zoning changes
- Approval of a Major Vesting Tentative Map
- Site and Architectural Review (including tree removal permits)
- Issuance of demolition, grading, building, and occupancy permits
- Issuance of permits by the Santa Clara Valley Water District to install a pedestrian bridge over Penitencia Creek and make trail improvements along the section of Penitencia Creek adjacent to the project site.
- Any additional necessary approvals for implementation of development of the project

SECTION 2.0 DESCRIPTION OF THE PROPOSED PROJECT

2.1 INTRODUCTION

There are two components to the proposed project: 1) redevelopment of two existing industrial sites with housing and 2) General Plan Amendments on eight parcels. Table 1 below outlines the specific proposals for each parcel.

TABLE 1
Land Use Changes Proposed By the Project

APN No.	Existing GP Designation	Proposed GP Designation	Existing Zoning	Proposed Zoning	Development Proposed
022-37-011	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	84 dwelling units
022-37-012	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	
022-37-019	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	None
022-37-040	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-045	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-046	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-047	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-049	Industrial Park	General Commercial	Industrial Park	General Commercial	None

For the purposes of this analysis, the parcels proposed to be redeveloped (APNs 022-37-011 and -012) will be collectively referred to as Lot 1. The other parcel proposed to be residentially designated (APN 022-37-019) will be referred to as Lot 2. The parcels proposed to be commercially designated will be collectively referred to as Lot 3 (APNs 022-37-040, -045, -046, -047, and -049). All eight parcels combined will be referred to as the "project site". The Lots are shown on the adjacent figure.

2.2 PROJECT LOCATION

The approximately 29.2-acre project site is located just south of Dixon Landing Road, on either side of California Circle. Lot 1 is a 10.7-acre site on the east of California Circle between the roadway and Penitencia Creek. Lot 2 is a 10.2-

acre parcel immediately south of Lot 1. Lot 3 is an 8.3-acre site to the west of Lot 1, on the west side of California Circle between the roadway and I-880.

2.3 PROPOSED DEVELOPMENT PROJECT

Lot 1 is currently developed with two vacant one-story industrial buildings totally 106,657 square feet. Surface parking lots surround both buildings. The site will be re-designated *Single-Family Moderate Density* and rezoned to the *R1-2.5 Single Family Residential* zoning district, allowing six to 15 DU/AC. As proposed, the project would demolish the existing buildings and hardscape and construct 84 three-story single-family detached houses. The houses would range in size from approximately 2,280 to 2,340 square feet and would have a maximum height of 39 feet. (See Figure 3)

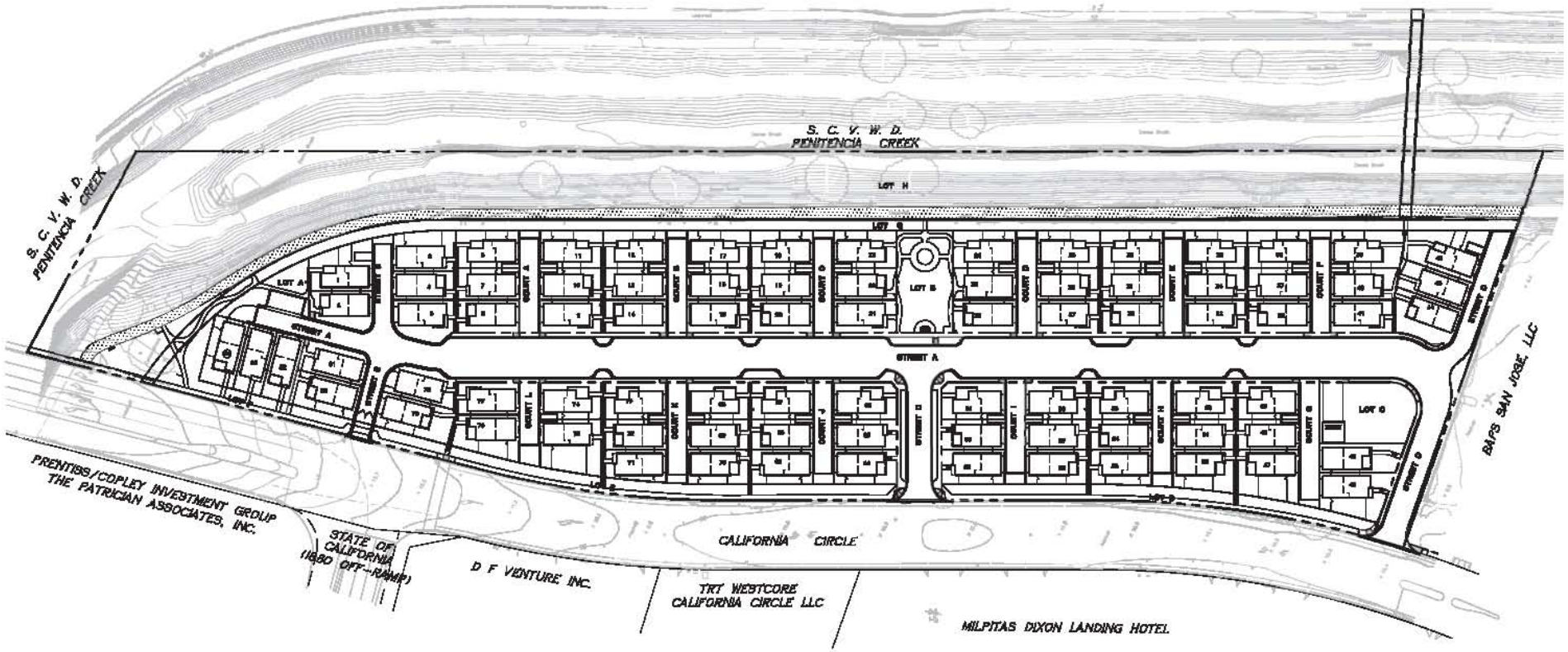
The project would include private yards for each residence as well as three small parks within the site. Park A would be approximately 0.05-acres (2,365 square feet) and would be located at the northern end of the site. Park A is intended as passive open space. Park B would be approximately 0.13-acres (6,817 square feet) and would be located in the middle of the site, adjacent to the levee. Park B would include a barbeque area and lawn. Park C would be approximately 0.13-acres (5,754 square feet) and would be located at the southern end of the site, in direct line of site with the proposed pedestrian bridge (discussed below). Park C would consist primarily of a tot lot. The total public open space on Lot 1, including parks and landscaped areas, would be 0.9 acres and would be open to the general public.

Lot 1 will be accessed by three driveways along California Circle. The northernmost driveway is for emergency vehicle access only and will not be accessible to residents and guest. The central and southern driveways will be the primary access points for Lot 1. Parking for residents will be provided within two-car garages attached to each unit for a total of 168 resident parking spaces. A total of 72 guest parking spaces will also be provided. The main drive aisle will provide 44 parallel parking spaces for guests and each court will have one to two guest spaces (24 spaces). An additional four guest spaces will be provided in a small parking area adjacent to Park A. There is currently no street parking allowed on California Circle. This will not change as a result of the proposed residential development.

The elevation of Lot 1 would be raised one to six feet above the current grade to remove the site from the flood zone and bring the site level with the adjacent levee.

2.3.1 <u>Pedestrian Bridge</u>

The project proposes to install a 10-foot wide clear span bridge over Penitencia Creek. As proposed, the bridge will be constructed off-site and the fully constructed bridge will be installed with a crane. The bridge will be located south of Lot 1, in alignment with Aspenridge Drive on the east side of the creek. The pedestrian bridge will require a joint use agreement between the City of Milpitas and the Santa Clara Valley Water District. The City will be responsible for perpetual maintenance of the bridge.



SITE PLAN

FIGURE 3

The bridge will be anchored flush on the levee trails and will have only shallow footings into the top of the levee. The bridge will not have any footings, cantilevers, or other supports within the creek or between the banks. Trail improvements are also proposed between the area north of 1600 California Circle and the bridge. Final design of the bridge will be determined in conjunction with the Santa Clara Valley Water District (SCVWD) and will be based, in part, on the SCVWD levee improvements scheduled for 2014. Based on the planned trail and levee improvements, it is anticipated that the bridge would be installed in 2015.

2.3.2 Green Building Measures

In addition to exceeding Title 24 requirements by 15 percent, the project will include the following green building measures to reduce on-site energy usage:

- Diversion of 50 percent of all construction and demolition waste.
- Landscaping will be comprised of 75 percent native species, will be drought tolerant, will not include invasive species listed by Cal-ICP, and will not require shearing.
- Irrigation systems will be high-efficiency (low-flow drip, bubblers, or sprinklers, and weather-based controllers).
- Plumbing will include high efficiency showerheads, bathroom faucets, kitchen and utility faucets, and toilets.
- HVAC system will be in compliance with the CALGreen code.
- Advanced mechanical ventilation.

With the inclusion of these measures, the project will exceed the requirements of the City's Green Building Ordinance.

2.4 PROPOSED CHANGES TO LAND USE DESIGNATIONS

As noted above, the project also proposes to change the General Plan and Zoning land use designations on an additional six parcels. Lot 2 is a 10.15 acre site currently designated *Industrial Park* and developed with one 222,156 square foot industrial building.[1] The project proposed to amend the General Plan designation to *Single-Family Moderate Density* and the zoning to *R1-2.5 Single Family Residential*. The new land use designations would allow development of six to 15 dwelling units per acre (DU/AC). Based on the City's development assumptions for this site, the analysis assumes a maximum build out of 152 dwelling units. There is no current proposal to redevelop Lot 2.

Lot 3 is comprised of five lots totaling 8.32 acres. All five parcels are currently designated *Industrial Park* and zoned *Industrial Park* and developed with a gas station, a hotel, a Starbucks, and two office buildings. The existing development on Lot 3 is commercial and the proposed General Plan and Zoning changes will make the land use designations consistent with the existing businesses on-site.

The project proposes to amend the General Plan and Zoning designations to *General Commercial*. The new land use designation would allow development up to a floor area ratio (FAR) of 0.50.

[1] The size of the existing building on Lot 2 was estimated based on the allowable floor area ratio on the site

Based on the City's development assumptions for this site, the analysis assumes a maximum build out of 181,210 square feet which is equivalent to the existing development on the site. There is no current proposal to redevelop Lot 3, and the proposed land use changes and rezoning are proposed to reflect current site conditions and land uses.

SECTION 3.0 CONSISTENCY WITH ADOPTED PLANS & POLICIES

In conformance with Section 15125(d) of the CEQA Guidelines, the following section discusses the consistency of the proposed project with relevant adopted plans and policies.

3.1 Bay Area 2010 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD), in cooperation with the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG), prepared the Bay Area 2005 Ozone Strategy (Ozone Strategy). The Ozone Strategy served as a roadmap showing how the San Francisco Bay Area will achieve compliance with the State one-hour air quality standard for ozone as expeditiously as practicable and how the region will reduce transport of ozone and ozone precursors to neighboring air basins. In 2010, BAAQMD adopted a new Clean Air Plan with the intent of updating the 2005 Ozone Strategy to comply with State air quality planning requirements as codified in the California Health and Safety Code.

The Bay Area 2010 Clean Air Plan (CAP) provides a comprehensive plan to improve Bay Area air quality and protect public health. The CAP defines a control strategy that the Air District and its partners will implement to: (1) reduce emissions and decrease ambient concentrations of harmful pollutants; (2) safeguard public health by reducing exposure to air pollutants that pose the greatest health risk, with an emphasis on protecting the communities most heavily impacted by air pollution; and (3) reduce greenhouse gas (GHG) emissions to protect the climate.

Consistency: The project would result in new residential development on a site (Lot 1) currently designated for industrial land uses. The project would also change the land use designation on six sites (Lots 2 and 3) from *Industrial Park* to residential and commercial. The development would increase housing within the City. The project would place housing in Milpitas near existing transit and jobs, but would cause a small change to local population projections. The project, as proposed, would reduce overall traffic trips from the project site relative to the development assumptions in the City of Milpitas General Plan and includes pedestrian improvements. As a result, the proposed project would be consistent with the control measures in the CAP.

3.2 Santa Clara County Congestion Management Program

The Santa Clara Valley Transportation Authority (VTA) oversees the *Santa Clara County Congestion Management Program* (CMP). The relevant State legislation requires that all urbanized counties in California prepare a CMP in order to obtain each county's share of the increased gas tax revenues. The CMP legislation requires that each CMP contain the following five mandatory elements: 1) a system definition and traffic level of service standard element; 2) a transit service and standards element; 3) a trip reduction and transportation demand management element; 4) a land use impact analysis program element; and 5) a capital improvement element. The Santa Clara County CMP includes the five mandated elements and three additional elements, including: a county-wide transportation model and data base element, an annual monitoring and conformance element, and a deficiency plan element.

Consistency: The proposed project would not have a significant impact on any CMP intersections (see Section 4.3, *Transportation*). The project is, therefore, consistent with the CMP.

3.3 San Francisco Bay Region Water Quality Control Plan

The State of California's Porter-Cologne Water Control Act provides the basis for water quality regulation within California and the Act assigns primary responsibility for the protection and enhancement of water quality to the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards. These agencies are authorized to adopt regional water quality control plans, prescribe waste discharge requirements, and perform other functions concerning water quality control within their respective regions.

The Regional Water Quality Control Board (RWQCB) has developed and adopted a Water Quality Control Plan (the Plan) for the San Francisco Bay region. The Plan is a master policy document that contains descriptions of the legal, technical, and programmatic bases of water quality regulations in the San Francisco Bay region. The Plan provides a program of actions designed to preserve and enhance water quality, and to protect beneficial uses based upon the requirements of the Porter-Cologne Act. It meets the requirements of the U.S. Environmental Protection Agency (USEPA) and establishes conditions related to discharges that must be met at all times.

Consistency: As discussed in Appendix A, Section 4.9 of the Initial Study, *Hydrology and Water Quality,* the proposed residential development on Lot 1 and future development on Lots 2 and 3 will be required to be implemented in conformance with the Municipal Regional Stormwater NPDES permit and the Construction General NPDES Permit requirements to ensure that there is no increase in erosion or sedimentation that could impact local waterways and that stormwater runoff from the site's impervious surfaces is treated prior to discharge to the stormwater system. Therefore the project is consistent with the San Francisco Bay Regional Water Quality Control Plan.

3.4 City of Milpitas General Plan

The City of Milpitas's General Plan is an adopted statement of goals and polices for the future character and quality of development in the community as a whole. The following is a summary of relevant sections of the General Plan that would apply to the proposed project.

3.4.1 Land Use Element

Development Intensity

Policy 2.a-I-2: Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80 % buildout in the Midtown and Transit Area Specific Plans.

Consistency: The application was submitted prior to the effective date of the General Plan policy for land conversion. Therefore, the proposed land use conversion of Lots 1 and 2 from *Industrial Park* to *Single Family Moderate* would not be prohibited by this policy.

Growth and Expansion

Policy 2.a-I-1: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

Consistency: The proposed residential project on Lot 1 and future development of Lot 2 under the proposed General Plan Amendment would result in the redevelopment of currently vacant and/or limited use industrial properties within the City limits that are already served by existing infrastructure.

Economic Development

Policy 2.a.I-9: Prohibit encroachment of incompatible uses into industrial lands, which prohibit non-industrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial uses due to land use compatibility issues.

Consistency: The project site is located in an existing industrial area that is adjacent to and in close proximity to residential and hotel land uses. As a result, these uses have already been deemed compatible with the industrial land uses in the area. Conversion of industrial lands to residential in this area would not result in incompatible land uses or operational restrictions on existing or new industrial businesses to any greater extent than the existing housing to the south and quasi-public uses within the business park. The project could, however, make the remaining industrial buildings and the Dixon Landing Business Park less desirable for new or existing businesses by placing housing on California Circle, which is now currently a non-residential street.

3.4.2 Circulation Element

Policy 3.a-I-1: Strive to maintain CMP LOS standards and goals for the CMP Roadway System in Milpitas.

Consistency: Implementation of the proposed residential project on Lot 1 will not cause the level of service of any CMP intersection to degrade to an unacceptable level. Future development on Lots 2 and 3 under the proposed General Plan Amendments would result in an overall decrease in traffic trips from the project site and would not cause the level of service of any CMP intersection to degrade to an unacceptable level.

Policy 3.b-I-1: Require new development to pay its share of street and other traffic improvements based on its impacts.

Consistency: The proposed residential project on Lot 1 would not result in any significant traffic impacts and would not be required to pay fair share fees for traffic improvements. Future development on Lots 2 and 3 under the proposed General Plan Amendments would result in an overall decrease in traffic trips from the project site in 2030 relative to the development assumptions in the City of Milpitas General Plan and would not result in any significant traffic impacts.

Policy 3.b-I-2: Require all projects that generate more than 100 peak-hour (A.M. or P.M.) trips to submit a transportation impact analysis that follows guidelines established by CMP.

Consistency: A transportation impact analysis was prepared consistent with the CMP guidelines for this project and is included in this EIR as Appendix D.

Policy 3.d-I-9: Require developers to make new projects as bicycle and pedestrian "friendly" as feasible, especially through facilitating pedestrian and bicycle movements within sites and between surrounding activity centers.

Consistency: The project proposes a pedestrian bridge over Penitencia Creek to provide connectivity between the proposed residential development and the existing residential neighborhood on the east side of the creek.

Policy 3.d-I-10: Encourage developer contributions toward pedestrian and bicycle capital improvement projects and end-of-trip support facilities.

Consistency: The project proposes a pedestrian bridge over Penitencia Creek to provide connectivity between the proposed residential development and the existing residential neighborhood on the east side of the creek. No specific capital improvement projects have been identified.

Policy 3.d-I-27: Where appropriate, require new development to provide public access points to the trail system and/or contribute to staging areas.

Consistency: The proposed residential project on Lot 1 will provide public access through the site to the proposed pedestrian bridge which will connect to the existing levee trails.

3.4.3 Open Space and Environmental Conservation Element

Policy 4.b-I-4: Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.

Consistency: A biological assessment was prepared for the proposed residential project on Lot 1 and is provided in this EIR as Appendix C.

Policy 4.d-P-7: Applicable projects shall minimize directly connected impervious area by limiting the overall coverage of paving and roofs, directing runoff from impervious areas to adjacent pervious areas, and selecting permeable pavements and surface treatments.

Consistency: The proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments will be designed and constructed to comply with the requirements of the Municipal Regional Stormwater Permit.

Policy 4.d-P-8: Applicable projects shall incorporate facilities (BMPs) to treat stormwater before discharge from the site. The facilities shall be sized to meet regulatory requirements.

Consistency: The proposed residential project on Lot 1 and all future development on Lots 2 and 3 under the proposed General Plan Amendments will meet all applicable stormwater control regulations.

Policy 4.d-P-9: Applicable projects shall control peak flows and duration of runoff where required to prevent accelerated erosion of downstream watercourses.

Consistency: The project site is not subject to NPDES hydromodification requirements due to its location.

3.4.4 Seismic and Safety Element

Policy 5.a-I-1: Require all projects within the Alquist-Priolo Special Studies Zone to have geologic investigations performed to determine the locations of active fault traces before structures for human occupancy are built.

Consistency: The project site is not located within an Alquist-Priolo Special Studies zone.

Policy 5.a-I-3: Require projects to comply with the guidelines prescribed in the City's *Geotechnical Hazards Evaluation* manual.

Consistency: The proposed residential project on Lot 1 and any future development on Lots 2 and 3 under the proposed General Plan Amendments will be constructed consistent with the requirements of site specific geotechnical reports, the City's *Geotechnical Hazards Evaluation Manual*, and the California Building Code.

Policy 5.b-I-1: Ensure that new construction or substantial improvements to any existing structure result in adequate protection from flood hazards. This includes ensuring that:

- New residential development within the 100-year flood zone locate the lowest floor, including basement, above the base flood elevation
- New non-residential development locate the lowest floor, including basement, above the base flood elevation or incorporated flood-proofing and structural requirements as spelled out in the Municipal Code.

Consistency: The project proposed to raise the ground surface of Lot 1 to be level with the top of the levee, elevating the site out of the flood plain. Any future development on Lots 2 or 3 under the proposed General Plan Amendments would be required to be built consistent with City's flood hazard policy.

Policy 5.c-I-1: Maintain a response time of four minutes of less for all urban service areas.

Consistency: Implementation of the proposed project at an existing in-fill location will not preclude the City from maintaining four minute response times within the urban service area.

3.4.5 Noise Element

Policy 6-I-2: Require an acoustical analysis for projects located within a "conditionally acceptable" or "normally unacceptable" exterior noise exposure area. Require mitigation measures to reduce noise to acceptable levels.

Consistency: A project specific acoustical analysis was prepared for the proposed residential project on Lot 1 and mitigation measures have been included for identified impacts. A project level analysis will also be completed for Lot 2 when a specific residential project is proposed.

Policy 6-I-3: Prohibit new construction where the exterior noise exposure is considered "clearly unacceptable" for the use proposed.

Consistency: A portion of Lot 1 will be exposes to ambient noise levels within the "clearly unacceptable" range. Mitigation measures have been identified to reduce the noise levels at these locations to the acceptable range.

Policy 6-I-4: Where actual or projected rear yard and exterior common open space noise exposure exceeds the "normally acceptable" levels of new single-family and multifamily residential projects, use mitigation measures to reduce sound levels in those areas to acceptable levels.

Consistency: A portion of Lot 1, including outdoor use areas, will be exposes to ambient noise levels within the "clearly unacceptable" range. Mitigation measures have been identified to reduce the noise levels at these locations to the acceptable range.

Policy 6-I-5: All new residential development and lodging facilities must have interior noise levels of 45 dB DNL or less. Mechanical ventilation will be required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels.

Consistency: The proposed residential project on Lot 1 includes mitigation measures to ensure compliance with the 45 dB interior noise standard. Any future residential development on Lot 2 under the proposed General Plan Amendment will be required to implement mitigation measures to ensure compliance with the 45 dB interior noise standard.

4.1 LAND USE

4.1.1 Existing Setting

The following discussion identifies the existing conditions on and adjacent to the proposed project site.

4.1.1.1 Existing Land Use

The 29.2-acre project site is comprised of eight non-contiguous parcels (APNs 22-037-011, -012, -019, -040, -045, -046, -047, -049) located on the east and west sides of California Circle, just south of Dixon Landing Road in the City of Milpitas. The project site is relatively flat and is located in a mixed use area of industrial, commercial, and residential land uses. The existing development on the individual sites is described below.

Lot 1

Lot 1 is comprised of two parcels totaling 10.7 acres, of which 3.2 acres are located within Penitencia Creek. The site is currently developed with two vacant one-story industrial buildings totally 106,657 square feet. Both buildings are surrounded by surface parking lots.

Lot 2

Lot 2 is comprised of a single parcel totaling 10.2 acres. The site is currently developed with a one-story, 222,156 square feet industrial building that is occupied by a church. The building is surrounded by a surface parking lot.

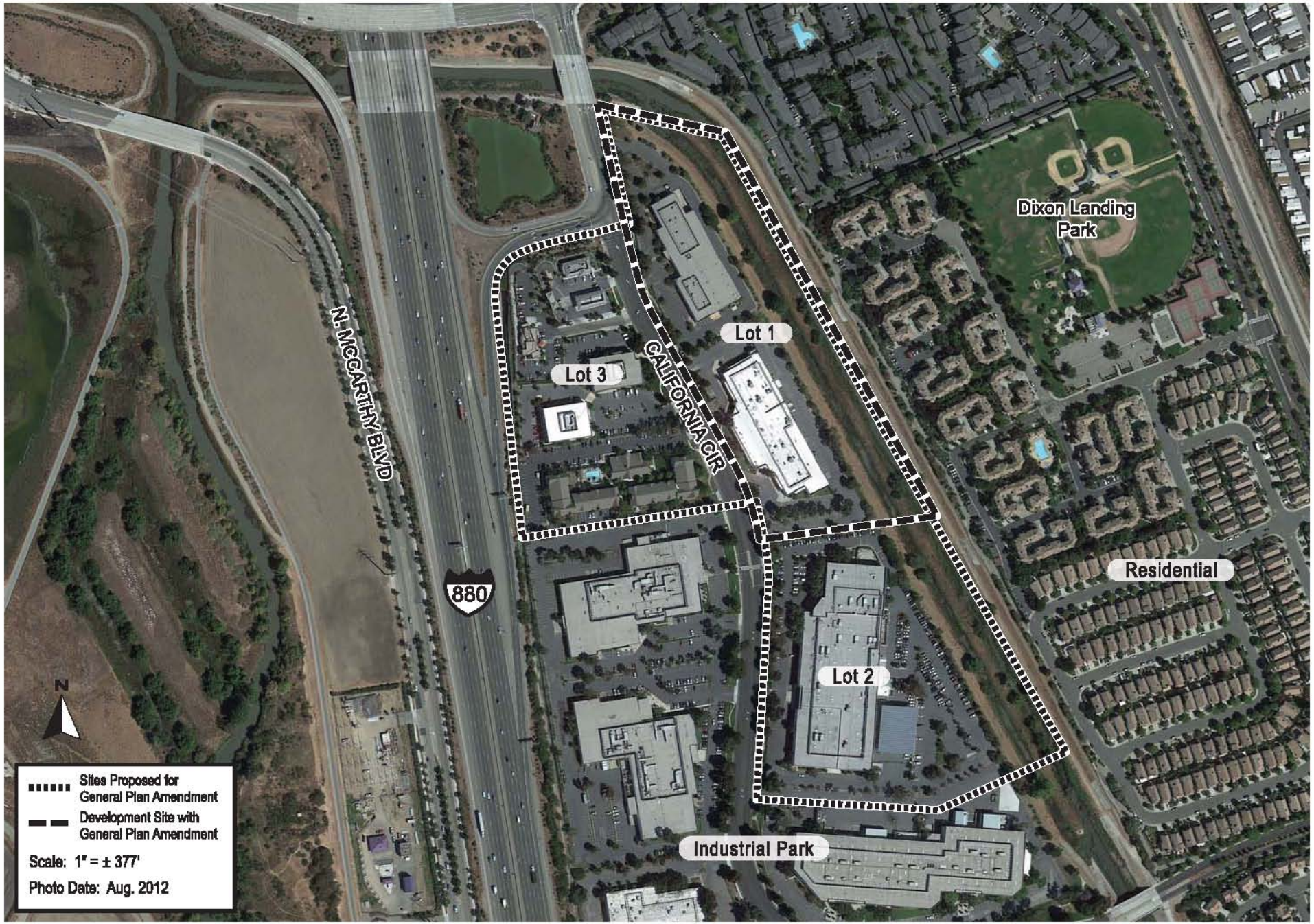
Lot 3

Lot 3 is comprised of five parcels totaling 8.3 acres. The site is currently development with multiple commercial businesses including a gas station, a Starbucks, two two-story office buildings, and a three-story hotel.

Figure 4 shows an aerial of the project site and surrounding land uses.

4.1.1.2 Surrounding Land Uses

Development in the project area is a mix of commercial, industrial, residential, and recreational land uses. The building heights vary by land use from one to three stories. The project site is bound by Dixon Landing Road off-ramp from Interstate 880 (I-880) and a percolation pond to the north, Penitencia Creek to the north and east, one-story industrial buildings to the south, and I-880 to the west. Newby Island Landfill and the San José/Santa Clara Water Pollution Control Plant (WPCP)



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 4

are located on the west side of I-880, approximately 1,965 and 2,635 feet from the westernmost boundary of the project site, respectively.

Penitencia Creek is a wide creek channel with levees on both sides and riparian and wetland vegetation throughout. The eastern levee has a trail that is accessible from the adjacent neighborhood. The neighborhood is comprised of multi-family residences (apartments and townhouses) and single-family residences. Dixon Landing Park is located within the neighborhood.

The industrial buildings to the south of the project site are one-story buildings surrounded by surface parking lots similar to the buildings on the project site.

I-880 is a 10-lane roadway in the vicinity of the project site, with a designated exit lane that provides access to the project site via California Circle. The exit lane also provides access to Dixon Landing Road.

4.1.1.3 Existing Land Use Designation and Zoning

The project site is currently designated *Industrial Park* in the General Plan and zoned *Industrial Park.*

The *Industrial Park (INP)* designation is intended for research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances.

The *MP – Industrial Park* (Section 7.0 of the Zoning Code) is intended to accommodate, in a park-like setting, a limited group of research, professional, packaging and distribution facilities and uses which may have unusual requirements for space, light, and air, and the operation of which are clean and quiet. The current zoning has a maximum floor area ratio (FAR) of 0.50.

4.1.2 Land Use Impacts

4.1.2.1 Thresholds of Significance

For the purposes of this EIR, a land use impact is considered significant if the project would:

- Physically divide an established community;
- Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect;
- Conflict with an applicable habitat conservation plan or natural community conservation plan.

4.1.2.2 Land Use Conflicts

Land use conflicts can arise from two basic causes: 1) a new development or land use may cause impacts to persons or the physical environment in the vicinity of the project site or elsewhere; or 2)

conditions on or near the project site may have impacts on the persons or development introduced onto the site by the new project. Both of these circumstances are aspects of land use compatibility. Potential incompatibility may arise from placing a particular development or land use at an inappropriate location, or from some aspect of the project's design or scope. Depending on the nature of the impact and its severity, land use compatibility conflicts can range from minor irritations and nuisance to potentially significant effects on human health and safety. The discussion below distinguishes between potential impacts *from* the proposed project *upon* persons and the physical environment, and potential impacts *from* the existing surroundings *upon* the project itself.

Consistency with the General Plan Land Use Designation and Zoning

As stated above, the project site is currently designated *Industrial Park*. The *Industrial Park* General Plan designation allows for research, professional, packaging and distribution facilities in a park-like setting. The project proposes multiple General Plan Amendments as outlined in Table 2. For Lots 1 and 2, the *Single-Family Moderate Density* designation allows for single-family houses at six to 15 DU/AC. For Lot 3, the *General Commercial* designation allows for commercial/retail development up to a floor area ratio (FAR) of 0.50.

TABLE 2
Land Use Changes Proposed By the Project

APN No.	Existing GP Designation	Proposed GP Designation	Existing Zoning	Proposed Zoning	Development Proposed
022-37-011	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	84 dwelling units
022-37-012	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	
022-37-019	Industrial Park	Single-Family Moderate Density	Industrial Park	R1-2.5 Single Family Residential	None
022-37-040	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-045	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-046	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-047	Industrial Park	General Commercial	Industrial Park	General Commercial	None
022-37-049	Industrial Park	General Commercial	Industrial Park	General Commercial	None

The proposed residential development on Lot 1 includes 84 single-family houses and multiple public open space areas. The residential project on Lot 1, as proposed, is inconsistent with the current land use designation and zoning. With the proposed General Plan amendment and rezoning the residential project will be consistent with all applicable City land use regulations. If the General Plan amendment and rezoning are not approved, the project cannot be approved as proposed. **(Less Than Significant Impact)**

Future redevelopment of Lots 2 and 3 with residential and commercial land uses would only be allowed if the proposed General Plan Amendments and rezoning are approved. If the General Plan

amendments and rezoning are not approved, Lot 3 would remain consistent with the current land use designations but Lot 2 would continue to have non-conforming land uses. Since the church use on Lot 2 was deemed acceptable by the City, this discrepancy between the existing land uses and land use designations is not an impact under CEQA. **(Less Than Significant Impact)**

Land Use Impacts

The proposed residential project on Lot 1 would demolish the existing industrial buildings and construct single-family housing on the site. Redevelopment of Lot 2 under the proposed General Plan Amendment would also result in the development of new housing on an industrial site. The project area is a mix of small commercial businesses, offices, hotels, residences, recreational areas, and other industrial buildings which are located in proximity to existing residential development. These businesses have been found to be generally compatible with the existing residential land uses. Therefore, the placement of new residences in the vicinity of the existing businesses in the area would not result in a land use conflict.

The addition of new residential dwellings in the project area would be consistent with the mix of land uses in the project area and would not result in a significant land use compatibility impact. **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would be consistent with the existing land uses on Lot 3 and would be compatible with all existing and proposed land uses in the immediate area. **(No Impact)**

The proposed residential project and future development under the proposed General Plan Amendments would not physically divide an established community. In addition, the project site is in a developed urban area and is not subject to any adopted Habitat Conservation Plan (HCP) or Natural Community Conservation Plan (NCCP). **(Less Than Significant Impact)**

4.1.3 Mitigation and Avoidance Measures for Land Use Impacts

No mitigation is required or proposed.

4.1.4 Conclusion

The proposed project would be compatible with all adjacent and nearby land uses and would not divide an established community. With approval of the proposed General Plan Amendments and rezoning, the proposed residential development project would comply with relevant land use policies and regulations. **(Less Than Significant Impact)**

4.2 BIOLOGICAL RESOURCES

The following discussion is based in part on tree survey prepared by *Hort Science* in December 2012 and a biological investigation prepared by Live Oak Associates, Inc. in July 2012. Copies of these reports are provided in Appendices B and C of this document.

4.2.1 Existing Setting

Biological resources include plants and animals and the habitats that support them. Individual plant and animal species that are listed as rare, threatened or endangered under the State and/or Federal Endangered Species Act (and the natural habitat communities that support them) are of particular concern. Sensitive natural communities (e.g., wetlands, riparian woodlands, and oak woodland) that are critical to wildlife or ecosystem function are also important biological resources.

4.2.1.1 Regulatory Framework

Special-Status Plants and Animals

Threatened and Endangered Species

State and Federal "endangered species" legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations.

Permits may be required from both the CDFW and USFWS if activities associated with a proposed project would result in the take of a species listed as threatened or endangered. To "take" a listed species, as defined by the State of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" said species (California Fish and Game Code, Section 86). "Take" is more broadly defined by the Federal Endangered Species Act to include "harm" of a listed species (16 USC, Section 1532(19), 50 CFR, Section 17.3).

Migratory Birds

State and Federal laws also protect most bird species. The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

Birds of Prey

Birds of prey, such as owls and hawks, are protected in California under provisions of the State Fish and Game Code, Section 3503.5, (1992), which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such birds except as otherwise provided by this Code or any regulation adopted pursuant thereto." Construction disturbance during the breeding season could result in the incidental

loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered a "taking" by the CDFW.

Bats

Section 2000 and 4150 of the California Fish and Game Code states that it is unlawful to take or possess bats, without a license or permit as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states that it is unlawful to harass[2], herd, or drive bats.

Wetlands and Other Jurisdictional Waters

Natural drainage channels and adjacent wetlands may be considered "Waters of the United States" (referred to as 'jurisdictional waters") subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE). Jurisdictional waters generally include:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce;
- All impoundments of waters otherwise defined as waters of the United States under the definition; and
- Tributaries of waters identified above.

The USACE regulates the filling or grading of jurisdictional waters under the authority of Section 404 of the Clean Water Act.

Milpitas Tree Ordinance

The City of Milpitas Tree Protection and Heritage Program (Title X, Chapter 2, Section 7 of the Milpitas Municipal Code) provides protection to all trees meeting the following criteria:

- All trees which have a 56-inch or greater circumference of any truck measured 4.5 feet from the ground and located on developed residential property.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the ground located on developed commercial or industrial property.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the ground, when removal relates to any transaction for which zoning approval or subdivision approval is required.
- All trees which have a 37-inch or greater circumference of any trunk measured 4.5 feet from the

[2] Harass is defined as "an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering."

ground and located on a vacant, undeveloped or underdeveloped property.

- All trees or groves of trees that have been identified by the City as heritage trees.

4.2.1.2 Conservation Plans

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (SCVHP) has recently been adopted by six local entities in Santa Clara County although it will not be in effect until both State and Federal Permits are issued and an implementing agency, the Santa Clara Valley Habitat Agency, is in place. Although not yet implemented, it is likely that the SCVHP will be in effect in late 2013 or early 2014.

The SCVHP was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, the Santa Clara Valley Water District, and the Valley Transportation Authority (collectively termed the 'Local Partners'), the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. The SCVHP is a conservation program to promote the recovery of endangered species in more than one-half of Santa Clara County[3] while accommodating planned development, infrastructure and maintenance activities. The species of concern identified in the SCVHP include, but are not limited to, the California tiger salamander, California red-legged frog, western burrowing owl, Bay Checkerspot butterfly, and a number of species endemic to serpentine grassland and scrub.

The area covered by the SCVHP lies within Santa Clara County with the northern edge generally defined by the boundary of Alameda and Santa Clara Counties, *excluding* the Milpitas City Limits. Santa Clara County has a land area of 835,449 acres; the SCVHP primary study area encompasses 519,506 acres, or approximately 62 percent of the county. About 100,000 acres of this area (19 percent) supports urban development. Within the City of San José, the northern boundary is the northern edge of the "bufferlands" of the Water Pollution Control Plant facility on Zanker Road, west of the project site. The study area of the SCVHP is defined as the area in which all covered activities would occur, impacts would be evaluated, and conservation activities would be implemented. Projects and activities of the other jurisdictions (such as the City of Milpitas), which are not Permittees, are not covered.

In addition to the SCVHP area defined above, an expanded study area for burrowing owl conservation was identified to the north and west in portions of the cities of San José, Santa Clara, Mountain View, Milpitas, and Sunnyvale; in Fremont in Alameda County; and a small portion of San Mateo County. The expanded study area for burrowing owl conservation that falls outside of the primary SCVHP study area is 48,464 acres in size and includes the project area within the City of Milpitas. The allowable activities covered by the SCVHP in this expanded study area are limited only to conservation actions for western burrowing owl.

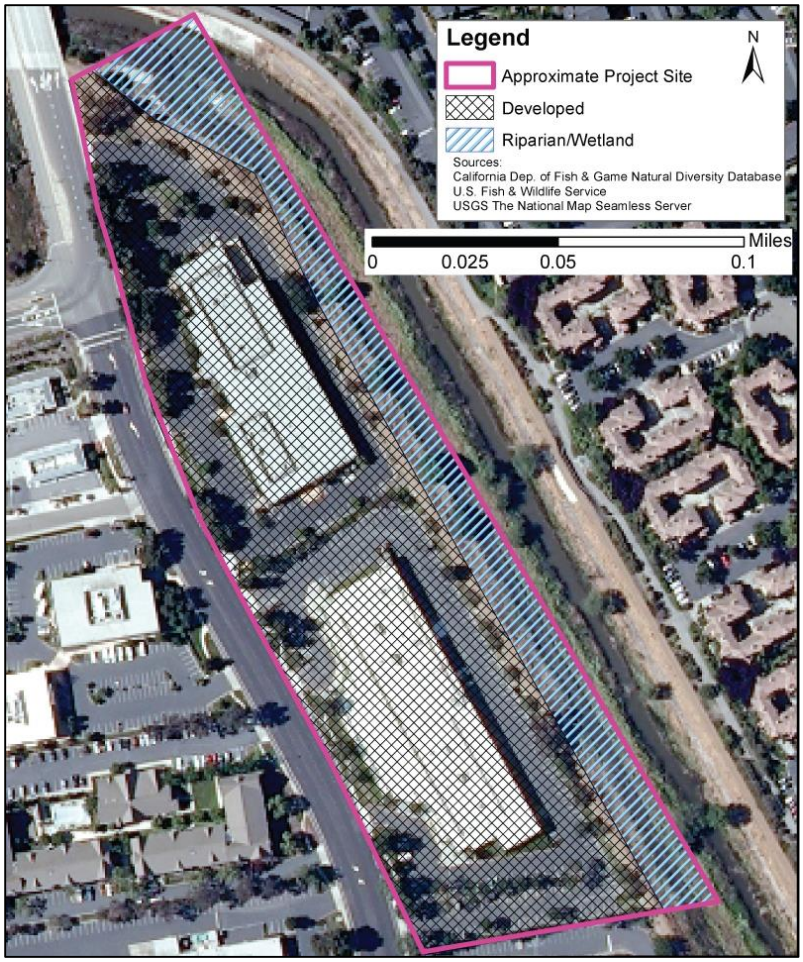
[3] Santa Clara County has a land area of 835,449 acres; the study area of the Santa Clara HCP/NCCP encompasses 519,506 acres, or approximately 62 percent of the county.

Expanded HCP/NCCP Area for Burrowing Owl Conservation

The project site is currently fully developed and does not provide suitable habitat for western burrowing owl that could be used for burrowing owl conservation.

4.2.1.3 Existing Conditions

Vegetation



The project site is located in developed urban habitat in the City of Milpitas and is surrounded by industrial, commercial, and residential development. A portion of Lot 1, approximately 3.2 acres, is located within Penitencia Creek and Lot 2 is located directly adjacent to the creek. This area of Lot 1 is separated by from the developed portion of the site by the levee. For the purposes of this analysis, analysis of vegetation on Lot 1 will refer to only the developed portion of the site. Impacts to vegetation within Penitencia Creek will be addressed separately.

Vegetation on the project site is comprised primarily of landscape vegetation with grass, shrubs, and trees. There are no sensitive habitats or special status plants on-site, due to a lack of habitat to support them. There are no serpentine soils on the project site.

Adjacent to the developed portion of Lot 1 and all of Lot 2 is a levee with a gravel walking trail and maintenance road on top. The top of the levee is approximately six feet above the grade of the project site. On the east side of the levee is the creek which supports both riparian and wetland habitats.

The section of Penitencia Creek adjacent to the site is within an approximately 200 foot wide engineered channel. Vegetation along the creek banks is primarily non-native annual grasses. Native vegetation is limited to a few species of trees and shrubs including Fremont's cottonwood, arroyo willow, sagebrush, and common bedstraw. Dense wetland vegetation is found within the

creek channel. The wetland vegetation is comprised of tule, cattails, broad-leaved pepper-weed, fringed willow-herb, horsetails, mugwort, curly dock, poison hemlock, and California blackberry.

There are no waterways, wetlands, or other sensitive habitats located on or adjacent to Lot 3.

Wildlife

The developed nature of the project site provides limited habitat for locally occurring wildlife species. The project area, aside from the creek, is of poor value for foraging or nesting habitat. Several bird species were observed in the project area including American white pelican, great egret, turkey vulture, red-shouldered hawk, Nuttall's woodpecker, western scrub jay, American crow, American robin, northern mockingbird, European starling, California towhee, house finch, and house sparrow. The only mammal observed was the eastern fox squirrel. No amphibians were observed.

Within Penitencia Creek, several avian and mammal species were observed. Most of the bird species were the same ones observed from the project site. Additional avian species seen within the creek include snowy egret, Anna's hummingbird, black phoebe, red-winged blackbird, and Brewer's blackbird. Additional mammals seen within the creek include Virginia opossum, Botta's pocket gopher, raccoon, striped skunk, and domestic dogs and cats.

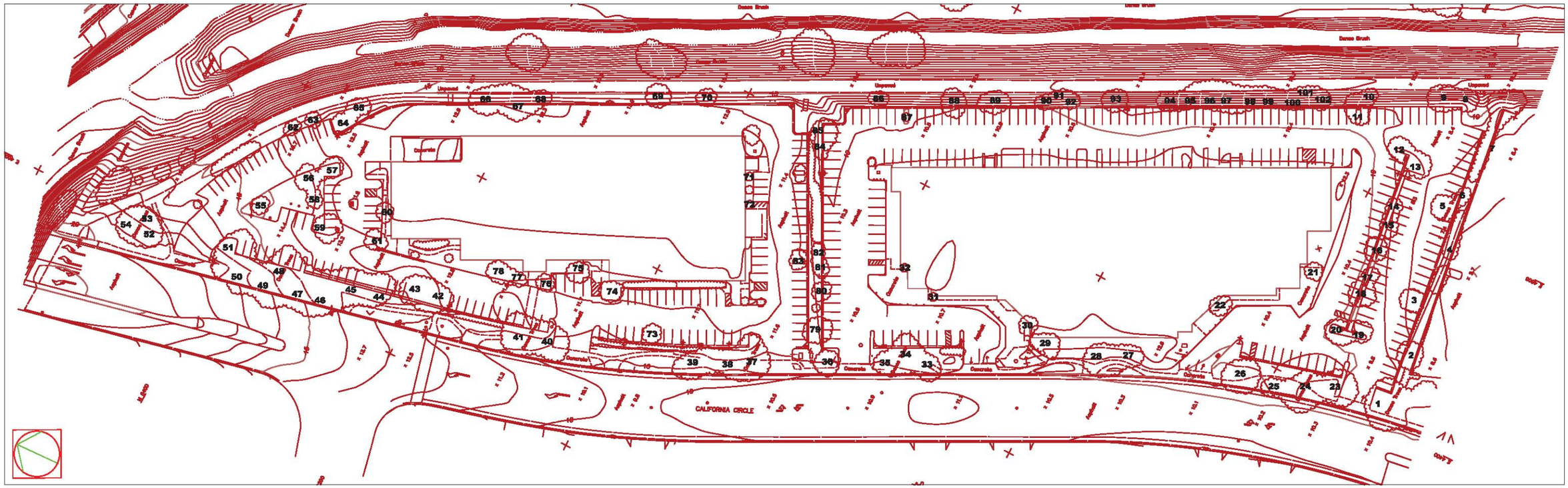
4.2.1.4 Trees

Mature trees (both native and non-native) are valuable to the human environment for the benefits they supply for resisting global climate change (i.e., carbon dioxide absorption), protection from weather, because they provide nesting and foraging habitat for raptors and other migratory birds, and because they are a visual enhancement. Therefore, a tree survey on Lot 1 was completed to document and evaluate the mature trees on-site.

On developed commercial property, such as the project site, the City of Milpitas Tree Ordinance defines an ordinance-sized tree as any tree having a trunk that measures 37 inches or greater in circumference (approximately 12 inches in diameter) at a height of four and one-half feet above the ground. A multi-stem tree is considered a single tree and ordinance-size if any one of its trunks measures 37 inches or greater in circumference. A tree removal permit is required from the City for the removal of ordinance-sized trees.

Trees located on the residential development site (Lot 1) are a mixture of native and non-native species, in varying sizes and levels of health. Within the boundaries of the construction area of Lot 1, there are a total of 102 trees. Of the 102 trees there are 27 acacias, 20 ashes, nine California peppers, nine myoporums, eight silver dollar gums, five flowering cherries, five Nichol's gums, four flax leaf peperbarks, four callery pears, three alders, two Brisbane boxes, two Italian stone pines, two Chinese pistaches, one black pine, and one African fern pine. Tree surveys were not completed for Lots 2 and 3 because no specific development is currently proposed.

The following table lists all trees identified on Lot 1 during the tree survey. The location of the trees is shown on Figure 5.



TREE MAP

FIGURE 5

TABLE 3 Tree Survey					
Tree No.	**Common Name**	**Diameter[4] In Inches**	**Protected**	**Health**	**Preservation Suitability**
1	Blackwood acacia	31	Yes	3	Moderate
2	Raywood ash	15	Yes	4	Moderate
3	Raywood ash	9	No	4	Moderate
4	Raywood ash	8	No	3	Moderate
5	Raywood ash	9	No	4	Moderate
6	Raywood ash	7	No	3	Moderate
7	Silver dollar gum	14	Yes	3	Moderate
8	Myoporum	Multi	No	2	Poor
9	Myoporum	Multi	No	2	Poor
10	Myoporum	Multi	No	2	Poor
11	Raywood ash	12	Yes	3	Moderate
12	Raywood ash	12	Yes	3	Moderate
13	Raywood ash	16	Yes	4	Moderate
14	Raywood ash	13	Yes	3	Moderate
15	Raywood ash	13	Yes	3	Moderate
16	Raywood ash	13	Yes	3	Moderate
17	Raywood ash	15	Yes	3	Moderate
18	Raywood ash	15	Yes	3	Moderate
19	Raywood ash	14	Yes	3	Moderate
20	Raywood ash	15	Yes	4	Moderate
21	Flax leaf paperback	13	Yes	4	Good
22	Raywood ash	12	Yes	4	Moderate
23	Blackwood acacia	21	Yes	3	Poor
24	Blackwood acacia	30	Yes	3	Moderate
25	Blackwood acacia	14	Yes	4	Moderate
26	Blackwood acacia	27	Yes	3	Moderate
27	Blackwood acacia	20	Yes	1	Poor
28	Blackwood acacia	25	Yes	2	Poor
29	Blackwood acacia	23	Yes	4	Moderate
30	Flax leaf paperback	11	No	4	Moderate
31	Flax leaf paperback	10	No	4	Moderate
32	Flax leaf paperback	10	No	3	Moderate
33	Blackwood acacia	24	Yes	4	Moderate
34	Blackwood acacia	24	Yes	5	Good
35	Blackwood acacia	16	Yes	4	Moderate
36	Blackwood acacia	16	Yes	4	Good
37	Blackwood acacia	25	Yes	4	Moderate
38	Blackwood acacia	22	Yes	4	Good
39	Blackwood acacia	19	Yes	3	Moderate
40	Blackwood acacia	24	Yes	3	Poor
41	Blackwood acacia	21	Yes	3	Moderate
42	Blackwood acacia	15	Yes	3	Poor

[4] Measured at 48 inches above grade.

TABLE 3 *Continued* Tree Survey					
Tree No.	**Common Name**	**Diameter In Inches**	**Protected**	**Health**	**Preservation Suitability**
43	Blackwood acacia	20	Yes	2	Poor
44	Blackwood acacia	22	Yes	3	Moderate
45	Blackwood acacia	23	Yes	3	Moderate
46	Blackwood acacia	26	Yes	3	Poor
47	Blackwood acacia	22	Yes	4	Good
48	Blackwood acacia	15	Yes	3	Poor
49	Blackwood acacia	23	Yes	3	Poor
50	Blackwood acacia	15	Yes	3	Poor
51	Blackwood acacia	29	Yes	2	Poor
52	Nichol's gum	25	Yes	4	Good
53	Nichol's gum	22	Yes	2	Poor
54	Nichol's gum	25	Yes	3	Moderate
55	European alder	10	No	4	Good
56	European alder	11	No	2	Poor
57	Callery pear	10	No	4	Good
58	European alder	8	No	3	Poor
59	Callery pear	12	Yes	4	Good
60	African fern pine	9	No	4	Moderate
61	Callery pear	12	Yes	4	Good
62	California pepper	10	No	4	Good
63	California pepper	7	No	4	Good
64	Callery pear	10	No	4	Good
65	California pepper	13	Yes	4	Good
66	Italian stone pine	19	Yes	4	Good
67	Italian stone pine	20	Yes	4	Good
68	Black pine	10	No	3	Moderate
69	Nichol's gum	15	Yes	4	Moderate
70	Nichol's gum	9	No	3	Poor
71	Brisbane box	5	No	3	Poor
72	Brisbane box	7	No	4	Moderate
73	Chinese pistache	7	No	5	Good
74	Flowering cherry	14	Yes	4	Moderate
75	Flowering cherry	13	Yes	4	Good
76	Flowering cherry	11	No	4	Moderate
77	Flowering cherry	11	No	4	Moderate
78	Flowering cherry	11	No	4	Moderate
79	Raywood ash	16	Yes	4	Moderate
80	Raywood ash	9	No	4	Moderate
81	Raywood ash	7	No	4	Moderate
82	Raywood ash	7	No	4	Moderate
83	Chinese pistache	6	No	5	Good
84	Silver dollar gum	13	Yes	2	Poor
85	Silver dollar gum	18	Yes	4	Moderate
86	Myoporum	Multi	No	2	Poor

TABLE 3 *Continued* Tree Survey					
Tree No.	**Common Name**	**Diameter In Inches**	**Protected**	**Health**	**Preservation Suitability**
87	Silver dollar gum	18	Yes	1	Poor
88	Silver dollar gum	14	Yes	5	Good
89	Myoporum	Multi	No	2	Poor
90	California pepper	9	No	4	Good
91	California pepper	10	No	4	Good
92	California pepper	10	No	4	Good
93	Myoporum	Multi	No	2	Poor
94	Myoporum	Multi	No	3	Poor
95	Silver dollar gum	18	Yes	2	Poor
96	Silver dollar gum	16	Yes	4	Good
97	Silver dollar gum	18	Yes	3	Moderate
98	Myoporum	Multi	No	3	Moderate
99	Myoporum	Multi	No	3	Moderate
100	California pepper	10	No	3	Moderate
101	California pepper	10	No	4	Good
102	California pepper	14	Yes	5	Good

4.2.2 Thresholds of Significance

A biological resources impact is considered significant if the project would:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service;
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law (conversion/loss of oak woodlands) – Public Resource Code 21083.4;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan; or
- Conflict with any local policies or ordinances protecting biological resources.

4.2.3 Biological Resources Impacts

4.2.3.1 Special-Status Plants and Animals

Since the entire project site is developed and there are no wetlands or other sensitive habitats on the site (excluding the 3.2 acres of Lot 1 located within Penitencia Creek), the presence of any special-status plants on the developed portion of the site is highly unlikely. For this reason, development within the boundaries of the project site would not result in significant impacts to special-status plant species or sensitive habitats. **(Less Than Significant Impact)**

The project proposes to install a 10-foot wide clear span bridge over Penitencia Creek. As proposed, the bridge will be constructed off-site and the fully constructed bridge will be installed with a crane. The bridge will be anchored on top of the levees and will not have any footings, cantilevers, or other supports within the creek or between the banks. Because the bridge will not disturb any habitat within the creek or require construction within the stream, the consulting biologist concluded that the bridge would have a less than significant impact on riparian and wetland habitat, native wildlife within the riparian corridor, and regulated waters. **(Less Than Significant Impact)**

Nesting Raptors and Migratory Birds

Based on the highly urbanized and developed nature of the site (excluding the 3.2 acres of Lot 1 located within Penitencia Creek), natural communities or habitats for special-status plant and wildlife species are not present on the site. Although no nests were observed, trees within the riparian corridor could provide suitable nesting habitat for tree-nesting raptors and migratory birds. Special-status birds such as white-tailed kite, saltmarsh common yellowthroat, and tricolored blackbird, as well as non-special status species may nest within the adjacent riparian habitat. Nesting birds, including urban adapted raptors, are protected under the provisions of the FMBTA and the CDFW Code 3503.5. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or could otherwise lead to nest abandonment. Nest abandonment and/or loss of reproductive effort caused by disturbance are considered a “take” by the CDFW, and therefore would constitute a significant impact. **(Significant Impact)**

4.2.3.2 Effects on Project Implementation of the Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

As previously discussed, the City of Milpitas is not one of the Local Partners in Santa Clara County that has adopted, or has activities covered by, the SCVHP.

Expanded HCP/NCCP Area for Burrowing Owls

As previously noted, the project site is currently fully developed (excluding the 3.2 acres of Lot 1 located within Penitencia Creek) and does not provide suitable habitat for Western Burrowing Owls that could be used for burrowing owl conservation. Redevelopment of Lot 1 and future redevelopment of Lots 2 and 3 would not reduce the area of habitat in northern Santa Clara County available for possible burrowing owl conservation activities with the goal of increasing local burrowing owl populations. (**No Impact)**

4.2.3.3 Trees

For the purposes of this analysis, it is assumed that all 102 trees on Lot 1 will be removed during construction of the proposed development project. Of the 102 trees to be removed, 70 are ordinance sized trees. New landscaping trees will be required; nevertheless, the loss of 70 ordinance sized trees, which are protected under the Milpitas Municipal Code, would be a significant impact if not off-set by replacement plantings.

No specific development is currently proposed on Lots 2 and 3. This analysis assumes that any future development on Lots 2 or 3 under the proposed General Plan Amendments would result in the loss of all existing trees on those sites.

The total loss of trees would also be significant because mature trees provide protection from the weather by shading buildings and buffering them from rain and wind and help to filter carbon dioxide out of the air. Trees also enhance the visual character of the local community.

In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City. The funds will be deposited in the City's Tree Replacement Fund and will be used to plant trees within the City of Milpitas. **(Less Than Significant Impact)**

4.2.4 <u>Mitigation and Avoidance Measures for Biological Resources</u>

4.2.4.1 General Plan Policies

The policies in the City of Milpitas General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Development under the proposed General Plan amendment would be subject to existing General Plan policies, including those listed below.

Policy 4.b-I-4: Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.

4.2.4.2 Project Specific Mitigation Measures

The project proposes to implement the following measures to reduce impacts to nesting birds to a less than significant level:

- If possible, construction and tree removal should be scheduled between September 1 and January 31 (inclusive) to avoid the bird nesting season. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to identify active bird nests that may be disturbed during project implementation. Between February and April (inclusive) pre-

construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for bird nests.

- If an active raptor nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the CDFW, designate a construction-free buffer zone (typically 250 feet) around the nest. A report indicating the results of the survey and any designated buffer zones will be prepared and submitted to the Director of Planning and Neighborhood Services prior to the initiation of tree removal or grading.

4.2.5 Conclusion

With implementation of measures to protect nesting birds, the project would not result in significant impacts to wildlife in the project area. **(Less Than Significant Impact with Mitigation)**

The proposed project will have a less than significant impact on trees, vegetation, and non-avian wildlife species. **(Less Than Significant Impact)**

4.3 TRANSPORTATION

The following discussion is based on a transportation impact analysis and a supplemental traffic analysis prepared by *Hexagon Transportation Consultants* in February 2012 and January 2013, respectively. A copy of these reports is located in Appendix D of this document.

4.3.1 Setting

The original transportation impact analysis (TIA) prepared in February 2012 only analyzed residential development on Lot 1. The TIA analyzed the demolition of the existing industrial buildings on Lot 1 and the construction of 46 single-family houses and 62 townhouses. Since completion of the original TIA, the proposed residential project was revised to a smaller project of 84 units and the additional General Plan Amendments on Lots 2 and 3 were proposed. The supplemental traffic analysis addresses the changes to the proposed residential development on Lot 1 and the General Plan Amendments on Lots 2 and 3. Per City of Milpitas methodology for analyzing traffic impacts associated with General Plan Amendments, impacts to the roadway network related to Lots 2 and 3 are discussed in Section 5.0, *Cumulative Impacts,* of this EIR. The following analysis primarily addresses the proposed residential development on Lot 1.

The supplemental traffic analysis concluded that while the current proposed 84 unit residential project would generate slightly more trips than the proposal for 108 units originally analyzed, the additional project trips[5] would be too few to materially change the level of service results in the original TIA, which are presented below.

4.3.1.1 Existing Roadway Network

Regional Access

Regional access to the project site is provided via Interstate 680 (I-680) and Interstate 880 (I-880) as described below.

I-680 is a north-south freeway located at the eastern edge of the City that runs parallel to I-880. The freeway has three lanes in each direction plus a southbound high occupancy vehicle (HOV) lane north of State Route 237 (SR 237) and four lanes in each direction south of SR 237.

I-880 is a north-south freeway located just west of the project site that extends through Milpitas and provides access to the project site via an interchange with Dixon Landing Road. The freeway has four lanes in each direction north of SR 237 and three lanes in each direction south of SR 237.

Local Access

Roadways within the project area include California Circle, Dixon Landing Road, Milmont Drive, Milpitas Boulevard, and McCarthy Boulevard which are described below.

[5] Single-family residences generate more traffic trips than multi-family residences. As a result, while the current project has fewer units than the original project, the units are all single-family, resulting in slightly more trips.

California Circle is a four-lane, north-south roadway that runs through the project site. California Circle extends from Dixon Landing Road to Fairview Way and provides direct access to the site. California Circle becomes Milmont Drive south of Fairview Way.

Dixon Landing Road is an east-west, four-lane roadway that extends east from McCarthy Boulevard to Milpitas Boulevard. Dixon Landing Road provides access to the project site via California Circle.

Milmont Drive is generally a two-lane, north-south roadway that becomes California Circle immediately south of Lot 2.

Milpitas Boulevard is a four-lane, north-south arterial that extends from Montague Expressway in the south to Dixon Landing Road where it continues north as Warm Springs Boulevard.

McCarthy Boulevard is a four-lane, north-south arterial that connects Montague Expressway to Dixon Landing Road. McCarthy Boulevard primarily provides access to SR 237, Montague Expressway, and I-880. In the future, McCarthy Boulevard is planned to extend north of Dixon Landing Road and connect to Fremont Boulevard.

4.3.1.2 Existing Pedestrian and Bicycle Facilities

Pedestrian Facilities

Pedestrian facilities in the project area consist of sidewalks along both sides of California Circle and Dixon Landing Road. All signalized intersections within the immediate project area have pedestrian crosswalks with ADA compliant curb ramps.

Bicycle Facilities

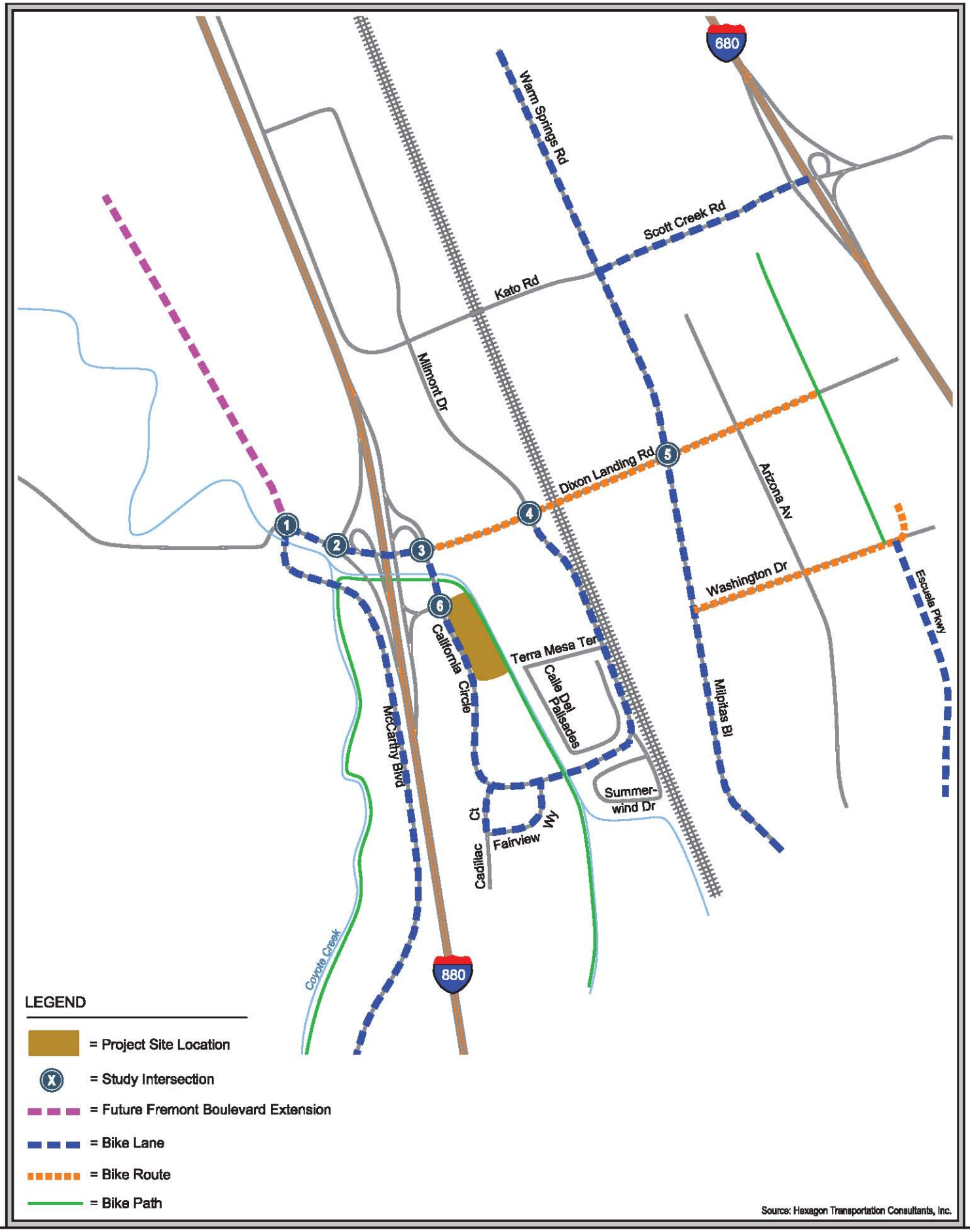
Bicycle facilities are comprised of paths (Class I), lanes (Class II), and routes (Class III). Bicycle paths are paved trails that are separate from roadways. Bicycle lanes are lanes on roadways designed for bicycle use by striping, pavement legends, and signs. Bicycle routes are roadways designated for bicycle use by signs only.

Class I facilities in the project area include the Penitencia Creek Trail along the east side of the project site and Coyote Creek Trail on the west side of I-880. Class II facilities exist on California Circle and Dixon Landing Road. Existing bicycle facilities are shown on Figure 6.

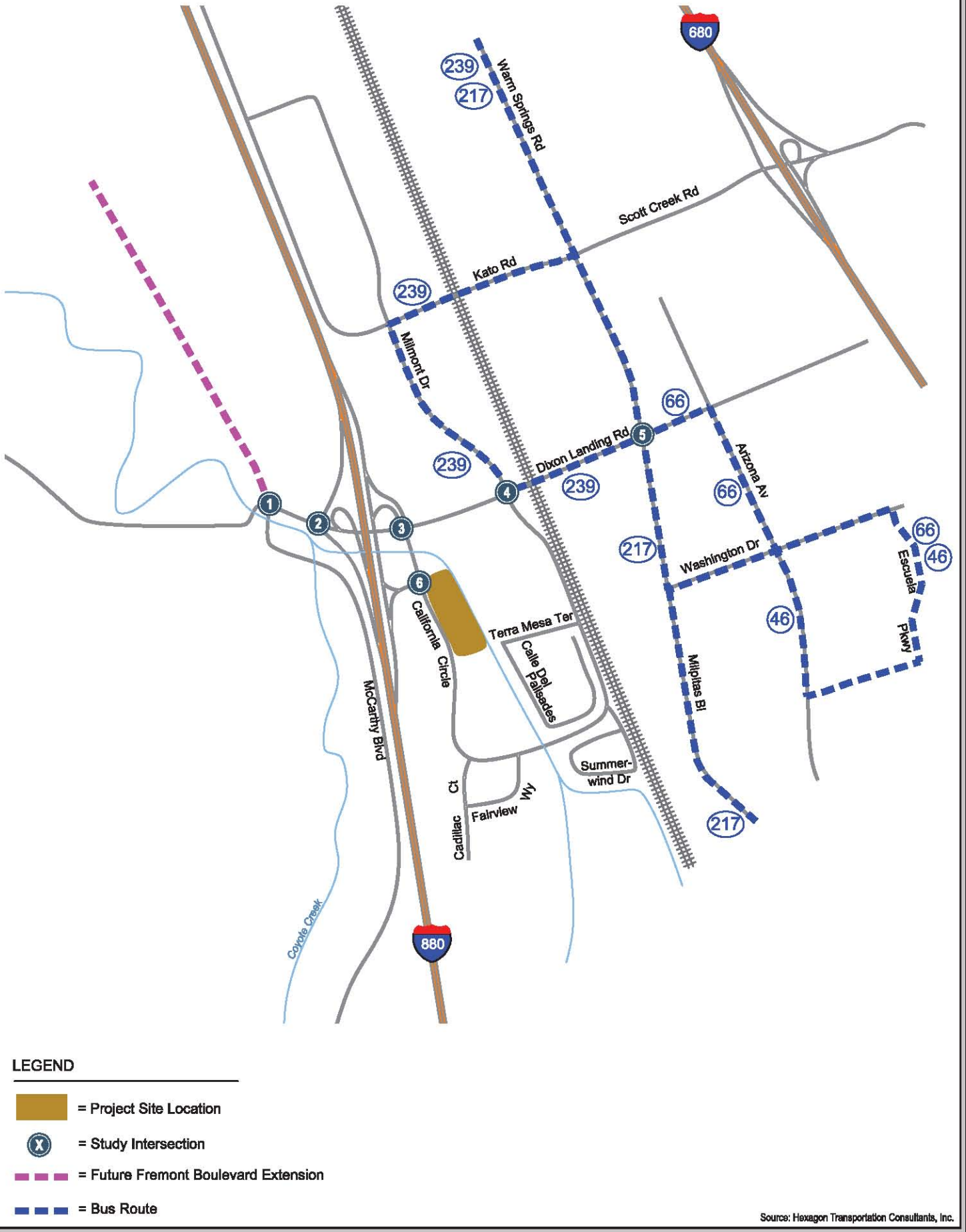
4.3.1.3 Existing Transit Service

Existing transit service in the project area is comprised of Santa Clara Valley Transportation Authority (VTA) and the Alameda-Contra Costa Transit District (AC Transit) bus service. Bus stops are located on Dixon Landing Road and Milpitas Boulevard. These stops are approximately 3,500 feet east of the project site. Table 4 below outlines the existing transit service in the project area.

All transit services are shown on Figure 7.



BICYCLE FACILITIES FIGURE 6



TRANSIT SERVICES

FIGURE 7

TABLE 4 Existing Transit Service			
Route	**Route Description**	**Weekday Operating Hours**	**Headways***
46	VTA – Great Mall/Main Transit Center to Washington	6:30 AM to 7:10 PM	25 to 30
66	VTA – Kaiser San Jose to Milpitas/Dixon Landing Road	5:30 AM to 12:00 PM	10 to 20
217	AC Transit – Great Mall to Fremont BART via Milpitas Boulevard	5:30 AM to 10:00 PM	30
239	AC Transit – Milpitas/Dixon Landing Road to Fremont BART via Milmont Drive	6:30 AM to 7:30 PM	45
*Approximate headways during commute periods, in minutes			

4.3.1.4 Existing Intersection Operations

Methodology

The impacts of the proposed residential development on Lot 1 were evaluated following the methodologies established by the City of Milpitas and the Santa Clara County Congestion Management Program (CMP). Intersections were selected for study if project traffic would add at least 10 trips per lane per hour during one or more peak hours, consistent with adopted CMP methodology.

Traffic conditions were evaluated for existing conditions, background conditions[6], existing plus project conditions, and background plus project conditions to determine if the level of service (LOS) of the local intersections in the project area would be adversely affected by the proposed project generated traffic. LOS is a qualitative description of operating conditions ranging from LOS A, or free-flowing conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. The correlation between average delay and LOS is shown in Table 5.

TABLE 5 Intersection Level of Service Definitions Based on Delay		
Level of Service	**Description**	**Average Control Delay per Vehicle[7]**
A	Operations with very low delay occurring with favorable progression and/or short cycle lengths.	10.0 or less
B	Operations with low delay occurring with good progression and/or short cycle lengths.	10.1 to 20.0
C	Operations with average delays resulting from fair progression and/or longer cycle lengths. Individual cycle failures begin to appear.	20.1 to 35.0

[6] Background conditions are existing conditions plus approved but not yet constructed development.
[7] Measured in seconds.

TABLE 5 *Continued* Intersection Level of Service Definitions Based on Delay		
Level of Service	**Description**	**Average Control Delay per Vehicle**
D	Operations with longer delays due to a combination of unfavorable progression, long cycle lengths, or high volume to capacity ratios. Many vehicles stop and individual cycle failures are noticeable.	35.1 to 55.0
E	Operations with high delay values indicating poor progression, long cycle lengths, and high V/C ratios. Individual cycle failures are frequent occurrences. This is considered to be the limit of acceptable delay.	55.0 to 80.0
F	Operation with delays unacceptable to most drivers occurring due to over saturation, poor progression, or very long cycle lengths.	Greater than 80.0

The traffic study analyzed AM and PM Peak Hour traffic conditions for six signalized intersections in the vicinity of the project site. The study intersections are listed in Table 6 below and the locations of the study intersections are shown on Figure 8.

Based on the City of Milpitas's policies, an acceptable operating level of service is defined as LOS D or better at all City controlled intersections. For County of Santa Clara and CMP intersections, an acceptable level of service is LOS E.

Existing LOS of Study Intersections

Analysis of the existing intersection operations concluded that all six study intersections currently operate at an acceptable LOS. The results of the existing conditions analysis are summarized in Table 6.

TABLE 6 Study Intersections Level of Service – Existing Conditions				
No.	**Intersection**	**Peak Hour**	**Delay**	**LOS**
1	McCarthy Boulevard and Dixon Landing Road	AM PM	9.7 8.9	A A
2	I-880 SB Ramps and Dixon Landing Road	AM PM	11.1 12.4	B B
3	I-880 NB Ramps and Dixon Landing Road	AM PM	15.3 18.4	B B
4	Milmont Drive and Dixon Landing Road	AM PM	40.4 24.7	D C
5	Milpitas Boulevard and Dixon Landing Road	AM PM	43.7 38.7	D D
6	California Circle and I-880 NB Ramps	AM PM	12.3 13.8	B B

Source: Hexagon Transportation Consultants, Inc.

STUDY INTERSECTIONS FIGURE 8

4.3.1.5 Background Intersection Operations

Background traffic conditions represent conditions anticipated to exist after completion of the environmental review process but prior to operation of the proposed development. It takes into account planned transportation system improvements that will occur prior to implementation of the proposed project and background traffic volumes. Background peak-hour traffic volumes are calculated by adding estimated traffic from approved but not yet constructed development to the existing conditions (see Appendix D for a list of Background projects). This traffic scenario represents a more congested traffic condition than the existing conditions scenario since it includes traffic from approved projects. The background conditions analysis is consistent with City of Milpitas policy for transportation analyses though it is not required under CEQA, as it is neither a project scenario nor cumulative analysis but represents conditions anticipated to exist at the time the project is built and operational.

There are no approved or fully funded roadway improvement projects in the project area. Therefore, the roadway network under background conditions would be the same as the existing roadway network.

Background Intersection Level of Service

Analysis of the background intersection operations found that all six intersections will operate at an acceptable LOS under background conditions. The results of the analysis under background conditions are summarized in Table 7 below.

TABLE 7
Study Intersections Level of Service – Background Conditions

No.	Intersection	Peak Hour	Existing		Background	
			Delay	LOS	Delay	LOS
1	McCarthy Boulevard and Dixon Landing Road	AM	9.7	A	9.7	A
		PM	8.9	A	9.1	A
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B
		PM	12.4	B	12.4	B
3	I-880 NB Ramps and Dixon Landing Road	AM	15.3	B	15.4	B
		PM	18.4	B	18.5	B
4	Milmont Drive and Dixon Landing Road	AM	40.4	D	40.6	D
		PM	24.7	C	24.7	C
5	Milpitas Boulevard and Dixon Landing Road	AM	43.7	D	43.8	D
		PM	38.7	D	38.7	D
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.3	B
		PM	13.8	B	13.8	B

4.3.2 Environmental Checklist and Discussion

For the purpose of this EIR, a traffic impact is considered significant if the project would:

- Cause the level of service at any local intersection to degrade from an acceptable LOS D or better under existing or background conditions to an unacceptable LOS E or F under existing plus project or background plus project conditions; or
- At any local intersection that is already an unacceptable LOS E or F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more; or
- Cause the level of service at a CMP or County intersection to degrade from an acceptable LOS E or better under existing or background conditions to an unacceptable LOS F under existing plus project or background plus project conditions; or
- At any CMP or County intersection that is already an unacceptable LOS F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more; or
- Cause the level of service on any freeway segment to degrade from an acceptable LOS E or better under existing or background conditions to an unacceptable LOS F under project conditions; or
- Add more than one percent of the existing freeway capacity to any freeway segment operating at LOS F under existing conditions; or
- Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities; or
- Result in inadequate emergency access.

4.3.2.1 Impact Criteria

City of Milpitas – Local Signalized Intersections

Based on City of Milpitas criteria, a project would cause a significant impact at a signalized intersection if the additional project traffic caused one of the following:

- Cause the level of service at any local intersection to degrade from an acceptable LOS D or better under existing or background conditions to an unacceptable LOS E or F under existing plus project or background plus project conditions; or
- At any local intersection that is already an unacceptable LOS E or F under existing or background conditions, cause the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (V/C) to increase by .01 or more.

4.3.2.2 Trip Generation Estimates

Lot 1 is currently vacant and does not generate any traffic. Traffic trips generated by the proposed residential project on Lot 1 were estimated for 84 single-family residences using the Institute of Transportation Engineers (ITE) *Trip Generation, 8th Edition.* A summary of the project trip generation estimates is shown in Table 8 below.

TABLE 8 Project Trip Generation Estimates – Lot 1							
Land Use	**Daily Trips**	**AM Peak Hour**			**PM Peak Hour**		
		In	**Out**	**Total**	**In**	**Out**	**Total**
Proposed Housing	803	16	47	63	53	32	85

4.3.2.3 Existing Plus Project Intersection Operations

The LOS of the study intersections was calculated under project conditions by adding the new project trips from the proposed residential development on Lot 1 to the existing conditions. Analysis of the existing plus project intersection operations concluded that all of the study intersections would continue to operate at an acceptable LOS in both Peak Hours with implementation of the proposed residential project on Lot 1. The results of the existing plus project conditions analysis are summarized in Table 9 below.

TABLE 9 Study Intersections Level of Service – Existing Plus Project Conditions on Lot 1						
No.	**Intersection**	**Peak Hour**	**Existing**		**Existing Plus Project**	
			Delay	LOS	Delay	LOS
1	McCarthy Blvd and Dixon Landing Road	AM	9.7	A	9.7	A
		PM	8.9	A	8.9	A
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B
		PM	12.4	B	12.8	B
3	I-880 NB Ramps and Dixon Landing Road	AM	15.3	B	15.6	B
		PM	18.4	B	18.6	B
4	Milmont Drive and Dixon Landing Road	AM	40.4	D	40.5	D
		PM	24.7	C	24.8	C
5	Milpitas Blvd and Dixon Landing Road	AM	43.7	D	43.8	D
		PM	38.7	D	38.7	D
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.6	B
		PM	13.8	B	14.0	B

Implementation of the proposed residential project on Lot 1would have a less than significant impact on the aforementioned intersections during both of the peak hours under existing plus project conditions. **(Less Than Significant Impact)**

4.3.2.4 Background Plus Project Intersection Operations

The LOS of the study intersections was calculated under background plus project conditions by adding the new project trips from the proposed residential development on Lot 1 to the background conditions. Analysis of the background plus project intersection operations concluded that all of the study intersections would continue to operate at an acceptable LOS in both Peak Hours with implementation of the proposed residential project on Lot 1. The results of the background plus project conditions analysis are summarized in Table 10 below.

TABLE 10 Study Intersections Level of Service – Background Plus Project Conditions on Lot 1								
No.	**Intersection**	**Peak Hour**	**Background**		**Background Plus Project**			
			Delay	LOS	Delay	LOS	Δ in Critical V/C	Δ in Critical Delay
1	McCarthy Blvd and Dixon Landing Road	AM	9.7	A	9.7	A	0.0	0.001
		PM	9.1	A	9.1	A	0.0	0.001
2	I-880 SB Ramps and Dixon Landing Road	AM	11.1	B	11.1	B	0.0	0.001
		PM	12.4	B	12.7	B	0.6	0.001
3	I-880 NB Ramps and Dixon Landing Road	AM	15.4	B	15.7	B	0.4	0.007
		PM	18.5	B	18.7	B	0.2	0.003
4	Milmont Drive and Dixon Landing Road	AM	40.6	D	40.6	D	0.0	0.001
		PM	24.7	C	24.8	C	0.2	0.005
5	Milpitas Blvd and Dixon Landing Road	AM	43.8	D	43.8	D	0.0	0.001
		PM	38.7	D	38.7	D	0.1	0.004
6	California Circle and I-880 NB Ramps	AM	12.3	B	12.6	B	0.6	0.011
		PM	13.8	B	14.0	B	0.3	0.005

Implementation of the proposed residential project on Lot 1would have a less than significant impact on the aforementioned intersections during both of the peak hours under background plus project conditions. **(Less Than Significant Impact)**

4.3.2.5 Pedestrian/Bicycle Facilities and Transit Operations

Pedestrian and Bicycle Facilities

The proposed project will generate new demand for pedestrian and bicycle facilities in the immediate project area. There are sidewalks and signalized crosswalks throughout the project area that provide access to nearby schools, retail centers, recreational facilities, and transit. The existing pedestrian facilities in the project area are sufficient to support the proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments. In addition, the proposed bridge over Penitencia Creek would improve pedestrian and bicycle access in the area. The proposed project would not result in any significant impacts to pedestrian facilities. **(Less Than Significant Impact)**

Bicycle lanes are provided on California Circle and Dixon Landing Road in the project vicinity. The proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments will not alter existing bicycle facilities and will not conflict with existing or planned bicycle facilities. Therefore, the proposed project will not result in unsafe conditions for bicyclists. **(Less Than Significant Impact)**

Transit Operations

The project site is currently served by fixed route bus services provided by the VTA. Currently VTA bus routes that serve the project area are operating below capacity. As a result, existing bus services can accommodate an increase in ridership demand resulting from the proposed residential project on Lot 1 and future development on Lots 2 and 3 under the proposed General Plan Amendments. The proposed project will not alter existing transit facilities or conflict with the operation of existing or planned facilities. Therefore, the proposed project will have a less than significant impact on transit operations. **(Less Than Significant Impact)**

4.3.3 Mitigation and Avoidance Measures for Transportation Impacts

No mitigation is required or proposed.

4.3.4 Conclusion

Implementation of the proposed residential project on Lot 1 will have a less than significant impact on local transportation facilities. **(Less Than Significant Impacts)**

Future development ton Lots 2 and 3 will have a less than significant impact on pedestrian, bicycle, and transit facilities. **(Less Than Significant Impact)**

4.4 AIR QUALITY

The following discussion is based in part on a Community Risk Analysis prepared by *Haley & Aldrich* in January 2013. This analysis is attached to this EIR as Appendix E.

4.4.1 Setting

Air quality is determined by the concentration of various pollutants in the atmosphere. Units of concentration are expressed in parts per million (ppm) or micrograms per kilograms (μg/kg).

The amount of a given pollutant in the atmosphere is determined by the amount of pollutants released within an area, transport of pollutants to and from surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin. The major determinants of transport and dilution are wind, atmospheric stability, terrain and, for photochemical pollutants, sun light.

Milpitas is located in the southern portion of the San Francisco Bay Area Air Basin. The proximity of this location to both the Pacific Ocean and San Francisco Bay has a moderating influence on the climate. Northwest and northerly winds are most common in the project area, reflecting the orientation of the Bay and the San Francisco Peninsula. Winds from these directions carry pollutants released by autos and factories from upwind areas of the Peninsula toward Santa Clara, particularly during the summer months. Winds are lightest on average in fall and winter. Every year in fall and winter there are periods of several days when winds are very light and local pollutants can build up.

Air quality standards for ozone are typically exceeded when relatively stagnant conditions occur for periods of several days during the warmer months of the year. Weak wind flow patterns combined with strong inversions substantially reduce normal atmospheric mixing. Key components of ground-level ozone formation are sunlight and heat. Significant ozone formation, therefore, only occurs during the months from late spring through early fall. Prevailing winds during the summer and fall can transport and trap ozone precursors from the more urbanized portions of the Bay Area. Meteorological factors make air pollution potential in the Santa Clara Valley quite high.

Pollutants can be diluted by mixing in the atmosphere both vertically and horizontally. Vertical mixing and dilution of pollutants are often suppressed by inversion conditions, when a warm layer of air traps cooler air close to the surface. During the summer, inversions are generally elevated above ground level, but are present over 90 percent of the time in both the morning and afternoon. In winter, surface-based inversions dominate in the morning hours, but frequently dissipate by afternoon.

Topography can restrict horizontal dilution and mixing of pollutants by creating a barrier to air movement. The South Bay has significant terrain features that affect air quality. The Santa Cruz Mountains and Diablo Range on either side of the South Bay restrict horizontal dilution, and this alignment of the terrain also channels winds from the north to south, carrying pollution from the northern Peninsula toward Milpitas.

The combined effects of moderate ventilation, frequent inversions that restrict vertical dilution and terrain that restrict horizontal dilution give Santa Clara a relatively high atmospheric potential for pollution compared to other parts of the San Francisco Bay Air Basin and provide a high potential for transport of pollutants to the east and south.

4.4.1.1 Overall Regulatory Setting

The significance of a pollutant concentration is determined by comparing the pollutant levels to an appropriate ambient air quality standard. The standards set the level of pollutant concentrations allowable while protecting general public health and welfare.

The Federal Clean Air Act (Federal CAA) establishes pollutant thresholds for air quality in the United States. In addition to being subject to Federal requirements, California has its own more stringent regulations under the California Clean Air Act (California CAA). At the Federal level, the U.S. Environmental Protection Agency (EPA) administers the CAA. The California CAA is administered by the California Air Resources Board (CARB) at the State level and by the Air Quality Management District's at the regional and local levels. The Bay Area Air Quality Management District (BAAQMD) regulates air quality in the nine-county Bay Area.

The U.S. EPA is responsible for establishing the National Ambient Air Quality Standards (NAAQS) which are required under the Federal CAA. The U.S. EPA regulates emission sources that are under the exclusive authority of the Federal government, such as aircraft, ships, and certain types of locomotives. The agency also established various emission standards for vehicles sold in states other than California. Automobiles sold in California must meet the stricter emission standards established by CARB.

California Air Resources Board

As stated above, CARB (which is part of the California EPA) is responsible for meeting the State requirements of the Federal CAA, administering the California CAA, and establishing the California Ambient Air Quality Standards (CAAQS). The California CAA requires all air districts in the State to achieve and maintain CAAQS. CARB regulates mobile air pollution sources such as motor vehicles. The agency is responsible for setting emission standards for vehicles sold in California and for other emission sources, such as consumer products and certain off-road equipment. CARB has established passenger vehicle fuel specifications and oversees the functions of local air pollution control districts and air quality management districts, which in turn administer air quality activities at the regional and county level. CARB also conducts or supports research into the effects of air pollution on the public and develops approaches to reduce air pollutant emissions.

Bay Area Air Quality Management District

BAAQMD is primarily responsible for ensuring that the national and State ambient air quality standards are attained and maintained in the Bay Area. These ambient air quality standards are levels of contaminants which represent safe levels that avoid specific adverse health effects associated with each pollutant. The ambient air quality standards cover what are called "criteria" pollutants because

the health and other effects of each pollutant are described in criteria documents. Table 11 identifies the major criteria pollutants, characteristics, health effects, and typical sources for the Bay Area.

TABLE 11
Major Criteria Pollutants

Pollutant	Characteristics	Health Effects	Major Sources
Ozone	A highly reactive photochemical pollutant created by the action of sun light on ozone precursors. Often called photochemical smog.	- Eye Irritation - Respiratory function impairment	The major sources of ozone precursors are combustion sources such as factories and automobiles, and evaporation of solvents and fuels.
Carbon Monoxide	Carbon monoxide is an odorless, colorless gas that is highly toxic. It is formed by the incomplete combustion of fuels.	- Impairment of oxygen transport in the bloodstream - Aggravation of cardiovascular disease - Fatigue, headache, confusion, dizziness - Can be fatal in the case of very high concentrations	Automobile exhaust, combustion of fuels, combustion of wood in wood stoves and fireplaces.
Nitrogen Dioxide	Reddish-brown gas that discolors the air, formed during combustion.	- Increased risk of acute and chronic respiratory disease	Automobile and diesel truck exhaust, industrial processes, and fossil-fueled power plants.
Sulfur Dioxide	Sulfur dioxide is a colorless gas with a pungent, irritating odor.	- Aggravation of chronic obstruction lung disease - Increased risk of acute and chronic respiratory disease	Diesel vehicle exhaust, oil-powered power plants, and industrial processes.
Particulate Matter	Solid and liquid particles of dust, soot, aerosols and other matter that are small enough to remain suspended in the air for a long period of time.	- Aggravation of chronic disease and heart/lung disease symptoms	Combustion, automobiles, field burning, factories and unpaved roads. Also a result of photochemical processes.

BAAQMD is also responsible for adopting and enforcing rules and regulations concerning air pollutant sources, issuing permits for stationary sources of air pollutants, inspecting stationary sources of air pollutants, investigating and responding to citizen complaints, monitoring ambient air quality and meteorological conditions, awarding grants to reduce motor vehicle emissions, conducting public education campaigns, and many other associated activities. BAAQMD has jurisdiction over much of the nine-county Bay Area, including Milpitas.

National and State Ambient Air Quality Standards

The ambient air quality in a given area depends on the quantities of pollutants emitted within the area, transport of pollutants to and from the surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin. Air quality is described by the concentration of various pollutants in the atmosphere. The significance of the pollutant concentration is determined by comparing the concentration to an appropriate ambient air quality standard. The standards represent the allowable pollutant concentrations designed to ensure that the public health and welfare are protected, while including a reasonable margin of safety to protect the more sensitive individuals in the population.

As required by the Federal CAA, the NAAQS have been established for six major air pollutants; carbon monoxide (CO), nitrogen oxides (NO_x), ozone (O_3), respirable particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$), sulfur oxides (SO_x), and lead (Pb). Pursuant to the California CAA, the State of California has also established ambient air quality standards. The CAAQS are generally more stringent than the corresponding Federal standards and incorporate additional standards for pollutants such as sulfates, hydrogen sulfide, vinyl chloride and visibility reducing particles. Both State and Federal standards are summarized in Table 12. The "primary" standards have been established to protect the public health. The "secondary" standards are intended to protect the nation's welfare and account for adverse air pollutant effects on soil, water, visibility, materials, vegetation and other aspects of the general welfare. Because CAAQS are more stringent than NAAQS, CAAQS are used as the applicable standard in this analysis.

TABLE 12
Ambient Air Quality Standards

Pollutant	Averaging Time	California Standards	National Standards	
			Primary	Secondary
Ozone	1-hour	0.09 ppm	---	Same as primary
	8-hour	0.070 ppm	0.075 ppm	---
Carbon monoxide	1-hour	20 ppm	35 ppm	---
	8-hour	9.0 ppm	9.0 ppm	---
Nitrogen dioxide	1-hour	0.18 ppm	0.10 ppm	---
	Annual	0.030 ppm	0.053 ppm	Same as primary
Sulfur dioxide	1-hour	0.25 ppm	0.075 ppm	---
	3-hour	---	---	0.5 ppm
	24-hour	0.04 ppm	---	---
PM_{10}	24-hour	50 $\mu g/m^3$	150 $\mu g/m^3$	Same as primary
	Annual	20 $\mu g/m^3$	---	---
$PM_{2.5}$	24-hour	---	35 $\mu g/m^3$	Same as primary
	Annual	12 $\mu g/m^3$	12 $\mu g/m^3$	Same as primary
Lead	Calendar Quarter	---	1.5 $\mu g/m^3$	Same as primary
	30-day average	1.5 $\mu g/m^3$	---	---

Source: California Air Resources Board, June 2012.[8]

[8] California Air Resources Board Website. http://www.arb.ca.gov/homepage.htm

Regional Clean Air Plans

The BAAQMD and other agencies prepare clean air plans in response to the State and Federal CAA. The City of Milpitas also has General Plan policies that encourage development that reduces air quality impacts. In addition, BAAQMD has developed CEQA Guidelines to assist local agencies in evaluating and mitigating air quality impacts in CEQA documents. The regional clean air plan is the 2010 Bay Area Clean Air Plan (CAP). A description of this plan and the City of Milpitas's relevant General Plan policies is provided in Section 3.0, *Consistency with Plans and Policies.*

City of San Jose Local Enforcement Agency

The City of San Jose Local Enforcement Agency (LEA) is a certified local agency that monitors and regulates the Federal, State, and local solid waste regulations at local sanitary landfill sites and recycling facilities. In particular, the LEA is charged with permitting, inspecting, and enforcing regulations for compost facilities at Newby Island.

California Department of Resources Recycling and Recovery

The California Department of Resources Recycling and Recovery (CalRecycle) is the State agency charged with overseeing the various LEA's as well as sharing in the permitting and environmental review of landfills, recycling, and compost facilities.

4.4.1.2 Existing Air Quality Conditions

Air quality studies generally focus on five criteria pollutants that are most commonly measured and regulated: CO, ground level ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and suspended particulate matter (PM_{10} and $PM_{2.5}$). In Santa Clara County, ozone and particulate matter are the pollutants of greatest concern since measured air pollutant levels exceed the State and Federal air quality standards concentrations at times.

Carbon Monoxide

Carbon monoxide, a colorless and odorless gas, interferes with the transfer of oxygen to the brain. It can cause dizziness and fatigue, and can impair central nervous system functions. Highest CO concentrations measured in the South Bay Area have been well below the national and State ambient standards. Since the primary sources of CO are cars and trucks, highest concentrations would be found near congested roadways that carry large volumes of traffic. Carbon monoxide emitted from a vehicle is highest near the origin of a trip and considerably lower once the automobile is warmed up (usually five to ten minutes into a trip). This is different, however, for vehicles of different ages, where older cars require a longer warm up period.

Ozone

While O_3 serves a beneficial purpose in the upper atmosphere (stratosphere) by reducing ultraviolet radiation, when it reaches elevated concentrations in the lower atmosphere it can be harmful to the human respiratory system and to sensitive species of plants. Ozone concentrations build to peak

levels during periods of light winds, bright sunshine, and high temperatures. Short-term O_3 exposure can reduce lung function in children, make persons susceptible to respiratory infection, and produce symptoms that cause people to seek medical treatment for respiratory distress. Long-term exposure can impair lung defense mechanisms and lead to emphysema and chronic bronchitis. Sensitivity to O_3 varies among individuals, but about 20 percent of the population is sensitive to O_3, with exercising children being particularly vulnerable. Ozone is formed in the atmosphere by a complex series of photochemical reactions that involve "ozone precursors" that are two families of pollutants: oxides of nitrogen (NOx) and reactive organic gases (ROG). Nitrogen oxides and ROG are emitted from a variety of stationary and mobile sources. While NO_2, an oxide of nitrogen, is another criteria pollutant itself, ROGs are not in that category, but are included in this discussion as O_3 precursors. The U.S. EPA recently established a new more stringent standard for O_3 of 0.75 ppm for 8-hour exposures, based on a review of the latest new scientific evidence.

Nitrogen Dioxide

Nitrogen dioxide, a reddish-brown gas, irritates the lungs. Exposure to NO_2 can cause breathing difficulties at high concentrations. Clinical studies suggest that NO_2 exposure to levels near the current standard may worsen the effect of allergens in allergic asthmatics, especially in children. Similar to O_3, NO_2 is not directly emitted, but is formed through a reaction between nitric oxide (NO) and atmospheric oxygen. Nitric oxide and NO_2 are collectively referred to as NO_x and are major contributors to O_3 formation. Nitrogen oxides are emitted from combustion of fuels, with higher rates at higher combustion temperatures. Nitrogen dioxide also contributes to the formation of PM_{10} (see discussion of PM_{10} below). Monitored levels in the Bay Area are well below ambient air quality standards.

Sulfur Oxides

Sulfur oxides, primarily SO_2, are a product of high-sulfur fuel combustion. The main sources of SO_2 are coal and oil used in power stations, in industries, and for domestic heating. Sulfur oxides are an irritant gas that attacks the throat and lungs. It can cause acute respiratory symptoms and diminished breathing functions in children. Concentrations of SO_2 in the Bay Area are at levels well below the State and national standards, but further reductions in emissions are needed to attain compliance with standards for PM_{10}, to which SO_2 is a contributor.

PM_{10} and $PM_{2.5}$

Respirable particulate matter (PM_{10}), and fine particulate matter ($PM_{2.5}$) consist of particulate matter that is ten microns or less in diameter and 2.5 microns or less in diameter, respectively, and represent fractions of particulate matter that can be inhaled and cause adverse health effects. Both PM_{10} and $PM_{2.5}$ are health concerns, particularly at levels above the Federal and State ambient air quality standards. Scientific studies have suggested links between fine particulate matter and numerous health problems including asthma, bronchitis, and acute and chronic respiratory symptoms such as shortness of breath and labored breathing. Children are more susceptible to the health risks of $PM_{2.5}$ because their immune and respiratory systems are still developing.

Both PM_{10} and $PM_{2.5}$ pose a greater health risk than larger particles because these tiny particles can penetrate the human respiratory system's natural defenses and damage the respiratory tract, increasing the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections. Whereas larger particles tend to collect in the upper portion of the respiratory system, $PM_{2.5}$ is miniscule and can penetrate deeper into the lungs and damage lung tissues. Suspended particulates also damage and discolor surfaces on which they settle, as well as produce haze and reduce regional visibility. Most stations in the Bay Area reported exceedances of the State standard on the same fall/winter days as reported in the South Bay. This indicates a regional air quality problem.

The primary sources of these pollutants are wood smoke and local traffic. Meteorological conditions that are common during this time of the year produce calm winds and strong surface-based inversions that trap pollutants near the surface. The high levels of PM_{10} result in not only health effects, but also reduced visibility.

Air Monitoring Data

Air quality in the region is controlled by the rate of pollutant emissions and meteorological conditions. Meteorological conditions, such as wind speed, atmospheric stability, and mixing height may all affect the atmosphere's ability to mix and disperse pollutants. Long-term variations in air quality typically result from changes in air pollutant emissions, while frequent, short-term variations result from changes in atmospheric conditions. The San Francisco Bay Area is considered to be one of the cleanest metropolitan areas in the country with respect to air quality. BAAQMD monitors air quality conditions at over 30 locations throughout the Bay Area.

As shown in Table 13 (next page), violations of State and Federal standards at the downtown San José monitoring station (the nearest monitoring station to the project site) during the 2009-2011 period (the most recent years for which data is available) include high levels of ozone, PM_{10}, and $PM_{2.5}$.[9] Violations of the CO standard have not been recorded since 1992.

[9] PM refers to Particulate Matter. Particulate matter is referred to by size (i.e., 10 or 2.5) because the size of particles is directly linked to their potential for causing health problems.

TABLE 13 Number of Ambient Air Quality Standards Violations and Highest Concentrations (2009-2011)				
Pollutant	**Standard**	**Days Exceeding Standard**		
		2009	**2010**	**2011**
SAN JOSÉ STATION				
Ozone	State 1-hour	0	5	1
	Federal 8-hour	0	3	0
Carbon Monoxide	Federal 8-hour	0	0	0
	State 8-hour	0	0	0
Nitrogen Dioxide	State 1-hour	0	0	0
PM_{10}	Federal 24-hour	0	0	0
	State 24-hour	0	0	0
$PM_{2.5}$	Federal 24-hour	0	3	3

Source: Bay Area Management District, Bay Area Air Pollution Summary

Attainment Status

The Federal CAA and the California CAA of 1988 require that CARB, based on air quality monitoring data, designate portions of the state where Federal or State ambient air quality standards are not met as "nonattainment areas". Because of the differences between the Federal and State standards, the designation of "nonattainment area" is different under the Federal and State legislation. Under the California CAA, Santa Clara County is a nonattainment area for O_3 and PM_{10}. The County is either in attainment or unclassified for other pollutants. Under the Federal CAA, the entire Bay Area region is classified as nonattainment for the 24-hour $PM_{2.5}$ standard. The U.S. EPA grades the region as in attainment or unclassified for all other air pollutants, included PM_{10}.

4.4.1.3 Toxic Air Contaminants

The Federal Clean Air Act defines Hazardous Air Pollutants (HAPs) as air contaminants identified by U.S. EPA as known or suspected to cause cancer, serious illness, birth defects, or death. In California, Toxic Air Contaminants (TACs) include all HAPs, plus other contaminants identified by CARB as known to cause morbidity or mortality (cancer risk). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., benzene near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, State, and Federal level.

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about two-thirds of the cancer risk from TACs (based on the Statewide average). Diesel particulate matter (DPM) is of particular concern since it can be distributed over large regions, thus leading to widespread public exposure. CARB has adopted and implemented a number of regulations for stationary and mobile sources to reduce emissions of DPM. Several of these regulatory programs affect medium and heavy duty diesel trucks that represent the bulk of DPM emissions from California highways. These

regulations include the solid waste collection vehicle (SWCV) rule, in-use public and utility fleets, and the heavy-duty diesel truck and bus regulations.

4.4.1.4 Odors

Common sources of odors include wastewater treatment plants, transfer stations, coffee roasters, painting/coating operations, etc. The project site is located approximately 1,965 feet east of Newby Island Landfill and 2,635 feet east of the WPCP. Other odor sources in and around the City of Milpitas include the Los Esteros substation (located approximately 1.6 miles southwest of the project site), the Zanker Road Landfill (located approximately 2.25 miles southwest of the project site), the former Cargill Salt Pond (located approximately 2.25 miles southwest of the project site), and the City's Main Sewer Pump Station (located approximately 2.8 miles south of the project site).

4.4.1.5 Sensitive Receptors

There are groups of people more affected by air pollution than others. CARB has identified children under 14, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases as people most likely to be affected by air pollution. These groups are classified as sensitive receptors. Locations that may contain a high concentration of sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. There is a residential neighborhood approximately 250 feet east of the project site.

4.4.2 Thresholds of Significance

For the purposes of this EIR, an air quality impact is considered significant if the project would:

- Conflict with or obstruct implementation of the applicable air quality plan,
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation,
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors),
- Expose sensitive receptors to substantial pollutant concentrations, or
- Create objectionable odors affecting a substantial number of people.

4.4.2.1 CEQA Thresholds Used in the Analysis

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. The City of Milpitas, and other jurisdictions in the San Francisco Bay Area Air Basin, often utilize the thresholds and methodology for assessing air emissions and/or health effects developed by the BAAQMD based upon the scientific and other factual data prepared by BAAQMD in developing those thresholds.

In December 2010, the California Building Industry Association (BIA) filed a lawsuit in Alameda County Superior Court challenging TACs and $PM_{2.5}$ thresholds adopted by BAAQMD in its 2010 CEQA Air Quality Guidelines (California Building Industry Association v. Bay Area Air Quality Management District, Alameda County Superior Court Case No. RG10548693). One of the identified concerns is inhibiting infill and smart growth in the urbanized Bay Area. On March 5, 2012, the Superior Court found that the adoption of thresholds by the BAAQMD in its CEQA Air Quality Guidelines is a CEQA project and BAAQMD is not to disseminate officially sanctioned air quality thresholds of significance until BAAQMD fully complies with CEQA. No further findings or rulings on the thresholds in the BAAQMD CEQA Air Quality Guidelines were made. The decision is currently being appealed to the California Court of Appeals, 1st District (case A136212).

The City understands the effect of the lawsuit to be that BAAQMD may eventually prepare an environmental review document before BAAQMD adopts the same or revised thresholds. However, the ruling in the case does not equate to a finding that the quantitative metrics in the BAAQMD thresholds are incorrect or unreliable for meeting goals in the Bay Area 2010 Clean Air Plan. Moreover, as noted above, the determination of whether a project may have a significant effect on the environment is subject to the discretion of each Lead Agency, based upon substantial evidence. Notwithstanding the BIA lawsuit, which has no binding or preclusive effect on the City of Milpitas's discretion to decide on the appropriate thresholds to use for determining the significance of air quality impacts, the City has carefully considered the thresholds previously prepared by BAAQMD and regards the thresholds listed below to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. Evidence supporting these thresholds has been presented in the following documents:

- BAAQMD. *Thresholds Options and Justification Report*. 2009.
- BAAQMD. *CEQA Air Quality Guidelines.* May 2011. (Appendix D).
- California Air Pollution Control Officers Association (CAPCOA). *Health Risk Assessments for Proposed Land Use Projects*. 2009.
- California Environmental Protection Agency, California Air Resources Board (CARB). *Air Quality and Land Use Handbook: A Community Health Perspective*. 2005.

The analysis in this EIR is based upon the general methodologies in the most recent BAAQMD CEQA Air Quality Guidelines (dated May 2012) and numeric thresholds for the San Francisco Bay Basin, including the thresholds listed in Table 14.

TABLE 14 Thresholds of Significance Used in Air Quality Analyses			
Pollutant	**Construction**	**Operation-Related**	
	Average Daily Emissions (pounds/day)	**Average Daily Emissions (pounds/day)**	**Maximum Annual Emissions (tons/year)**
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
Fugitive Dust (PM_{10}/$PM_{2.5}$)	BMPs	None	None
Risk and Hazards for New Sources and Receptors (Project)	Same as Operational Threshold	• Increased cancer risk of >10.0 in one million • Increased non-cancer risk of > 1.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.3 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Risk and Hazards for New Sources and Receptors (Cumulative)	Same as Operational Threshold	• Increased cancer risk of >100 in one million • Increased non-cancer risk of > 10.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.8 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Sources: *BAAQMD Thresholds Options and Justification Report (2009)* and *BAAQMD CEQA Air Quality Guidelines* (dated May 2011).			

4.4.2.2 Bay Area 2010 Clean Air Plan

The most recent clean air plan is the *Bay Area 2010 Clean Air Plan* that was adopted by BAAQMD in September 2010. This plan addresses air quality impacts with respect to obtaining ambient air quality standards for non-attainment pollutants (i.e., O_3, PM_{10} and $PM_{2.5}$), reducing exposure of sensitive receptors to toxic air contaminants (TACs), and reducing greenhouse gas (GHG) emissions such that the region can meet AB 32 goals of reducing emissions to 1990 levels by 2020. The consistency of the proposed project with this regional plan is primarily a question of the consistency with the population/employment assumptions utilized in developing the 2010 CAP, which were based on ABAG Projections. The proposed project includes General Plan Amendments and rezoning and, as a result, the growth assumptions made under the CAP for the City of Milpitas will be altered. Therefore, the project could substantially affect population or traffic forecasts and may not be consistent with the CAP.

The 2010 CAP includes emission control measures that are intended to reduce air pollutant emissions in the Bay Area either directly or indirectly. The control measures are divided into five categories that include:

- Measures to reduce stationary and area sources;
- Mobile source measures;
- Transportation control measures;

- Land use and local impact measures; and
- Energy and climate measures

The consistency of the proposed project was evaluated with respect to the relevant control measures. It was determined that area source emissions are controlled through BAAQMD permits and will not be significantly increased as a result of the project. For mobile source emissions, CARB has new regulations requiring the replacement or retrofit of on-road trucks, construction equipment, and other specific equipment that is diesel powered. Because construction equipment will be required to meet CARB standards, construction of the proposed project will not significantly increase emissions. Lastly, the analysis found that because the project by re-designating 29.2 acres from *Industrial Park* to residential and commercial will significantly reduce overall traffic trips relative to the development assumptions in the City of Milpitas General Plan, it is consistent with the CAP. **(Less Than Significant Impact)**

4.4.2.3 Impacts to Regional and Local Air Quality

Operational Emissions of Criteria Pollutants

The proposed residential project on Lot 1 and future residential development on Lot 2 combined would construct up to 236 residential units. BAAQMD has developed screening criteria to provide a conservative indication of whether a project could result in potentially significant air quality impacts. For operational impacts from criteria pollutants, the screening size is 325 dwelling units. Projects that are smaller than the screening size are considered to have a less than significant operational air quality impact.

The project is well below the screening size for the proposed land use. Therefore, proposed and future residential projects on Lots 1 and 2 will have a less than significant operational air quality impact. **(Less Than Significant Impact)**

Based on the City's development assumptions for future development under the proposed commercial General Plan Amendments, redevelopment of Lot 3 would fall below the operational screening size for the various commercial land uses. Therefore, future development on Lot 3 will have a less than significant operational air quality impact. **(Less Than Significant Impact)**

Carbon Monoxide Emissions

Carbon monoxide emissions from traffic generated by the project would be the pollutant of greatest concern at the local level. Congested intersections with a large volume of traffic have the greatest potential to cause high-localized concentrations of CO. BAAQMD screening thresholds indicate that a project would have a less than significant impact to CO levels if project traffic would not increase traffic levels at any affected intersection to more than 44,000 vehicles per hour. The project would result in a net decrease of approximately 4,970 daily traffic trips compared to future forecast trips based on current General Plan designations. The proposed residential development on Lot 1 will increase daily trips from the site by 803, but the increase would not be sufficient to cause any

intersections to exceed 44,000 vehicles per hour. Therefore, the project would not result in CO impacts. **(Less Than Significant Impact)**

Community Risk Impacts

BAAQMD recommended thresholds of significance for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor. Local community risk and hazard impacts are associated with TACs and $PM_{2.5}$ because emissions of these pollutants can have significant health impacts at the local level. The proposed residential project on Lot 1 and future residential development on Lot 2 under the proposed General Plan Amendment would include sensitive receptors that could be exposed to TACs due to the sites proximity to major roadways, including I-880 and Dixon Landing Road, as well as nearby stationary sources and a heavy rail line. Therefore, a community risk assessment for future site occupants was completed.

To determine the risk associated with the rail line (located approximately 1,320 feet east of the project site), the DPM emissions were calculated and the average concentration at each receptor location was estimated using air dispersion modeling.

The lifetime cancer risk and $PM_{2.5}$ concentrations from nearby roadways is calculated based on the annual average daily traffic (ADT). Per the BAAQMD screening analysis table, no analysis is required for roadways carrying less than 10,000 ADT. Roadways within 1,000 feet of the project site which carry more than 10,000 ADT are I-880 and Dixon Landing Road.

Permitted stationary sources of toxic air contaminants were identified within 1,000 feet of the proposed residential land uses on the project site. The following six sources were identified:

- International Disposal Corp of California
- City of Milpitas Pump Station (above ground storage tank)
- City of Milpitas Pump Station (other sources)
- Chevron Gas Station (on the project site)
- Ford Cleaners
- LTX Credence (above ground storage tank)

The threshold for total cancer health risk from TAC exposure is 10 cancer cases in one million exposed residents over a 70 year exposure period. The threshold for non-cancer health risk from $PM_{2.5}$ exposure is an annual average $PM_{2.5}$ concentration greater than 0.3 micrograms per cubic meter ($\mu g/m^3$).

The maximum total cancer health risk for Lot 1 residents was computed at 5.1 per one million, which is below the 10 in one million threshold. The maximum average annual concentration was just below the 0.30 $\mu g/m^3$ threshold. Therefore, operation of the proposed residential project on Lot 1 will not impact the health of future residents as a result of automobile/truck or rail line emissions. **(Less Than Significant Impact)**

Future residences on Lot 2 would be further removed from emissions on Dixon Landing Road than Lot 1 residences, but would be generally the same distance from I-880 and the rail line. Therefore, it is reasonable to assume that TAC and $PM_{2.5}$ emissions on Lot 2 would be equal to or slightly less than Lot 1. Nevertheless, a site specific health risk analysis will be required at the time a specific development project is proposed due to the fact that ADT on local roadways or operation of the rail line could change over time. If significant TAC impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level. **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would not be exposed to health risks from TAC emissions due to the limited duration of time employees and customers (who are not considered sensitive receptors) would spend on the site. **(No Impact)**

The maximum total cancer health risk for all stationary sources combined was computed at 8.6 per one million, which is just below the 10 in one million threshold. The maximum annual average $PM_{2.5}$ concentration for all stationary sources combined was 0.018 $\mu g/m^3$. This concentration is also below the BAAQMD threshold. Therefore, operation of the proposed residential project on Lot 1 will not impact the health of future residents as a result of stationary source emissions. **(Less Than Significant Impact)**

Future residences on Lot 2 would be generally the same distance from stationary sources as Lot 1 residences. Therefore, it is reasonable to assume that TAC and $PM_{2.5}$ emissions on Lot 2 would be equal to Lot 1. Nevertheless, a site specific health risk analysis will be required at the time a specific development project is proposed due to the fact that the number or location of stationary sources could change over time. If significant TAC impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level, **(Less Than Significant Impact)**

Possible future development on Lot 3 under the proposed commercial General Plan Amendments would not be exposed to health risks from stationary sources due to the limited duration of time employees and customers would spend on the site. **(No Impact)**

4.4.2.4 Construction Air Quality Impacts

Criteria Pollutants

As with operational emissions, BAAQMD has developed screening criteria to provide a conservative indication of whether construction activities associated with a project could result in potentially significant air quality impacts. For construction impacts from criteria pollutants, the screening size for single-family residential development is 114 dwelling units. Projects that are smaller than the screening size are considered to have a less than significant operational air quality impact.

The proposed residential project on Lot 1 is well below the screening size for the proposed land use, and would be constructed independent of future development on Lot 2. Therefore, the Lot 1

development will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Future development on the Lot 2 site could result in up to 152 single-family houses being constructed on-site. Because any future development on Lot 2 has the potential to exceed the screening criteria, a construction air quality analysis will be required at the time a specific development project is proposed. If significant construction impacts are identified, mitigation measures will be required by the City to reduce the impacts to a less than significant level, including the following exhaust control measures recommended by BAAQMD:

- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.
- The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options that become available.
- All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emissions reductions of NOx.
- All contractors shall use equipment that meets ARB's most recent certification standard for off-road heavy duty diesel engines.

Therefore, future development of Lot 2 will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Based on the City's development assumptions for future development under the proposed commercial General Plan Amendments, redevelopment of Lot 3 would fall below the construction screening size for the various commercial land uses and would be constructed independently of Lots 1 and 2. Therefore, future development on Lot 3 will have a less than significant construction air quality impact. **(Less Than Significant Impact)**

Dust Generation

Construction activities on all three lots would include demolition of the existing structures and hardscape, excavation, and grading of the sites which will generate dust and other particulate matter. The generation of dust and other particulate matter could temporarily impact nearby sensitive receptors.
As a condition of approval, the project will be required to implement the following standard dust control measures recommended by BAAQMD:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet powered vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contract at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

With the inclusion of the BAAQMD dust control measures, project construction activities would have a less than significant dust impact. **(Less Than Significant Impact)**

Toxic Air Contaminants and Community Risk

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. Construction activity is anticipated to include demolition of existing buildings, grading, building construction, paving, and application of architectural coatings.

Sensitive offsite receptors in the vicinity of the project site include adult and child residents in the residential neighborhoods to the east of the project site. A health risk assessment was completed that evaluated potential health effects to sensitive receptors from construction emissions of DPM during project construction.

According to BAAQMD screening tables, a project that constructs 50 to 100 residential units could potentially impact sensitive receptors located 410 to 575 feet from the construction site. On-site diesel exhaust emissions from construction were computed using the US Environmental Protection Agency Industrial Source Complex Short Term Model (ISCST3) air dispersion model.

Results of the community risk modeling indicated that construction of the project would result in a cancer risk of 1.2 cancer cases per million, which is below the threshold of 10 in one million excess cancer cases. Associated non-cancer hazards also would be well below threshold hazard index of 1 for DPM. **(Less Than Significant Impact)**

Results of the health risk modeling indicated that the project would result in maximum $PM_{2.5}$ concentrations of 0.175 ug/m^3, during construction which is below the significance threshold concentration of 0.3 µg/m^3. **(Less Than Significant Impact)**

4.4.2.5 Odor Impacts

The project would generate localized emissions of diesel exhaust during equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors. Odors would, however, be localized and are not likely to affect people off-site. **(Less Than Significant Impact)**

The project would place new residences near existing odor sources including the WPCP and Newby Island Landfill. As discussed in the BAAQMD CEQA Guidelines, offensive odors rarely cause physical harm but can be unpleasant and lead to considerable distress among the public. Any project with the potential to frequently expose members of the public to objectionable odors would be deemed to have a significant impact.

BAAQMD establishes project screening trigger levels for potential odor impacts. These are minimum distances that need to be provided between new sensitive receptors and various odor sources to avoid a potential adverse odor impact. When these minimum distances are not met, the potential for odor impacts exist. The minimum distance for wastewater treatment plants and sanitary landfills and/or composting facilities from residential users is one mile. The parcels proposed for residential development on the project site are approximately 1,965 from Newby Island Landfill and 2,635 feet from the WPCP. Other odor sources in and around the City of Milpitas include the Los Esteros substation (located approximately 1.6 miles southwest of the project site), the Zanker Road Landfill (located approximately 2.25 miles southwest of the project site), the former Cargill Salt Pond (located approximately 2.25 miles southwest of the project site), and the City's Main Sewer Pump Station (located approximately 2.8 miles south of the project site). These sources are located well outside the one mile radius established by BAAQMD and were not considered potential odor sources for the project site.

For a project located near an existing source of odor, a project would have a significant impact if it is proposed for a site that is closer to an existing odor source than any location where there has been:

- More than one confirmed complaint per year averaged over a three year period, or
- Three unconfirmed complaints per year averaged over a three year period.

Based on data provided by BAAQMD, 15 unconfirmed and no confirmed complaints were reported between January 2010 and January 2013 for Newby Island Landfill. These complaints average to five per year, which would qualify as a significant impact.

BAAQMD also reports seven unconfirmed and no confirmed complaints in the same time frame for the WPCP. These complaints average less than three per year and do not qualify as a significant impact.

The City of Milpitas also has a reporting system for odor complaints. Citywide, a total of 196 odor complaints were filed in 2012. Based on data provided by the City, three complaints were generated from the immediate project area between June and December 2011, 41 in all of 2012, and two in January 2013. Based on the description of the odors, five of these complaints resulted from

operations of the WPCP. The remainder resulted from operation of Newby Island. Consistent with the BAAQMD findings, the unconfirmed complaints result in a significant impact from Newby Island Landfill and a less than significant impact from the WPCP.

Placement of residential land uses on the proposed project site would expose residents to odors from the existing daily operations of the nearby landfill. **(Significant Impact)**

4.4.3 Mitigation and Avoidance Measures for Air Quality Impacts

4.4.3.1 General Plan Policies

The policies in the City of Milpitas General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Development under the proposed General Plan amendment would be subject to existing General Plan policies, including those listed below.

The City of Milpitas has no General Plan policies that address odor impacts.

4.4.3.2 Project Specific Mitigation Measures

There is no feasible mitigation that would reduce the identified odor impact in that the landfill is not under the control of the applicant or the City of Milpitas.

4.4.4 Conclusion

Construction of the proposed project would have a less than significant air quality impact. **(Less Than Significant Impact)**

Operation of the proposed project would have a less than significant long-term impact on local and regional air quality and will not expose sensitive receptors to significant health risks from TAC emissions. **(Less Than Significant Impact)**

The proposed project would not conflict with or obstruct implementation of the 2010 CAP. **(Less Than Significant Impact)**

The proposed residential development on the project site would be exposed to significant odors from Newby Island Landfill. The only way to reduce the impact would be to change the operations of the landfill which is not under the control of the project applicant or the City of Milpitas. This impact is significant and unavoidable. **(Significant Unavoidable Impact)**

4.5 GREENHOUSE GAS EMISSIONS

The following discussion is based, in part, on a greenhouse gas emissions analysis prepared by *Illingworth & Rodkin* in January 2013. The report can be found in Appendix F of this EIR.

4.5.1 Overview

Unlike emissions of criteria and toxic air pollutants, which have local or regional impacts, emissions of GHGs have a broader, global impact. Global warming associated with the "greenhouse effect" is a process whereby GHGs accumulating in the atmosphere contribute to an increase in the temperature of the earth's atmosphere. The principal GHGs contributing to global warming and associated climate change are carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and fluorinated compounds. Emissions of GHGs contributing to global climate change are attributable in large part to human activities associated with the transportation, industrial, utility, residential, commercial, and agricultural sectors.

Impacts to California from climate change include shifting precipitation patterns, increasing temperatures, increasing severity and duration of wildfires, earlier melting of snow pack and effects on habitats and biodiversity. Sea levels along the California coast have risen up to seven inches over the last century, and average annual temperatures have been increasing. These and other effects would likely intensify in the coming decades and significantly impact the State's public health, natural and manmade infrastructure, and ecosystems.[10]

4.5.1.1 State of California

AB 32 and CEQA

The 2006 Global Warming Solutions Act (Assembly Bill (AB) 32) was created to address the Global Warming situation in California. The Act requires that the GHG emissions in California be reduced to 1990 levels by 2020. In addition, the Governor of California signed Executive Order S-3-05 in 2005 which identified the California Environmental Protection Agency (CalEPA) as the lead coordinating State agency for establishing climate change emission reduction targets in California. Under Executive Order S-3-05, the State plans to reduce GHG emissions to 80 percent below 1990 levels by 2050. Additional State law related to the reduction of GHG emissions includes SB 375, the Sustainable Communities and Climate Protection Act (see discussion below).

The California Natural Resources Agency, as required under State law (Public Resources Code Section 21083.05) amended the State CEQA Guidelines to address the analysis and mitigation of GHG emissions. Under the CEQA Guidelines, Lead Agencies, such as the City of Santa Clara, retain discretion to determine the significance of impacts from GHG emissions based upon individual circumstances. Neither CEQA nor the CEQA Guidelines provide a specific methodology for analysis of GHG and under the amendments to the CEQA Guidelines, a Lead Agency may describe,

[10] State of California Energy Commission. *2009 California Climate Adaptation Strategy Discussion Draft. Frequently Asked Questions.* August 3, 2009. <www.climatechange.ca.gov/adaptation/documents/2009-07-31_Discussion_Draft-Adaptation_FAQs.pdf>

calculate or estimate GHG emissions resulting from a project and use a model and/or qualitative analysis or performance based standards to assess impacts.

Senate Bill 375- Redesigning Communities to Reduce Greenhouse Gas Emissions/Plan Bay Area

Senate Bill 375 (SB 375), the Sustainable Communities and Climate Protection Act of 2008, requires regional transportation plans to include a Sustainable Communities Strategy (SCS) that links transportation and land use planning together into a more comprehensive, integrated process. The SCS is a mechanism for more effectively linking a land use pattern and a transportation system together to make travel more efficient and communities more livable. The result is reduced GHG emissions from passenger vehicles along with other benefits.

The target for the Bay Area is a seven percent per capita reduction in GHG emissions attributable to automobiles and light trucks by 2020 and a 15 percent per capita reduction by 2035. The base year for comparison of emission reductions is 2005. The 2013 Regional Transportation Plan, *Plan Bay Area*, will be the Bay Area's first plan that is subject to SB 375.[11]

4.5.1.2 Regional and Local Plans

Bay Area 2010 Clean Air Plan

The Bay Area 2010 Clean Air Plan (CAP) is a multi-pollutant plan prepared by the Bay Area Air Quality Management District (BAAQMD) that addresses GHG emissions along with other air emissions in the San Francisco Bay Area Air Basin. One of the key objectives in the CAP is climate protection. The 2010 CAP includes emission control measures in five categories: Stationary Source Measures, Mobile Source Measures, Transportation Control Measures, Land Use and Local Impact Measures, and Energy and Climate Measures. Consistency of a project with current control measures is one measure of its consistency with the CAP. The current CAP also includes performance objectives, consistent with the State's climate protection goals under AB 32 and SB 375, designed to reduce emissions of GHGs to 1990 levels by 2020 and 40 percent below 1990 levels by 2035.

4.5.1.3 City of Milpitas Climate Action Plan

The City of Milpitas is currently preparing a Climate Action Plan and Qualified Greenhouse Gas Emissions Strategy (CAP). The CAP is a strategic planning document that identifies how the City can achieve the GHG reduction targets contained in AB 32. Specifically, the CAP identifies ways in which the community and City can reduce GHG emissions and provide guidance for adapting to the anticipated effects of climate change. The City's Draft CAP (March 2013) looks at five key sectors – energy use, vehicle miles, waste production, water usage, and off-road activities and identifies best

[11]One Bay Area. "One Bay Area Fact Sheet". Accessed March 5, 2012. Available at: http://www.onebayarea.org/pdf/SB375_OneBayArea-Fact_Sheet2.pdf

practices based on public input to produce a blueprint for achieving GHG emission reductions in Milpitas and ultimately to comply with AB 32 and SB 375.[12]

The City will implement the CAP though a variety of programs and with public involvement. The Milpitas community will collectively play a role in achieving the goals of the CAP and, in turn, a sustainable future. Throughout the public engagement process of the CAP, the City will identify and promote the most effective ways to reduce GHG emissions within the community. Through the CAP, the City will establish predictability regarding mitigation strategies to address climate change. Adoption of the CAP is anticipated to be considered by the Milpitas City Council in May 2013.

4.5.1.4 Existing Conditions

The project site is a mix of occupied and vacant industrial and commercial buildings. The existing land uses generate approximately 8,870 daily traffic trips (based on Lot 1 buildings being vacant) and operation of these businesses uses electricity and water which results in the emission of GHGs from the site.

4.5.2 Thresholds of Significance

For the purposes of this EIR, a greenhouse gas emissions impact is considered significant if the project would:

- Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or
- Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data.

The first threshold will be assessed using quantitative thresholds for GHG emissions identified by BAAQMD in 2009. Using a methodology that models how new land use development in the San Francisco Bay area can meet Statewide AB 32 GHG reduction goals, BAAQMD identified a significance threshold of 1,100 metric tons of CO_2e per year. In addition to this bright-line threshold, an “efficiency” threshold was identified for urban high density, transit-oriented development projects that are intended to reduce vehicle trips but that may still result in overall emissions greater than 1,100 metric tons per year. This efficiency threshold is 4.6 metric tons of CO_2e per service population (e.g., residents and employees) per year.

[12] City of Milpitas Website. http//www.ci.miilpitas.ca.gov/government/planning/climate.asp Accessed March 27, 2013.

The City has carefully considered the thresholds prepared by BAAQMD[13] and regards the quantitative thresholds to be based on the best information available for residential and commercial development in the San Francisco Bay Area Air Basin. Evidence supporting these thresholds has been presented in the following documents:

- Bay Area Air Quality Management District (BAAQMD). 2009. *CEQA Thresholds Options and Justification Report.*
- BAAQMD. 2010. *California Environmental Quality Act Air Quality Guidelines*. (Appendix D).
- California Air Resources Board. 2008. *Climate Change Scoping Plan.* (Statewide GHG Emission Targets)

The second threshold listed above will be assessed based upon a review of the project's conformance with applicable plans and policies.

4.5.3 Greenhouse Gas Emissions Impacts

Given the overwhelming scope of global climate change, it is not anticipated that a single development project would have an individually discernible effect on global climate change. It is more appropriate to conclude that the GHG emissions generated by the proposed project would combine with emissions across the State, nation, and globe to cumulatively contribute to global climate change.

GHG emissions from the proposed project would include emissions from construction and operation of the project. The GHG emissions from the project include:

- Construction emissions;
- Emissions from the manufacture and transport of building materials;
- Mobile emissions (e.g., emissions from combustion of fossil fuels for vehicle trips to and from the site)
- Emissions from the generation of electricity to operate lighting, appliances, and HVAC on the site, and to convey water to the site.

4.5.3.1 Methodology

The CalEEMod model is used to estimate direct CO_2 emissions from the project and indirect mobile source emissions for both construction and operation of the project.

[13] In December 2010, the California Building Industry Association (BIA) filed a lawsuit in Alameda County Superior Court challenging adoption of thresholds developed by BAAQMD for its CEQA Air Quality Guidelines (California Building Industry Association v. Bay Area Air Quality Management District, Alameda County Superior Court Case No. RG10548693). On March 5, 2012, the Superior Court found that adoption of thresholds by the BAAQMD in its 2010 CEQA Air Quality Guidelines is a CEQA project and BAAQMD is not to disseminate officially sanctioned air quality thresholds of significance until BAAQMD fully complies with CEQA. No findings or rulings were made on the merit of the thresholds or the substantial evidence supporting the thresholds.

4.5.3.2 Operational Greenhouse Gas Emissions (Long Term Emissions)

The proposed residential project on Lot 1 is anticipated to be in full operation by the year 2016. There is no specific date for Lot 2 or 3 to redevelop, so no quantitative analysis is possible now.

Future redevelopment of Lot 2 under the proposed General Plan Amendment would result in a maximum of 152 residential units that would generate GHG emissions from traffic trips, energy, solid waste, and water, similar to the proposed development on Lot 1. The total GHG emissions that would result from redevelopment of Lot 2 is unknown. It would be speculative to estimate operational GHG emissions for Lot 2 because energy and traffic emissions are assumed to change by year based on planned increases in renewable energy usage and increases in fuel efficiency goals. At the time that a specific development project is proposed for Lot 2, a project specific GHG emissions assessment will be required. Nevertheless, with reductions in energy and traffic emissions between now and the year 2020 milestone (Lot 2 redevelopment may occur after 2020) and implementation of the City's Climate Action Plan, future development on Lot 2 would have a less than significant operational GHG emissions impact. **(Less Than Significant Impact)**

Future redevelopment of Lot 3 under the proposed General Plan Amendment would be comparable to the existing development on the site. As a result, GHG emissions would be equal to existing emissions or less as new structures would be more energy efficient than the existing structures. With no net increase in GHG emissions, future development on Lot 3 would have a less than significant operational GHG emissions impact. **(Less Than Significant Impact)**

Lot 1 Project Emissions

Default energy consumption rates were assumed in the model, and green buildings measures proposed by the project were factored in. The proposed residential project on Lot 1 has committed to the following specific green building measures:

- Diversion of 50 percent of all construction and demolition waste.
- Exceed Title 24 California Energy Code standards by 15 percent
- Landscaping will be comprised of 75 percent native species, will be drought tolerant.
- Plumbing will include high efficiency showerheads, bathroom faucets, kitchen and utility faucets, and toilets.
- HVAC system will be in compliance with the CALGreen code.
- Advanced mechanical ventilation.

Table 15 shows a breakdown of the annual operational GHG emissions of the proposed residential project on Lot 1. Because the existing buildings on Lot 1 are vacant, the analysis assumes existing emissions to be zero.

Based on the available project data, the residential project on Lot 1 would emit approximately 1,186 MT CO_2e/year in the first full operational year 2016. This would exceed the bright line 1,100 MT CO_2e/year significance threshold established by BAAQMD.

TABLE 15
Annual Project GHG Emissions in Metric Tons for Lot 1

Source Category	2016 Emissions	2020 Emissions
Area	80	80
Energy	264	245
Mobile	776	675
Solid Waste	54	54
Water	12	10
Total Emissions	***1,186***	***1,064***
Per Capital Emissions	***4.2***	***3.8***

The Guidelines include an "efficiency" threshold to be used for projects that result in overall emissions greater than 1,100 metric tons per year but emit GHGs at efficient levels that still allow achievement of AB 32. This efficiency threshold is 4.6 metric tons of CO_2e per service population (e.g., residents and employees) per year. Based on an assumed residential population on Lot 1 of 280 persons[14], the per capita emissions in 2016 would be 4.2 MT of CO_2e. The proposed residential project on Lot 1 would generate emissions below the efficiency threshold in 2016.

The State of California requires compliance with emissions reduction limits/standards established in Executive Order S-3-05 and AB 32 by the year 2020. In 2020, the project would emit 1,064 MT CO_2e/year which is below the bright line 1,100 MT CO_2e/year significance threshold established by BAAQMD. Therefore, from the year 2020 through the useful life of the Lot 1 development, the residences on Lot 1 would have a less than significant impact on GHG emissions and would not preclude the State from achieving its GHG reduction goals.

GHG emission rates associated with electricity consumption were adjusted to account for Pacific Gas & Electric utility's (PG&E) projected 2016 and 2020 CO_2 intensity rate. There rates are based, in part, on the requirement of a renewable energy portfolio standard of 33 percent by the year 2020. As shown in Table 15, the GHG emissions of the Lot 1 development associated with energy use would decrease over time. This decrease would occur as more renewable sources of energy are incorporated in PG&E's energy mix and would be independent of the Lot 1 development.

State regulations currently in place would also reduce GHG emissions from mobile sources (vehicles) over time. These regulations include the Pavley Rule that increases fleet efficiency (reducing fuel consumption) and the low carbon fuel standard.

Although energy use and vehicle trips associated with the Lot 1 development could initially contribute to GHG emissions above the bright-line threshold in the near term (2016), the emissions associated with the Lot 1 development would drop below the threshold prior to the 2020 milestone.

On May 7, 2013, the City of Milpitas adopted a Climate Action Plan to address GHG emissions and ensure the City's compliance with State GHG reduction goals. The Lot 1 development will be

[14] Based on an average 3.34 persons per household. State of California Department of Finances. *Census 2010.* 2010.

required, as a Condition of Approval, to comply with the Climate Action Plan, including any trip reduction measures, green building measures, or other measures not already proposed by the project that the City deems necessary. Therefore, the proposed project will have a less than significant GHG impact. **(Less Than Significant Impact)**

4.5.3.3 Construction Greenhouse Gas Emissions (Short Term Emissions)

GHG emissions would occur during demolition of the existing buildings and hardscape, excavation and grading of the site, and construction of the project. Construction of the project would involve emissions associated with equipment and vehicles used to construct the project, as well as emissions associated with manufacturing materials used to construct the project.

Neither the City of Milpitas nor BAAQMD have quantified thresholds for construction activities. The CalEEMod model was used to calculate CO_2 emissions generated from construction of the proposed residential project on Lot 1 over a period of 36 months starting in late 2013 and ending in 2015. It was estimated that construction of the Lot 1 residential development would emit 654 MT of CO_2 in 2014 and 575 MT in 2015. It is assumed that redevelopment of Lots 2 and 3 would have comparable construction emissions, even though construction equipment must meet more stringent emission reduction goals over time.

Given that the emissions would be temporary and that the project is in an urban setting close to construction supplies and equipment, and that the project will implement the best management practices outlined in Section 4.3, *Air Quality*, construction of the project would not contribute substantially to GHG emissions. **(Less than Significant Impact)**

4.5.4 Mitigation and Avoidance Measures for Greenhouse Gas Emissions Impacts

No mitigation is required or proposed.

4.5.5 Conclusion

Implementation of the proposed residential project on Lot 1 and future redevelopment of Lots 2 and 3 under the proposed General Plan Amendments will have a less than significant impact on operational GHG emissions. **(Less Than Significant Impact)**

Construction activities will have a less than significant short-term GHG impact. **(Less Than Significant Impact)**

4.6 ENERGY

This section was prepared pursuant to CEQA Guidelines Section 15126.4 (a)(1)(C) and Appendix F which requires that EIRs include a discussion of the potential energy impacts of proposed projects with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. The information in this section is based largely on data and reports produced by the California Energy Commission, the Bay Area Air Quality Management District (BAAQMD), and the Energy Information Administration of the U.S. Department of Energy.

4.6.1 Introduction and Regulatory Background

Energy consumption is analyzed in an EIR because of the environmental impacts associated with its production and usage. Such impacts include the depletion of nonrenewable resources (e.g., oil, natural gas, coal, etc.) and emissions of pollutants during both the production and consumption phases.

Energy usage is typically quantified using the British Thermal Unit (Btu).[15] As points of reference, the approximate amount of energy contained in a gallon of gasoline, a cubic foot of natural gas, and a kilowatt hour (kWh) of electricity are 123,000 Btus, 1,000 Btus, and 3,400 Btus, respectively. Utility providers measure gas usage in therms. One therm is approximately equal to 100,000 Btus.

Electrical energy is expressed in units of kilowatts (kW) and kilowatt-hours (kWh). One kilowatt, a measurement of power (energy used over time), equals one thousand joules per second.[16] A kilowatt-hour is a measurement of energy. If run for one hour, a 1,000 watt (1 kW) hair dryer would use one kilowatt-hour of electrical energy. Other measurements of electrical energy include the megawatt (1,000 kW) and the gigawatt (1,000,000 kW).

4.6.1.1 Regulatory Setting

Many Federal, State, and local statutes and policies address energy conservation. At the Federal level, energy standards set by the U.S. Environmental Protection Agency (EPA) apply to numerous products (e.g., the EnergyStar™ program). The EPA also sets fuel efficiency standards for automobiles and other modes of transportation. At the State level, Title 24 of the California Building Standards Code sets forth energy standards for buildings, rebates/tax credits are provided for installation of renewable energy systems, and the *Flex Your Power* program promotes conservation in multiple areas. The Title 24 standards have been revised and will be effective January 1, 2014.[17]

In January 2010, the State of California adopted the California Green Building Standards Code (CALGreen) that establishes mandatory green building standards for all buildings in California. The

[15] The British Thermal Unit (Btu) is the amount of energy that is required to raise the temperature of one pound of water by one degree Fahrenheit.
[16] As defined by the International Bureau of Weights and Measures, the joule is a unit of energy or work. One joule equals the work done when one unit of force (a Newton) moves through a distance of one meter in the direction of the force.
[17] California Energy Commission. "Building Energy Efficiency Program." 2013. Accessed March 15, 2013. Available at: http://www.energy.ca.gov/title24/

code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

At the local level, the City of Milpitas sets green building standards for new private and municipal development. Title II, Chapter 20 of the Milpitas Municipal Code defines new construction of different types and sizes based on the number of residential units or for nonresidential, the gross building area of development. Under these regulations, new residential projects constructing over five units are required to adhere to the Build It Green or LEED standards.[18, 19] The proposed project must prepare and submit a checklist demonstrating the achievement of a minimum of 50 points on the Build It Green scale or equivalent for LEED. The checklist must be verified by a GreenPoint Rater Certified through Build It Green and submitted to the City of Milpitas Chief Building Official.

4.6.2 Existing Setting

Total energy usage in California was approximately 7,826 trillion Btu in the year 2010 (the most recent year for which this specific data was available).[20] The breakdown by sector was approximately 19 percent (1,463 trillion Btu) for residential uses, 19 percent (1,501 trillion Btu) for commercial uses, 22 percent (1,765 trillion Btu) for industrial uses, and 40 percent (3,097 trillion Btu) for transportation.[21] This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

The two industrial buildings proposed to be demolished on Lot 1 total 106,657 square feet. Since the two buildings are currently vacant, they do not use any energy in operation. The site may consume a nominal amount of electricity for security lighting and other systems, but for the purposes of this EIR, Lot 1 is considered to use no energy. Given the nature of the existing and proposed land uses, the remainder of this discussion will focus on the three most relevant sources of energy: electricity, natural gas, and gasoline for vehicle trips.

While Lots 2 and 3 are currently occupied and consume energy, the project does not currently propose any physical changes to these properties. As a result, no specific analysis of energy consumption on these Lots is provided because there is no timeframe for the redevelopment. If these sites are redeveloped in the future under the proposed General Plan Amendments, they will incorporate site specific green building measures to reduce energy consumption.

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[18] Build It Green is a non-profit organization that promotes healthy, energy and resource-efficient building practices in California. Build It Green provides a GreenPoint Rated system that verifies a home has been built according to proven green building standards.

[19] Created by the non-profit organization United States Green Building Council, LEED (Leadership in Energy and Environmental Design) is a certification system that assigns points for green building measures based on a 110-point rating scale.

[20] United States Energy Information Administration. "Table C4. Total End-Use Energy Consumption Estimates, 2010." Accessed March 13, 2013. Available at: http://www.eia.gov/beta/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/sum_use_tx.html&sid=CA

[21] United States Energy Information Administration. "Table C1. Energy Consumption Overview: Estimates by Energy Source and End-Use Sector, 2010". Accessed March 13, 2013. Available at: http://www.eia.gov/beta/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/sum_btu_1.html&sid=CA

The City of Milpitas encourages the use of building materials that include recycled materials and requires new buildings to be built to current codes, including the City's adopted Green Building Ordinance, which requires insulation and design to minimize wasteful energy consumption resulting in the use of less energy for heat and light and less water than a standard residential development. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption.

4.6.2.1 Electricity

Electricity supply in California involves a complex grid of power plants and transmission lines. In 2011, California produced approximately 70 percent of the electricity it consumed; it imported the remaining 30 percent from 11 western states, Canada, and Mexico. Electricity imports from the northwest states were particularly high in 2011 due to an increase in hydroelectric generation resulting from higher precipitation in the northwest.

The bulk of California's electricity comes from power plants. In 2011, 36.5 percent the state's electricity was generated by natural gas, 15.7 percent by nuclear, 13.4 percent by large hydroelectric, 8.4 percent by coal, and 11.5 percent by unspecified sources. Renewable sources such as rooftop photovoltaic systems, biomass power plants, and wind turbines, accounted for the remaining 14.5 percent of California's electricity. [22]

Electricity consumption in California increased by approximately 4.6 percent in the last decade, from approximately 260,408 gigawatt hours (GWh) in 2000 to approximately 272,342 GWh in 2010. Electricity consumption is forecast to increase by five to nine percent over 2010 levels by 2015, bringing total consumption to between 286,000 and 296,000 GWh.[23]

Pacific Gas and Electric (PG&E) provides both natural gas and electricity utility service in Milpitas for residential, commercial, industrial, and municipal uses. PG&E generates electricity at hydroelectric, nuclear, renewable, natural gas, and coal facilities. In 2011, natural gas facilities provided 25 percent of PG&E's electricity delivered to retail customers; nuclear plants generated 22 percent; hydroelectric operations accounted for 18 percent; renewable energy facilities including solar, geothermal, and biomass provided 19 percent; and 15 percent was unspecified.[24] Under the provisions of Senate Bill 107, investor-owned utilities were required to generate 20 percent of their retail electricity using qualified renewable energy technologies by the end of 2010. PG&E's 2011 electricity mix was 19 percent renewable.

Electricity usage for differing land uses varies substantially by the type of uses in a building, the type of construction materials used, and the efficiency of the electricity-consuming devices used. Electricity used in the PG&E Planning Area within which the project is located, is consumed

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[22] California Energy Commission, Energy Almanac, "Total Electricity System Power." Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/electricity/total_system_power.html

[23] California Energy Commission. "2011 Integrated Energy Policy Report (CEC-100-2011-001-CMF)." Page 103. Accessed March 13, 2013. Available at: http://www.energy.ca.gov/2011publications/CEC-100-2011-001/CEC-100-2011-001-CMF.pdf

[24] PG&E. "Clean Energy Solutions." Accessed March 13, 2013. Available at: http://www.pge.com/en/about/environment/pge/cleanenergy/index.page

primarily by the commercial sector (41 percent), the residential sector (33 percent), and the industrial sector (approximately 16 percent).[25]

If the industrial buildings were occupied, then based on BAAQMD's BGM User's Manual, the average annual electricity usage would be 5.8 kWh per square foot per year.[26] The project proposes to demolish the two existing buildings on Lot 1 which total 106,657 square feet. At full occupancy, the two existing buildings would use approximately 618,610 kWh of electricity each year. In 2011, Santa Clara County consumed approximately 16,384 million kWh of electricity.[27]

4.6.2.2 Natural Gas

In 2010, approximately 12 percent of California's natural gas supply came from in-state production, while 88 percent was imported from other western states and Canada.[28] PG&E and two other major gas utilities provide 98 percent of the state's natural gas.[29] PG&E supplies Milpitas with natural gas through underground high-pressure pipes.

The most recent data from the California Energy Commission shows that between 2006 and 2011, on average, approximately 34 percent of the natural gas delivered for consumption in California was for electricity generation, 32 percent for industrial uses, 22 percent for residential uses, 11 percent for commercial uses, and less than one percent for transportation.[30] As with electricity usage, natural gas usage depends on the type of uses in a building, the type of construction materials used, and the efficiency of gas-consuming devices. In industrial buildings, natural gas can be used for a variety of applications including heating, ventilation, and air conditioning (HVAC) systems and boilers. Since the buildings are vacant, no natural gas is currently used on site.

According to the BAAQMD BGM User's Manual, the average annual natural usage for the existing buildings on Lot 1 would be 4,300 Btu per square foot, or 4.3 kBtu/sf per year.[31] If the two industrial buildings were in use, they would use approximately 458,625 kBtu, or 458.63 million Btus (MMBtu)

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[25] California Energy Commission, Energy Consumption Data Management System. "Electricity Consumption by Planning Area, 2011." Accessed March 13, 2013. Available at: http://ecdms.energy.ca.gov/elecbyplan.aspx

[26] Electricity factors for 'All Warehouses' in Climate Zone 4 are estimated based on the 2006 California Commercial End User's Survey. Bay Area Air Quality Management District. "Draft BAAQMD Greenhouse Gas Model User's Manual." Accessed March 13, 2013. Available at: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BGM%20Users%20Manual.ashx?la=en

[27] California Energy Commission, Energy Consumption Data Management System. "Electricity Consumption by County." 2008 (based on 2011 data). Accessed March 15, 2013. Available at: http://www.ecdms.energy.ca.gov/elecbycounty.aspx

[28] California Energy Commission. "Natural Gas Supply by Region." 2011. Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/naturalgas/natural_gas_supply.html

[29] California Energy Commission. "Overview of Natural Gas in California." 2013. Accessed March 13, 2013. Available at: http://www.energyalmanac.ca.gov/naturalgas/overview.html

[30] U.S. Energy Information Administration. "Natural Gas Summary." January 31, 2013. Accessed March 13, 2013. Available at: http://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SCA_a.htm

[31] Bay Area Air Quality Management District. "Draft BAAQMD Greenhouse Gas Model User's Manual." Accessed March 13, 2013. Available at: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BGM%20Users%20Manual.ashx?la=en

per year. In 2011, the State of California consumed approximately 2.2 trillion cubic feet of natural gas, or 2.26 billion MMBtu.[32, 33]

4.6.2.3 Gasoline for Motor Vehicles

California accounts for more than one-tenth of the United States' crude oil production and petroleum refining capacity.[34] In 2010, 21.5 billion gallons of gasoline, diesel, and jet fuel were consumed in California.[35] According to the California Energy Commission's *2011 Integrated Energy Policy Report*, California is experiencing a downward trend in sales of gasoline, diesel, and jet fuel, primarily due to low economic growth and high unemployment. It is expected that this trend will continue in the future due to high fuel prices, efficiency gains, competing fuel technologies, and mandated use of alternative fuels.

The average fuel economy for light-duty vehicles (autos, pickups, vans, and SUVs) in the United States has steadily increased from about 13.1 miles-per-gallon (mpg) in the mid-1970s to 22.6 mpg in 2011 (estimated).[36] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was subsequently revised to apply to cars and light trucks of Model Years 2011-2016.[37] In 2012, the Federal government raised the fuel economy standard to 54.5 miles per gallon for cars and light-duty trucks by Model Year 2025.[38]

The BAAQMD URBEMIS 2007 model, which takes into account the land use type, size, and location, estimates that the average length of vehicle trips to and from the existing buildings on Lot 1 would be 7.4 miles if the buildings were occupied. The two buildings that the project proposes to demolish (APNs 022-37-011 and -012) would generate approximately 743 daily trips (see Table 2 of the Supplemental Traffic Analysis, Appendix D of the EIR). Thus the daily total vehicle miles travelled (VMT) to and from the two buildings on the project site would be 5,498 miles. Based on the 2011 EPA estimated average fuel economy of 22.6 miles per gallon, the existing industrial development would result in the consumption of approximately 243 gallons of gasoline per day. The

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[32] United States Energy Information Administration. "Which states consume and produce the most natural gas?" January 15, 2013. Accessed March 15, 2013. Available at: http://www.eia.gov/tools/faqs/faq.cfm?id=46&t=8
[33] Conversion uses 1,027 Btu per cubic foot of natural gas.
[34] United States Energy Information Administration. "California State Energy Profile." Available at: http://www.eia.gov/beta/state/analysis.cfm?sid=CA
[35] California Energy Commission. "2011 Integrated Energy Policy Report (CEC-100-2011-001-CMF)." Page 139. Accessed March 13, 2013. Available at: http://www.energy.ca.gov/2011publications/CEC-100-2011-001/CEC-100-2011-001-CMF.pdf
[36] U.S. Environmental Protection Agency. "Light-Duty Automotive Technology, Carbon Dioxide Emissions and Fuel Economy Trends: 1975 through 2011." March 2012. Page i. Available at: http://www.epa.gov/otaq/cert/mpg/fetrends/2012/420r12001a.pdf
[37] U.S. Department of Energy. "Energy Independence & Security Act." Accessed March 13, 2013. Available at: http://www1.eere.energy.gov/femp/regulations/eisa.html.
[38] National Highway Traffic Safety Administration. "Obama Administration Finalizes Historic 54.5 mpg Fuel Efficiency Standards." August 28, 2012. Available at: http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/Obama+Administration+Finalizes+Historic+54.5+mpg+Fuel+Efficiency+Standards

existing 106,657 square feet of industrial space would use 88,859 gallons of gasoline each year if fully occupied.[39]

4.6.3 Thresholds of Significance

Based on Appendix F of the CEQA Guidelines, and for the purposes of this EIR, a project will result in a significant energy impact if the project will:

- Use fuel or energy in a wasteful manner; or
- Result in a substantial increase in demand upon energy resources in relation to projected supplies; or
- Result in longer overall distances between jobs and housing.

4.6.4 Energy Impacts

4.6.4.1 Estimated Energy Use of Lot 1

Implementation of the proposed residential project on Lot 1 would result in the construction 84 new single-family detached homes and the re-designation of six parcels (Lots 2 and 3) to make the general plan designation and zoning consistent with the current commercial land uses. Three other parcels, two of which would support the 84 proposed homes (Lot 1), would be designated *Single-Family Moderate* Density and zoned *R1-2.5 Single Family Residential*. No construction is currently proposed on Lots 2 or 3, which means that the current energy use for those sites would not change in the near term. Future redevelopment of Lots 2 and 3 under the proposed general plan and zoning changes could increase energy use. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption.

Energy would be consumed during both the construction and operational phases of the proposed residential project on Lot 1. The demolition and construction phase will require energy for the manufacture and transportation of building materials, preparation of the site (e.g., demolition of the existing buildings and grading), and the actual construction of the buildings. The operation of the proposed residences would consume electricity and natural gas primarily for building heating and cooling, lighting, cooking, and water heating. Gasoline would be used by residents of the homes for general transportation and for commutes to and from work.

Table 16 summarizes the estimated net increase in energy use resulting from implementation of the project. The BAAQMD BGM model estimates average residential electricity and natural gas use based on the California Residential Appliance Saturation Study.

[39] Calculations for annual gasoline usage use 365.25 days as a measure of one year in order to account for leap years.

TABLE 16 Annual Energy Use from Lot 1			
Type of Energy	**Existing Energy Use at Site**	**Project Energy Use[1]**	**Energy Use Increase**
Electricity	~ 0 kWh	622,860 kWh	622,860 kWh
Natural Gas	0 MMBtu	4,166 MMBtu	4,166 MMBtu
Gasoline	0 gallons	96,034 gallons	96,034 gallons

[1] Based upon the existing and proposed square footage of the buildings and the following Average Annual Energy Use Factors from URBEMIS 2007 and BAAQMD BGM models:

Single Family Residential (Climate Zone 4) – 7,415 kWh/unit/year and 49.6 MMBtu/unit/year (natural gas use)

[2] Estmated gasoline use based upon trip estimates in Table 2 of the Supplemental TIA in Appendix D of this EIR (803 daily trips for 84 single-family detached units), an estimated average trip length of 7.4 miles, and the U.S. EPA 2011 fuel economy estimates of 22.6 miles per gallon.

4.6.4.2 Operational Impacts from the Proposed Residential Project On Lot 1

As shown in Table 16 above, the residential project on Lot 1 would increase electricity use on Lot 1 by approximately 622,860 kWh per year, natural gas usage by 4,166 MMBtu per year, and gasoline consumption by 96,034 gallons over existing conditions.

The new residences would be required to build to the State CalGreen code, which includes insulation and design to minimize wasteful energy consumption. In order to comply with the City of Milpitas requirements, the project proposes to achieve 70 points on the Build It Green GreenPoint Rated checklist, 20 points more than required by the City of Milpitas. The GreenPoint Rated checklist measures a project's sustainability through five main categories: energy efficiency, water conservation, resource conservation, indoor air quality, and community-oriented design. The project would achieve 30 checklist points for energy efficiency by exceeding State Title 24 standards by 15 percent.

Implementation of the proposed sustainability measures would result in efficient energy use at the Lot 1 site, compliance with the CalGreen standards, and a verified GreenPoint Rating in compliance with the City of Milpitas code. While energy use would increase over existing conditions, the addition of 84 residences at an infill location would not substantially increase demand on energy resources in relation to projected supplies or existing demand. **(Less Than Significant Impact)**

4.6.5 Mitigation and Avoidance Measures for Energy Impacts

No mitigation is required or proposed.

4.6.6 Conclusion

The proposed residential project on Lot 1 would place residential uses at an infill site within reasonable distance of existing job opportunities. With implementation of the proposed green building design features the project would not result in the wasteful use of fuel or energy. The

project would not result in a substantial increase in demand upon energy resources in relation to projected supplies. **(Less Than Significant Impact)**

Future development on Lots 2 and 3 would likely be more energy efficient than the existing buildings and would be required to conform to the City's Green Building Ordinance which would minimize energy consumption. **(Less Than Significant Impact)**

SECTION 5.0 CUMULATIVE IMPACTS

Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, are considerable or which compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant projects taking place over a period of time. The CEQA Guidelines state (§15130) that an EIR shall discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the potential impacts which might result from approval of past, present and reasonably foreseeable future projects, in conjunction with the proposed project.

5.1 Cumulative Impacts

5.1.1 Thresholds of Significance

The discussions below address the following aspects of cumulative impacts:

- Would the effects of the proposed project, when combined with the effects of all past, present, and pending development result in a cumulatively significant impact on the resources in question?
- If a cumulative impact is likely to be significant, would the contribution of the proposed project to that impact be cumulatively considerable?

The City of Milpitas has 10 approved housing projects, three pending housing projects, and four housing projects currently under construction. The majority of this development is within the transit area and none of the projects are in proximity to the project site. The City recently approved an electronic billboard to be installed adjacent to the Starbucks on Lot 3. A discussion of that project is included below. No other projects within the City or in the neighboring cities of Fremont or San Jose are in close enough proximity to the project site to have the potential for cumulative impacts.

Based on the analysis in this EIR, the proposed project would result in a less than significant impact to aesthetics, agricultural/forestry resources, cultural resources, energy, geology and soils, GHG, hazards and hazardous materials, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems. The degree in which the proposed project would add to existing or probable future impacts on existing land uses and/or resources would be negligible. As a result, the project's contribution to a cumulatively significant impact in any of these resource areas would not be considerable.

The proposed project would result in significant air quality, biological resources, and noise impacts. The biological impacts will result from construction of the proposed project. These impacts are temporary and will be reduced to a less than significant level with implementation of the proposed mitigation measures. Because of the temporary nature of these impacts and the fact that the impacts will be mitigated, there would be no long term cumulative effect. The proposed bridge would have a

less than significant impact and, as there are no other proposed bridges in proximity to the site along Penitencia Creek, it would not have a cumulative effect. As a result, the projects contribution to a cumulatively significant biological resources impact would not be considerable.

The operational air quality impacts would result from placing housing in proximity to the Newby Island Landfill. There is no feasible mitigation to reduce this impact to a less than significant level. The nature of the impact is such that it only affects residents within a specific area of Milpitas and does not meet the criteria of a cumulative impact. The placement of 84 houses within the landfill's area of impact and the possible future construction of up to 152 additional houses would not be cumulatively considerable. In that the project exposes sensitive receptors to an impact, in does not by itself generate odors that cause an impact.

The operational noise impacts will result from placing residences and open space areas in a high noise area. The identified impact will be reduced to a less than significant level with implementation of the proposed mitigation measures. Because of the nature of this impact (the project is exposed to noise impacts, but it does not substantially contribute to ambient noise levels) and the fact that the impact will be mitigated, there would be no long term cumulative effect.

5.1.2 Cumulative Transportation Impacts

To determine future cumulative traffic volumes in the study area, the effects of the proposed General Plan Amendments were analyzed based on projected roadway link volumes using year 2030 land use data. Peak hour volumes (AM and PM) were developed using the City of Milpitas Travel Demand Forecast (TDF) model, which is a sub-area model of the VTA CMP TDF model.

5.1.2.1 Year 2030 Network Assumptions

The year 2030 roadway network includes the following planned transportation improvements:

- I-880 will be widened to include a high occupancy vehicle land in each direction from Montague Expressway north into Alameda County.

- Calaveras Boulevard will be widened to six lanes between Milpitas Boulevard and Abel Street. Operational improvements are also planned for intersections on Calaveras Boulevard between I-680 and I-880.

- Montague Expressway will be widened to provide eight lanes between Great Mall Parkway and I-880.

- McCarthy Boulevard will be extended north of Dixon Landing Road to connect to Fremont Boulevard. The planned extension would include two northbound and two southbound travel lanes.

5.1.2.2 Year 2030 Traffic Volumes

For the purposes of estimating the effect of the proposed land use changes, the traffic impacts of the proposed residential project on Lot 1 and General Plan Amendments on Lots 2 and 3 were evaluated relative to the existing land uses. The net project traffic volumes for the year 2030 analysis were calculated using a three-step process as follows:

- **Traffic Generation.** A comparison of the trip generation between the proposed General Plan Amendments and the existing land uses (see Table 17). The proposed changes in land use would decrease the total trip generation from the project site by 675 trips in the AM Peak Hour and 635 trips in the PM Peak Hour.

- **Traffic Distribution & Assignment.** The directions of approach and departure of the proposed and existing land uses were estimated along major travel corridors. Because traffic from the industrial/commercial and residential land uses have different origins and destinations, separate trip distributions were developed for each use. The peak hour trips generated by the proposed and existing land uses were assigned to specific street segments in accordance with their respective trip distributions.

- **Traffic Volume Tabulation.** For each roadway link, the projected Peak Hour traffic volumes with the proposed General Plan were estimated by subtracting the trips generated by the existing land uses from year 2030 traffic volumes, and adding the estimated traffic generated by the proposed General Plan Amendments.

TABLE 17
Year 2030 Trip Generation

Land Use	APN	Daily Total	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Existing Land Uses								
Industrial Park	011, 012, 019	5,703	564	124	688	148	557	705
Shopping Center	049	2,102	30	19	49	89	94	183
Service Station	040	1,834	73	70	143	85	82	167
Hotel	047	1,070	47	33	80	41	43	84
Office	045, 046	1,324	164	22	186	30	149	176
Pass-by Trips		*-1,338*	*-37*	*-35*	*-72*	*-60*	*-60*	*-120*
Subtotal		**10,696**	**842**	**234**	**1,076**	**333**	**865**	**1,198**
Proposed Land Uses								
Single-Family	011, 012, 019	2,259	44	133	177	150	88	238
Shopping Center	040, 049	2,710	31	20	51	92	96	188
Hotel	047	1,070	47	33	80	41	43	84
Office	045, 046	662	82	11	93	15	75	90
Pass-by Trips		*-434*	*0*	*0*	*0*	*-18*	*-19*	*-38*
Subtotal		**5,727**	**204**	**197**	**401**	**280**	**283**	**563**
Net New Project Trips		***-4,970***	***-638***	***-37***	***-675***	***-53***	***-582***	***-635***

5.1.2.3 Year 2030 Link Analysis

The analysis of year 2030 conditions was conducted based on projected roadway link volumes from the City of Milpitas Travel Demand Forecast (TDF) model. For roadway segments, the traffic operations were evaluated based on volume-to-capacity (v/c) ratios. A project is said to adversely impact a roadway segment if:

1. The roadway segment is projected to operate below its LOS standard under existing General Plan conditions and the proposed General Plan is projected to cause an increase in traffic of at least one percent of its capacity; or

2. The roadway segment is projected to operate at or better than its LOS standard under existing General Plan conditions and the proposed General Plan is projected to degrade the level of service to less than acceptable levels.

Year 2030 conditions with the proposed General Plan Amendments were evaluated relative to year 2030 conditions under the existing General Plan in order to determine potential impacts. Although many of the study segments are projected to operate at LOS E or F during the AM and PM Peak Hours, according to the City of Milpitas roadway segment impact criteria, the proposed land use changes would not result in any significant impacts to roadway segments. The proposed land use changes would reduce traffic on all of the surrounding roadways.

5.1.2.4 Conclusion

The proposed changes to the General Plan, which would replace industrial land uses with commercial and residential uses, would not result in any cumulative traffic impacts. The proposed General Plan Amendments would generate fewer overall traffic trips compared to the existing General Plan designations. **(Less Than Significant Impact)**

5.1.3 Cumulative Aesthetic Impacts

In January 2013, the City of Milpitas approved the installation of two LED electronic billboards along the east side of I-880 at 1545 and 1301 California Circle. Only the billboard at 1545 California Circle (adjacent to the existing Starbucks) is within close proximity to the proposed residential parcels on the project site. The billboard support column will be 50 feet tall (measured from grade) and the sign faces will be 14 feet by 48 feet (672 square feet per side). This billboard will be visible from all parcels within the project site.

The billboard FEIR identified residential land uses as sensitive receptors that could be impacted by the proposed LED billboards. The FEIR concluded that at a distance of 500 feet or more, the proposed billboards would have a less than significant impact on the visual character of the adjacent residential areas. The nearest proposed residences on Lots 1 and 2 would be approximately 480 feet from the approved billboard.

While the proposed housing would be slightly closer than the 500 foot distance identified in the billboard FEIR, ultimately the 20 foot difference would have no measureable effect on the visual character of the proposed residential area along California Circle, therefore the FEIR's conclusions concerning the compatibility of the billboard with existing residences at 500 feet would be applicable to the proposed project residences at 480 feet.

The billboard FEIR did identify a significant impact from spill light and sky glow due to operation of the billboards during evening hours. Mitigation measures, listed below, were included in the project to reduce spill light and sky glow impacts on nearby residences.

> Mitigation 4.2: As a condition of approval, require the final Project design specifications to include a combination of display angle, display light source shielding, LED display brightness control (illumination aim, focus, 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 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.

The FEIR concluded that with implementation of this mitigation, to the satisfaction of the City's Planning and Neighborhood Services Director, the light, glare, and sky glow impacts of the billboard project would be reduced to less than significant.

5.1.3.1 Conclusion

With implementation of the mitigation measures identified in the billboard FEIR, the proposed housing on Lots 1 and 2 of the project would be exposed to less than significant visual and aesthetic impacts from the approved but not yet constructed billboard. **(Less Than Significant Cumulative Impact)**

SECTION 6.0 PROJECT ALTERNATIVES

Section 15126.6 of the CEQA Guidelines requires that an EIR describe a reasonable range of alternatives to the proposed project that could feasibly attain most of the project objectives while avoiding or considerably reducing any of the significant impacts of the proposed project. In addition, the No Project Alternative must be analyzed in the document.

In order to comply with the purposes of CEQA, it is necessary to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented while trying to meet most of the basic objectives of the project. The Guidelines emphasize a common sense approach. The alternatives shall be reasonable, shall "foster informed decision making and public participation," and shall focus on alternatives that avoid or substantially lessen the significant impacts.

The stated objectives of the project proponent are to:

1. Convert three existing office-use properties from industrial-use to residential General Plan and Zoning land-use categories in order to improve the diversity of for-sale housing opportunities in Milpitas.

2. Convert two existing office-use properties and construct a high-quality, medium-low density, market-rate, for-sale residential subdivision of approximately 84 single-family homes adjacent to existing residential neighborhoods, trails and a community park.

3. Provide medium-low density housing which supports convenient living that is close to shopping, services, and transportation yet transitions sensitively with adjacent industrial and commercial uses.

4. Improve encourage pedestrian and bicycle usage along Penitencia Creek.

The stated objectives of the City are to:

1. Promote and encourage high quality residential development, trails/bike path connectivity, parks and recreation development, and other quality-of-life assets that will set the tone for potential planning and transition of the surrounding area along California Circle as a vibrant mix of residential and commercial type use, well-connected and identifiable neighborhood.

2. Develop, plan, and encourage a mix of new commercial retail, service, and office as well as maintaining existing industrial developments to increase the sales tax base and employment opportunity in the City of Milpitas.

3. Encourage potential for additional commercial uses and future commercial or mixed use development along the east side of the Interstate 880 corridor.

4. Maintain remaining viable commercial property for commercial and industrial uses for sustainable economic development.

5. Provide a direct pedestrian and bicycle connection between the proposed residential and adjacent properties as well as the existing multi-family residential community across the Penitencia Creek.

6. Provide an appropriate residential design, density, circulation, and public benefit that can be integrated in future area planning and land use along California Circle.

An EIR is required to include a "No Project" alternative that "compares the impacts of approving the proposed project with the impacts of not approving the proposed project."[40]

The significant impacts identified in this EIR as resulting from the proposed project include significant unavoidable odor impacts due to the proximity of the proposed residences to Newby Island Landfill, as well as significant interior and exterior noise impacts for the proposed housing, and potential construction impacts to nesting raptors. The logical way to reduce the odor and noise impacts would be to propose the housing in a different location as the entire site is within the one mile radius of the Newby Island Landfill and WPCP and the noise sources cannot be avoided on-site. The biological resources impacts could occur at any project location with mature trees.

6.1 NO PROJECT ALTERNATIVE

The CEQA Guidelines [§15126(d)4] require that an EIR specifically discuss a "No Project" alternative, which shall address both "the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services." Since the project site is developed, one alternative would be to maintain the entire site as is. If the project site were to remain as is with industrial buildings on the eastern half of the site and commercial businesses of the western portion of the site, there would be no new impacts.

The entire project site is designated *Industrial Park* in the General Plan and is zoned *Industrial Park*. The proposed residential project on Lot 1 is not consistent with either the current General Plan designation or zoning. Given the General Plan land use designation (and corresponding zoning designation), Lot 1 could only be redeveloped with industrial buildings similar to those currently existing on-site, which would avoid the noise and odor impacts of the proposed project due to the fact that commercial and office uses are not considered sensitive receptors. Construction impacts would be comparable to the proposed project.

Lots 2 and 3 have no specific development proposals so the No Project alternative would not result in any physical changes to the proposed project. Without the proposed commercial General Plan Amendments, Lot 3 could be redeveloped under the No Project alternative with industrial land uses. Industrial land uses generate fewer traffic trips per square foot than commercial land uses and have

[40] CEQA Guidelines Section 15126.6(e)(1)

comparable water and energy usage. As a result, redevelopment of Lot 3 with industrial land uses would be comparable to the existing commercial land uses.

Conclusion: Implementation of the no-build "No Project" alternative would avoid the significant unavoidable odor impacts and significant noise impacts identified in this EIR. The no-build No Project alternative would not, however, allow for new housing to be constructed on the project site. This alternative does not meet any of the objectives of the proposed project or the City.

The redevelopment "No Project" alternative could result in the loss of the existing commercial businesses on Lot 3 and increased industrial development. This alternative does not meet any of the objectives of the proposed project or the City.

6.2 LOCATION ALTERNATIVE

In an effort to avoid the significant odor and noise impacts that would result from the proposed project but still provide new housing within the City of Milpitas, an alternative location could be considered.

The City of Milpitas has identified housing sites throughout the City in the General Plan. The City's Housing Element identifies 14 sites currently zoned for residential but currently developed with commercial or industrial land uses. Most sites that are currently designated for housing have been through some level of environmental review and have been found to be consistent with the General Plan and would likely avoid or mitigate exterior and interior noise impacts.

One specific site, 1005 North Park Victoria Drive, is the city's largest vacant single family detached housing site. There is General Plan level clearance for this site, but there has been no previous environmental review for this site so it is unknown what specific environmental consequences may result from development of this site. As the site is vacant, it may currently support Burrowing Owls or other special status species. The site is located at the base of the foothills and at this time it is unknown what geological issues could existing on-site. Other potential issues are increased traffic (as the site is currently vacant and therefore does not generate any trips, unlike the California Circle site which has buildings which generate traffic under baseline conditions and serve to reduce the magnitude of net new trips from the housing project), impacts to unknown cultural resources, and electricity usage on a currently vacant site. A site specific environmental analysis would, however, address these issues and would identify mitigation to lessen or avoid identified impacts. While placing housing on this site would likely reduce the significant odor and noise impacts of the proposed project, it could result in new impacts or impacts of greater severity for other resource areas compared to the proposed project. In addition, this site is designated *Single-Family Residential Low Density (3-5 DU/AC)* and would need a General Plan Amendment in order to construct approximately 8 DU/AC consistent with the residential density proposed on the project site. For all these reasons, this site is not considered to be environmentally superior to the proposed project site.

The remaining 13 housing sites are located in either the Midtown Specific Plan Area or the Transit Specific Plan Area. A Program EIR was prepared for both specific plan areas which studied approximately 1,279 acres for future development. Due to the distance of these sites from Newby Island, it is reasonable to assume that the odor impacts identified for the proposed project would be

significantly reduced at these locations. Noise impacts would likely be similar because the sites are located along major roadways. Impacts related to aesthetics, air quality (other than odors), biological resources, energy, geology and soils, GHG emissions, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems would be comparable to the proposed project. The proposed project has no significant traffic impacts. In all likelihood, higher density housing within the Midtown and Transit areas would have significant impacts to local intersections where mitigation may or may not be feasible.

While the North Park Victoria Drive site and sites with the Midtown and Transit Specific Plan Areas have been identified for housing, given the available information, none of the housing sites identified by the City could be considered environmentally superior (other than reducing/avoiding odor impacts) to the proposed project site due to the level and variety of identified or potential impacts compared to identified impacts on the project site. In addition, the project applicant does not own or control any of these identified housing site.

A large portion of the City's existing non-residential lands are in proximity to I-880, I-680, Newby Island Landfill, the WPCP, and/or other nearby odor sources including Los Esteros Substation, Zanker Landfill, the former Cargill Salt Pond, and the City's Main Sewer Pump Station. It is likely that conversion of underutilized non-residential properties for residential use in these areas would have noise impacts similar to the proposed project. Some of these sites would, however, be outside the one mile impact area for Newby Island Landfill and the WPCP, as well as the other identified odor sources.

Conversion of non-residential lands could result in new impacts. It is reasonable to assume that industrial lands and some commercial lands would have contaminated soil and/or groundwater. Depending on the location, it would be possible for the proposed residential units to have a significant transportation impact if they were located in an area that is already heavily congested. Lastly, some areas of the City are more sensitive in terms of subsurface cultural resources.

It is reasonable to assume that impacts related to aesthetics, air quality (other than odors), biological resources, energy, geology and soils, GHG emissions, hydrology, land use, mineral resources, population and housing, public services, recreation, and utilities and service systems would be comparable to the proposed project.

Substantive due diligence would be required to find a specific development site that reduced the projects identified impacts to a less than significant level and did not result in new significant impacts.

If a location alternative were to be found, the proposed General Plan Amendments on Lots 2 and 3 would not proceed as they are directly related to the redevelopment of Lot 1 with housing.

Conclusion: Implementation of the Location Alternative could lessen or avoid the odor and/or noise impacts that would result from the proposed project, but would have the potential to result in new impacts related to cultural resources, hazardous materials, and transportation. This alternative meets some, but not all the project objectives. This alternative would not meet any of the City's objectives. If a suitable location could be found that did not have sensitive cultural resources or hazardous

materials, or result in increased traffic impacts, this alternative would be environmentally superior to the proposed project.

6.3 ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the Location Alternative because of the project's significant unavoidable odor impacts and significant noise impacts could be avoided. The Location Alternative would achieve one of the objectives of the proposed project. This alternative would be inconsistent with the project objectives No. 1, 2, and 4 which set goals for the redevelopment of underutilized industrial lands and improvements to pedestrian and bicycle facilities along Penitencia Creek. Any alternative location that avoids odor and noise impacts is not currently under the control of the applicant for Lot 1, and it is uncertain if it could be acquired at a reasonable price and, therefore, the feasibility of this alternative is unknown.

SECTION 7.0 SIGNIFICANT UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as it is proposed. The following significant unavoidable impacts have been identified as resulting from the proposed project:

1. Implementation of the proposed residential project on Lot 1 and future residential development on Lot 2 under the proposed General Plan Amendment would expose future residences to significant unavoidable odor impacts from Newby Island Landfill.

All other significant impacts of the proposed project would be reduced to a less than significant level with the implementation of mitigation measures identified in this EIR

SECTION 8.0 IRREVERSIBLE ENVIRONMENTAL CHANGES AND IRRETRIEVABLE COMMITMENT OF RESOURCES

CEQA and the CEQA Guidelines require that an EIR address "significant irreversible environmental changes which would be involved in the proposed project, should it be implemented." [§15126(c)]

If the proposed project is implemented, development of Lot 1 and future development of Lots 2 and 3 would involve the use of non-renewable resources both during the construction phase and future operations/use of these sites. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Construction also involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources. Once the new development is complete, occupants will use non-renewable fuels to heat and light the buildings. The proposed and future residential projects will also consume water at a higher rate than the current land uses.

The City of Milpitas encourages the use of building materials that include recycled materials and requires new buildings to be built to current codes, including the City's adopted Green Building Ordinance, which requires insulation and design to minimize wasteful energy consumption resulting in the use of less energy for heat and light and less water than a standard residential development. Future development on Lots 2 and 3 would be required to conform to the City's Green Building Ordinance which would minimize energy consumption. In addition, these sites are infill locations and are currently served by public transportation. The proposed project will, therefore, facilitate a more efficient use of resources over the long-term than greenfield sites or sites that are not within close proximity to jobs, services, and transit.

SECTION 9.0 GROWTH INDUCING IMPACTS OF THE PROJECT

For the purposes of this project, a growth inducing impact is considered significant if the project would:

- Cumulatively exceed official regional or local population projections;
- Directly induce substantial growth or concentration of population. The determination of significance shall consider the following factors: the degree to which the project would cause growth (i.e., new housing or employment generators) or accelerate development in an undeveloped area that exceeds planned levels in local land use plans;
- Indirectly induce substantial growth or concentration of population (i.e., introduction of an unplanned infrastructure project or expansion of a critical public facility (road or sewer line) necessitated by new development, either of which could result in the potential for new development not accounted for in local general plans).

The proposed redevelopment project on Lot 1 is proposed on an infill site in the City of Milpitas. The site is surrounded by existing infrastructure and both existing and planned development. Development of the project will not require upgrades to the existing sanitary sewer, water, and/or storm drain lines that directly serve the project site. The project does not include expansion of the existing infrastructure that would facilitate growth in the project area, other areas of the City, or outside the urban envelope. As with Lot 1, Lots 2 and 3 are infill sites served by existing infrastructure and would not require expansion of existing facilities to serve new development.

Redevelopment of Lots 1 and 2 would replace existing industrial buildings with new residences that are in proximity to retail services, recreational areas, transit, and major roadways. The proposed residential project(s) would be compatible with the nearby residential neighborhood and the existing commercial land uses on Lot 3, but could pressure adjacent industrial properties to redevelop with new or different land uses.

Redevelopment of Lot 3 would result in commercial development comparable to the existing land uses on-site and would be compatible with existing and proposed land uses in the immediate area.

Redevelopment of this site under the proposed General Plan Amendments would result in a net increase in housing Citywide. There is currently a shortage of available housing within the City of Milpitas compared to the number of jobs within the City. The increase in housing will incrementally decrease the overall jobs/housing imbalance within the City. The increase, however, represents a minor percentage increase in total housing and will not be a substantial change compared to existing conditions or planned population projections within the City. If adjacent and nearby industrial lands were redeveloped with housing in the future, it would further reduce the overall jobs/housing imbalance in the City.

The project would not have a significant growth inducing impact.

SECTION 10.0 RESPONSES TO NOTICE OF PREPARATION COMMENT LETTERS

The City of Milpitas received six letters in response to the Notice of Preparation (NOP). Copies of these letters are provided in Appendix K of this EIR. Responses to these letters are provided below to provide information to readers regarding where or how particular issues are addressed in this Draft EIR.

10.1 California Department of Transportation, March 28, 2013

Comment 1: Traffic Impact Study (TIS)
One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance potential adverse impacts by local development on State highways. Interstate 880 (I-880) currently experiences back-ups or congestion during the afternoon peak period at the junction of Route 237 and in the north bound direction at Dixon Landing Road. We request that, as part of the proposed project's environmental assessment, a Traffic Impact Study be prepared to evaluate the following:

- Mainline I-880 from Dixon Landing Road to the junction with Route 237;
- Ramp operations and queuing at the Dixon Landing Road interchange;
- Ramp operations and queuing at the junction of State Route 237 and Interstate 880;
- Level of Service and queuing at the freeway ramp intersections at California Circle and Dixon Landing Road (for both northbound and southbound ramps); and
- Intersection operation at the intersection of Dixon Landing Road and N. McCarthy Blvd.

Response 1: The TIA for the proposed project addressed freeway impacts consistent with the Congestion Management Plan (CMP) guidelines. The findings of the analysis, provided in Table 1 of the TIA, show that the proposed project will have no impact on local freeway facilities or operations.

Comment 2: We recommend using the Caltrans *Guide for the Preparation of Traffic Impact Studies* (TIS Guide) for determining which scenarios and methodologies to use in the analysis. The TIS Guide is a starting point for collaboration between the lead agency and Caltrans in determining when a TIS is needed. The appropriate level of study is determined by the particulars of a project, the prevailing highway conditions, and the forecasted traffic. The TIS Guide is available at the following website address: http://dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf.

The TIS should include:

1. Vicinity map, regional location map, and a site plan clearly showing project access in relation to nearby State roadways. Ingress and egress for all project components should be clearly identified. The State right-of-way (ROW) should be clearly identified. The maps should also include project driveways, local roads and intersections, parking, and transit facilities.

2. Project-related trip generation, distribution, and assignment. The assumptions and methodologies used to develop this information should be detailed in the study, and should be supported with appropriate documentation.

3. Average Daily Traffic, AM and PM peak hour volumes and levels of service (LOS) on all roadways where potentially significant impacts may occur, including crossroads and controlled intersections for existing, existing plus project, cumulative and cumulative plus project scenarios. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect study area roadways and intersections. The analysis should clearly identify the project's contribution to area traffic and any degradation to existing and cumulative LOS. Caltrans' LOS threshold, which is the transition between LOS C and D, and is explained in detail in the TIS Guide, should be applied to all State facilities. If the existing State highway facility is operating at less than the appropriate target LOS, the existing Measures of Effectiveness (MOE) should be maintained.

4. Schematic illustration of traffic conditions including the project site and study area roadways, trip distribution percentages and volumes as well as intersection geometrics, i.e., lane configurations, for the scenarios described above.

5. The project site building potential as identified in the General Plan. The project's consistency with both the Circulation Element of the General Plan and the Congestion Management Agency's Congestion Management Plan should be evaluated.

6. Identification of mitigation for any roadway mainline section or intersection with insufficient capacity to maintain an acceptable LOS with the addition of project-related and/or cumulative traffic. As noted above, the project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should also be fully discussed for all proposed mitigation measures.

   Response 2: A full TIA was prepared in accordance with all applicable requirements and guidelines and available traffic data. A discussion of the project's traffic impacts and proposed mitigation measures is provided in Section 4.3, *Transportation.* The full TIA is provided in Appendix B. Consistency with applicable Plans and Polices is discussed in Section 3.0 of this EIR.

Comment 3: ***Lead Agency***

As the lead agency, the City of Milpitas 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 information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy. Since an encroachment permit is required for work in the State right-of-way (ROW), and Caltrans will not issue a permit until our concerns are adequately addressed, we strongly recommend that the County work with both the applicant and Caltrans to ensure that our concerns are resolved during the environmental process, and in any case prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see end of this letter for more information regarding encroachment permits.

Response 3: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed. All identified mitigation measures for other resource areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment 4: ***Vehicle Trip Reduction***

Caltrans encourages you to locate any needed housing and neighborhood services near major mass transit centers, with connecting streets configured to facilitate walking and biking, as a means of promoting mass transit use and reducing regional vehicle miles traveled and traffic impacts on State highways. We also encourage you to develop Travel Demand Management (TDM) policies to encourage usage of nearby public transit lines and reduce vehicle trips on the State Highway System. These policies could include car-sharing programs, bicycle lanes and bicycle parking, and providing transit passes to residents, among others.

In addition, secondary impacts on pedestrian and bicyclists resulting from any traffic impact mitigation measures should be analyzed. The analysis should describe any pedestrian and bicycle mitigation measures and safety countermeasures that would in turn be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on State highways.

Response 4: The proposed housing sites are located near existing services and transit as discussed in this EIR. No TDM plan is currently proposed. The proposed project will not have a significant impact on the local transportation network so no mitigation is required or proposed. The project will, however, make improvements to the adjacent creek trail.

Comment 5: ***Traffic Impact Fees***

Please identify traffic impact fees to be used for project mitigation. Development of plans should require traffic impact fees based on projected traffic and/or based on associated cost estimates for public transportation facilities necessitated by development. Scheduling and costs associated with planned improvements on Departmental ROW should be listed, in addition to identifying viable funding sources correlated to the pace of improvements for roadway improvements, if any.

Response 5: The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed.

Comment 6: ***Regional Impact Fees***

Interstate 880 is critical to regional and interregional traffic in the San Francisco Bay region. It is vital to commuting, freight, and recreational traffic and is one of the most congested regional freeway facilities. Given the proximity of the proposed project to the interchange ramps, the traffic generated could have significant regional impact to the already congested state highway system. The Department encourages the City of Milpitas to condition the project with a contribution to a regional transportation fee program to mitigate and plan for the impact of future growth on the regional transportation system. The fees would be used to help fund regional transportation programs that add capacity increasing improvements to the transportation system to lessen future traffic congestion.

Reducing delays on State facilities will not only benefit the region, but also reduce any queuing on local roadways caused by highway congestion. The purpose of regional impact fee program would

improve mobility by reducing time delays and maintaining reliability on major roadways throughout the San Francisco Bay Area.

> *Response 6:* The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed.

Comment 7: ***Mitigation Reporting Guidelines***
The California Environmental Quality Act (CEQA) requires the adoption of reporting or monitoring programs when public agencies include environmental impact mitigation as a condition of project approval. Reporting or monitoring takes place after project approval to ensure implementation of the project in accordance with mitigation adopted during the CEQA review process.

Some of the information requirements detailed in the attached Guidelines for Submitting Transportation Information from a Reporting Program include the following:

- Name, address, and telephone number of the CEQA lead agency contact responsible for mitigation reporting;
- Type of mitigation, specific location, and implementation schedule for each transportation impact mitigation measure; and
- Certification section to be signed and dated by the lead agency certifying that the mitigation measures agreed upon and identified in the checklist have been implemented, and all other reporting requirements have been adhered to, in accordance with Public Resources Code Sections 21081.6 and 21081.7.

Further information is available in the following website:
http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html.

> *Response 7:* The proposed project will have a less than significant transportation impact. No transportation related mitigation measures are required or proposed. All identified mitigation measures for other resource areas will be included in the Mitigation, Monitoring or Reporting Plan as required by CEQA.

Comment 8: ***Encroachment Permit***
Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. 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. David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623-0660. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See the website linked below for more information:
http://www.dot.ca.gov/hq/traffops/developserv/permits.

> *Response 8:* If necessary, the project will comply with all Caltrans requirements for encroachment permits.

10.2 Kristen Valus, April 8, 2013

Comment 1: We are writing as concerned residents of California Landing Villas about the proposed pedestrian bridge associated with the Waterstone Residential Project. Per your project description, *"an approximately six-foot tall, clear-span pedestrian bridge over the creek to provide connectivity between the proposed residential development and the existing residential neighborhood east of the creek. The approximate location of the bridge is at the southern end of the site as shown in the adjacent figure. The final location of the bridge will be determined in coordination with the Santa Clara Valley Water District."*

We oppose this location of the pedestrian bridge for several reasons. The bridge will allow increased access to our neighborhood as a "cut through" to Dixon Landing Park. We are concerned about the increased accessibility promoting more crime in our neighborhood as well as a loss of privacy. Our HOA spent a good deal of money building a privacy fence along the creek to keep our neighborhood relatively secure from the public using the creek trails. We absolutely oppose an access gate in our fence for the public, nor do we want people "jumping the fence" because they are too lazy to walk around. Terra Mesa Way is technically a private street. Also, the height of the bridge would be seen from the second and third stories of our homes.

We understand the benefit of the new residents being able to access Dixon Landing Park, however, there are other ways to promote this access without using our neighborhood as a thoroughfare. We suggest you work with the developer to expand the current traffic bridge over the creek on California Circle to allow for bike lanes in both directions and a wide walking path so new residents can access the park by going along Dixon Landing Road to Milmont Drive. Alternatively, we strongly recommend the developer consider moving the pedestrian bridge to intersect with Aspenridge Dr. where our fence and community ends, so the public would be using public (not private) streets to access Dixon Landing Park.

Finally, consider not building a bridge at all. We do not want the pedestrian bridge connecting in our neighborhood and we, along with our HOA, will continue to fight this aspect of the proposal throughout the city's approval process.

> *Response 1:* A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area. The City and the project applicant, in consultation with the SCVWD, have agreed to relocate the proposed bridge to align with Aspenridge Drive.

10.3 Lane Tomita, April 14, 2013

Comment 1: I was not able to make the council meeting on the Waterstone. I live on the corner of Terra Mesa Way and Calle del Sol. Looking at the Notice of Preparation for this project I see that there's a bridge planned to cross the creek right where I live. I'm opposed to the location of this bridge. Terra Mesa Way and Calle del Sol are private streets. I feel that the bridge should be moved and connect to a city street like Aspenridge or no bridge at all. I feel the bridge is not a marketing attribute to the project but an enabler for unsavory people or kids to cause trouble on both sides of the bridge. We already have issues with people cutting holes in the fence or parking their cars in our

area when they live in the houses. We don't need people parking their cars in our area and then crossing the bridge to get to someones house. We don't need people casing our complex to take delivery packages.

> *Response 1:* The City and the project applicant have agreed to relocate the proposed bridge to align with Aspenridge Drive.

10.4 Helen Lim, April 16, 2013

Comment 1: I am a long-time homeowner and resident at California Landing Villas, which is east of the proposed Waterstone Residential Project to consist of 84 new homes on California Circle. Included in the proposal is a pedestrian bridge, which I strongly oppose for the following reasons:

1) While I understand that change happens and that the city needs revenues, a 3rd bridge which crosses Lower Penitencia Creek is not necessary since there are already 2 existing and well-constructed bridges on both ends of California Circle.

> *Response 1:* A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area.

Comment 2: 2) While Trumark Homes is anticipated to fund/build the bridge if the plan is accepted, the City will be responsible for it maintenance, and I do not think that it will be maintained properly or frequently. The city trail which is adjacent to the creek has been neglected since last year's lay-offs. Vegetation is overgrown, and the trail is very trashy. The area looks very slummy.

3) Since the trial maintenance has been significantly reduced, there is a lot of trash (e.g., broken beer bottles and other glass), and I suspect trash will be left on this new bridge or tossed over it into the creek.

> *Response 2:* As noted in the project description, the cost for future maintenance of the bridge will be the responsibility of the City.
>
> Please note that the City is not responsible for maintenance of the trail and it is under the jurisdiction of the SCVWD.

Comment 3: 4) In addition, I suspect that adding this bridge will invite more crime (e.g., vandalism) and also provide an additional exit for lawbreakers.

5) This bridge will not be easily accessible to law enforcement because motorizes vehicles are currently not allowed along this trail, and there are 3 waist-high posts that the city installed to prevent such traffic. (One had been vandalized and removed a couple yrs ago right after they were replaced.) These posts are near Terra Mesa Way, which is next to the east end of where the proposed bridge will be. MPD will either have to park at Aspenridge (the boundary between California Landing Villas and the single family homes south of the proposed bridge) and run to the bridge, or police will have to access the bridge on the west side (via the new homes). Neither east nor west sides of the

bridge would be quickly or easily accessible and would delay response to any reported crime in progress.

6) The trail has no public lighting at night, and I suspect that the proposed bridge will not have lights either. This again provides advantages to lawbreakers.

> *Response 3:* There is no indication that construction of pedestrian bridge between two residential areas would increase criminal activities. The proposed development will place homes on a currently vacant industrial parcel which would likely reduce unacceptable behaviors occurring on the project site or along the creek trail.
>
> If issues were to occur on the bridge, the emergency response would be the same as for any other pedestrian bridge or similar structure in Milpitas.

Comment 4: 7) The proposed bridge is supposed to be six feet high, which seems short. What if someone tries to commit suicide from it?

> *Response 4:* The proposed height of the railings is consistent with similar structures in the area and most likely high enough to discourage most people from climbing on it.

Comment 5: 8) The water level at the creek seems to get higher now during periods of heavy rain. Maybe it's a result of changes made to the floor of the creek a few years ago—I don't know. But, the levees aren't that big, and it seems that the proposed bridge might affect the integrity of the levees on both sides of the creek. I'd be curious to know SCV Water District's input regarding the proposed bridge. We also saw flooding twice at the park this past December. When we flooded here in 1998, the city pumped water out from our area to the creek, and, again, I fear the levees will be compromised with the addition of the bridge.

> *Response 5:* As discussed in the project description, Section 2.0 of this EIR, the proposed bridge will be a clear span bridge that will connect directly to the creek trails. No footings, cantilevers, or other supports would be located within the creek or between the banks/levees which could comprise the structural integrity of the levees. Furthermore, final design and installation will be in coordination with the Santa Clara Valley Water District.

Comment 6: 9) I use the trail regularly, despite it's decline in appearance and the land mines (dog poo), and I think the new homeowners should be encouraged by the city to enjoy the trail and to make healthy lifestyle choices. I.e., the new homeowners can walk to either of the 2 existing bridges if they wish to visit Dixon Landing Park. When people visit the park, they're usually active there, so why not make them walk a little farther to either of 2 bridges that are already here? Plus, for the regular Starbucks drinkers, having the new bridge may make our residents lazier by taking the shortcut on the bridge and thereby crossing thru the new development.

> *Response 6:* This comment is acknowledged.

Comment 7: 10) My community already gets alot of foot and auto traffic because of the public park across the street. There's alot of trash that gets strewn in our complex, not to mention parking problems. We don't need more outsiders (e.g., from the new project) parking in our private parking

spaces if they can't find parking where they're at. The Brander-Mill apartment residents already do that (use our parking spaces).

> *Response 7:* It is reasonable to assume that without a safe and convenient pedestrian path to the park, future residents of the project site may drive to the park. Nevertheless, it is beyond the scope of this EIR to try to predict or mitigate for people potentially parking in restricted areas off the project site. Increased competition for public parking is not considered an environmental impact under CEQA.

10.5 Dieter Griesmeier, April 26, 2013

Comment 1: The Homeowners and residents of California Landing Villas Association want to express their strong opposition to the proposed 220-foot long pedestrian bridge of the Penitencia creek at the current position, location near Terra Mesa Way.

Also, residents of the single-family homes in the community adjacent to California Landing Villas join us in rejecting this bridge location.

Many Homeowners and residents who live near the proposed bridge location will lose privacy within their units as a long part of the bridge' walkway runs along the first level of homes in this area, near Terra Mesa Way. People crossing the bridge will have direct, close-up view into many California Landing Villas homes. Women and children especially will feel threatened knowing that anybody walking by can see into their home and watch them in the "privacy" of their home.

> *Response 1:* The City and the project applicant, in consultation with the SCVWD, have agreed to relocate the proposed bridge to align with Aspenridge Drive.
>
> In terms of privacy issues, the bridge will not be higher than the existing levee trail and would not afford any more direct views into the upper floors of any residences on the east side of the creek.

Comment 2: Moreover, the proposed bride in this location will increase foot traffic in the area as many people will use it as a short-cut which did not exist before and which the bridge will make possible. In addition, some people will be on the bridge at night just to smoke and for other outdoor socializing, such as just "hanging out". Some will likely jump over "our fence" on Terra Mesa Way and will cause damage. We had to repair our fence twice in the past four months as holes were cut into the mesh fence to get access to our complex as a short cut.

> *Response 2:* It appears that there is currently an issue with persons on the creek trail cutting through the fence at California Landing Villas. This is an existing issues and is unlikely to measurably increase as a result of the pedestrian bridge and the increase in local residents as persons purchase and live in the proposed single-family houses on the west side of the creek. The proposed development will place homes on a currently vacant industrial parcel which would likely reduce unacceptable behaviors occurring on the project site or along the creek trail.

Comment 3: The homeowners, residents and officers of the California Landing Villas community want to be a part of the solution to any problems that are bound to surface as plans to construct the bridge move forward.

Naturally we all have large emotional and financial interest in our homes and wish Milpitas official involved in approving the placement of the bridge would give us the opportunity to contribute ideas that will help solve problems that affect our community. The more input that's collected, the more likely it will be that the best solutions are chosen.

Regarding the bridge issue we offer some alternatives that might be more acceptable to the community. Attachment one, is a picture with the proposed new position of the pedestrian bridge. With the new location, parallel to the California Circle bridge, you have decreased the length of the bridge and you are farther away from homes so you can protect the privacy and more people will use it.

Attachment two, shows a picture, how it would look like, based with my limited capability of modifying the current location on the new pedestrian bridge.

We hope you will consider these ideas in the spirit of working together to keep our community a wonderful, attractive place to live, and we wish we will have ongoing opportunities to contribute views as proposals that affect California Landing Villas in particular come before Milpitas officials for action.

> *Response 3:* These comments are acknowledged.

10.6 Janet Kan, May 2, 2013

Comment 1: We are residents of the California Landing community and we learned about the Waterstone Residential Project recently. We generally support the project with the exception of the proposed pedestrian bridge crossing the water district creek.

1) Is this bridge necessary?
There are already two bridge crossings, California Landing and within 800 feet of the proposed crossing location. These crossings are adequate connectivity between the east and west banks of the creek in my opinion.

The proposed project is already adjacent to the western creek trail where future residents can readily access for exercising and leisure use.

> *Response 1:* A pedestrian bridge connecting the proposed residential development and the existing neighborhoods on the east side of the creek will provide a public benefit and promote better connectivity through the area.

Comment 2: 2) Is this bridge practical?
The east end of the bridge is in the alignment of Terra Mesa Way, which is a private street owned by our community. There is a fence on the western boundary of our community. Thus, future users of the bridge will need to walk north to California Circle or south to Aspenridge Drive to exit the east

trail. The total walk distance will almost be the same as walking along the creek trail in a loop. Why build this bridge?

Response 2: Please see Response 1 above.

Comment 3: 3) Safety & Privacy Issues with Additional Foot/Bike Traffic
We are concerned that the addition of anew pedestrian bridge will increase foot and bike traffic through Calle Del Sol, Montrcito Way and Terra Mesa Way because these are the most direct routes to Dixion Landing Park. These are all private streets. Increase traffic into our private streets increase our on-going trespassing issues along the trail and reduce privacy of our community.

There are essentially no sidewalks on the above mentioned streets. Increased pedestrians and bikers will certainly increase the chance of traffic accidents.

We highly object the construction of this bridge. We don't need an impractical bridge to increase connectivity. The communities are already well connected.

Response 3: The City and the project applicant have agreed to relocate the proposed bridge to align with Aspenridge Drive.

SECTION 11.0 LEAD AGENCY AND CONSULTANTS

Lead Agency

City of Milpitas
Steven McHarris, Planning & Neighborhood Services Director
Sheldon AhSing, Senior Planner
Cindy Hom, Assistant Planner

Consultants

David J. Powers & Associates, Inc.
Environmental Consultants and Planners
San José, CA

Akoni Danielsen, Principal
Shannon George, Senior Project Manager
Zach Dill, Graphic Artist

Hexagon Transportation Consultants
Transportation Consultants
San José, CA

Illingworth & Rodkin
Air Quality
Petaluma, CA

SECTION 13.0 REFERENCES AND PERSONS CONSULTED

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Persons Consulted

Bessie Louie – Executive Secretary, Business Services, Milpitas Unified School District

Milpitas Unified School District

1331 E. Calaveras Blvd., Milpitas, CA 95035
Web site: www.musd.org

Valued ☆ Challenged ☆ Successful

Cary Matsuoka
Superintendent
Tel. (408) 635-2600 ext. 6013 Fax (408) 635-2616
E-mail: cmatsuoka@musd.org

October 10, 2013

Steven McHarris
Planning & Neighborhood Services Director, City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

Dear Mr. McHarris,

I am writing on behalf of the Milpitas Unified School District with regards to the Trumark proposal to develop 84 single family homes at 1494 and 1600 California Circle. We are opposed to the amendment to the General Plan and rezoning of this area to single family homes for two reasons.

First, we at capacity at nearly every campus in our district and the schools in the northern portion of the city are full. The three campuses that would be impacted are Weller Elementary, Russell Middle School, and Milpitas High School. Second, that entire area is zoned for commercial use and we believe that the city needs to maintain a healthy balance of commercial and residential land use.

We should preserve that section of the city for commercial use, which in turn supports jobs and a stronger tax base for the city of Milpitas.

Respectfully,

Cary Matsuoka

Cary Matsuoka
Superintendent

Cc: Board of Trustees, MUSD

RECEIVED
OCT 10 2013
CITY OF MILPITAS
PLANNING DIVISION

MILPITAS/DIXON LANDING HOTEL DEVELOPMENT VENTURE, L.P.

400 S. EL CAMINO REAL, SUITE 200
SAN MATEO, CA 94402-1731

T: 650.347.8260
F: 650.347.8261

October 17, 2013

Ms. Cindy Hom
Planning Department
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Trumark Homes application for a
General Plan Amendment (GP12-0003) and
Zoning Amendment (ZA12-0004)
From Industrial Park to Residential and General Commercial
(APNs: 22-37-011, 012, 019, 040, 045, 046, 047 and 049)

Dear Ms. Hom:

I write on behalf of Milpitas/Dixon Landing Hotel Development Venture, the owner of the property commonly known as the Residence Inn by Marriott located at 1501 California Circle, Milpitas (APN 022-37-047).

We object to the proposed General Plan Amendment and Zoning Amendment.

We purchased the land and built the Residence Inn by Marriott based in part on its location within the Dixon Landing Business Park. We believe that "Industrial Park" is the correct designation and use for the properties within the Dixon Landing Business Park. It would be inappropriate to convert some of the properties, particularly those at the entrance to the Business Park, to residential use. That would mix residential use with industrial/commercial uses (which could create safety concerns for children living in the residences, among other things), and it would geographically isolate the remaining industrial/commercial properties, depressing their value.

We ask that the City deny the application.

Thank you very much.

Very truly yours.

For and on behalf of
MILPITAS/DIXON LANDING HOTEL DEVELOPMENT VENTURE

Clement Chen, III

Cindy Hom

From: Helen Lim <hlyfitness@yahoo.com>
Sent: Wednesday, October 23, 2013 1:28 PM
To: Cindy Hom
Cc: Jose Esteves
Subject: A few more comments on proposed pedestrian bridge for Waterstone Project

Hello Cindy and Mayor Esteves:

Sorry for these last minute additional comments before tonight's planning commission meeting. I hope it isn't too late. Anyway, I'm still opposed to a pedestrian bridge being built for the Waterstone Project. Besides my reasons stated previously (below), Lower Penetencia Creek is a fowl habitat which I hope is preserved.

If a decision has already been made that a pedestrian bridge will be built and while this is not an endorsement, I think the best location for that bridge would be at Aspenridge for the following reasons:

1) It will allow any new/future residents, particularly if the Indian temple and the old Solyndra lots are re-zoned in the future for residential use too, a southern walking route to Dixon Landing park. A northern access to the park is already easily available.

2) Aspenridge is where the fence ends that borders my complex (California Landing Villas). So, Trumark only has to contend with one fence that is next to the levee rather than double fencing. (California Landing Villas does NOT have OPEN BORDERS, i.e., we have a fence, and people can't enter except from the north or south ends.)

3) The Aspenridge location also allows residents in the single family homes to access the businesses to the west of the proposed Trumark project.

One last comment: Hopefully, the City won't own or be responsible for maintaining this proposed bridge because it/we can't afford it, plus it will be a liability issue. However, if the Trumark residents will own it and maintain it, then it is private, and we who are living east of it probably won't have access, correct? Also, for crime and security issues, if the gate is privately owned, they should have locked gates on both ends for access. Otherwise, it only invites crimes to be perpetrated there. I don't really know the best solution, but the bridge WILL BE a liability issue for someone, either Trumark HOA or City of Milpitas.

Thanks for listening!

Helen

----- Forwarded cMessage -----
From: Helen Lim <hlyfitness@yahoo.com>
To: "jesteves@ci.milpitas.ca.gov" <jesteves@ci.milpitas.ca.gov>; "apolanski@ci.milpitas.ca.gov" <apolanski@ci.milpitas.ca.gov>; "dgiordano@ci.milpitas.ca.gov" <dgiordano@ci.milpitas.ca.gov>; "agomez@ci.milpitas.ca.gov" <agomez@ci.milpitas.ca.gov>; "cmontano@ci.milpitas.ca.gov" <cmontano@ci.milpitas.ca.gov>; "chom2@ci.milpitas.ca.gov" <chom2@ci.milpitas.ca.gov>;

"smcharris@ci.milpitas.ca.gov" <smcharris@ci.milpitas.ca.gov>; "sahsing@ci.milpitas.ca.gov" <sahsing@ci.milpitas.ca.gov>
Sent: Tuesday, April 16, 2013 12:01 AM
Subject: OPPOSED to proprosed pedestrian bridge for Waterstone Project

Dear Mayor Esteves, Vice-Mayor Polanski, Councilmembers Giordano, Gomez, and Montano, Ms. Hom, Mr. McHarris, Mr. AhSing, and Chief Pangelinan:

I am a long-time homeowner and resident at California Landing Villas, which is east of the proposed Waterstone Residential Project to consist of 84 new homes on California Circle. Included in the proposal is a pedestrian bridge, which I strongly oppose for the following reasons:

1) While I understand that change happens and that the city needs revenues, a 3rd bridge which crosses Lower Penetencia Creek is not necessary since there are already 2 existing and well-constructed bridges on both ends of California Circle.

2) While Trumark Homes is anticipated to fund/build the bridge if the plan is accepted, the City will be responsible for its maintenance, and I do not think that it will be maintained properly or frequently. The city trail which is adjacent to the creek has been neglected since last year's lay-offs. Vegetation is overgrown, and the trail is very trashy. The area looks very slummy.

3) Since the trail maintenance has been significantly reduced, there is alot of trash (e.g., broken beer bottles and other glass), and I suspect trash will be left on this new bridge or tossed over it into the creek.

4) In addition, I suspect that adding this bridge will invite more crime (e.g., vandalism) and also provide an additional exit for lawbreakers.

5) This bridge will not be easily accessible to law enforcement because motorized vehicles are currently not allowed along this trail, and there are 3 waist-high posts that the city installed to prevent such traffic.. (One had been vandalized and removed a couple yrs ago right after they were replaced.) These posts are near Terra Mesa Way, which is next to the east end of where the proposed bridge will be. MPD will either have to park at Aspenridge (the boundary between California Landing Villas and the single family homes south of the proposed bridge) and run to the bridge, or police will have to access the bridge on the west side (via the new homes). Neither east nor west sides of the bridge would be quickly and easily accessible and would delay response to any reported crime in progress.

6) The trail has no public lighting at night, and I suspect that the proposed bridge will not have lights either. This again provides advantages to lawbreakers.

7) The proposed bridge is supposed to be 6 feet high, which seems short. What if someone tries to commit suicide from it?

8) The water level at the creek seems to get higher now during periods of heavy rain. Maybe it's a result of changes made to the floor of the creek a few years ago--I don't know. But, the levees aren't that big, and it seems that the proposed bridge might affect the integrity of the levees on both sides of the creek. I'd be curious to know SCV Water District's input regarding the proposed bridge. We also saw flooding twice at the park this past December. When we flooded

here in 1998, the city pumped water out from our area to the creek, and, again, I fear the levees will be compromised with the addition of the bridge.

9) I use the trail regularly, despite it's decline in appearance and the land mines (dog poo), and I think the new homeowners should be encouraged by the city to enjoy the trail and to make healthy lifestyle choices. I.e., the new homeowners can walk to either of the 2 existing bridges if they wish to visit Dixon Landing Park. When people visit the park, they're usually active there, so why not make them walk a little further to either of 2 bridges that are already here? Plus, for the regular Starbucks drinkers, having the new bridge may make our residents lazier by taking the shortcut on the bridge and thereby crossing thru the new development.

10) My community already gets alot of foot and auto traffic because of the public park across the street. There's alot of trash that gets strewn in our complex, not to mention parking problems. We don't need more outsiders (e.g., from the new project) parking in our private parking spaces if they can't find parking where they're at. The Brander-Mill apartment residents already do that (use our parking spaces).

I apologize for my lengthy message, but this subject is of serious concern to me.

Thanks for indulging me by reading this far.

Best regards,
Helen Lim

Cindy Hom

From: Kristal C <caidoykristal@gmail.com>
Sent: Friday, October 18, 2013 7:20 PM
To: Cindy Hom
Subject: Milpitas Planning Commission

Hello Cindy Hom,

I have looked at the Planning commission agenda for Oct 23, 2013.

I support the recommendation to approve resolution No. 13-025 recommending denial of project to city council because the project does not meet Milpitas' Climate Action Plan to reduce greenhouse gas emissions. I would like to see more sustainable growth in Milpitas. For instance, I would like to see the industrial park turn into open space for people to use along Penitencia creek and healthy of the creek. I don't think putting housing close to the freeway will solve the congestion issue or quality of life in Milpitas.

Unfortunately, I won't be able to attend the meeting.

Kristal Caidoy,
Resident of Milpitas

Motion to adopt Resolution No. 13-017 approving Conditional Use Permit No. UP13-0007 for an 890 sq. ft. dental laboratory, subject to conditions of approval

Motion/Second: Commissioners Sandhu/Mohsin

AYES: 7

NOES: 0

X. NEW BUSINESS

X-1. Study Session on California Circle land use and future vision.

California Circle study area encompasses approximately 110 acres that is bounded by Interstate 880 to the west, Dixon Landing Road to the north, Penitencia Creek to the east, and residential uses to the south. This area was currently zoned Industrial Park.

Planning Director Steve McHarris addressed the Commissioners, recognizing City staff Planner Cindy Hom and Traffic Engineer Steve Chan, who assisted him with the preparation for this study session topic.

This would be an opportunity to review site conditions, opportunities, interests, land use, and planning possibilities, while also seeking Commissioner input and comments. There were older industrial buildings in this area, with high vacancy rates. One project application was anticipated for a residential project for 80 homes, in the California Circle area. It would need to come before the Commission at a future meeting for a possible General Plan amendment.

Chair Mandal wondered what was happening in the city, where industrial was often converting to residential homes. He wanted to learn if there was any way to develop in a different way, to keep residential in residential zones. Also he asked what could be done to attract more business to Milpitas in commercial/industrial areas.

Alternate Member Morris agreed completely with the Chair, and to look at all possible uses in California Circle area.

Commissioner Madnawat asked if the future proposal was for the whole study area and staff replied no. He felt housing was so easy and profitable for builders. Mr. Madnawat saw the need to keep industrial/commercial areas and to increase resistance toward housing, especially right next to a freeway. He preferred commercial use for this site.

Commissioner Sandhu stated this was one of the only areas that was industrial, still available. There was also a need for a place for community to gather, such as his own Gudhwara temple gathering. He sought to keep industrial use at the site discussed. He also referred to an idea for Indian temples concentrated in one area of the city.

Vice Chair Ciardella wanted to know the percentage of industrial versus housing and retail, citywide. Staff could reply later. He asked if California Circle was built out completely and staff replied nearly, yes, such that new projects would be considered infill. Mr. Ciardella also wished to know percent of vacancies (updated per chart).

Commissioner Mohsin agreed with Commissioner Sandhu's comments. There was a need for more religious places and a need for mixed use spaces. She encouraged faster response from staff on religious use applications and providing information to religious use applicants.

Commissioner Barbadillo stated a need to put brakes on housing in the City. A business friendly approach must be done. He referred to EP5 program, to pursue getting business here. Staff Mr. McHarris suggested more business development with promotion not focused on housing, but more on business, may be needed.

Chair Mandal pointed out this study session was for visioning of the study area.

Commission Mohsin remarked that growth was connected to everything, and to consider that housing was an industry in the marketplace.

Chair Mandal suggested keeping in mind schools, when projects come forward. There was an issue of capacity, adding population and kids to the City.

Commissioner Luk expressed the strong need for a sustainable vision in Milpitas. It could be a long journey to reach the needed vibrant community setting. Also, he saw the need for space for R&D in Milpitas. He thought it would be a good idea to tour the site under discussion at this meeting.

Commissioner Madnawat pointed out there was no school at this site, and that was a problem for this site. A need for long term planning was demonstrated.

Planning Director McHarris continued with his presentation, identifying five constraints and many opportunities, seven specifically listed. He reported that there were many inquiries to City staff about land use for California Circle.

Chair Mandal noted some history: Milpitas offered San Jose several million to remove the waste facility 25 years ago, in order to develop. That did not work out, however. So at this time, with California Circle, there was a great opportunity for planning in this area.

Mr. McHarris explained what "infill transitioning" was and why it would be needed.

Alternate Member Morris asked for staff to define mixed-use, and the optimum balance of industrial, commercial and residential use for this area.

Mr. McHarris identified city interests in a listing of six items. Potential land uses were: residential (density feedback needed), residential/commercial mixed-use, and parks/trails/open space use. Land use and zoning options were listed as well.

Commissioner Mohsin asked if this topic would come back to the Commission and staff responded if that was the desired feedback from Commissioners. She also asked if density could be changed. Different types of mixed uses could be here. Staff could reply about viable commercial uses, based on specific density if residential was part of mix.

Vice Chair Ciardella asked about a creek that ran in the study area, which had flooded years ago. Staff would study a possible rising of the levy. Mr. Ciardella sought more detailed information on any formula about how high to raise homes, if a school would be built nearby and other factors related to a flood area.

Mr. McHarris revealed the planning possible for California Circle with visioning in five steps; with a specific plan designed in several steps. Staff sought input, as to whether the process identified conformed to what Commissioners would like to do.

Chair Mandal commended the Planning Director and his staff. It was good to come and talk conceptually, with a need for visioning in this study area.

Commissioner Mohsin felt the last part of the presentation should have been first. It made sense to understand mixed use process, and what good uses could be allowed. She emphasized a place where community could meet.

Alternate Member Morris wanted to better understand the appropriate mix for mixed-use.

Vice Chair Ciardella remarked that when he recently drove through California Circle, the properties and the area was not kept up as well as it should be.

Chair Mandal invited speakers to the podium.

Mr. Cary Matsuoka, Superintendent of Milpitas Unified School District, was concerned about rate of development in the City overall. The School District appreciated being a stakeholder with the city. He responded on numbers of housing units in the development process and numbers being built presently. He quoted numbers of new students in next few years, and in the next decade anticipated. Four elementary schools were full at this time and there was an identified need for a K-8 school in the Transit Area. He suggested the City slow the approval of residential development projects.

Rob Means, 1421 Yellowstone, felt the industrial demand for space was low, based on national policies. He discussed statistics of a jobs-to-housing ratio. Ideal services were available near that Intestate 880 corridor, and there would soon be new lighted billboard signs at California Circle. Other topics of concern to Mr. Means related to density, parks/open space, and creek flooding gap that was remedied.

Elizabeth Ainsworth, President-elect of Milpitas Chamber of Commerce and a Milpitas resident, was very familiar with this area and had lived in Mill Creek Park when she first came to the city. There was a golden opportunity to put something beautiful, in a spot right in between the two new BART stations under construction. A "riverwalk" idea as shown by staff would be great, noting that north of California Circle and Milpitas (into Fremont) was all industrial.

A unanimous vote was taken to "close the public hearing" and was considered to be the conclusion of this segment of the Planning Commission meeting.

Alternate Member Morris requested the current jobs-to-housing ratio, and also to get the figures that the Superintendent was talking about from the school district.

XI. ADJOURNMENT

The meeting was adjourned at 9:05 PM to the next meeting of June 26, 2013.

Motion to adjourn to adjourn the meeting

Motion/Second: Commissioners Madnawat/Luk

AYES: 7

NOES: 0

Meeting Minutes drafted and submitted by
City Clerk Mary Lavelle,
acting as Recording Secretary

AGENDA ITEM: IX-4

MILPITAS PLANNING COMMISSION
AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 23, 2013

APPLICATION: **Waterstone Residential Project: General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001**

APPLICATION SUMMARY: A request to (i) change the General Plan and Zoning Land Use Designations from Industrial Park to Residential for subdivision and construction of an 84-unit detached single-family residential development on 10.7 acres, (ii) construct a Penitencia Creek pedestrian bridge, and (iii) change the General Plan and Zoning Land Use Designations on six other parcels from Industrial Park to General Commercial and Residential for 18.5 acres of developed property. The project includes an Environmental Impact Report.

LOCATION: 1424-1600 & 1501-1551 California Circle (APNs: 22-37-011, 012, 019, 040, 045, 046, 047, and 049)

APPLICANT: Trumark Homes, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506

OWNERS: Proposed Subdivision Properties: **(APNs 22-37-011 and 012)** Everlasting Private Foundation, 19620 Stevens Creek Blvd, Suite. 200, Cupertino, CA 95014;
Proposed Supplemental Properties: **(APN 22-37-019)** BAP San Jose LLC, 81 Suttons Ln. Piscataway, NJ 08854; and **(APN 22-37-040)** DF Venture Inc., C/O TEG Micro Technology Inc., 821 Corporate Way, Fremont, CA 94539; **(APNs 22-37-045 and 046)** US Bank NA ASSC TTEE, C/O Benjamin Miller, CW Capital Asset MGT. 7501 Wisconsin Ave. Suite 500 W, Bethesda, MD 20814; **(APN 22-37-047)** Milpitas Dixon Landing Hotel C/O Clement Chen & Associates, 400 S. El Camino Real, San Mateo, CA 94402; **(APN 22-37-049)** Westcore Greenfield LLC Et Al, C/O Lamb & Meyer, 1761 Hotel Cir, Suite 100, San Diego, CA 92122

RECOMMENDATION: Adopt Resolution No.13-025 recommending to the City Council denial of General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001 based on the finding set forth in this Report.

PROJECT DATA:

General Plan/ Zoning Designation: Industrial Park (INP) / Industrial Park (MP)

Overlay District: Site and Architectural Overlay (-S)

CEQA Determination: In accordance with Article 7 of the CEQA Guidelines, an Environmental Impact Report (EIR) was prepared and circulated between June 21, 2013 to August 5, 2013. The Final EIR was made publically available on September 27, 2013.

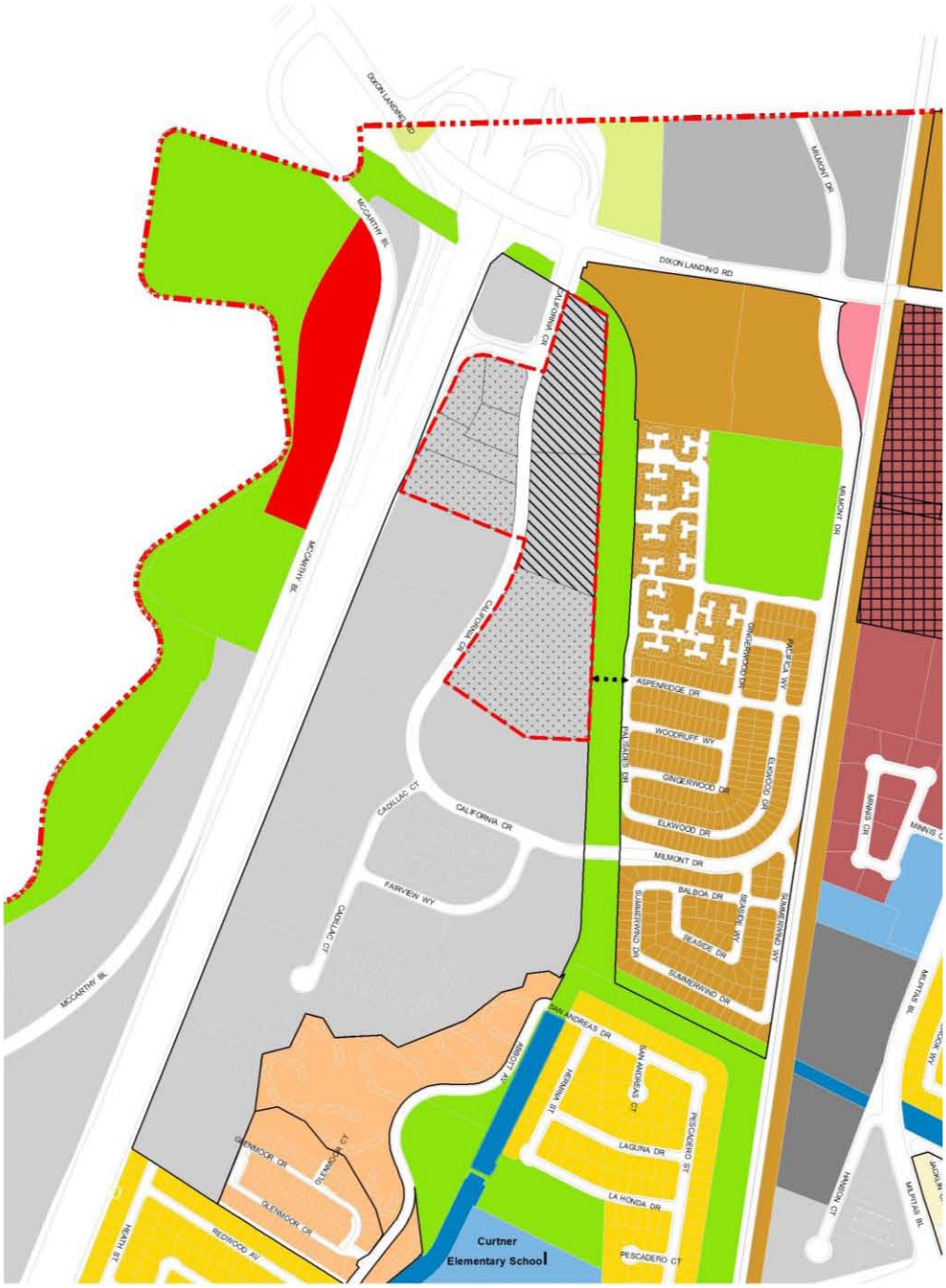
PLANNER: Cindy Hom, Assistant Planner

PJ: 2830

ATTACHMENTS:

A. Resolution No. 13-025
B. Project Plans
C. Applicant's Project Description Letter
D. Final EIR [Draft EIR, (Appendices: Flood Study, Storm Water Control Plan, Noise Study, Traffic Impact Assessment, Phase 1 Site Assessment, Arborist Report)]
E. Public Comments
F. Planning Commission Meeting Minutes for 6-12-2013

Map 1:
Land Use Map



Legend

- WATERSTONE PROJECT AREA
- PROPOSED PENITENCIA BRIDGE
- SUPPLEMENTAL PARCELS
- TRUMARK'S PROPOSED SUBDIVISION SITE
- SINGLE FAMILY RESIDENTIAL (R1-6)
- ONE OR TWO FAMILY (R2)
- MULTI-FAMILY, HIGH DENSITY (R3)
- NEIGHBORHOOD COMMERCIAL (C1)
- GENERAL COMMERCIAL (C2)
- HIGHWAY SERVICES (HS)
- HEAVY INDUSTRIAL (M2)
- LIGHT INDUSTRIAL (M1)
- INDUSTRIAL PARK (MP)
- INSTITUTIONAL (I)
- PARK AND OPEN SPACE (POS)

Map 2:
Project Site and Vicinity Map

Legend

- WATERSTONE PROJECT AREA
- PROPOSED PENITENCIA BRIDGE
- SUPPLEMENTAL PARCELS
- TRUMARK'S PROPOSED SUBDIVISION SITE

Map 3:
Proposed Single-Family Residential Subdivision

EXECUTIVE SUMMARY

The proposed project is a request from a residential developer (Trumark Homes) to convert 10.7 acres of Industrial property to 84 single family detached homes along California Circle. There are other components of the proposed project that supplement this request such as land use changes to adjacent properties totaling 18.5 acres, and a proposal for a Penitencia Creek pedestrian bridge. The staff report focuses on the applicant's objective to construct the 84 single family homes along California Circle. The staff report analysis focuses on: (1) City's Discretion Regarding Legislative Acts; (2) General Plan Consistency; (3) Planning/Land Use Opportunities; and (4) Zoning Implications. Staff analysis concludes that the applicant's request is pre-mature representing a lost opportunity for the City to significantly influence planning and future land use for the study area. In addition, the required Findings for the General Plan and Zoning Amendments cannot be made. Based on these main points, staff recommends that the Planning Commission recommend the City Council deny the request to change the land use designations from Industrial park to Residential.

BACKGROUND

Previous land uses and planning entitlements for the project area are listed below including a general chronology of this application:

- August 1984 - The City Council approved a General Plan Amendment (GPA 1984-2), Zone Change (ZC No.538), and PUD Amendment (PUD 31-B) that approved the Dixon Landing Business Park with various industrial uses throughout the majority of the area, and commercial uses in the northern section.
- November 2011 - The applicant submitted a pre-application for an 84-unit detached single-family residential subdivision with a Penitencia Creek pedestrian bridge.
- May 2012 - The applicant submitted a formal application for the development proposal for the 84 detached single-family homes, a Penitencia Creek pedestrian bridge, and supplemental land use and zoning amendments.
- October 2012 – Staff requested supporting information for code-required public benefit associated with the proposed residential subdivision and the pedestrian bridge.
- December 2012 – Due to lack of information regarding code-required public benefit, staff informed the applicant that the project was placed on hold until supporting information for public benefit associated with the proposed residential subdivision and the pedestrian bridge was submitted.
- May 2013 - The applicant conducted a community meeting for the proposed project. Several California Landing residential community residents opposed the proposed pedestrian bridge landing adjacent to their private street, favoring a more southerly public street location. Staff communicated to applicant the lack of support for the proposed project based on General Plan and Zoning inconsistencies, as well as a need to comprehensively study the California Circle, Fairview, Cadillac Court Area.
- June 2013 - Staff conducted a study session with the Planning Commission on the California Circle Area to review land uses, opportunities and constraints, and receive

input for future planning of this area. The Planning Commission directed staff to proceed with vision planning for this area. (Refer to attached 6-12-13 Planning Commission Meeting Minutes).

The Application

On May 23, 2012, an application was submitted pursuant to Section 57, Applications of the Milpitas Zoning Code:

- *General Plan and Zoning Amendments* – The request includes a change for five of the eight parcels from Industrial Park to General Commercial and three of the parcels to be changed from Industrial Park to Residential. Two of the three residential parcels are proposed with 84-unit residential subdivision. Planned Unit Development zoning is required with the 84-unit subdivision zoning amendment to allow for reductions to lot area, height and setback requirements and to consider a proposed Penitencia Creek pedestrian bridge.

- *Tentative Maps* – For the creation of 84-resdiental lots, and other common lots (private parks), and assign responsibility for maintaining common lots and infrastructure.

- *Site Development Permit* – To evaluate the proposed site layout, landscaping, and architectural review of 84 detached single family home development and a Penitencia Creek pedestrian bridge.

PROJECT DESCRIPTION

Location and Land use
The proposed project area encompasses approximately 29.2 acres of industrial land located south of the intersection at Dixon Landing Road and California Circle, within the Dixon Landing Business Park. The project area is bounded by Dixon Landing Road to the north, Interstate I-880 to the west, industrial buildings to the south and the Penitencia Creek to the east. The proposed project area is currently developed with two vacant industrial buildings and a cultural and religious center located on the eastern half of the project area. The western portion of project area is comprised of commercial and professional office buildings as well as a Residence Inn Hotel.

The proposed project area is currently zoned and designated as Industrial Park with Site and Architectural Overlay. Surrounding land uses includes Penitencia Creek and Multi-family Residential, High Density to the east. Industrial buildings and uses are located to the north and south of the project area. Interstate I-880 freeway is located to the west. Refer to land use map and project site/vicinity map shown on Page 3 and 4 of the staff report.

Project Proposal
The proposed project consists of two components:

1) A General Plan Amendment and Zone Change for two parcels on 10.7 acres from Industrial Park to Residential that would include the construction of 84 single family homes and various site improvements. This component also includes a pedestrian bridge spanning Penitencia Creek; and

2) A General Plan Amendment and Zone Change for six parcels on 18.5 acres from Industrial Park to Commercial and Residential that includes no construction.

Project Analysis

The proposed project is a request from a residential developer (Trumark Homes) to convert 10.7 acres of Industrial property to 84 single family detached homes along California Circle. There are other components of the proposed project that supplement this request such as land use changes to adjacent properties totaling 18.5 acres, and a proposal for a Penitencia Creek Pedestrian bridge. However, because the applicant's proposed project objective is to construct 84 single family detached homes along California Circle, the staff report analysis focuses on: (1) City's Discretion Regarding Legislative Acts; (2) General Plan Consistency; (3) Planning/Land Use Opportunities; and (4) Zoning Implications.

1) <u>City's Discretion Regarding Legislative Acts</u>

Legislative Acts include both General Plan Amendments and Zone Changes, as proposed by the project applicant. The City is granted broad discretion to make these decisions by State statute and the California Constitution. Applications for such changes are not subject to the Permit Streamlining Act, and the City maintains significant discretion on all such requests, providing no obligation to recommend project approval or make findings to recommend denial. As such, legislative acts carry the highest threshold for consideration because the General Plan establishes well planned land uses and internally consistent development policies for the entire City. Proposed amendments to the City's General Plan and zoning ordinance require careful consideration. As such, the staff report documents the City's policies and procedures, provides analysis of the proposed project, identifies required Findings, and specific recommendations to the Planning Commission.

As a result of the applicant's request, staff has processed the proposed application, completed a Draft Environmental Impact Report (DEIR) and scheduled public hearings for the Planning Commission and City Council. Staff currently does not support the proposed introduction of single-family residential land use into this industrial-zoned business park as further explained in this report. Staff has carefully reviewed the completed application and is recommending the Planning Commission recommend the City Council deny the land use designation changes at this time.

2) <u>General Plan Consistency</u>.

The recent economic recovery in the Silicon Valley has led to General Plan Amendment inquiries by residential developers to convert properties along California Circle from industrial to residential use. To date, the project applicant is the only developer to apply for and process a

General Plan Amendment land use conversion in the California Circle area. A review of the General Plan Principles and Policies raises significant project-related concerns regarding managing future growth, economic development, long-term fiscal sustainability, land use compatibility, and the lack of planning for the overall California Circle industrial area, as analyzed below.

Staff acknowledges that housing is in high demand throughout the South San Francisco Bay area. However, regional land use and transportation policy administered through the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) through "Plan Bay Area" and the "Sustainable Communities Strategy" (SCS) *(www.mtc.ca.gov/planning/plan_bay_area)* recommend limiting the proliferation of auto-dependent single-family housing and focusing development efforts on multi-family housing in close proximity to transit. The City has embraced this strategy and proactively provides two areas for planned residential growth for approximately 10,000 new housing units within the Transit Area and Mid-Town Specific Plan areas. These are the locations where the City's General Plan anticipates the majority of its residential growth, as well as improving the housing to jobs imbalance. Currently, there are 11,524 single family residential units and approximately 10,166 multifamily residential units citywide. Specific General Plan analysis is identified below to compare the applicant's project and proposed land use change to the City Council adopted General Plan Policies.

Land Use Guiding Principles

- **2.a-G-8** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

- **2.a-G-9** The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- **2.a-G- 10** Consider long-term planning and strong land use policy in managing the City's fiscal position.

- **2.a-G- 11** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Staff Analysis

A recommendation of denial is consistent with the stated Guiding Principles in that the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. Pre-mature conversion from employment generating land uses to uses that increase the residential population should only be considered after proper planning and analysis in light of the City as a whole. Given the land use policy and planned growth for the Transit Area and Midtown Specific Plan areas of the City, lack of comprehensive planning for the California Circle area, and conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Polices

Development Intensity

- **2.a-I-2** Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% build-out in the Midtown and Transit Area Specific Plans.

- **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.

- **2.a-I-9** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Staff Analysis

A recommendation of denial is consistent with stated polices on development intensity because the Transit Area and Midtown has not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is in contrary with Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, may have the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Much of this could be further considered with a comprehensive study and plan for future changes in land uses within the overall California Circle area which has not been completed. In the meantime, the conversion of the proposed project site to single family residential will introduce residential uses in close proximity to industrial uses and the impacts of those uses, such as semi-truck/trailer activity, diesel exhaust, noise and odors. Introduction of residential and sensitive uses near pre-existing industrial uses can also compromise the day-to-day operation and activity of the existing industrial uses and hamper their economic production. It could also provide a barrier to attracting more industrial uses to the area.

Economic Development

- **2.a-I-10** Maintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands.

- **2.a-I-13** When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

Staff Analysis
A recommendation of denial is consistent with the stated polices on economic development because of the policy directive to maintain an adequate supply of industrial lands and only consider land use conversions to residential when contemplating substantial economic benefit. There is no substantial economic benefit provided by the project that would justify the conversion of prime business park property with direct visibility and access to Interstate 880. These types of conversions, if considered, should only be contemplated after more comprehensive land use, design, market and economic analysis. Given the short-term trend in market and economic fluctuation, a more comprehensive and long-term fiscally sustainable approach is warranted.

Fiscally Beneficial Land Use

- **2.a-I-15** Maintain and expand the total amount of land with industrial designations. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas.

Staff Analysis
A recommendation of denial is consistent with the stated polices on fiscally beneficial land use because this policy seeks to maintain and expand the City's industrial land base rather than allow conversion to a non-industrial land use.

3) Planning/Land Use Opportunities.

According to the project application, the project merits City consideration for land use conversion to single-family detached residential because it presents a tremendous opportunity to meet the high demand for housing. The application also states that the project will improve the existing housing to jobs imbalance, concluding that the proposed 84-home single-family homes will increase the diversity of housing in Milpitas.

The above General Plan consistency analysis is contrary to the applicant's project justification. Although these adopted General Plan policies of the City Council clearly do not support change in industrial land use to residential land use, the City Council has recognized a lack of market interest for industrial uses in the California Circle area in the past, and previously indicated they are open to planning for other uses. In order to seek clarity on the topic of changes in land use within the California Circle area, staff arranged a study session with the Planning Commission to gauge their comments and direction for potential changes in land use, if any.

On June 12, 2013, the Planning Commission held a study session to discuss planning opportunities within the California Circle area. The study area included properties along California Circle, Fairview Way, Cadillac Court, the adjacent Penitencia Creek and City storm water pump and reservoir. The general consensus of the Commission was that the area should be

further studied, an overall vision established, and possibly a specific plan developed by the City (Refer to attached Planning Commission 6/12/13 minutes for details).

In late June 2013, staff began discussions with Cal Poly San Luis Obispo City & Regional Planning Urban Design Studio in developing conceptual development alternatives for the California Circle Study Area leading to a formal work scope and contract. Cal Poly has extensive experience and national recognition in assisting public agencies with planning and urban design concepts for public agencies throughout California. Opportunity and constraints, technical details, market trends, and comparable South Bay Area development analysis is currently underway. Site review, assessments and tours, including visits to nearby Silicon Valley sites, as well as detailed discussions with City and Santa Clara Valley Water District (SCVWD) staff were completed in September 2013. A brief update of study scope and schedule was presented to the Planning Commission on September 25, 2013. A special Planning Commission workshop is scheduled for October 26, 2013 where the Commission, staff, and the Cal Poly team will engage in developing new and creative land use concepts for the study area. The results of this overall pre-planning study will be presented to the Planning Commission on December 11, 2013 where the Commission will have the opportunity to provide further comment on developing a Specific Plan for this area. A final print document will be delivered to the City in early January 2014.

The Santa Clara Valley Water District (SCVWD) has also expressed interest and partnered with the City on planning for a Penitencia Creek water-quality interpretative "Riverwalk" theme pedestrian way within the California Circle Study Area where future land uses could orient towards the creek and incorporate this concept. Basic concepts are currently being studied such as an expanded trail network along and within the greater California Circle study area, high quality pedestrian paving, lighting, wayfinding, interpretative signage, specialized native and drought resistant landscaping and irrigation, low-impact and low-maintenance non-mechanical bio-swale features, and possible Penitencia Creek bridge location(s) and design concepts.

4) Zoning Implications.

As a result of staff analysis in items 1, 2, and 3 above, the proposed 84-unit residential subdivision is physically separated from all residential development by the 250-foot wide Penitencia Creek that has a General Plan land use designation and zoning district designation of Park & Open Space.

Staff analysis concludes that the applicant's request is pre-mature, and not consistent with the General Plan and the City's long term land use strategy. Further, it compromises the City's long-term fiscal zoning sustainability and represents a lost opportunity for the City to significantly influence planning and future land use for the study area, and reposition Dixon Landing Business Park for economic recovery and success. Therefore, staff does not recommend support for this request and recommends the Planning Commission support the recommendation of denial to the City Council.

Residential Project Deficiencies

Flood Zone Issues
The proposed project site is located in a Flood Hazard Zone area. The applicant prepared a Flood Study to determine the existing floodplain conditions for the 100-year Federal Emergency Management Agency (FEMA) based flood event, define what the building elevation necessary to meet FEMA and City floodplain management requirements, and evaluation whether the proposed development may have an area wide effect on flood flows or existing water surface elevations.

The flood study initially indicated an inconsistency with the FEMA maps. The Flood Study incorporated a conservative approach to reconcile the issue by raising the building pad elevations approximately six feet in height, creating an elevated pad condition above California Circle.

The Santa Clara Valley Transportation Authority (VTA) recently prepared a study of the two major creek systems: Berryessa Creek and Upper Penitencia Creek which may affect the project site because of new impacts associated with the nearby BART project. The results conclude that the proposed project site would require less fill and lower pad elevation along California Circle.

Staff Analysis
The proposed project would physically and visually detract from the surrounding properties. This would also create a visual prominence with retaining walls that have an overall height that ranges from 3-feet to 6-feet tall along the California Circle street frontage and from 6-feet to 8-feet tall along the southern boundary. The applicant proposes to install a 6-foot tall fence that would be constructed on top of the retaining wall which would bring the overall wall height of 9-feet to 14-feet. This is another example where the project is pre-mature, as final FEMA elevations should incorporate the VTA study to determine actual finished grade elevations along California Circle, prior to project consideration of the project.

Municipal Code Development Standards
Because the project does not meet the required development standards for the Single Family Residential minimum lots size 2,500 square feet Zoning District (R1-2.5), the applicant requests a Planned Unit Development (PUD) that allows for deviations from the lot area, setbacks, height, and driveway dimensions which are summarized in the table below. Planned Unit Developments is a type of discretionary permit that allows for diversification in the relationships of buildings, structures and open space, while insuring substantial compliance to the District Regulations and other provisions of the Zoning Ordinance.

Table 1:
Setbacks and Development Standards

	R1-2.5 Development Standards	**Proposed Development Standards**
Density (Maximum)	6-15 Units/Gross Acre	**7.9/Gross Acre**
Lot Area	Min. 2,500 sq. ft.	**1,850 to 3,300 square feet**
Lot Width	Min. 30’	**Min. 30’**

	R1-2.5 Development Standards	Proposed Development Standards
Setbacks (Minimum)		
Front to Primary Structure	Min. 20’	**10’**
Interior Side	Min. 5’ one side	**3.2’**
Street Side (Corner Lots)	Min. 10’	**3.2’**
Rear	Min. 15’ one-story Min. 20’ two-story	**3.5**
Building Height (Maximum)	Min. 30’	**39’**
Parking	Min. 232	**240**
Driveway Dimensions	10’x20’	**Shared driveways**

Architecture

Architecture

The project proposes three architectural styles: “Cottage”, “Southern Cottage”, and “Beach Cottage”. The units are proposed with flat concrete tile roofing, gable and/or hipped roof forms, and exterior finishes of stucco and simulated wood siding, shutters, decorative railing, window awnings and window framing treatments. Figure 1 illustrates the proposed Cottage style architecture and details for each home style are attached in Attachment B.

Figure 1:
Proposed Architecture

FINDINGS

Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a General Plan Amendment, Zoning Amendment, Site Development Permit, Planned Unit Development, or Conditional Use Permit.

Findings shall identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

General Plan Amendment Findings [MMC XI-57.02 (G)(1)]

1. *The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.*

Findings cannot be made due to the project's inconsistency with the General Plan Principles and Polices. The proposed amendment is internally inconsistent with those portions of the General Plan which are not being amended as set forth below:

Land Use Guiding Principles

- **2.a-G-2** – Maintain a relatively compact form. Emphasize mixed use development to the extent feasible to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

- **2.a-G-8** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.

- **2.a-G-9** The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- **2.a-G- 10** Consider long-term planning and strong land use policy in managing the City's fiscal position.

- **2.a-G- 11** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Staff Analysis

The proposed project is inconsistent with the stated Guiding Principles in that the proposed single family detached homes do not maximize density to achieve a compact form nor does the project emphasize mixed use development that maximizes job development or commercial or industrial opportunities. Further, the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. The proposed land use conversion from employment generating land uses to uses that increase the residential population absent City comprehensive planning and analysis, is premature, especially considering that the City is currently studying the overall California Circle area land use. Given the land use policy and

planned growth for the Transit Area and Midtown areas of the City, conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Polices

Development Intensity

- **2.a-I-2** Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% build-out in the Midtown and Transit Area Specific Plans.

- **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.

- **2.a-I-9** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Staff Analysis
The proposed project is inconsistent with the stated polices on development intensity because the Transit Area and Midtown have not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is in contrary with Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, has the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Finally, the conversion of these sites to residential will introduce residential uses in close proximity to industrial uses and the impacts of those uses, such as semi-truck/trailer activity, diesel exhaust, noise and odors. Introduction of residential and sensitive uses near pre-existing industrial uses can also compromise the day-to-day operation and activity of the existing industrial uses and hamper their economic production. It could also provide a barrier to attracting more industrial uses to the area.

Economic Development

- **2.a-I-10** Maintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands.

- **2.a-I-13** When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

Staff Analysis
The proposed project is inconsistent with the stated polices on economic development because of the policy directive to maintain an adequate supply of industrial lands and only consider land use

conversions to residential when contemplation of substantial economic benefit. There is no substantial economic benefit provided by the project that would justify the conversion of prime business park property with direct visibility and access to Interstate 880. These types of conversions, if considered, should only be contemplated after more comprehensive land use, design, market and economic analysis. Given the short-term trend in market and economic fluctuation, a more comprehensive and long-term fiscally sustainable approach is warranted.

Fiscally Beneficial Land Use

- **2.a-I-15** Maintain and expand the total amount of land with industrial designations. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas.

Staff Analysis
The proposed project is inconsistent with the stated polices on fiscally beneficial land use because this policy seeks to maintain and expand the City's industrial land base rather than allow conversion to a non-industrial land use.

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

Staff Analysis
The proposed project may have an adverse effect on public health, safety, and welfare due to the uncertainty with what BFE level to use for the project's site design. According the applicant's consultant memo dated 9/26/13, the VTA flood analysis is based on a complex set of hydrology and hydraulic assumption and methodology which has not been reviewed by either the Santa Clara Valley Water District or FEMA. The flood elevation is dependent on various factors such as the volume and timing of the flows and the capacity of the City's stormwater pump station and culverts that drain to the nearby detention pond. A relatively small change in the flow modeling during the review process could have a significant effect on the flood elevation at the site. Redesigning the project at this time may expose it to a potential risk of a floodplain map revision change in the future or run the risk of building the project below the elevation of the overland release to the detention basin and the creek channel. However, if the project is built using the 18-feet NAVD, the project site would need to be raised approximately six (6) feet in height and require four (4) to six (6) feet tall retaining walls along California Circle and six (6) to eight (8) feet tall retaining walls along the southern boundary which is not a site and architectural review condition supported or recommended by staff without a comprehensive site and land use planning analysis of the larger California Circle area. For these reasons and those discussed above, a finding cannot be made that the proposed amendment will not adversely affect the public health, safety, and welfare.

Zoning Amendment Findings [MMC XI-57.02 (G)(3)

1. The proposed amendment is consistent with the General Plan.

Staff Analysis
The proposed zoning amendment is inconsistent with the General Plan as explained in detail above.

2. The proposed amendment will not adversely affect on the public health, safety and welfare.

Staff Analysis
The proposed zoning amendment may have an adverse affect on the public health, safety and welfare as explained in detail above.

Tentative Map Findings (MMC XI-1-4.03)

1. *The tentative map is in conformity the Subdivision Map Act, Milpitas Subdivision Ordinance, and the General Plan.*

Staff Analysis
The State Subdivision Map Act defers to the local ordinance with respect to the approval of a vesting tentative map. The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. Staff cannot make this finding due to the project's inconsistency with the previously stated General Plan Principles and Policies.

Site Development Permit [MMC XI-10-57-03(F)]

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

Staff Analysis
The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:

- The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial and commercial buildings and streetscape.
- The project's single-family residential site design and architecture is not consistent with the site surroundings.
- The entire site is proposed to be elevated six (6) feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the project's proximity to Interstate 880 entry and exit, it does not provide enhanced treatment to provide the area with a special and/or distinct identification.

2. *The project is consistent with the Milpitas General Plan*

Staff Analysis
The proposed project is inconsistent with the General Plan as analyzed above.

3. *The project is consistent with the Milpitas Zoning Ordinance:*

Staff Analysis
The project does not meet the intent of the Zoning Ordinance (Section 1.02) that ensures the most appropriate use of land throughout the city; to stabilize and conserve the value of property to provide adequate light, air and reasonable access; to secure safety from fire and other dangers and in general to promote the public health, safety, peace, morals, comfort and welfare.

Planned Unit Development [MMC XI-10-54.07 (B) (6)]

1. *The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision Ordinance.*

Staff Analysis
As proposed, the project is not proposing a higher density than allowed in the General Plan and the R1-2.5 zoning district. The project proposes a density of approximately eight (8) units per gross acre, which is within the General Plan density requirement of six (6) to fifteen (15) units per gross acre Single Family Moderate Density. However, the proposed detached single family homes require significant deviations from the minimum standards on setbacks, heights, and lot areas.

2. *The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.*

Staff Analysis
A Transportation Impact Analysis was prepared by Hexagon to analyze potential traffic and parking impacts (Attachment I). The project would generate less than 100 net new peak-hour trips. Project conditions would maintain LOS D or better on studied intersections.

3. *For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation. In the case of the Valley Floor Planning Area residential developments proposed on land zoned "R3" (Multiple Family Residential) an overall density of up to forty (40) units per gross acre can be approved if the following criteria are found by the City Council to be met.*

Staff Analysis
The project is proposing a density that is consistent with the upper range of the allowable units per gross acre for the proposed R1-2.5 zoning district.

4. *Sewer capacity and water availability will be sufficient to accommodate the proposed project density as well as other future planned unit development downstream from the project site. Any improvements to the sewer or water system that would be required to accommodate any higher density proposals may be made conditions of project approval*

Staff Analysis
Based on staff's analysis, there is sufficient sewer and water availability to accommodate the proposed project density.

5. *Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.*

Staff Analysis
The project proposes installation of a Penitencia Creek pedestrian bridge and trail improvements a part of the code-required public benefit.

6. *The proposed Planned Unit Development is consistent with the Milpitas General Plan*

Staff Analysis
The proposed project is inconsistent with the General Plan as analyzed above.

7. *The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.*

Staff Analysis
The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:

- The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial and commercial buildings and streetscape.
- The project's single-family residential site design and architecture is not consistent with the site surroundings.
- The entire site is proposed to be elevated six (6) feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the project's proximity to an Interstate 880 entry and exit, it does not provide enhanced treatment to provide the area with a special and/or distinct public benefit.

ENVIRONMENTAL REVIEW
The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project requires a focused Environmental Impact Report. The EIR focused on Land Use, Transportation, Air Quality, Greenhouse Gases Emissions, and Biology. The Draft EIR was

circulated for public comment on June 21, 2013 through August 5, 2013, and the Final EIR was made publicly available on September 27, 2013.

Significant Impacts
The EIR contains analysis based on thresholds established for CEQA using the "initial study" checklist. The EIR identified a significant and unavoidable impact related to odors. The implementation of proposed residential uses would expose future residences to significant unavoidable odor impacts from the Newby Island landfill which is located within one-mile of the project site.

If the Planning Commission recommends denial of the proposed project to the City Council, no action on the EIR is required by the Planning Commission. However, if the Planning Commission recommends approval of the project, the Planning Commission will be required to recommend the City Council certify the EIR and adopt a statement of overriding consideration for the odor impacts. Furthermore, the following Findings would be required:

- The EIR has been completed in accordance with CEQA.
- The EIR adequately describe the environmental impacts of the proposed project.
- The EIR reflect the City's independent judgment and analysis on the potential environmental effects.

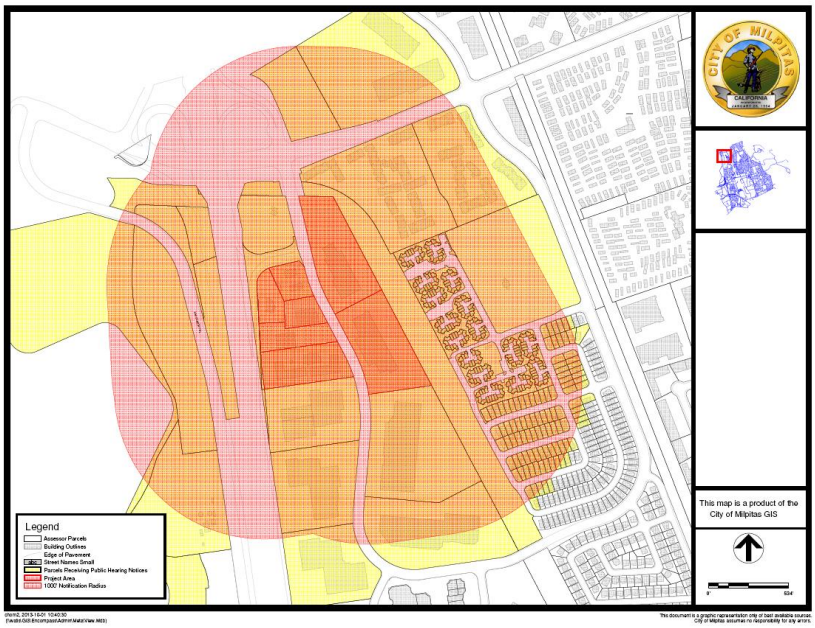
PUBLIC COMMENT/OUTREACH
The application was publicly noticed in accordance with City and State law. Staff has received comment letters from Caltrans and the Santa Clara Valley Water District on the Environmental Impact Report. Two letters were received in opposition of the General Plan Amendment and zone change associated with the proposed single-family residential land use. The table below provides a summary of the City's public noticing for this project.

Table 3
Public Noticing Summary

Notice of Public Hearing	Agenda
▪ Posted on the site (*14 days prior to the hearing*) ▪ Two hundred and 637 notices mailed to property owners and residents within 1,000 feet to the project site (*10 days prior to the hearing*) ▪ Posted on the City's official notice bulletin board (*10 days prior to the hearing*)	▪ Posted on the City's official notice bulletin board (*5 days prior to the hearing*) ▪ Posted on the City of Milpitas's Web site (*one week prior to the hearing*)

The map below illustrates the extent of the mailed notices.

Map 4
Public Notice Radius



CONCLUSION

Based on staff analysis, the proposed application is pre-mature representing a lost opportunity for the City to significantly influence planning and future land use for the California Circle area. The required findings for the General Plan and Zoning Amendment cannot be made to support the project. The project would not provide a harmonious development with surrounding properties and land uses. Staff recommends that the Planning Commission recommend the City Council deny the request to change the land use designations from Industrial Park to Residential.

ALTERNATIVES

Other alternatives that the Planning Commission could pursue is to continue the item to a date certain of January 8, 2014 to allow the Planning Commission to review the results of this overall pre-planning study of the California Circle Area prior to considering the proposed project *or* the Planning Commission can direct staff to prepare certain findings, draft conditions of approval and return at a subsequent Planning Commission public hearing for only the proposed subdivision properties APNs 22-37-011 and 012.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission conduct a public hearing and adopt Resolution No. 13-025 recommending the City Council deny of General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001.

Attachments:

A. Resolution No. 13-025
B. Project Plans
C. Applicant's Project Description Letter

D. Final EIR [Draft EIR, (Appendices: Flood Study, Storm Water Control Plan, Noise Study, Traffic Impact Assessment, Phase 1 Site Assessment, Arborist Report)]
E. Public Comments
F. Planning Commission Meeting Minutes for 6-12-2013

MILPITAS/DIXON LANDING HOTEL DEVELOPMENT VENTURE, L.P.

400 S. EL CAMINO REAL, SUITE 200
SAN MATEO, CA 94402-1731

T: 650.347.8260
F: 650.347.8261

November 8, 2013

City Council
c/o City Clerk
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Trumark Homes application for a General Plan Amendment (GP12-0003), Zoning Amendment (ZA12-0004), Site Development Permit (SD12-0002), Conditional Use Permit (UP12-0012), Planned Unit Development (PD12-0001), Major Vesting Tentative Map (TM12-0001) and Environmental Assessment (EA13 -0003)
From Industrial Park to Residential and General Commercial
(APNs: 22-37-011, 012, 019, 040, 045, 046, 047 and 049)

Dear Members of the City Council:

I write on behalf of Milpitas/Dixon Landing Hotel Development Venture, the owner of the property commonly known as the Residence Inn by Marriott located at 1501 California Circle, Milpitas (APN 022-37-047).

We object to the proposed General Plan Amendment, Zoning Amendment, Site Development Permit, Conditional Use Permit, Planned Unit Development, Major Vesting Tentative May and Environmental Assessment.

We purchased the land and built the Residence Inn by Marriott based in part on its location within the Dixon Landing Business Park. We believe that "Industrial Park" is the correct designation and use for the properties within the Dixon Landing Business Park. It would be inappropriate to convert some of the properties, particularly those at the entrance to the Dixon Landing Business Park, to residential use. That would mix residential use with industrial/commercial uses (which could create safety concerns for children living in the residences, among other things), and it would geographically isolate the remaining industrial/commercial properties, depressing their value.

We ask that the City deny the application.

Thank you very much.

Very truly yours.

For and on behalf of
MILPITAS/DIXON LANDING HOTEL DEVELOPMENT VENTURE

Clement Chen, III
President of MHDV, Inc., its general partner

CITY OF MILPITAS

OFFICE OF MAYOR JOSE ESTEVES

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3000, FAX: 408-586-3056, www.ci.milpitas.ca.gov

*5

DRAFT

November 19, 2013

Honorable Gavin Newsom
Lieutenant Governor
State of California
State Capitol, Suite 1114
Sacramento, CA 95814

Dear Lieutenant Governor Newsom:

It has recently come to the attention of the City Council of the City of Milpitas that you have volunteered to head a blue ribbon panel aimed at placing an initiative on the 2016 ballot that would legalize the general use of marijuana in California. We further note that in statements to the press you have advocated the general legalization of marijuana in this State.

As an elected body of local officials with a duty to the general health and welfare of the citizens of Milpitas, we are greatly surprised by your taking what we view as an unsupportable position on future legislation that could cause great harm to Milpitas citizens as well as to all California citizens. While there may be medicinal value to marijuana in many cases, it is clearly a mind altering substance, the unrestricted use of which would pose new dangers to the health and safety of our citizens. Our concern in this regard is consistent with the City's long standing land use prohibition of medical marijuana dispensaries. We strongly oppose any general legalization of marijuana and encourage you to reconsider your position on this issue.

Sincerely,

Mayor Jose S. Esteves
on behalf of the Milpitas City Council

Jose Esteves, Mayor
City of Milpitas
jesteves@ci.milpitas.ca.gov

*6

REGULAR

NUMBER: **286**

TITLE: **AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS LEVYING AND APPORTIONING THE SPECIAL TAX IN COMMUNITY FACILITIES DISTRICT NO. 2013-1 (PIPER MONTAGUE)**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of November 5, 2013, upon motion by Vice Mayor Polanski, and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City Council has established Community Facilities District No. 2013-1 (Piper Montague) (the "District") pursuant to Resolution No. 8310 (the "Resolution of Formation"), duly adopted on November 5, 2013, for the purpose of providing for the financing of certain public facilities in and for the City; and

WHEREAS, at an election held in the District on November 5, 2013, the qualified electors of the District authorized the levy of the special tax described in the Resolution of Formation.

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

1. **Record and Basis for Action**. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. **Levy of Special Tax**. Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution of Formation.

3. **Collection of Special Tax**. Pursuant to Section 53340 of the California Government Code and the Resolution of Formation, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

4. **Claims for Refund**. Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

(a) All claims shall be filed, in writing, with the City Finance Director during the Fiscal Year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

(b) Pursuant to Government Code section 935(b), the claim shall be subject to the provisions of Government Code sections 945.6 and 946.

(c) The City Council shall act on a timely claim within the time period required by Government Code section 912.4.

(d) The procedure described in this Ordinance, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

5. **No Mandatory Duty of Care**. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

6. **Severability**. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

7. **Effective Date and Publication**. This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: Office of the City Clerk

Record without fee under
Section 6103 - Government Code
State of California

*7

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING INITIAL ACCEPTANCE AND REDUCING PERFORMANCE BOND OF PARK RENOVATION 2011, PROJECT NO. 5091

WHEREAS, the City of Milpitas have heretofore entered into a contract with DRT Grading and Paving Inc., for the subject project, and the City Engineer of the City of Milpitas has recommended acceptance of said improvement as completed in accordance with plans, specifications and approved change orders and correction lists, and in accordance with the final inspection of said City Engineer.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City of Milpitas does hereby accept said improvement as completed on this 19th day of November, 2013, and does hereby authorize and direct the City Engineer of the City of Milpitas to file a Notice of Completion in accordance with the provisions of Sections 8182 and 9200-9208 of the Civil Code of the State of California, and does hereby authorize and direct the City Engineer to file a Certificate of Completion in accordance with the provisions of Section 4005 of the Government Code of the State of California, if said work was by day's labor or force account. The penal sum of the faithful performance bond securing said improvement may be reduced to the sum of $13,911.02 upon request of principal and surety, with said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond, provided that said term shall not be less than one year.

PASSED AND ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

Recording Requested by and
When Recorded Mail to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
Attention: City Clerk

Record without fee under
Section 6103 - Government Code
State of California

CITY OF MILPITAS

NOTICE OF COMPLETION
(Civil Code Sections 8182 and 9200-9208)

NOTICE IS HEREBY GIVEN:

1. On or about April 2, 2013, the City of Milpitas, a municipal corporation of the State of California, whose address is City Hall, 455 East Calaveras Boulevard, Milpitas, California, 95035 (as owner) entered into a contract for work of: **Park Renovation 2011.**

2. A description of the site of which the City is owner for said work of improvement is: **Pinewood Park and Albert J. Augustine Jr. Park** in the City of Milpitas, Santa Clara County, California, more particularly described on the plans.

3. The nature and interest or estate of the City as owner of said site is: **City of Milpitas**.

4. The name and address of the original contractor is: **DRT Grading and Paving, Inc., P.O. Box 429 Sunol, CA 94586**

5. A general statement of the kind of work done or materials furnished to the City is as follows: **Repair of park pathways and installation of ADA ramps.**

6. The name of the sureties upon the bond of the contractor for said work of improvement is: **SureTec Insurance Company 3033 5th Ave., Ste. # 300, San Diego, CA 92103; bond # 5158133.**

7. Said work of improvement was accepted by the Milpitas City Council as completed on November 19, 2013.

****

I, the undersigned, declare that I am the **City Engineer** of the City of Milpitas and am authorized to execute the foregoing Notice of Completion and this Verification thereof. I have read the foregoing Notice of Completion. I declare under penalty of perjury that the foregoing Notice of Completion is true and correct. Executed on _____, 2013 at Milpitas, California.

_____
Jeff Moneda, Public Works Director/City Engineer
City of Milpitas

NOTE: RECORD WITHIN 15 DAYS OF ACCEPTANCE WITH COUNTY RECORDER OF SANTA CLARA COUNTY

RESOLUTION NO. _____ ***8**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE POLICE CANINE TRAINING CONTRACT WITH JAMES FAGGIANO, AN INDIVIDUAL DBA JAFCO CANINE MANAGEMENT, FROM DECEMBER 1, 2013 TO NOVEMBER 30, 2014 IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF $20,260.00 AND AUTHORIZING THE CITY MANAGER TO EXERCISE UP TO FOUR (4) ANNUAL OPTIONS WITH ANNUAL FEE INCREASES NOT TO EXCEED 5% PER YEAR, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL

WHEREAS, the City of Milpitas conducted a competitive solicitation on October 21, 2013, for the purchase of Police Canine Training Services and awarded a contract James Faggiano, an individual doing business as JAFCO Canine Management, on November 19, 2013, which becomes effective on December 1, 2013 (the "Agreement"); and

WHEREAS, the City's Purchasing Agent recommends the City Council approve the Agreement between the City and James Faggiano for a term period from December 1, 2013 to November 30, 2014 in the annual not-to-exceed amount of Twenty Thousand Two Hundred Sixty dollars ($20,260.00) and the total not-to-exceed amount of One Hundred One Thousand Three Hundred Dollars ($101,300.00) during the term of the Agreement: and

WHEREAS, the City of Milpitas reserves the right to extend the Agreement for one (1) year increments, not to exceed five (5) years; and

WHEREAS, City staff also requests authority for the City Manager to renew the Agreement on an annual basis for the next four (4) years with an annual increase of no more than 5% per year, without further City Council approval except appropriation of funds.

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

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council approves the Agreement for Police Canine Training with James Faggiano, an individual doing business as JAFCO Canine Management, in the annual not-to-exceed amount of Twenty Thousand Two Hundred Sixty dollars ($20,260.00) and the total not-to-exceed amount of One Hundred One Thousand Three Hundred Dollars ($101,300.00) during the term of the Agreement, a copy of which is attached hereto as **Exhibit A**; and

3. The City Council authorize the City Manager to extend the term of the Agreement on annual basis for the next four (4) years with an annual increase of no more than 5% per year, without further City Council approval except appropriation of funds.

PASSED AND ADOPTED this _____day of, _____, 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

CITY OF MILPITAS CONTRACT

Project: Police Canine Training
Bid No: IFB 2056
Annual Not-To-Exceed Amount of Contract: $20,260.00

THIS CONTRACT, made this 20th day of November, 2013, by and between the City of Milpitas, hereinafter referred to as "the City of Milpitas" and **James Faggiano an individual DBA JAFCO Canine Management**, hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

Part A – Invitation For Bids
Part B - Background
Part C – Scope of Work
Part D – Minimum Basic Requirements
Part E – General Conditions and Instructions to Bidders
Part F – Special Conditions
Part G – Schedule
Part H – Terms and Conditions for Receipt of Bid
Part I – Addenda
Part J – Bid Form
Part K – Experience Statement
Part L – Sample Contract
Part M – Bidders Statement Regarding Insurance Coverage
Part N - Non-Collusion Affidavit
Part O – Worker's Compensation Insurance Certificate
Part P – Contractor's Nondiscriminatory Employment Certificate
Part Q – Local Purchasing Preference Certificate
Part R - Insurance Requirements – General

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Bid;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Bid, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees

to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

1. The term of the contract shall be for a one year period from December 1, 2013 to November 30, 2014, with four (4) annual options. The City of Milpitas reserves the right to exercise the annual options by providing written notice to contractor in the form attached as Exhibit A, and in the amount that may be adjusted as set forth in Invitation for Bid No. 2056 for Police Canine Training.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

_____
Thomas C. Williams, City Manager

_____
Contractor's Signature

__ **James R. Faggiano** _____
Name of Authorized representative

_____
Title of Authorized Representative

Approved As To Form:

_____
Michael J. Ogaz, City Attorney

Approved As To Content:

_____
Sandy Holliday, K9 Unit Manager

Business Tax Compliance: Certificate No. **32232**

EXHIBIT A - NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	
CONTRACTOR Name and Address:	
DATE OF OPTION:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section _____ of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	

NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas
a municipal corporation

By_____
Name:
Title:

*9

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE PURCHASE OF SEVEN POLICE VEHICLES FROM NATIONAL AUTO FLEET GROUP THROUGH A COOPERATIVE PROCUREMENT CONTRACT

WHEREAS, Section I-2-3.08 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as the City's; and

WHEREAS, Municipal Code Section I-2-3.08 "Cooperative Procurement' specifically authorizes the Purchasing Agent to make purchases from the National Joint Powers Alliance; and

WHEREAS, the Purchasing Agent, having reviewed all of the documentation from the National Joint Powers Alliance Request for Proposal (RFP) #102811 entitled "Passenger Cars, Light Duty, Medium Duty, and Heavy Duty Trucks with Related Accessories," has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas. The price for the vehicles is the same as that offered in the original agreement.

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

1. 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 it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Purchasing Agent is authorized to purchase seven (7) Police vehicles from National Auto Fleet Group for the not-to-exceed amount of $239,895.29 through the National Joint Powers Alliance.

PASSED AND ADOPTED this _____ day of _____, 2013, 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

*10

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
MATERIAL AND CONTRACT SERVICES, LLC.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and **Material and Contract Services, LLC,** a California corporation hereinafter ("Consultant") as of November 20, 2013.

AGREEMENT

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed **$45,000.00** per the rates specified in Exhibit A for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.2 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.3 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.4 **Reimbursable Expenses.** There are no reimbursable expenses under this contract

2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.6 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers'

Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of

Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** **NOT APPLICABLE** - If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** **NOT APPLICABLE** - Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that

Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by **Chris Schroeder, Purchasing Agent** who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Material and Contract Services, LLC
Dan Plute
5820 Stoneridge Mall Road, Suite 217
Pleasanton, CA 94588

Any written notice to City shall be sent to:

City of Milpitas
Purchasing
455 East Calaveras Boulevard

Milpitas, California 95035

10.11 **Professional Seal.** **NOT APPLICABLE** - Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C. Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Emma Karlen, Finance Director/Risk Manager

ATTEST:

Mary Lavelle, City Clerk

MATERIAL AND CONTRACT SERVICES LLC.

Dan P. Plute

Name of Authorized Representative

President

Title of Authorized Representative

38 - 3787370

Taxpayer Identification Number

City of Milpitas Business License Number

EXHIBIT A

SCOPE OF SERVICES

MACS will perform services for CLIENT by sourcing, screening, and presenting prospective employees for project support/consulting services.

TERM OF SERVICE

Start date: ___/___/___ - end date: ___/___/___

Part time, twenty hours per week (flexible) maximum not-to-exceed 1,000 hours.

HOURLY RATE

$ ____.__

TOTAL CONTRACT NOT-TO-EXCEED

Forty–Five Thousand dollars. ($45,000.00)

BUYER NAME

_____

DESCRIPTION – CONTRACTED BUYER

The City of Milpitas has an immediate need for a part time contracted Buyer to purchase materials, supplies, equipment and services for the City. The contracted Buyer will work with the user departments to develop specifications for goods and services; and to administer bids, purchase orders and contracts as assigned.

The contracted Buyer will receive direction on the assignments from the Purchasing Agent but is expected to work independently on each project and assignment.

Education & Experience

Any combination of training and experience equivalent to a Bachelor's degree in Supply Management, Purchasing, Business Administration or a closely related field and at least (5) five years of related local government work experience, purchasing a wide variety of supplies, equipment and services.

Examples of Duties

May include, but are not limited to, the following:

- Purchase materials, supplies, equipment, and services for the City.
- Solicit both informal and formal bids: RFQ, IFB, RFP etc..
- Contact suppliers and vendors to determine availability, price, terms, delivery schedules regarding specific requisitions; evaluate quotations and recommend award.
- Develop and prepare contracts as appropriate, process all paperwork related to the purchase including obtaining the required insurance certificates and endorsements.
- Prepare reports and make presentations as necessary.

Desirable Qualifications

- Knowledge of laws, principles and procedures used in a governmental purchasing and solicitation process.
- Knowledge of "Specification" and "Scope of Work" writing.
- Possession of current CPM, APP, CPPO, CPPB Certification or other equivalent purchasing certification is highly desirable.
- Ability to understand, interpret and apply a variety of rules, regulations, ordinances and procedures related to purchasing.
- Ability to keep records, plan, schedule, and manage projects.
- Ability to communicate effectively both orally and in writing.
- Establish and maintain cooperative working relationships with City staff, vendors and the general public.
- Knowledge of applicable rules, regulations, codes and ordinances governing City procurement of goods and services.
- Working knowledge of Microsoft Word and Excel

Additional Requirements

- Must possess a current California driver's license and current automobile insurance coverage as the contracted Buyer may be required to travel between City sites.

EXHIBIT B

COMPENSATION SCHEDULE

A. CLIENT agrees to pay MACS for its services an hourly rate as stated on attachment A.

B. CLIENT can hire a MACS specialist at no fee after 6 months (180 days) of continuous calendar days or 1040 hours of work. If CLIENT directly hires a MACS specialist prior to 180 days, CLIENT agrees to pay MACS a fee of 25% of the Candidate's annual base salary, less 1/180th for each calendar day the Candidate has been assigned to CLIENT. For example, if the Candidate is converted to a CLIENT employee on the 30th day of an assignment, the fee owed to MACS would be 20.83% (150/180 x 25%); at the end of 90 days, the fee would be 12.50% (90/180 x 25%).

*11

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
REED C. GRANDY**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and Reed C. Grandy, an Individual/Sole Proprietorship DBA "Phoenix Design Group" ("Consultant") as of November 19, 2013.

AGREEMENT

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 31, 2017, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.

1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.

1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed one hundred seventy five thousand dollars ($ 175,000.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.6 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed seven thousand dollars ($7,000.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily

completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. **FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. **INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-

insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on

behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers,

employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the

injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension

shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon

demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach**. The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Julie Waldron who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Reed C. Grandy, Landscape Architect
195 Scheller Ave.
Morgan Hill, CA 95037

Any written notice to City shall be sent to:
Jeff Moneda, Public Works Director/City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **Exhibits**. All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

Thomas C Williams, City Manager

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

Jeff Moneda, Public Works Director/City Engineer

CONSULTANT

Reed C. Grandy, Principal

Taxpayer Identification Number

567507682

Corporate Entity Number: N/A

EXHIBIT A
SCOPE OF SERVICES FOR
GREAT MALL MEDIAN LANDSCAPING
PHASE II

GENERAL:

This project provides for the construction of the Light Rail Median Island's Irrigation, Planting & Hardscape Improvements along Great Mall Parkway and N. Capitol Ave. in the City of Milpitas, CA. The basis of this work will use the previously designed Light Rail Median Landscaping Phase II Plans, Specifications, and Estimate (PS&E) package generated by Sugimura & Associates. The scope of services includes obtaining Agency Permits and approvals for proposed improvements; updating the plans, specifications and cost estimate and performing construction administration services.

SUB-CONSULTANTS:

City and Consultant agree that portions of this project's scope of work will be performed by sub-consultants. The following are the sub-consultants on this project:

Susan M. Landry Environmental Architect
349 Curtner Ave
Campbell, CA 95008
Project Manager: Susan M. Landry

Mark Thomas Company, Civil Engineers
1960 Zanker Road
San Jose, CA 95112
408.644.6936 408.453.5373
Principal Civil Engineer: Jimmy Sims

Alliance Engineering Consultants, Electrical Engineers
4701 Patrick Henry Drive, Bldg. 10
Santa Clara, CA 95054
408.970.9888
Electrical Engineer: David W. Clow

PROJECT MANAGER:

The Consultant shall designate a Project Manager who will be responsible for initiating the work, coordinating the permit approval process, refining the plans and maintaining effective communication with City. Project Manager shall coordinate meetings with all permitting agencies, and will be responsible for setting agendas, developing minutes and tracking action items as required to obtain project permits and approvals from various regulatory agencies. The designated Project Manager form Phoenix Design Group is Susan M. Landry.

PERMITS & CONSTRUCTION DOCUMENTS

TASK 1: PERMIT PROCESS & APPROVALS:

Consultant shall prepare permit applications, coordinate with regulatory agencies, and obtain the necessary permits and/or approvals to proceed with construction from the required agencies including, Santa Clara County Department of Roads & Airport, Valley Transportation Authority, PG&E, Santa Clara Valley Water District, CalTrans, South Bay Water Recycling, California Department of Public Health, State Water Resources Control Board, Union Pacific Rail Road, and Regional Water Quality Control Board. Coordinate with the City and provide project management. The City shall pay all permit fees.

DELIVERABLES:

- Attend (2) meetings, in person, as requested by City.
- Prepare all permit applications, plans and supporting documents as required by the permitting agencies.
- Obtain agency permits and or approvals for the Light Rail Median Island Project.

TASK 2: REVISIONS TO PS&E PACKAGE:

Incorporate all of the following revisions into the project plans and specifications:

a) Approved permit/approval requirements
b) City review comments
c) Update all product information
d) Update all references to current required codes, standards, and details
e) Update the project construction estimate.

DELIVERABLES:

- PS&E Package suitable for Public Contracts Code bidding and construction.
- One (1) BID SET (PS&E) bond paper copy on 24" x36" size sheets suitable for reproduction.
- One (1) electronic copy on a CD containing; plans in PDF format, Specifications in MS Word & Estimate in MS Excel format.

TASK 3: BIDDING PERIOD:

CITY will be responsible for advertisement and bidding of the project. CONSULTANT shall assist the CITY during the bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at two (2) pre-bid meetings, review and evaluation of bids.

DELIVERABLES:

- Attend and assist at two (2) Pre-Bid meetings.

- Prepare response to bidders' inquiries and submit to City for integration into their formal responses.
- Assist and draft addenda/response to bidder inquiries, if needed
- Assist in bid evaluation as requested by City

TASK 4: CONFORMED CONSTRUCTION DOCUMENTS:

Upon completion of bidding, Consultant shall prepare a conformed set of construction plans and conformed specifications, revised to incorporate all addenda, ready to issue for contract award and construction. Consultant shall submit one (1) wet-signed hard copy of the conformed set of contract documents within ten (10) days of award of the Construction Contract.

DELIVERABLES:

- One (1) conformed set of plans bond paper copy on 24" x 36" size sheets suitable for reproduction
- One (1) electronic copy of plans in PDF format and specifications in MS Word & PDF formats on a CD.

CONSTRUCTION ADMINISTRATION SUPPORT

TASK 5: GENERAL CONDITIONS:

Consultant shall provide construction observation and project administration duties commencing with the award of the construction contract and shall terminate at the conclusion of the warranty periods for the Contractor's work.

a. Consultant shall review reports, summaries and other construction contractor provided documents to determine in general, whether or not the construction contractor is in compliance with the contract documents.

b. Consultant shall review shop drawings and submittals and provide responses to the City. Consultant shall review submittals for completeness, compliance with the plans/specifications and design intent. Issue any rejections of submittals on grounds of incompleteness as soon as possible, but in no event later than five (5) working days.

c. Consultant shall attend the project's pre-construction meeting.

DELIVERABLES:

- Review submittals and provide responses, within 5 working days.
- Maintain record of and copies of contractor submittals.
- Attend (1) Pre-construction meeting.

TASK 6: RFI's & CHANGE ORDERS:

Consultant shall review and respond to construction contractor's Requests for Information (RFI's). Consultant shall coordinate its review and response to these documents with the

City and the construction contractor as needed to allow for work to proceed, and be cognizant of the construction contractor's progress and schedule. In this regard, Consultant shall work in good faith with the contractor and the City to prioritize the processing of critical path RFI's and submittals and other contractor submitted documents as outlined in this scope of work.

a. Consultant's review and response to Contractor RFI's shall be done in a timely and expeditious manner. So long as construction contractor fully complies with the Project's approved schedule, Consultant shall review and respond to RFI's with such reasonable promptness as to cause no delay in the work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than five (5) working days.

b. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond Consultant's reasonable control, Consultant shall notify the City in writing of the grounds for such delay and request additional review and processing time from the City, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the construction contractor's progress. In such cases, Consultant shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

c. Consultant shall review requests by the City for changes in the work, including adjustments to the contract price or time of completion. Consultant shall provide a recommendation to the City in writing.
   - Review Contractor-submitted Potential Change Order requests within five (5) working days of its receipt.
   - Assist the City in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the City's approval and execution in accordance with the contract documents.
   - Maintain all records relative to changes in the work.

DELIVERABLES:

- Review and provide written responses and supporting documents to Contractor's RFI's.
- Draft Change Orders as requested by the City, submit to the City for issuance of their CO's.
- Review Contractor-submitted Potential Change Order requests within five (5) working days of its receipt.
- Assist the City in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the City's approval and execution in accordance with the contract documents.
- Maintain all records relative to changes in the work.

TASK 7: CONSTRUCTION MEETINGS:

Consultant shall attend construction meetings, as scheduled, with the Contractor, or as requested by the City. Consultant shall provide commentary to the City on all material issues. Construction meetings are anticipated to be held once per week for the first month, then every other week for the duration of construction.

DELIVERABLES:

- Attend construction meetings, in person, as requested.

TASK 8: NURSERY SITE VISITS:

Consultant shall visit the plant nurseries, with the Contractor, where the plant material is stored, within 60 miles of Milpitas, CA. Contractor to pre-select plant material prior to consultant's nursery visit. Consultant will review contractor's selections and accept or reject plants based on the project specifications.

DELIVERABLES:

- Attend up to (2) nursery site visit, in person, as required.

TASK 9: SITE VISITS:

Consultant shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the City and the Consultant. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the construction contractor's rights and responsibilities under the contract with City.

a. Consultant to endeavor to determine if the work is being performed in a manner such that the work, when fully completed, will be in accordance with the construction contract.

b. Consultant may, after receiving approval from the City, reject work that does not conform to the contract documents. Whenever Consultant considers it necessary or advisable for implementation of the intent of the contract documents, Consultant will notify the City when Consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.

c. Consultant shall keep the City informed of its observations of the progress of the Project.

d. Consultant shall promptly report in writing to the City any known deviations from the construction contract and from the most recent construction schedule submitted by the Contractor. However, the Consultant will not be responsible for the construction contractor's failure to perform the work in accordance with the requirements of the construction contract.

e. Consultant shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the construction contractor or the City to clarify the design intent at no additional cost to the City.

f. Consultant shall prepare a final punch list of any discovered incomplete and/or unaccepted items of the construction work for the City's review and approval. Consultant shall attend, with the City, a Site Visit for Acceptance of Construction and approve the start of maintenance. This final close-out walkthrough of the Project will occur when all punch list items have been completed in accordance with the requirements of the construction documents.

DELIVERABLES:

- Perform regular site visits and report deviations/observations.
- Report in writing any deviations from the project schedule.
- Prepare Punch list items and conduct punch list walk through.
- Attend Final Closeout walk-through.

TASK 10: PROJECT CLOSEOUT & RECORD DOCUMENTS:

a. Consultant shall review all Contractor supplied operation and maintenance manuals, and warranties.

b. Prior to acceptance of the Project by the City, Consultant shall review for accuracy and completeness the Contractor's As-Built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete

c. Consultant shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing Set. Consultant shall also draft and initial the official Record Drawings and submit both a hard copy on Mylar and an electronic copy in AutoCAD format, PDF on CD to the City within forty five (45) days of receipt of completed Contractor red line drawings. CONSULTANT to provide the CITY a hardcopy check set of the As-Built Drawings for review prior to printing the Mylar set.

DELIVERABLES:

- Review contractor provided reports, manuals, warranties and other documents.
- Provide (1) bond copy check-set of plans to City for review.
- Record drawings one (1) hard copy on Mylar
- One(1) electronic copy on a CD in AutoCAD and PDF formats
- Attend meetings in person as requested by City.

TASK 11: (1) YEAR MAINTENANCE PERIOD:

City and Consultant will review construction work for compliance with the plans and specifications and determine acceptance of the project. Once the work has been accepted, the Maintenance Period is one (1) calendar year (365 days). Consultant to shall visit the site at 3 months, 6 months, 9 months & 12 months.

DELIVERABLES:

- Perform site visits and report deviations/observations.

REIMBURSALBES

All Plan Set submittals shall be on bond paper copy set and the PDF electronic files on 24" x36" size sheets. City to reproduce additional copies. Consultant shall supply the City with the Final submittal of Record Drawings, (1) complete Mylar Set of Plans on 24" x36" size sheets and the electronic files in PDF and Auto CAD formats on CD.

ADDITIONAL SERVICES

1. The CITY will provide written direction and a budget for any additional service to be performed. Written authorization must be obtained from the CITY prior to the CONSULTANT beginning any additional services. The CITY will not be responsible for any additional work that the CONSULTANT performs prior to receiving written authorization.

EXHIBIT B

COMPENSATION SCHEDULE

EXHIBIT C

INSURANCE DOCUMENTS

*12

AMENDMENT NO. 3 TO THE AGREEMENT
WITH
TERRACARE ASSOCIATES, LLC.
FOR
STREETSCAPE LANDSACPE MAINTENANCE AND REPAIR SERVICES

This Amendment is entered into this 20th day of November, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Terracare Associates, LLC.**, a Limited Liability Corporation registered in the State of California (hereafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, the parties entered into an Agreement entitled "City of Milpitas Streetscape Landscape Maintenance and Repair Service" on June 6, 2012, which was approved by City Council on June 5, 2012 and became effective July 1, 2012 ("Agreement"). This is a two (2) year agreement with three (3) one (1) year options to renew. The first year contract amount, is One Hundred Twenty-Five Thousand Two Hundred Eighteen dollars ($125,218.00); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on April 25, 2013 to add three (3) medians adjacent to Cerano Park to the Agreement for a monthly increase of Three Hundred and Eighty-Five Dollars ($385.00) for the remainder of the Agreement for a total year one contract amount of One Hundred Twenty-Six thousand Three Hundred and Seventy-Three dollars ($126,373.00); and

WHEREAS, the parties entered into Amendment No. 2 to the Agreement on April 30, 2013 to incorporate the requirements of the "California Regional Water Quality Control Board, Municipal Regional Stormwater NPDES Permit" at no cost to the City; and

WHEREAS, the parties now desire to further amend the Agreement to allow CONTRACTOR to provide additional streetscape landscape maintenance and repair services for Tasman Median at McCarthy Blvd and the Sinclair Horizons walking path located in Landscape Maintenance District LMD 98-1, along the Berryessa Creek Trail for a monthly total of $535.00 for the remainder of the agreement for a total year two contract amount of One Hundred Thirty-Three Thousand Five Hundred and Eighty-Three dollars ($133,583.00).

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement to include the following:

1. The Agreement is amended to include the following two service areas in the Scope of Services.
   A. Tasman Median at McCarthy Blvd.
   B. Sinclair Horizons walking path located in Landscape Maintenance District LMD 98-1, along the Berryessa Creek Trail.

2. City agrees to pay CONTRACTOR for all services performed in accordance with the amended Agreement in the amounts no-to-exceed as follows:

A. 7/01/12 to 6/30/13: $126,373.00
B. 7/01/13 to 6/30/14: $133,583.00
C. 7/01/14 to 6/30/15: $136,258.00
D. 7/01/15 to 6/30/16: $136,258.00
E. 7/01/16 to 6/30/17: $136,258.00

2. This amendment shall become effective December 1, 2013.

3. All other provisions of the Agreement not amended by this Amendment No. 3 shall remain in full force and effect.

This Amendment is executed as of the date written on page one.

APPROVED BY:
CITY OF MILPITAS

_____
Thomas C. Williams, City Manager

TERRACARE ASSOCIATES

_____
Name of Authorized Representative

_____
Title of Authorized Representative

Approved As
To Form:

_____
Michael J. Ogaz, City attorney

Approved As
To Content:

_____
Steve Erickson, City Project Manager

*HA3-A

RESOLUTION NO. HA___/____/SA___

A JOINT RESOLUTION OF THE CITY OF MILPITAS HOUSING AUTHORITY, THE CITY COUNCIL OF THE CITY OF MILPITAS, AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (1) APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE INITIAL DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE REAL PROPERTY OF THE MILPITAS HOUSING AUTHORITY LOCATED AT 1504-1620 SOUTH MAIN STREET IN MILPITAS, CALIFORNIA, (2) APPROVING A SUMMARY REPORT REQUIRED BY HEALTH AND SAFETY CODE SECTION 33433, (3) APPROVING A FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND THE SALE OF SUCH REAL PROPERTY TO SOUTH MAIN SENIOR LIFESTYLES, LLC, AND (4) ADOPTING FINDINGS IN CONNECTION WITH SUCH SALE

WHEREAS, the Redevelopment Agency of the City of Milpitas ("RDA") acquired approximately 5.94 acres of land located at 1504-1620 South Main Street (Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048) (collectively referred to herein as the "Property") located within Milpitas Redevelopment Project Area No. 1 (the "Project Area") and governed by the redevelopment plan for the Project Area (the "Redevelopment Plan") and the Midtown Specific Plan (the "Specific Plan"), both as adopted by the City Council (the "City Council") of the City of Milpitas (the "City"); and

WHEREAS, the RDA purchased the Property for redevelopment, including the provision of affordable housing, in accordance with the terms of the Redevelopment Plan, the Specific Plan, the City's General Plan, and the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (the "CRL") using tax increment revenues deposited in its Low and Moderate Income Housing Fund established under the CRL (the "Housing Fund"); and

WHEREAS, to accomplish these redevelopment and affordable housing purposes, the RDA and South Main Street Lifestyles, LLC (the "Developer") entered into a Disposition and Development Agreement dated August 18, 2009, as amended by a First Amendment dated October 18, 2011 (collectively, the "Initial DDA") providing for disposition of the Property to the Developer and development thereon by the Developer of a two-phased residential complex containing approximately three hundred eighty-seven (387) residential units (including specified affordable units), a new City street and other City rights-of-way, common use facilities, parking, landscaping and related on- and off-site improvements (the "Initial Project"); and

WHEREAS, pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, the "Redevelopment Dissolution Law"):

1. The RDA, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The City of Milpitas Housing Authority (the "Housing Authority"), the City Council, and the RDA adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency (the "Successor Agency") to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved RDA; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved RDA; and

WHEREAS, the Property constitutes a "housing asset" of the RDA that transferred to the Housing Authority pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. A letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. The Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012, as prepared in accordance with Health and Safety Code Section 34179.5; and

3. The Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012, as prepared in accordance with Health and Safety Code Section 34182(a); and

WHEREAS, within the meaning of Health and Safety Code Section 34176, the Initial DDA constitutes:

1. A "housing obligation" and a "housing duty" of the dissolved RDA in that it commits the RDA to convey the Property (which is a housing asset of the dissolved RDA, as described in the preceding recital) to the Developer and to provide specified financial assistance from its Housing Fund to the Developer; and

2. A "housing asset" of the dissolved RDA, in that the Initial DDA includes an express obligation of the Developer to develop and operate specified affordable housing units in the Initial Project for the benefit of the dissolved RDA's affordable housing program; and

3. A "housing function" of the dissolved RDA, in that the Initial DDA directs the RDA to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Initial Project on the Property and provision of specified affordable housing units using moneys from the Housing Fund; and

WHEREAS, for the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved RDA to the Housing Authority, the Successor Agency and the Housing Authority desire to enter into an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), substantially in the form on file with the City Clerk, the Housing Authority Secretary, and the Successor Agency Secretary, whereby the Successor Agency will assign and delegate its rights and obligations under the Initial DDA to the Housing Authority and the Housing Authority will accept such assignment and delegation; and

WHEREAS, to better reflect current market, financial, statutory and planning circumstances, and to enable feasible development of the Property in furtherance of the CRL, the Redevelopment Plan, the Specific Plan, the RDA's most recent five-year Implementation Plan (the "Implementation Plan"), and the California Housing Authorities Law (Health and Safety Code Section 34200 *et seq.*) (the "Housing Authorities Law") as applicable to the Housing Authority, the Housing Authority and the Developer now desire to modify the terms of the Initial DDA in the form of a First Amended and Restated Disposition and Development Agreement (the "Amended DDA"), substantially in the form on file with the City Clerk and the Housing Authority Secretary; and

WHEREAS, included within the Amended DDA are certain modifications to the Initial Project (as so modified and as further described below and in the Amended DDA, the "Project"); and

WHEREAS, the Project will include the following two sequential phases:

1. A first phase residential development (the "Phase One Development") consisting of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements; and

2. A second phase residential development (the "Phase Two Development") consisting of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements; and

WHEREAS, the Phase One Development will include ten (10) residential units available at affordable housing cost to income-qualified very low income households, and the Phase Two Development will include thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households; and

WHEREAS, in connection with adoption of the Specific Plan, on March 19, 2002, the City Council certified a Program Environmental Impact Report (the "EIR") for the Specific Plan (SCH #2000092027) in accordance with the requirements of the California Environmental Quality Act and the applicable State and local implementing guidelines ("CEQA"); and

WHEREAS, based on an environmental assessment for the Amended DDA as summarized in the staff report accompanying this Resolution (the "Staff Report"), it has been determined that the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR, and that none of the events specified in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 have occurred that would require a supplemental or subsequent environmental impact report; and

WHEREAS, as a result of these determinations:

1. No new environmental document is required pursuant to CEQA in connection with the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA, as provided in Section 15168(c)(2) of the State CEQA Guidelines; and

2. The Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are exempt from CEQA pursuant to California Government Code Section 65457, dealing with residential projects consistent with a specific plan that was the subject of an environmental impact report certified after January 1, 1980; and

WHEREAS, the Housing Authority and the City Council acknowledge and agree that, in connection with consideration of the Developer's application for City land use entitlements to develop the Project on the Property as required by the Amended DDA (the "Entitlements"):

1. The Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project;

2. Evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and

3. Mitigation measures required as part of the EIR that are applicable to the Project, and any other mitigation measures deemed necessary as a result of such review, have been incorporated as requirements in the Amended DDA, and will be incorporated into the City Entitlements or other Project approvals; and

WHEREAS, by Resolution 13-027 of October 23, 2013, the Planning Commission of the City determined, in accordance with Government Code Section 65402(c), that the disposition of the Property by the Housing Authority and the development of the Project by the Developer pursuant to the Amended DDA conforms to the Specific Plan and the City's General Plan; and

WHEREAS, as housing successor of the dissolved RDA, the Housing Authority has inherited all of the rights, powers, assets, duties and obligations of the RDA in connection with the disposition of the Property pursuant to the Amended DDA, including the power and duty to dispose of the Property consistent with the disposition requirements of the CRL that formerly applied to the RDA; and

WHEREAS, in compliance with these powers and duties, the City Council and the Housing Authority have each considered the disposition of the Property as set forth in the Amended DDA, have followed all requisite procedures, and by this Resolution intend to adopt all requisite findings in connection with the foregoing, including, without limitation, the requirements of the CRL set forth in Health and Safety Code Sections 33431 and 33433; and

WHEREAS, specifically, Health and Safety Code Section 33433 requires that:

1. Before any property acquired, in whole or in part, with tax increment monies is sold for development pursuant to a redevelopment plan, such sale shall first be approved by the City Council (and, in this case, the Housing Authority), after a duly noticed public hearing of the City Council (and, in this case, the Housing Authority); and

2. The City (and, in this case, the Housing Authority) shall make available for public inspection a copy of the proposed sale and a summary which describes the financial aspects of the transaction (the "Section 33433 Summary Report"); and

WHEREAS, in accordance with the applicable statutes, the required documents have been made available for inspection and the City Council and the Housing Authority have reviewed the Section 33433 Summary Report, as prepared by the real estate consulting firm Economic and Planning Systems, Inc. and dated October 14, 2013; and

WHEREAS, the Section 33433 Summary Report, a copy of which is on file with the City Clerk and the Housing Authority Secretary, outlines the proposed Project and the Amended DDA, sets forth the estimated value of the Property under the terms of the Amended DDA and compares such value to the consideration to be paid by the Developer for the Property under the Amended DDA, summarizes the economic impacts of the proposed Project and the Amended DDA, and describes how the proposed Project under the Amended DDA will eliminate blight and provide affordable housing in the Project Area analysis; and

WHEREAS, the Section 33433 Summary Report concludes that the Developer's proposed consideration to be paid to the Housing Authority for the Property pursuant to the Amended DDA is not less than the Property's fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Property in accordance with the Amended DDA; and

WHEREAS, the proposed disposition and development of the Property in accordance with the Initial DDA and the Amended DDA will assist in the elimination of blight by redeveloping and removing dilapidated and vacant residential and commercial buildings, remediating environmental contamination, and enhancing the quality of life of present and future residents, will assist in the provision of affordable housing for very low-income households, and is consistent with the goals of the Implementation Plan; and

WHEREAS, a duly noticed joint public hearing by the City Council and the Housing Authority on the proposed sale of the Property and on the Amended DDA was held on November 19, 2013; and

WHEREAS, the findings, determinations, resolutions, and actions set forth in this Resolution are based in part on the following (collectively, the "Supporting Documentation"), which are incorporated by reference in this Resolution: (1) the Staff Report; (2) the Section 33433 Summary Report; (3) Planning Commission

Resolution 13-027; (4) the EIR; (5) the Specific Plan; (6) the City General Plan; (7) the Redevelopment Plan; (8) the Implementation Plan; (9) the Assignment and Assumption Agreement; and (10) the Amended DDA.

NOW, THEREFORE, the Board of the Housing Authority (the "Housing Authority Board"), the City Council of the City of Milpitas, and the Board of the Successor Agency (the "Successor Agency Board") hereby find, determine, declare and resolve as follows:

1. The Housing Authority Board, the City Council, and the Successor Agency Board have considered the full record before them, which includes, but is not limited to, the Supporting Documentation, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. Based on the Supporting Documentation, the Housing Authority Board and the City Council hereby find and determine that the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR, and that none of the events specified in Public Resources Code Section 21166 or State CEQA Guidelines Section 15162 have occurred that would require a supplemental or subsequent environmental impact report. As a result, the Housing Authority Board and the City Council hereby further find and determine that: (a) no new environmental document is required pursuant to CEQA in connection with the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA, as provided in Section 15168(c)(2) of the State CEQA Guidelines; and (b) the Amended DDA and the disposition and development of the Property in accordance with the Amended DDA are exempt from CEQA pursuant to California Government Code Section 65457, dealing with residential projects consistent with a specific plan that was the subject of an environmental impact report certified after January 1, 1980. The City Manager and the Housing Authority Executive Director are hereby authorized to file the appropriate CEQA notice of exemption in connection with the actions set forth in this Resolution.

3. The Section 33433 Summary Report is hereby approved by the City Council and the Housing Authority Board. The City Council and the Housing Authority Board declare that the findings and determinations set forth below in Sections 4 and 5 are based in part on the approved Section 33433 Summary Report.

4. The City Council and the Housing Authority Board hereby find and determine that the consideration to be paid by the Developer for the conveyance of the Property pursuant to the Amended DDA is not less than the Property's fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Property in accordance with the Amended DDA.

5. The City Council and the Housing Authority Board hereby find and determine that the conveyance and development of the Property in accordance with the Amended DDA will assist in the elimination of blight and in the provision of affordable housing for very low-income and low-income households.

6. The City Council and the Housing Authority Board hereby find and determine that the conveyance and proposed development of the Property in accordance with the Amended DDA are consistent with the Milpitas General Plan, the Specific Plan, the Milpitas Municipal Code, the Redevelopment Plan, and the Implementation Plan.

7. The Housing Authority Board and the Successor Agency Board hereby approve the Assignment and Assumption Agreement. The Housing Authority Executive Director and the Successor Agency Executive Director are hereby authorized by the Housing Authority Board and the Successor Agency Board, respectively, to execute the Assignment and Assumption Agreement, subject to staff level correction, if necessary, of any technical errors (such as the correction of typographical misprints, the insertion of address information, and the

like) and to implement, and take other legally-required actions in connection with, the Assignment and Assumption Agreement.

8. The Housing Authority Board and the City Council hereby approve the Amended DDA and the sale of the Property to the Developer in accordance with the Amended DDA. The Housing Authority Executive Director is hereby authorized by the Housing Authority Board to execute the Amended DDA, subject to staff level correction, if necessary, of any technical errors (such as the correction of typographical misprints, the insertion of address information, and the like) and to implement, and take other legally-required actions in connection with, the Amended DDA.

9. The Housing Authority Board, the City Council, and the Successor Agency Board hereby designate the City Clerk as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the City Clerk's Office at 445 East Calaveras Street, Milpitas, California 95035.

PASSED AND ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____
Mary Lavelle, Housing Authority Secretary/
City Clerk/Successor Agency Secretary

_____
Jose S. Esteves, Chair/Mayor/Chair

APPROVED AS TO FORM:

_____
Michael J. Ogaz, Housing Authority Counsel/
City Attorney/Successor Agency Counsel

*HA3-B

FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

Initially Executed: August 18, 2009

Amended: October 18, 2011

First Amended and Restated: November 19, 2013

TABLE OF CONTENTS

Page

ARTICLE 1. REPRESENTATIONS; CONDITIONS PRECEDENT TO PROPERTY CONVEYANCE .....

Section 1.1 Developer's Representations. 5
Section 1.2 Housing Authority Representations. 6
Section 1.3 Conditions Precedent. 6
Section 1.4 Operator, Operations Agreement, and Services Plan For Phase One Development. 12
Section 1.5 Execution and Delivery of Documents. 14
Section 1.6 Insurance. 15
Section 1.7 Memorandum. 15

ARTICLE 2. [INTENTIONALLY OMITTED] 15

ARTICLE 3. DISPOSITION OF THE PROPERTY 15

Section 3.1 Purchase and Sale of Property. 15
Section 3.2 Purchase Price. 16
Section 3.3 Escrow 16
Section 3.4 Costs of Closing and Escrow. 16
Section 3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. 16
Section 3.6 Closing Date 16
Section 3.7 Conditions to Closing. 17

ARTICLE 4. CONDITION OF THE SITE; ENVIRONMENTAL MATTERS 18

Section 4.1 Access to Site; Inspections 18
Section 4.2 AS-IS Sale 18
Section 4.3 Release of Claims. 19
Section 4.4 Developer's Post-Closing Obligations; Environmental Indemnification. 19

ARTICLE 5. DEVELOPMENT OF THE PROJECT 21

Section 5.1 Schedule of Performance. 21
Section 5.2 Cost of Acquisition and Construction. 22
Section 5.3 Construction Plans. 22
Section 5.4 Permits and Approvals. 22
Section 5.5 Construction Plans Must Be Approved; Construction in ..... Accordance with Plans and Approvals. 23
Section 5.6 Change in Construction Plans. 23
Section 5.7 Defects in Plans 23
Section 5.8 Equal Opportunity 24
Section 5.9 Prevailing Wages. 24

TABLE OF CONTENTS

Page

Section 5.10 Performance and Payment Bond(s). 24
Section 5.11 Insurance Requirements. 25
Section 5.12 Certificate of Completion. 25
Section 5.13 Compliance with Laws. 25
Section 5.14 Indemnity. 25
Section 5.15 Liens and Stop Notices. 26
Section 5.16 Right of Housing Authority to Satisfy Liens on the Property. 26
Section 5.17 Housing Authority Rights of Access. 26
Section 5.18 Housing Authority Disclaimer. 26

ARTICLE 6. USE OF THE PROPERTY 27

Section 6.1 Uses. 27
Section 6.2 Affordable Senior Housing. 27
Section 6.3 Maintenance. 27
Section 6.4 Taxes and Assessments. 28
Section 6.5 Non-Discrimination and Mandatory Language in All Subsequent Deeds, Leases and Contracts 28

ARTICLE 7. LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER 30

Section 7.1 Identity of Developer; Changes Only Pursuant to this Agreement 30
Section 7.2 Prohibition on Transfer and Significant Change of Ownership 30
Section 7.3 Permitted Transfers. 31
Section 7.4 Requirements for Other Proposed Transfers 32
Section 7.5 Effect of Transfer without Housing Authority Consent. 33

ARTICLE 8. FINANCING AND RIGHTS OF MORTGAGEES 34

Section 8.1 Mortgages and Deeds of Trust for Development. 34
Section 8.2 Holder Not Obligated to Construct Improvements. 34
Section 8.3 Notice of Default; Right to Cure. 34
Section 8.4 Failure of Holder to Complete Improvements. 35
Section 8.5 Right of Housing Authority to Cure Defaults. 36
Section 8.6 Holder to be Notified. 36
Section 8.7 Estoppel Certificates. 36
Section 8.8 Modifications; FHA-Required Provisions. 36

ARTICLE 9. DEFAULTS AND REMEDIES 37

Section 9.1 Termination Without Fault. 37
Section 9.2 Fault of Housing Authority. 37
Section 9.3 Fault of the Developer. 38
Section 9.4 Legal Actions. 40

TABLE OF CONTENTS

Page

Section 9.5 Remedies Cumulative; No Waiver. 40
Section 9.6 Special Remedies Prior To Phase One Development Certificate of Completion..... 40
Section 9.7 Special Remedies Prior To Phase Two Development Certificate of Completion..... 43
Section 9.8 Memorandum of Right of Reverter/Option to Purchase..... 46
Section 9.9 Construction Plans. 46
Section 9.10 Rights of Mortgagees..... 46
Section 9.11 Additional Provisions Regarding Options to Purchase..... 47
Section 9.12 Mechanics of Revesting..... 47
Section 9.13 Mediation. 48

ARTICLE 10. MISCELLANEOUS PROVISIONS..... 49

Section 10.1 No Brokers..... 49
Section 10.2 Enforced Delay; Extension of Times of Performance. 49
Section 10.3 Notices. 50
Section 10.4 Attorneys' Fees..... 51
Section 10.5 Waivers; Modification. 51
Section 10.6 Binding on Successors. 51
Section 10.7 Provisions Not Merged With Deeds; Survival..... 51
Section 10.8 Construction..... 51
Section 10.9 Action or Approval. 51
Section 10.10 Entire Agreement..... 51
Section 10.11 Counterparts..... 52
Section 10.12 Severability. 52
Section 10.13 No Third Party Beneficiaries. 52
Section 10.14 Parties Not Co-Venturers..... 52
Section 10.15 Non-Liability of Officials, Employees and Agents. 52
Section 10.16 Time of the Essence; Calculation of Time Periods..... 52
Section 10.17 Governing Law. 52
Section 10.18 Inspection of Books and Records. 52
Section 10.19 General Indemnification. 53
Section 10.20 Operating Memoranda. 53

Exhibits

A	Legal Description of the Property
A-1	Legal Description of the Phase One Parcel
A-2	Legal Description of the Phase Two Parcel
A-3	Legal Description of the Public Use Parcels
B	Scope of Development—Project Description
C	[Intentionally Omitted]
D	Schedule of Performance
E-1	Financing Plan for Phase One Development
E-2	Financing Plan for Phase Two Development
F	Form of Grant Deed
G	Form of Memorandum of Disposition and Development Agreement
H-1	Form of Phase One Regulatory Agreement
H-2	Form of Phase Two Regulatory Agreement
I	Form of Certificate of Completion

THIS FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), initially executed as of August 18, 2009, as amended October 18, 2011, and as herein fully amended and restated as of November 19, 2013 ("**Amendment Effective Date**"), is entered into by and between the City of Milpitas Housing Authority ("**Housing Authority**"), a public body, corporate and politic, and South Main Senior Lifestyles, LLC, a California limited liability company ("**Developer**"). Housing Authority is authorized by the City Council ("**City Council**") of the City of Milpitas ("**City**") to conduct business pursuant to the California Housing Authorities Law (Health and Safety Code Section 34200 et seq.) ("**Housing Authorities Law**"), and to serve as "housing successor" to the former Redevelopment Agency of the City of Milpitas ("**Agency**") pursuant to Health and Safety Code 34176(b). Housing Authority and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party.**"

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.) ("**CRL**") and prior to its dissolution as described below, the Agency had the responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, "**Redevelopment Plan**") by the City Council of the City for the Milpitas Redevelopment Project Area No. 1 (**"Project Area**") as more particularly described in the Redevelopment Plan.

B. The Agency sought, and the Housing Authority now continues to seek, development of the property containing approximately 5.94 gross acres known as Santa Clara County Assessor's Parcel Nos. 086-22-027, 086-22-028, 086-22-046, 086-22-047, and 086-22-048 located at 1504-1620 South Main Street and more particularly described in Exhibit A attached hereto ("**Property**"). The Property is located within the Project Area and the area governed by the City's Midtown Specific Plan ("**Specific Plan**"). The Agency purchased the Property on November 23, 2009 using funds from its Low and Moderate Income Housing Fund ("**Housing Fund**") in accordance with the requirements of the CRL. As further provided in Recital K and in accordance with Section 1.3.5.2 hereof, the Property is intended to be subdivided prior to conveyance, resulting in the assignment of new Assessor's Parcel numbers.

C. To accomplish development of the Property consistent with the CRL, the Redevelopment Plan and the Specific Plan, the Agency and the Developer entered into a Disposition and Development Agreement dated as of August 18, 2009, as amended by a First Amendment dated October 18, 2011 (collectively, "**Initial Agreement**"). The Initial Agreement provided for disposition of the Property to the Developer and development thereon by the Developer of a two-phased residential complex containing approximately three hundred eighty-seven (387) residential units, a new City street and other City rights-of-way, common use facilities, parking, landscaping and related on- and off-site improvements ("**Initial Project")**.

D. Pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, "**Redevelopment Dissolution Law**"):

1. The Agency, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. Housing Authority, City Council, and Agency adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the successor agency ("**Successor Agency**") to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved Agency; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved Agency.

E. The Property constitutes a "housing asset" of the Agency that transferred to the Housing Authority pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. A letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. The Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012 as prepared in accordance with Health and Safety Code Section 34179.5; and

3. The Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012 as prepared in accordance with Health and Safety Code Section 34182(a).

F. Within the meaning of Health and Safety Code Section 34176, the Initial Agreement constitutes:

1. A "housing obligation" and a "housing duty" of the dissolved Agency in that it commits Agency to convey the Property (which is a housing asset of the dissolved Agency, as described in Recital E) to Developer and to provide specified financial assistance from its Housing Fund to Developer;

2. A "housing asset" of the dissolved Agency, in that the Initial Agreement includes an express obligation of Developer to develop and operate specified affordable housing units in the Initial Project for the benefit of the dissolved Agency's affordable housing program; and

3. A "housing function" of the dissolved Agency, in that the Initial Agreement directs the Agency to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Initial Project on the Property and provision of specified affordable housing units using moneys from the Housing Fund.

G. For the foregoing reasons, and in accordance with the requirements of Health and Safety Code Section 34177(g) calling for Successor Agency to transfer the housing functions and assets of the dissolved Agency to Housing Authority, Successor Agency and Housing Authority entered into an Assignment and Assumption Agreement dated of even date herewith, whereby Successor Agency assigned and delegated its rights and obligations under the Initial Agreement to Housing Authority.

H. The Parties now desire to modify the terms of the Initial Agreement in the form of this Agreement to better reflect current market, financial, statutory and planning circumstances, and to enable feasible development of the Property in furtherance of the CRL, the Redevelopment Plan, the Specific Plan, the Agency's most recent five-year Implementation Plan ("**Implementation Plan**"), and the Housing Authorities Law. As part of such modification, the Parties desire to make certain modifications to the Initial Project in the form of the proposed project ("**Project**") that is further summarized below and detailed throughout this Agreement.

I. The proposed Project that is the subject of this Agreement is generally described in the Scope of Development ("**Scope of Development**") attached hereto as Exhibit B. As further described and depicted in the Scope of Development, the Project will include the following two sequential phases:

1. The first phase residential development ("**Phase One Development**") consisting of a one hundred ninety-nine (199) unit "continuum of care" senior (62 years of age and older) housing rental development and related amenities, parking, landscaping, and public street, utility and infrastructure improvements. The Phase One Development will include ten (10) residential units available at affordable housing cost to income-qualified very low income households ("**Phase One Affordable Units**", as more fully described in the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase One Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-1).

2. The second phase residential development ("**Phase Two Development**") consisting of one hundred ninety (190) apartment units for active, independent seniors (62 years of age and older), and related amenities, parking, landscaping and public street, utility, and infrastructure improvements. The Phase Two Development will include thirty-eight (38) residential units available at affordable housing cost to income-qualified very low income households ("**Phase Two Affordable Units**", as more fully described in the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Phase Two Regulatory Agreement**"), the form of which is attached hereto as Exhibit H-2). The Phase One Affordable Units and the Phase Two Affordable Units are collectively referred to herein as "**Affordable Units**".

As used in this Agreement, the term "**Development Phase**" means the Phase One Development or the Phase Two Development, as applicable.

J. The Property received certain land use entitlements pursuant to a City Council resolution of February 5, 2008. Those entitlements, including a vesting tentative map remain applicable to the Property through June 24, 2014 (the "**Current VTM**"). To facilitate the development of the Project, the Developer will seek a new set or amended set of land use entitlements from the City (the "**Entitlements**") in accordance with Section 1.3.5.1. The nature and scope of the anticipated Entitlements to be sought by the Developer are summarized in the Scope of Development (Exhibit B), and include revisions to the Current VTM. The Current VTM, as may be revised pursuant to a new application of the Developer and approval of the City Council, is referred to herein as the "**Revised VTM**."

K. To further facilitate the development of the Project, the Developer, with the cooperation of the Housing Authority as provided in Section 1.3.5.2, will seek to cause the

subdivision of the Property in accordance with the State Subdivision Map Act and City Subdivision Ordinance ("**Final Map**") to establish the following parcels within the Property:

1. A private development parcel of approximately 1.94 net acres in the southern portion of the Property, generally as delineated in the attached Exhibit B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Phase One Parcel**"), upon which the Phase One Development will be constructed and operated;

2. A private development parcel of approximately 2.86 net acres in the northern portion of the Property, generally as delineated in the attached Exhibit B, Attachment 1 (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, **"Phase Two Parcel**"), upon which the Phase Two Development will be constructed and operated; and

3. Public use parcels to be dedicated in fee or by easement to the City comprising the approximately 1.14-net acre balance of the Property, generally as delineated in the attached Exhibit B, Attachment 1, (as such parcel boundaries are finally established pursuant to the approved Revised VTM and the Final Map, "**Public Use Parcels**"), which will contain the right-of-way for various public streets (i.e., Cedar Way and Costas Street), utilities, and related infrastructure improvements.

As used in this Agreement, the term "**Development Parcel**" means the Phase One Parcel or the Phase Two Parcel, as applicable. Exhibit A includes an illustrative plat map that will be subject to refinement in preparing the Final Map.

L. On March 19, 2002, the City Council certified a Program Environmental Impact Report ("**EIR**") for the Specific Plan (SCH #2000092027). Based on an environmental assessment for this Agreement, it has been determined that this Agreement is within the scope of the program of activities for which the environmental impacts were adequately addressed by the EIR. As a result, no new environmental document is required with respect to this Agreement pursuant to the California Environmental Quality Act ("**CEQA**"), as provided in Section 15168(c)(2) of the State CEQA Guidelines, and this Agreement is also exempt from CEQA pursuant to California Government Code Section 65457. The parties acknowledge and agree that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project and any other mitigation measures deemed necessary as a result of such further City review (collectively, "**Project Mitigation Measures**") have been incorporated in this Agreement as requirements for development of the Project pursuant to Section 5.3, and will be incorporated by the City into the Entitlements or other Project approvals.

M. By action of October 23, 2013, the Planning Commission of the City determined, in accordance with Government Code Section 65402(c), that the disposition of the Property by

Housing Authority and the development of the Project by Developer pursuant to this Agreement conforms to the Specific Plan and the City's General Plan.

N. As housing successor of the dissolved Agency, the Housing Authority has inherited all of the rights, powers, assets, duties and obligations of the Agency in connection with the disposition of the Property pursuant to this Agreement, including the power and duty to dispose of the Property consistent with the disposition requirements of the CRL that formerly applied to the Agency. In compliance with these powers and duties, City Council and Housing Authority have each approved the disposition of the Phase One Parcel and the Phase Two Parcel as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the CRL.

O. The purpose of this Agreement is to effectuate the Redevelopment Plan, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law by providing for the disposition and development of the Property as more particularly set forth herein, including the provision of the Affordable Units. The Housing Authority has determined that the development of the Property pursuant to this Agreement is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will further the goals of the Redevelopment Plan, the Specific Plan, the Implementation Plan, the CRL and the Housing Authorities Law.

P. It is the Parties' intention that, as of the Amendment Effective Date, this Agreement shall amend, restate, and supersede the Initial Agreement in its entirety.

NOW THEREFORE, the Parties hereby agree as follows.

ARTICLE 1.

REPRESENTATIONS; CONDITIONS PRECEDENT TO PROPERTY CONVEYANCE

Section 1.1 Developer's Representations. Developer represents and warrants to Housing Authority as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.1 not to be true, Developer shall immediately give written notice of such fact or condition to Housing Authority. Developer acknowledges that Housing Authority shall rely upon Developer's representations made herein, notwithstanding any investigation made by or on behalf of Housing Authority.

1.1.1 Authority; Limited Liability Company. Developer is a limited liability company duly organized and in good standing under the laws of the State of California. Developer has full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer.

The sole members of Developer are James R. Burns II ("**Burns**"), Harry G. Burrowes ("**Burrowes**"), Joseph W. Callahan, Jr. ("**Callahan**"), Deborah L. Clausen ("**Clausen**"), and Therese A. Freeman ("**Freeman**"), each an individual. Callahan and Burns are the co-managing members of Developer. Burns, Burrowes, Callahan, Clausen, and Freeman are herein collectively referred to as the "**Developer Principals**" and individually referred to as a "**Developer Principal**."

1.1.2 No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

1.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

1.1.4 No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

Section 1.2 Housing Authority Representations. Housing Authority represents and warrants to Developer as follows, and Housing Authority covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2 not to be true, Housing Authority shall immediately give written notice of such fact or condition to Developer. Housing Authority acknowledges that Developer shall rely upon Housing Authority's representations made herein, notwithstanding any investigation made by or on behalf of Developer.

1.2.1 Authority. Housing Authority is a public entity duly organized and in good standing under the laws of the State of California. Housing Authority has full right, power and authority to undertake all obligations of Housing Authority as provided herein, and the execution, performance and delivery of this Agreement by Housing Authority have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Housing Authority have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Housing Authority.

1.2.2 No Conflict. Housing Authority's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Housing Authority is a party or by which it is bound.

1.2.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Housing Authority to perform its obligations under this Agreement.

1.2.4 No Bankruptcy. Housing Authority is not the subject of a bankruptcy proceeding.

Section 1.3 Conditions Precedent. As a condition precedent to Housing Authority's obligation to convey the Property to Developer, Developer must satisfy each of the requirements

set forth below to the Housing Authority's satisfaction and within the times set forth in the Schedule of Performance attached hereto as Exhibit D ("**Schedule of Performance**"), unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase One Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase One Development in accordance with Section 1.3.3; and

(c) City approval of the Entitlements for the Project in accordance with Section 1.3.5.1 and issuance of any other City approvals necessary for construction of the Phase One Development in accordance with Section 1.3.5; and

(d) In cooperation with Housing Authority, recordation of the Revised VTM and the Final Map with respect to the entire Property in accordance with Section 1.3.5.2, provided Developer shall only be required to bond for the public improvements to be constructed as part of Phase 1 prior to the recordation of the Final Map for the entire Property; and

(e) Payment by Developer of all City fees and charges required to be paid at or prior to Closing in accordance with Section 1.3.5.3; and

(f) City approval of the Construction Plans for the Phase One Development in accordance with Section 1.3.5.4; and

(g) Housing Authority approval of the Operator and the Operations Agreement for the Phase One Development in accordance with Section 1.4.1; and

(h) Housing Authority approval of the Services Plan for the Phase One Development in accordance with Section 1.4.2; and

(i) Developer execution and delivery of the Housing Authority Documents in accordance with Section 1.5; and

(j) Submittal by Developer of evidence of required insurance for the Phase One Development in accordance with Section 1.6; and

(k) Payment into escrow by Developer of the Purchase Price in accordance with Section 3.2 and of specified Closing costs in accordance with Section 3.4; and

(l) Satisfaction or waiver of the Closing conditions in accordance with Section 3.7.

As a condition precedent to Developer's commencement of construction of the Phase Two Development on the Phase Two Parcel, Developer must satisfy each of the requirements set forth below to the Housing Authority's satisfaction with respect to the Phase Two Parcel and the Phase Two Development (collectively, "**Phase Two Development Commencement**

Requirements") within the times set forth in the Schedule of Performance (Exhibit D) unless such time is extended by the mutual agreement of Developer and Housing Authority acting in the discretion of its Executive Director (or waived by Housing Authority acting in the discretion of its Executive Director):

(a) Housing Authority's Board approval of a Financing Plan for the Phase Two Development in accordance with Section 1.3.1; and

(b) Submittal by Developer of the evidence of availability of funds for the Phase Two Development in accordance with Section 1.3.3; and

(c) City issuance of any City approvals necessary for construction of the Phase Two Development in accordance with Section 1.3.5; and

(d) Payment by Developer of all City fees and charges required to be paid prior to commencement of construction of the Phase Two Development in accordance with Section 1.3.5.3; and

(e) City approval of the Construction Plans for the Phase Two Development in accordance with Section 1.3.5.4; and

(f) Submittal by Developer of evidence of required insurance for the Phase Two Development in accordance with Section 1.6;

Developer and Housing Authority, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement.

1.3.1 Financing Plan. Within the time period set forth in the Schedule of Performance, Developer shall submit for Housing Authority's Board review and approval Developer's plans for financing the acquisition of each Development Parcel and the construction and permanent financing of each Development Phase ("**Financing Plan**"). A separate Financing Plan shall be submitted for each Development Phase. The Financing Plan for each Development Phase shall indicate all sources of funds necessary to pay, when due, the estimated costs of development of that Development Phase, including without limitation hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. The Financing Plan for each Development Phase shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of construction and operation of the applicable Development Parcel/Development Phase, including the substantial reserves required by lenders and contingencies to cover unanticipated cost overruns. The pro formas will also include a flow of funds showing sources and timing of disbursements to cover projected construction and operating costs. Developer anticipates that a substantial portion of the investor equity will be invested upfront, prior to the funding of the construction loan, to pay predevelopment costs, and to fund the lender-mandated reserves and project cost contingencies.

As of the Amendment Effective Date, it is the Parties' expectation, and the Parties acknowledge and agree, that the first mortgage debt financing for the Phase One Development and the Phase Two Development may consist of a Federal Housing Administration ("**FHA**") Section 232 program and Section 221(d)(4) program insured loan, respectively, although Developer may also explore and include other forms of debt financing in the Financing Plan it submits for each Development Phase. In the event Developer's proposed Financing Plan for the Phase Two Development as approved by Housing Authority provides for issuance of tax-exempt bonds ("**Phase Two Tax-Exempt Bonds**") to provide debt financing for the Phase Two Development and to enable procurement of accompanying low income housing tax credit equity, Housing Authority agrees to serve as issuer of the Phase Two Tax-Exempt Bonds and to use diligent good faith efforts to cause issuance of such bonds and delivery of the net bond proceeds for development of the Phase Two Development, consistent with all applicable laws, statutes, rules and regulations; provided that in no way whatsoever shall Housing Authority be responsible, obligated, or liable for the payment of any such bonds other than and exclusively from funds provided by Developer or from designated bond proceeds.

Housing Authority staff shall promptly review and submit each proposed Financing Plan to Housing Authority Board for Board's consideration of approval, and Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.3.1. If Housing Authority does not approve a Financing Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limits for completion set forth in Section 5.1 below. Developer acknowledges and agrees that (i) Housing Authority's approval of a Financing Plan for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer; and (ii) the Financing Plans for Phase One and Phase Two are subject to the Housing Authority's review and approval. Housing Authority's approval of a Financing Plan for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer. The approved Financing Plans for the Phase One Development and the Phase Two Development shall be attached hereto as Exhibit E-1 and Exhibit E-2, respectively.

1.3.2 Amendment of Previously Approved Financing Plan. Developer shall submit any material revision to an approved Financing Plan to the Housing Authority for its review and approval. Housing Authority staff shall promptly review each proposed revised Financing Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve a revised Financing Plan in writing within thirty (30) business days following receipt provided that the revised Financing Plan conforms to the requirements of this Section. If Housing Authority does not approve a revised Financing Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Financing Plan that addresses the reasons for disapproval. Any revised Financing Plan that is approved by Housing Authority shall thereafter constitute the approved Financing Plan for the applicable Development Phase, and a copy of such approved revised Financing Plan shall be attached hereto as a new Exhibit E-1 or Exhibit E-2, as applicable. Until a revised Financing Plan for a particular Development Phase is approved by

Housing Authority, the previously approved Financing Plan shall govern the financing of that Development Phase.

1.3.3 Evidence of Availability of Funds. No later than the date shown in the Schedule of Performance for each Development Phase, Developer shall submit to the Housing Authority evidence reasonably satisfactory to Housing Authority that:

(a) all conditions to the release and expenditure of the initial draw of funds described in the approved Financing Plan for the applicable Development Phase as the source of construction financing for that Development Phase have been met (or, with respect to the Phase One Development, will be met upon conveyance of the Property to Developer, and, with respect to the Phase Two Development, will be met upon commencement of construction by Developer), and that such initial draw of funds will be available upon conveyance of the Property to Developer with respect to the Phase One Development, and will be available upon commencement of construction by Developer with respect to the Phase Two Development;

(b) all approvals, permits, and authorizations which are conditioned upon conveyance of the Property with respect to the Phase One Development, and commencement of construction with respect to the Phase Two Development, will be received promptly after conveyance or commencement of construction, as applicable; and

(c) all construction financing (including draws subsequent to the initial draw of funds) with respect to the applicable Development Phase will be available at the times and subject to the terms and conditions of the financing sources set forth in the applicable approved Financing Plan.

Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase One Development shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer. Submission by Developer, and approval by Housing Authority, of such evidence of funds availability and evidence of issuance of all required approvals, permits and authorizations for the Phase Two Development shall be a condition precedent to commencement of construction of the Phase Two Development by Developer.

1.3.4 Scope of Development. Prior to the Housing Authority's consideration of this Agreement, Developer submitted to Housing Authority a proposed Scope of Development for the Project in the form attached as Exhibit B. The Scope of Development describes and depicts the general location of the Phase One Development, the Phase Two Development, and related public improvements, including the location of the residential units, parking, open space, common areas, landscaping, street, and sidewalks. By execution of this Agreement, Housing Authority hereby approves the general concept of the Scope of Development, subject to subsequent City review and approval through the regular Entitlements process. The parties acknowledge and agree that the Scope of Development represents a starting point and framework for Developer's application for the Entitlements pursuant to Section 1.3.5.1, but that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements.

1.3.5 Land Use Approvals; Cooperation. Developer acknowledges and agrees that the execution of this Agreement by Housing Authority does not relieve Developer from the obligation to apply for and to obtain from City all necessary approvals, entitlements, and permits for the development of the Project (including without limitation approval of the Project in compliance with CEQA), nor does it limit in any manner the discretion of the City in the approval process. Prior to conveyance of the Property to Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase One Development, including without limitation, building permits. Prior to commencement of construction of the Phase Two Development by Developer, Developer shall obtain all permits, licenses and approvals required for development of the Phase Two Development, including without limitation, building permits. Housing Authority staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for development of the Project. The conditions of approval imposed by the City in connection with any permits or approvals for the Project, including, without limitation, in connection with any grant of the Entitlements as described in Section 1.3.5.1 below or the subdivision of the Property as described in Section 1.3.5.2 below, are hereinafter referred to as the "**Conditions of Approval**."

Developer further acknowledge and agrees that, in connection with consideration of Developer's application for the Entitlements and other approvals pursuant to Section 1.3.5, Developer will provide substantially greater detail with respect to the site specific activities and physical characteristics of the proposed Project; that evaluation of the site specific activities and physical conditions of the proposed Project will be conducted by the City pursuant to CEQA as provided in State CEQA Guidelines Section 15168(c)(4) or 15168(d)(1); and that mitigation measures required as part of the EIR that are applicable to the Project, and any other mitigation measures deemed necessary as a result of such review, will be incorporated into the Entitlements or other Project approvals.

1.3.5.1 Entitlements. Within the time set forth in the Schedule of Performance, Developer shall submit an application to the City to obtain City consideration of the Entitlements, including, without limitation, a planned district zoning for the Property, a site development permit, a density bonus, a use permit, the Revised VTM, the Final Map, and any other entitlements deemed necessary by the City. The application for the Entitlements sought by Developer shall be reasonably consistent with the Scope of Development (Exhibit B); provided, however, that the parties acknowledge and agree that any actual Entitlements granted by the City shall incorporate refinements and revisions to the Scope of Development as determined pursuant to the City's application review process for the Entitlements. In addition, at Developer's election, the application for the Entitlements may include (and if granted by the City the term "Entitlements" shall be deemed to also include) a development agreement for the Project in accordance with California Government Code Section 65864 et seq. The parties further acknowledge and agree that, in addition to the contractual requirements set forth in the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement that each Development Phase be operated as senior housing with the Affordable Units, the Entitlements granted by City for the Project will include a land use restriction that each Development Phase be operated as senior housing consistent with applicable federal and state laws and regulations with the Affordable Units. City approval of the Entitlements shall be a condition precedent to the Housing Authority's obligation to convey the Property to Developer.

1.3.5.2 Subdivision of Property. Provided that the City has approved the Entitlements, including, without limitation, the Revised VTM and the Final Map, and provided that all other conditions precedent to conveyance of the Property in its entirety to Developer related to the Phase One Parcel and the Phase One Development have been satisfied or waived, Housing Authority shall record, prior to conveyance of the Property in its entirety to Developer and at the Developer's expense, the Revised VTM and the Final Map for the entire Property. Upon filing and recording of the Final Map, the legal descriptions of the Phase One Parcel, the Phase Two Parcel, and the Public Use Parcels shall be attached to this Agreement as Exhibit A-1, Exhibit A-2, and Exhibit A-3, respectively.

1.3.5.3 Permits and Fees. Developer shall be obligated to pay when due all customary City fees and charges in connection with the processing of City permits and approvals.

1.3.5.4 Construction Plans. Prior to conveyance of the Property to Developer, City shall have approved the Construction Plans for the Phase One Development pursuant to Article 5. Prior to commencement of construction of the Phase Two Development by Developer, City shall have approved the Construction Plans for the Phase Two Development pursuant to Article 5.

1.3.5.5 Public Improvement Costs. The Scope of Development (Exhibit B) provides, and it is anticipated that the Entitlements will provide, for the preponderance of on-site and off-site public improvements needed for the development of both the Phase One Parcel and the Phase Two Parcel to be installed and initially paid for by Developer as part of the development of the Phase One Development. Housing Authority acknowledges and agrees that Developer with respect to the Phase One Development may seek reimbursement from Developer with respect to the Phase Two Developer (if different) for an allocable fair share of the on-site and off-site public improvements installed and initially paid for by Developer as part of the Phase One Development; provided that Housing Authority shall have no obligation with respect to any such reimbursement.

Section 1.4 Operator, Operations Agreement, and Services Plan For Phase One Development.

1.4.1 Operator and Operations Agreement. Within the time set forth in the Schedule of Performance, Developer shall submit for Housing Authority review and approval the proposed operator to operate the Phase One Development ("**Operator**"), and the proposed agreement between Developer and the Operator for the operation of the Phase One Development ("**Operations Agreement**"). In connection with such submission, Developer shall provide sufficient information, as determined by Housing Authority, to enable Housing Authority to reasonably determine the Operator's financial capacity and operating experience in operating similar "continuum of care" facilities.

Housing Authority staff shall promptly review the identity and qualifications of the Operator and the terms of the Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve such Operator and Operations Agreement in writing within thirty (30) business days following receipt provided that the following requirements are satisfied. Housing Authority shall approve the proposed Operator if, in

Housing Authority Executive Director's determination, based on the information provided by Developer, such Operator has the necessary financial capacity and experience to satisfactorily operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Housing Authority Documents. Housing Authority shall approve the proposed Operations Agreement if, in Housing Authority Executive Director's determination, such Operations Agreement provides for the Operator to operate the Phase One Development as a "continuum of care" facility in the manner contemplated by the Housing Authority Documents, including providing the types of services and amenities to residents, without regard to income level, generally as described in the Scope of Development (Exhibit B) and any then approved Services Plan (as defined and described in Section 1.4.2) and providing the Affordable Units pursuant to and in accordance with the Phase One Regulatory Agreement.

If Housing Authority does not approve the Operator and/or the Operations Agreement, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit revised information about the Operator or shall proposed a different Operator and/or a shall submit a revised Operations Agreement, as applicable, that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to make such revised submission(s), subject to the outside time limit for completion set forth in Section 5.1 below. Housing Authority's approval of the Operator and the Operations Agreement shall be a condition precedent to Housing Authority's obligation to convey the Property to Developer.

Developer shall submit the identity and qualifications of any proposed new Operator, and/or any material revision to the approved Operations Agreement to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed new Operator and/or revised Operations Agreement, and acting through Housing Authority's Executive Director, Housing Authority shall approve the new Operator and/or the revised Operations Agreement in writing within thirty (30) business days following receipt provided that the new Operator and/or the revised Operations Agreement conforms to the requirements of this Section. If Housing Authority does not approve the new Operator and/or the revised Operations Agreement, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit additional information about the new Operator or a different new Operator, and/or a revised Operations Agreement that addresses the reasons for disapproval. Any new Operator that is approved by Housing Authority shall thereafter be the Operator with respect to the Phase One Development. Any revised Operations Agreement that is approved by Housing Authority shall thereafter constitute the approved Operations Agreement for the Phase One Development. Until a new Operator and/or a revised Operations Agreement for the Phase One Development is approved by Housing Authority, the previously approved Operator and/or Operations Agreement shall remain and govern with respect to the operation of the Phase One Development. Notwithstanding the prior terms of this paragraph, so long as the Phase One Development is encumbered by a mortgage, deed of trust, or other security instrument permitted by this Agreement, the approval by the holder of such mortgage, deed of trust or other security instrument of a proposed new Operator and/or revised Operations Agreement shall be deemed to constitute approval by Housing Authority as well without need for further action or approval by Housing Authority

1.4.2 Services Plan. Within the time set forth in the Schedule of Performance, Developer shall submit for Housing Authority review Developer's plans for the provision of support services and amenities to the residents of the Phase One Development ("**Services Plan**"). The Services Plan shall be generally consistent with the framework of services to residents of the Phase One Development that is summarized in the Scope of Development (Exhibit B) and shall describe the nature of the congregate care and assisted living services to be provided to residents of the Phase One Development. As set forth in Exhibit B, these services are expected to include meals, housekeeping, scheduled transportation in the community shuttle bus, programmed activities and events, health, fitness, recreational and educational programs and assistance with the activities of daily living such as assistance with medication management, grooming, mobility and other personal care and services. By Operating Memoranda prepared and approved in accordance with Section 10.20, the Parties may incorporate such changes to the framework of resident services as set forth in Exhibit B as they deem mutually appropriate.

Housing Authority staff shall promptly review the proposed Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve such plan in writing within thirty (30) business days following receipt provided that the plan conforms to the requirements of this Section 1.4.2. If Housing Authority does not approve the Services Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Services Plan that addresses the reasons for disapproval, and Housing Authority shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Services Plan, subject to the outside time limit for completion set forth in Section 5.1 below. Housing Authority's approval of the Services Plan shall be a condition precedent to Housing Authority's obligation to convey the Property in its entirety to Developer.

Developer shall submit any material revision to the approved Services Plan to Housing Authority for its review and approval. Housing Authority staff shall promptly review the proposed revised Services Plan, and acting through Housing Authority's Executive Director, Housing Authority shall approve the revised Services Plan in writing within thirty (30) business days following receipt provided that the revised Services Plan conforms to the requirements of this Section. If Housing Authority does not approve the revised Services Plan, Housing Authority shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer may thereafter submit a revised Services Plan that addresses the reasons for disapproval. Any revised Services Plan that is approved by Housing Authority shall thereafter constitute the approved Services Plan for the Phase One Development. Until a revised Services Plan for the Phase One Development is approved by Housing Authority, the previously approved Services Plan shall govern with respect to the provision of support services for the Phase One Development.

Section 1.5 Execution and Delivery of Documents. Developer shall execute, acknowledge as applicable, and deliver to Housing Authority this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Phase One Regulatory Agreement, the Phase Two Regulatory Agreement, a Notice of Affordability Restrictions On Transfer of Property for the Phase One Affordable Units (a "**Phase One Notice of Affordability**") prepared in accordance with Health and Safety Code Section 33334.3(f)(3)(B), and a Notice of Affordability Restrictions On Transfer of Property for the Phase Two Affordable Units (a "**Phase Two Notice of Affordability**") prepared in

accordance with Health and Safety Code Section 33334.3(f)(3)(B) . This Agreement, the Phase One Regulatory Agreement, the Phase Two Regulatory Agreement, the Phase One Notice of Affordability, the Phase Two Notice of Affordability, the Grant Deed (as defined in Section 3.1 below) for the Property, and the Memorandum (as defined in Section 1.7 below) are hereinafter referred to collectively as the "**Housing Authority Documents**."

Section 1.6 Insurance. Prior to and as a further condition of Housing Authority conveyance of the Property to Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.1 with respect to the Phase One Parcel and the Phase One Development. Prior to and as a further condition of commencement of construction of the Phase Two Development by Developer, Developer shall provide evidence reasonably satisfactory to Housing Authority that Developer has obtained insurance coverage meeting the requirements set forth in Section 5.11.2 with respect to the Phase Two Parcel and the Phase Two Development.

Section 1.7 Memorandum. Developer and Housing Authority shall execute and acknowledge a Memorandum of this Agreement ("**Memorandum**") substantially in the form attached hereto as Exhibit G, and Housing Authority shall cause the Memorandum to be recorded in the Official Records of Santa Clara County promptly following the Amendment Effective Date.

ARTICLE 2.

[INTENTIONALLY OMITTED]

ARTICLE 3.

DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall sell to Developer, and Developer shall purchase from Housing Authority, the fee interest in the entire Property in accordance with and subject to the terms, covenants and conditions of this Agreement, free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, assessments, leases and taxes except: (a) the provisions and effect of the Redevelopment Plan, (b) the provisions and effects of the Housing Authority Documents that are applicable to the particular Development Parcel, (c) applicable building and zoning laws and regulations, (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed for the Property, and (e) those additional title exceptions identified in that certain preliminary title report issued by Old Republic Title Company dated October 3, 2013 (Order Number 1117012669-JM). All of the foregoing are collectively hereinafter referred to as the "**Permitted Exceptions.**" Conveyance of the Property shall be effectuated by grant deed substantially in the form attached hereto as Exhibit F (the "**Grant Deed"**).

Section 3.2 Purchase Price. The purchase price for the Property ("**Purchase Price**") shall be Two Dollars ($2.00), consisting of One Dollar ($1.00) attributable to the purchase of the Phase One Parcel portion of the Property and One Dollar ($1.00) attributable to the purchase of the Phase Two Parcel portion of the Property. The Purchase Price shall be payable in cash by Developer to Housing Authority at and through the Closing (described and defined in Section 3.3 below).

Section 3.3 Escrow. Within the time set forth in the Schedule of Performance, Housing Authority and Developer shall open escrow at the office of Old Republic Title Company located in Oakland, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance of the Property in its entirety to Developer and the closing of escrow (**"Closing**") for the transaction contemplated hereby.

Section 3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of each Development Phase and all conveyance and recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the conveyance of the Property and the financing of each Development Phase. Property taxes and assessments shall be prorated as of the date of Closing for the Property in its entirety ("**Closing Date**").

Section 3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. Housing Authority and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Housing Authority or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Housing Authority and Developer, shall serve as escrow instructions for the conveyance of the Property in its entirety to Developer.

Section 3.6 Closing Date. Within the time period set forth in the Schedule of Performance, Developer shall deposit into escrow the Purchase Price, the balance of any other funds Developer is obligated to pay to Housing Authority pursuant to this Agreement with respect to the Closing, and the Housing Authority Documents, executed and acknowledged as applicable. Provided that all conditions precedent set forth in this Agreement to conveyance of the Property related to development of the Phase One Development on the Phase One Parcel have been satisfied or waived, Housing Authority shall deposit into escrow the executed Grant Deed and executed copies of the other Housing Authority Documents to which Housing Authority is a party for the Property. On the Closing Date the Escrow Agent shall cause the Grant Deed for the Property and the other Housing Authority Documents to be recorded in the Official Records of Santa Clara County.

The Closing Date for the Property shall be a date no later than twenty-four (24) months after the Amendment Effective Date ("**Closing Deadline**") which is mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Developer's satisfaction of all conditions precedent to conveyance of the Property related to the development of the Phase One Development on the Phase One Parcel as set forth in Articles 1 and 3. The Closing Deadline may be extended by Operating Memorandum executed by the Parties in accordance with Section 11.20.

Section 3.7 Conditions to Closing. In addition to the conditions precedent to Closing set forth in Articles 1 and 3, the Closing for conveyance of the Property is conditioned upon the satisfaction of the terms and conditions set forth in Sections 3.7.1 and 3.7.2.

3.7.1 Housing Authority's Conditions to Closing. Housing Authority's obligation to proceed with the Closing for conveyance of the Property is subject to Developer's satisfaction or Housing Authority's waiver of the following conditions:

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other Housing Authority Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other Housing Authority Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Closing for the Property.

(c) Execution and Recordation of Documents. Developer shall have executed and acknowledged the Memorandum, shall have acknowledged the Grant Deed, and shall have executed and acknowledged as applicable and delivered to escrow all other documents required in connection with the transactions contemplated by the Housing Authority Documents for the Property, including execution and delivery for recordation of the Revised VTM and the Final Map for the entire Property.

(d) Authorization. Developer shall have provided Housing Authority with certified copies of resolutions authorizing Developer's execution of the Housing Authority Documents and such additional certificates as Housing Authority shall reasonably require.

(e) Satisfaction of Conditions Precedent. Developer shall have satisfied all of Developer's obligations set forth in Article 1 and 3 with respect to the Phase One Parcel and the Phase One Development to the Housing Authority’s satisfaction.

3.7.2 Developer's Conditions to Closing. Developer's obligation to proceed with the Closing for conveyance the Property is subject to satisfaction or Developer's waiver of the following conditions:

(a) No Default. Housing Authority shall not be in default under the terms of this Agreement, and all representations and warranties of Housing Authority contained herein shall be true and correct in all material respects.

(b) Execution of Documents. Housing Authority shall have executed and acknowledged the Housing Authority Documents and any other documents required hereunder with respect to conveyance of the Property, and shall have delivered such documents into escrow.

(c) Title Policy. The Title Company shall, upon payment of the premium therefore, be ready to issue an ALTA Owner's Title Insurance Policy for the benefit and

protection of Developer ("**Title Policy**") showing title to Property vested in Developer, subject only to Permitted Exceptions.

(d) Available Funding. The Developer has obtained the evidence of availability of all funds necessary to develop the Phase One Development on the Phase One Parcel, as further provided in Section 1.3.3.

(e) Entitlements/Approvals. The City has granted the Entitlements for the Project and all other permits and approvals necessary to develop the Phase One Development, as further provided in Section 1.3.5, and provision has been made for delivery and recordation of the Final VTM and the Final Map for the entire Property, concurrently with the Closing for conveyance of the Property to Developer.

ARTICLE 4.

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

Section 4.1 Access to Site; Inspections. Housing Authority shall provide Developer and Developer's representatives with access to the Property for the purpose of conducting surveys, obtaining data and making tests necessary to investigate the soils and environmental condition of the Property and the condition of the existing improvements. Housing Authority may require Developer to execute a right of entry agreement and obtain insurance satisfactory to Housing Authority prior to entry onto the Property for such purpose. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide Housing Authority with copies of all reports and test results promptly following completion of such reports and testing. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold City and Housing Authority and their respective elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively hereinafter the **"Indemnitees"**) harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter **"Claims"**) resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 4.1; provided, however, that Developer shall not have a liability or indemnification obligation to the extent any Claim arises merely from discovery by Developer of an existing fact or conditions related to the Property so long as Developer does not exacerbate the condition. Developer's indemnification obligations set forth in this Section 4.1 shall survive the Closing for the Property and the termination of this Agreement.

Section 4.2 AS-IS Sale. Developer acknowledges and agrees that: (i) prior to the Closing Date, in Developer's discretion, Developer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by acquiring the

Property, Developer shall be deemed to have approved of all such characteristics and conditions; and (iii) the Property and the improvements thereon are to be conveyed to, and accepted by Developer in their present condition "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials, and no patent or latent defect or deficiency in the condition of the Property or the improvements thereon whether or not known or discovered, shall affect the rights of either Housing Authority or Developer hereunder. Developer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. Housing Authority shall have no responsibility for site preparation, demolition, or any other removal or replacement of improvements on the Property.

If following conveyance of the Property, the condition of the Property is not in all respects entirely suitable for the uses to which the Property will be put pursuant to this Agreement, then it shall be the sole responsibility and obligation of Developer to correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the Property in a condition suitable for the Project to be constructed pursuant to this Agreement. Developer hereby waives any right to seek reimbursement from Housing Authority for costs Developer incurs in connection with the correction of any physical condition on the Property.

Section 4.3 Release of Claims. Developer hereby waives, releases and discharges forever Indemnitees from all present and future Claims arising out of or in any way connected with the condition of the Property, any Hazardous Materials on, under, in or about the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the gross negligence or willful misconduct of Indemnitees.

Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR

As such relates to this Section 4.3, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

_____
Developer Initials

Section 4.4 Developer's Post-Closing Obligations; Environmental Indemnification.

4.4.1 Developer's Covenants. Developer hereby covenants and agrees that:

(a) Developer shall not knowingly permit the Project or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or

transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Project or the Property with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential property and used, stored and disposed of in compliance with Hazardous Materials Laws.

(b) Developer shall keep and maintain the Project and the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Hazardous Materials Laws.

(c) Upon receiving actual knowledge of the same, Developer shall immediately advise Housing Authority in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, the Project, or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer, the Project or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Project or the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**". Housing Authority and/or City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by Developer.

(d) Without Housing Authority's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Housing Authority agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

4.4.2 Environmental Indemnity. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Developer, Developer's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

4.4.3 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 4.4.2 above, are in no way limited or otherwise affected by any information Housing Authority or City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Housing Authority or the City obtained such information from the Developer or from its own investigations.

4.4.4 Definitions.

(a) Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, Housing Authority or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

(b) Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 4.4.4.1, as they may be amended from time to time.

(c) Project and Property. For the limited and exclusive purposes of this Section 4.4, the terms "Project" and "Property" shall not include the Public Use Parcels, because Developer will not control or be responsible for operating and maintaining the Public Use Parcels.

ARTICLE 5.

DEVELOPMENT OF THE PROJECT

Section 5.1 Schedule of Performance. Developer shall commence and complete construction of each Development Phase and shall satisfy all other obligations of Developer

under this Agreement within the time periods set forth in the Schedule of Performance except as such time periods may be extended upon mutual written consent of Housing Authority and Developer or by operation of Section 10.2. Developer and Housing Authority, acting in the discretion of its Executive Director, may revise the Schedule of Performance from time to time by Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement. Without limiting the foregoing, Developer shall commence construction of each Development Phase within the respective times set forth in the Schedule of Performance, and shall diligently prosecute to completion the construction of each Development Phase sufficient to allow City issuance of a final certificate of occupancy within the time periods set forth in the Schedule of Performance, subject to the operation of Section 10.2. Each Party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such Party pursuant to this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final certificate of occupancy for each Development Phase by the times specified in this Section 5.1.

Section 5.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall pay all of Developer's direct and indirect costs and expenses incurred in connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Project approvals, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of Housing Authority. Without limiting the generality of the foregoing, Developer shall design and construct at Developer's expense any lateral connections to public utilities which are necessary to provide water, sewer and storm drain service to the Property.

Section 5.3 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for each Development Parcel (the "**Construction Plans**") within the time period specified in the Schedule of Performance. As used herein, "**Construction Plans**" means all construction documentation upon which Developer and Developer's contractors shall rely in constructing the applicable Development Phase (including landscaping, parking, common and public areas) and shall include, without limitation, final architectural drawings, the site development plan, landscaping plans and specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the approved Entitlements, the other approvals for the applicable Development Phase including the Conditions of Approval and the Project Mitigation Measures imposed by the City in connection with the Entitlements (which Conditions of Approval and Project Mitigation Measures as imposed by the City are incorporated in this Agreement by this reference and are hereby made requirements for the development of each Development Phase), and any other plans or development approvals issued by the City, and shall not materially deviate therefrom without the express written consent of Housing Authority. Provided that the Construction Plans for a Development Phase are consistent with the requirements of this Agreement, approval of the Construction Plans by City shall be deemed approval thereof by Housing Authority.

Section 5.4 Permits and Approvals. Within thirty (30) days following Developer's receipt of City approval of the Construction Plans for each Development Phase, Developer shall apply for and make commercially reasonable efforts to obtain issuance of all necessary building

permits for that Development Phase. Housing Authority staff shall render all reasonable assistance to Developer to obtain such building permits. Developer shall pay City's usual and customary plan check, development impact, and permit fees. Developer shall be responsible for acquisition and maintenance of all permits, licenses and other authorizations required in connection with construction of each Development Phase.

Section 5.5 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. Developer shall not commence construction of a Development Phase until Developer has received written approval of the Construction Plans for that Development Phase by the City Building Department. Developer shall construct each Development Phase in accordance with the approved Construction Plans and all other permits and approvals granted by City and/or Housing Authority pertaining to development of that Development Phase. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental Housing Authority having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

Section 5.6 Change in Construction Plans. If Developer desires to make any material change in the Construction Plans for a Development Phase, Developer shall submit the proposed changes to the Housing Authority and City for approval, which approval shall not be unreasonably withheld, conditioned or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Scope of Development, the Entitlements, and the Conditions of Approval. Unless such proposed change is rejected within thirty (30) days, Housing Authority shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with applicable law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the applicable Development Phase as shown on the latest approved Construction Plans for that Development Phase.

Section 5.7 Defects in Plans. Neither Housing Authority nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold harmless the Indemnitees from and against any Claim for damage to property or injury to or death of any person arising out of or in any way relating to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section 5.7 shall survive the termination of this Agreement and the recordation of a Certificate of Completion for the applicable Development Phase. It is further agreed that Housing Authority and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Housing

Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 5.8 Equal Opportunity. During construction of the Project there shall be no discrimination on the basis of race, religion, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project. Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

Section 5.9 Prevailing Wages. Developer shall carry out and shall cause its contractors to carry out the construction of the Project in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. To the extent applicable to the Project, Developer and its subcontractors and agents, shall comply with California Labor Code Section 1720 et seq. and regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall be responsible for carrying out the requirements of such provisions.

Developer shall, and hereby agrees to indemnify, defend (with counsel approved by Housing Authority), protect and hold harmless the Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Housing Authority, City or Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Housing Authority and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Housing Authority or City, or Developer's deposit with Housing Authority of any of the insurance policies described in this Agreement.

Section 5.10 Performance and Payment Bond(s).

5.10.1 Basic Requirement. Within the time specified in the Schedule of Performance for each Development Phase, Developer shall deliver to Housing Authority copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of that Development Phase. The bonds shall name Housing Authority and City as co-obligees.

5.10.2 Alternative Compliance. In lieu of such performance and payment bonds, Developer may submit evidence satisfactory to Housing Authority of Developer's ability to commence and complete construction of the applicable Development Phase in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of Housing Authority required for any withdrawal, a completion guaranty in a form and from a guarantor

acceptable to Housing Authority, or Subguard Insurance from a general contractor. Such evidence must be submitted in approvable form in sufficient time to allow the Housing Authority to review and approve the information within the time specified in the Schedule of Performance.

Section 5.11 Insurance Requirements.

5.11.1 Phase One Development. The insurance requirements for the Phase One Parcel and the Phase One Development shall be as set forth in Exhibit B to the Form of Phase One Regulatory Agreement (which is attached hereto as Exhibit H-1), except as otherwise provided in Section 6.7 of the Form of Phase One Regulatory Agreement.

5.11.2 Phase Two Development. The insurance requirements for the Phase Two Parcel and the Phase Two Development shall be as set forth in Exhibit B to the Form of Phase Two Regulatory Agreement (which is attached hereto as Exhibit H-2), except as otherwise provided in Section 6.6 of the Form of Phase Two Regulatory Agreement.

Section 5.12 Certificate of Completion. Promptly after completion of construction of a particular Development Phase in accordance with this Agreement and upon City's issuance of a certificate of occupancy for that Development Phase, upon request of Developer, Housing Authority shall provide an instrument so certifying in substantially the form attached hereto as Exhibit I ("**Certificate of Completion**"). Such Certificate of Completion shall constitute conclusive determination of satisfactory completion of construction of the applicable Development Phase. Such Certificate of Completion for a Development Phase shall be in such form as will enable it to be recorded among the official records of Santa Clara County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance that Development Phase or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not be deemed a determination that the obligations of Developer which continue beyond the completion of construction (including without limitation the obligations imposed pursuant to Article 6 hereof) have been fulfilled.

Section 5.13 Compliance with Laws. Developer shall carry out the construction of the Project in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, applicable provisions of the California Public Contracts Code, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq. and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

Section 5.14 Indemnity. Developer shall defend (with counsel approved by Housing Authority), indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising from or in connection with Developer's failure to comply with all applicable laws and regulations relating to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards, or in any other manner relating to development of the Project, or Developer's activities or performance under this Agreement whether such activities or performance be by Developer or by anyone directly or

indirectly employed or contracted with by Developer and whether such Claim shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 5.14 shall not extend to Claims resulting solely from Indemnitees' gross negligence or willful misconduct.

Section 5.15 Liens and Stop Notices. Until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development and the Phase One Parcel, and until expiration of the Phase Two Regulatory Agreement with respect to the Phase Two Development and the Phase Two Parcel, Developer shall not allow to be placed on the applicable Development Parcel or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting a particular Development Parcel within the applicable period set forth in the preceding sentence, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge the same; (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Housing Authority that the claim of lien or stop notice will be paid or discharged; or (c) contest in good faith the lien or stop notice.

Section 5.16 Right of Housing Authority to Satisfy Liens on the Property. After the conveyance of the Property, if Developer fails to satisfy, discharge or contest any lien or stop notice on the applicable portion of the Property pursuant to Section 5.15 above, Housing Authority shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall immediately reimburse Housing Authority for such paid lien or stop notice. Alternatively, Housing Authority may require Developer to immediately deposit with Housing Authority the amount necessary to satisfy such lien or claim pending resolution thereof. Housing Authority may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the applicable Development Phase for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the applicable Development Parcel or Development Phase. Housing Authority may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Housing Authority deems necessary or desirable to protect its interest in the Property and the improvements thereon.

Section 5.17 Housing Authority Rights of Access. Developer shall permit Housing Authority through its officers, agents, or employees, during normal business hours, and accompanied by a representative of Developer, to enter into the Project following 24-hours written notice from Housing Authority (except in the case of emergency in which case Housing Authority shall provide such notice as may be practical under the circumstances) (a) to inspect the works of construction to determine that the same is in conformity with the requirements of this Agreement and the Housing Authority Documents, and (b) following completion of construction, to inspect the ongoing operation and management of the Project to determine that the same is in conformance with the requirements of this Agreement.

Section 5.18 Housing Authority Disclaimer. Developer acknowledges that the Housing Authority is under no obligation, and Housing Authority neither undertakes nor assumes any responsibility or duty, to Developer or to any third party to in any manner review, supervise, or

inspect the progress of construction or the operations of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by Housing Authority is solely for the purpose of determining whether Developer is properly discharging its obligations to Housing Authority, and shall not be relied upon by Developer or any third party as a warranty or representation by Housing Authority as to the quality of the design or construction of the Improvements or otherwise.

ARTICLE 6.

USE OF THE PROPERTY

Section 6.1 Uses. Developer covenants and agrees for itself and its successors and assigns that each Development Parcel shall be used for the purposes specified in the Redevelopment Plan, the Specific Plan, this Agreement, and the Phase One Regulatory Agreement, or the Phase Two Regulatory Agreement, as applicable. Except as provided otherwise in this Agreement, the conditions set forth in this Agreement with respect to each Development Parcel shall apply until a Certificate of Completion is issued for that Development Parcel; provided however, (a) the covenants against discrimination specified in Section 6.5 of this Agreement shall be perpetual, (b) the covenants pertaining to use and maintenance of each Development Parcel and each Development Phase shall be in effect for the duration of the Redevelopment Plan, (c) the covenants regarding provision of the Phase One Affordable Units and the other provisions regarding the Phase One Development specified in the Phase One Regulatory Agreement shall remain in effect for a term of fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for the Phase One Development, (d) the covenants regarding provision of the Phase Two Affordable Units and the other provisions regarding the Phase Two Development specified in the Phase Two Regulatory Agreement shall remain in effect for a term of fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for the Phase Two Development, and (e) the conditions set forth in the Entitlements for the Property shall be perpetual or as otherwise specifically indicated in the Entitlements.

Section 6.2 Affordable Senior Housing. For a term of fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Phase One Development, the Phase One Parcel and the Phase One Development shall be used solely for a senior housing project in which the Phase One Affordable Units shall be available as affordable residential units pursuant to and in accordance with the Phase One Regulatory Agreement. For a term of fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Phase Two Development, the Phase Two Parcel and the Phase Two Development shall be used solely for a senior housing project in which the Phase Two Affordable Units shall be available as affordable residential units pursuant to and in accordance with the Phase Two Regulatory Agreement.

Section 6.3 Maintenance. Developer shall maintain each Development Parcel and each Development Phase, including related landscaping and common areas, in accordance with

the Milpitas Municipal Code in a manner consistent with community standards, and shall comply with all applicable federal, state and local laws and regulations pertaining thereto. Developer covenants that prior to completion of each Development Phase, the applicable Development Parcel undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards. Developer shall maintain each Development Parcel and each Development Phase in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, and landscaping, and from time to time make all necessary and proper repairs, renewals and replacements.

In the event that there arises at any time prior to the expiration of the term of the Phase One Regulatory Agreement with respect to Phase One Parcel and Phase One Development, or prior to the expiration of the term of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development, a condition in contravention of the above maintenance standard, then Housing Authority shall notify Developer in writing of such condition, giving Developer thirty (30) days from receipt of such notice to cure, or commence to cure and thereafter diligently prosecute to completion the cure of, such condition. In the event Developer fails to cure or commence to cure the condition within the time allowed, Housing Authority shall have the right to perform all acts necessary to cure such condition, or to pursue such other remedy available to Housing Authority and to receive from Developer the Housing Authority's cost in taking such action. The Parties further mutually understand and agree that the rights conferred upon Housing Authority expressly include the right to enforce or establish a lien or other encumbrance against the Phase One Parcel or the Phase Two Parcel, as applicable. The foregoing provisions shall be a covenant running with the land until the expiration of the respective period for each Development Parcel as set forth in the first sentence of this paragraph, enforceable by Housing Authority, its successors and assigns. Nothing in the foregoing provisions shall preclude Developer from making any alterations, additions, or other changes to a particular Development Phase, provided that such changes comply with this Agreement and the approved Construction Plans, and with all necessary land use, building permits, and other approvals from the City.

Section 6.4 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Development Parcels, or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the applicable Development Parcel; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.5 Non-Discrimination and Mandatory Language in All Subsequent Deeds, Leases and Contracts. Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Developer or any person claiming under or through

Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the improvements therein shall contain the following language:

6.5.1 In Deeds:

"(a) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

6.5.2 In Leases:

"(a) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

6.5.3 In Contracts:

"(a) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

ARTICLE 7.

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

Section 7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Developer and its principals are of particular concern to Housing Authority. It is because of those qualifications, experience, financial capability and expertise that Housing Authority has entered into this Agreement with Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as hereinafter provided.

Section 7.2 Prohibition on Transfer and Significant Change of Ownership. Prior to the expiration of the term of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development), Developer shall not, except as expressly permitted by this Agreement, the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development):

(a) Directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "**Transfer**") of the whole or any part of the Property, the Project, or this Agreement without the prior written approval of Housing Authority which the Housing Authority may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without Housing

Authority's consent shall be null and void and shall confer no rights or privileges upon the purported assignee.

(b) Undergo any Significant Change of Ownership without the prior written approval of Housing Authority. For purposes of this Agreement, a "**Significant Change of Ownership**" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

(c) As used in this Agreement, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, the term "Transfer" shall include a Significant Change of Ownership.

Section 7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent the following transactions, and the following transactions are hereby authorized and permitted (collectively, the "**Permitted Transfers**"):

(a) The granting of temporary easements or permits to facilitate development of the Project;

(b) The dedication of any property required pursuant to this Agreement or the Project approvals, including without limitation the Entitlements and the Conditions of Approval;

(c) the lease of individual residences to tenants for occupancy as their principal residence;

(d) Assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or any portion thereof pursuant to the applicable approved Financing Plan (subject to the requirements of Article 8) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; provided, however, that in no event shall a security interest in connection with financing for the Phase Two Development be placed upon or encumber the Phase Two Parcel prior to the date that all of the Phase Two Development Commencement Requirements set forth in Section 1.3 have been satisfied by Developer or waived by Housing Authority;

(e) Assignments creating security interests in a Development Parcel and Development Phase following issuance of a Certificate of Completion for that Development Parcel and Development Phase or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest;

(f) A Significant Change of Ownership consisting of an adjustment of the membership ownership percentages among the Developer Principals, or of the assignment and transfer of the ownership interest of one or more Developer Principals to a wholly owned affiliate of the Developer Principal(s) making such assignment and transfer;

(g) A Significant Change of Ownership consisting of the admission of one or more additional members in Developer so long as:

1. each such member is admitted either as an equity investor in Developer consistent with the applicable approved Financing Plan, or as an operator for the Phase One Development or the Phase Two Development;

2. one or more of the Developer Principals remain as managing member or co-managing members of Developer; and

3. Developer notifies Housing Authority not less than sixty (60) days prior to the proposed Significant Change in Ownership of such change, and Housing Authority's Executive Director approves such Significant Change of Ownership, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within thirty (30) days of receipt of Developer's notice.

(h) With respect to the Phase One Parcel and the Phase One Development only, any Transfer consistent with Section 8.1 or Section 8.2 of the Form of Phase One Regulatory Agreement attached hereto as Exhibit H, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase One Regulatory Agreement.

(i) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer consistent with Section 8.1 or Section 8.2 of the form of Phase Two Regulatory Agreement attached hereto as Exhibit H-1, regardless of whether such Transfer occurs prior to or following execution and recordation of the Phase Two Regulatory Agreement.

(j) With respect to the Phase Two Parcel and the Phase Two Development, any Transfer to a limited liability company or other legal entity in which the members (owners) consist of at least at least three of the Development Principals or wholly owned affiliate(s) of at least three of the Developer Principal(s).

(k) Any Transfer occurring after expiration of the Phase One Regulatory Agreement (with respect to the Phase One Parcel and the Phase One Development), or after the expiration of the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel and the Phase Two Development).

Upon request of Developer, Housing Authority shall provide confirmation in form reasonably acceptable to Developer that a particular Permitted Transfer meeting the requirements and conditions of this Section 7.3 has occurred and is recognized as a Permitted Transfer under this Agreement.

Section 7.4 Requirements for Other Proposed Transfers. Housing Authority may, in the exercise of its sole discretion, approve a Transfer of this Agreement, the Property or portion thereof only if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Permitted Transfers described in Section 7.3):

(a) The proposed transferee demonstrates to Housing Authority's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Housing Authority to competently complete construction of the

Project (or applicable portion thereof) and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(b) Developer and the proposed transferee shall submit for Housing Authority review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Housing Authority may reasonably request.

(c) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under the Housing Authority Documents which are applicable to the Transfer arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations).

(d) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Housing Authority in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer pursuant to this Section 7.4 may be given by the Housing Authority's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Housing Authority's governing board.

Section 7.5 Effect of Transfer without Housing Authority Consent.

7.5.1 In the absence of specific written agreement by the Housing Authority, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 If, in violation of this Article 7, Developer Transfers all or any part of the Property or the improvements thereon prior to the recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, Housing Authority shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) the Purchase Price paid by Developer to Housing Authority for the applicable Development Parcel, and (b) the costs incurred by Developer in connection with the improvement and development of the applicable Development Phase, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to Housing Authority by Developer and until so paid, Housing Authority shall have a lien on the applicable Development Parcel and Development Phase for such amount. The provisions of this Section 7.5.2 have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Following recordation of the Certificate of Completion for the applicable Development Parcel and Development Phase, the provisions of this Section 7.5.2 shall have no further force and effect.

7.5.3 Without limiting any other remedy Housing Authority may have under this Agreement, or under law or equity, this Agreement may be terminated by Housing Authority with respect to the affected Development Parcel and Development Phase if, in violation of this

Article 7, Developer assigns or Transfers this Agreement or the Property prior to the Housing Authority's issuance of a Certificate of Completion for such Development Parcel and Development Phase.

ARTICLE 8.

FINANCING AND RIGHTS OF MORTGAGEES

Section 8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on a Development Parcel prior to issuance of the Certificate of Completion with respect to that Development Parcel, but only for the purpose of securing loans approved pursuant to the applicable approved Financing Plan for the purpose of financing the costs of the design and construction and other expenditures necessary for development and permanent financing of the applicable Development Phase pursuant to this Agreement, including (to the extent provided in the applicable Financing Plan) payments to equity investors in the applicable Development Phase. Developer covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing prior to issuance of the Certificate of Completion with respect to a Development Parcel without the prior written approval of Housing Authority's Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed if such financing is consistent with the applicable approved Financing Plan. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate acquisition, construction and land development.

Following issuance of the Certificate of Completion with respect to a particular Development Parcel and Development Phase, the limitations on encumbrances of that Development Parcel and that Development Phase set forth in the preceding paragraph shall no longer apply.

8.1.1 Memorandum to be Senior to Mortgages. Developer covenants and agrees that the Memorandum of this Agreement shall be senior in priority to any mortgage or other security instrument recorded against the Property, and that if any such instrument has been recorded against the Property prior to recordation of the Memorandum, Developer shall promptly secure execution of such subordination agreements as may be necessary to ensure that Housing Authority's reversionary interest in the Property shall not be defeated as a result of foreclosure of any such instrument.

Section 8.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the applicable Development Phase or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the applicable Development Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default; Right to Cure. Whenever Housing Authority delivers any notice of default or demand to Developer with respect to the commencement, completion, or

cessation of the construction of a Development Phase, Housing Authority shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the applicable Development Parcel, provided that Housing Authority has been provided an address for such notices. Housing Authority shall have no liability to any such holder for any failure by the Housing Authority to provide notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the copy of the notice, to cure or remedy or, if the default is of a nature that it cannot be cured within such time period, to commence to cure or remedy any default hereunder. In the event possession of the applicable Development Parcel (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the applicable Development Phase (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer' s obligations to Housing Authority under this Agreement with respect to that Development Phase. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Development Phase to which the lien or title of such holder relates. Any such holder properly completing the improvements shall be entitled to a Certificate of Completion for the applicable Development Phase upon compliance with the requirements of this Agreement.

Section 8.4 Failure of Holder to Complete Improvements. In any case where six (6) months after occurrence of a Developer Event of Default (as defined and described in Section 9.3 below) in completion of construction of a particular Development Phase, the holder of record of any mortgage or deed of trust has not exercised its option to construct that Development Phase, or having first exercised its option to construct, has not proceeded diligently with such construction, Housing Authority shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement. In addition, Housing Authority shall have the right prior to foreclosure or transfer of deed in lieu of foreclosure to purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage or deed of trust. If the ownership of a particular Development Parcel has vested in the holder, Housing Authority shall have the right for sixty (60) days after such vesting to acquire that Development Parcel from the holder upon payment of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure;

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of that Development Parcel (or portion thereof);

(d) The costs of any improvements for the applicable Development Phase made by such holder; and

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Housing Authority.

Section 8.5 Right of Housing Authority to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by a particular Development Parcel, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Housing Authority may cure the default, without acceleration of the subject loan, following prior notice thereof to Developer. In such event, Developer shall be liable for, and Housing Authority shall be entitled to reimbursement from Developer for all costs and expenses incurred by Housing Authority associated with and attributable to the curing of the default or breach. Housing Authority shall also be entitled to record a lien upon the applicable Development Parcel to the extent of such incurred costs and disbursements.

Section 8.6 Holder to be Notified. For each deed of trust or mortgage creating a security right or interest in a Development Parcel prior to issuance of the Certificate of Completion for that Development Parcel, the provisions of this Article 8 shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactorily to Housing Authority, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the applicable Development Parcel.

Section 8.7 Estoppel Certificates. Either Developer or Housing Authority may, at any time, and from time to time, deliver written notice to the other Party requesting such party to certify in writing that, to the knowledge of the certifying party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Housing Authority Executive Director is authorized to execute any certificate requested by Developer hereunder.

Section 8.8 Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan for a Development Phase should, as a condition of providing financing for development of all or a portion of that Development Phase, request any modification of this Agreement in order to protect its interests in the Development Phase or this Agreement, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

ARTICLE 9.

DEFAULTS AND REMEDIES

Section 9.1 Termination Without Fault. The occurrence of any of the following constitutes a basis for either Party to terminate this Agreement (to the extent set forth below) without fault of the other Party:

(a) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to Housing Authority's obligation to convey the Property to Developer, set forth in Articles 1 and 3, by not later than the Closing Deadline established pursuant to Section 3.6;

(b) Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to commencement of construction of the Phase Two Development by Developer, set forth in Articles 1 and 3, by not later than the deadline set forth in the Schedule of Performance for such construction commencements;

(c) Housing Authority, despite good faith and diligent efforts, is unable to convey the Property to Developer, and Developer is otherwise entitled to such conveyance;

(d) After undertaking an inspection of the environmental conditions on, under, about and above the Property, the Developer concludes in the reasonable exercise of its discretion that the Property is or is likely to be contaminated by Hazardous Materials and, as a result of the contamination, the proposed development of the Property in accordance with this Agreement cannot be undertaken successfully without excessive financial risk to the Developer; provided, however, that this Agreement may only be terminated pursuant to this subsection if the Developer notifies the Housing Authority in writing of such determination no later than one hundred eighty (180) days from the Amendment Effective Date.

Except as otherwise provided in the following paragraph, upon the occurrence of any of the above-described events, and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After termination, neither Party shall have any rights against or liability to the other Party under this Agreement, except that the indemnification provisions of Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination and remain in full force and effect.

Notwithstanding the foregoing, in connection with an event described in paragraph (b) above, this Agreement may be terminated by either Party upon written notice to the other Party only as this Agreement relates to the rights and obligations of the Parties with respect to the Phase Two Parcel and the Phase Two Development, and after such limited termination this Agreement shall remain in full force and effect as it relates to the rights and obligations of the Parties with respect to the Phase One Parcel and the Phase One Development.

Section 9.2 Fault of Housing Authority. Except as to events constituting a basis for termination under Section 9.1, and provided further that the Developer has satisfied its obligations hereunder, the following events shall constitute a "**Housing Authority Event of Default**":

(a) Housing Authority, without good cause, fails to convey the Property to Developer within the time and in the manner set forth in Article 3, and Developer is otherwise entitled by this Agreement to such conveyance; or

(b) Housing Authority breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

Upon the occurrence of either of the above-described events, Developer shall first notify Housing Authority in writing of its purported breach or failure, giving Housing Authority thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event Housing Authority does not then so cure within thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, Housing Authority fails to commence to cure within thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then such failure shall constitute a Housing Authority Event of Default and the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating this Agreement by delivery of written notice to Housing Authority (provided, however, that the indemnification provisions of Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 10.1 and 10.19 shall survive such termination); (2) terminating this Agreement only with respect to the Development Parcel and accompanying Development Phase to which the Housing Authority Event of Default applies, while maintaining this Agreement in full force and effect with respect to the other Development Parcel and accompanying Development Phase; and (3) prosecuting an action for specific performance. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against City or Housing Authority upon the occurrence of a Housing Authority Event of Default or upon termination of this Agreement.

Section 9.3 Fault of the Developer. Except as to events constituting a basis for termination under Section 9.1, and provided further that Housing Authority has satisfied its obligations hereunder, the following events shall each constitute a **"Developer Event of Default"**:

(a) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 1 and Article 3, one or more of the conditions precedent to the Housing Authority's obligation to convey the Property to the Developer;

(b) Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner specified in Article 1 and Article 3, one or more of the conditions precedent to commencement of construction of the Phase Two Development by Developer;

(c) Developer refuses to accept conveyance of the Property within the time periods and under the terms set forth in Article 3;

(d) An Event of Default arises under any Housing Authority Document other than this Agreement and remains uncured beyond any applicable cure period;

(e) An Event of Default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any

applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Developer fails to commence or complete construction of a Development Phase within the times set forth in Article 5 or abandons or suspends construction of a Development Phase prior to completion of all construction for a period of sixty (60) days after written notice of such abandonment or suspension;

(g) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7;

(h) Developer fails to maintain insurance on the Property and the Project as required pursuant to the Housing Authority Documents;

(i) Subject to Developer's right to contest the following charges pursuant to the Housing Authority Documents, if Developer fails to pay taxes or assessments due on a Development Parcel or Development Phase or fails to pay any other charge that may result in a lien on that Development Parcel or Development Phase;.

(j) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Housing Authority or the City in connection with this Agreement or in any other Housing Authority Document proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to Housing Authority or City;

(k) A court having jurisdiction shall have made or entered any decree or order (1) adjudging Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for either of Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of Developer;

(l) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(m) Developer shall have voluntarily suspended its business or Developer's partnership shall have been dissolved or terminated; or

(n) If Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.3 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default

after the date upon which Housing Authority shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Upon Developer's default under this Agreement, Housing Authority shall provide written notice of the purported breach, and unless a shorter cure period is specified above or in the case of a Developer Event of Default arising under clauses (d) through (n) above, Developer shall have thirty (30) days after the date upon which Housing Authority shall have given written notice of the default to Developer to cure such default; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Section 9.4 Legal Actions. Upon the occurrence of a default and the expiration of the applicable cure period, the non-defaulting Party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement; provided, however, as further set forth in Section 9.2, in no event shall damages be awarded against City or Housing Authority upon the occurrence of an Housing Authority Event of Default or upon termination of this Agreement. Any such legal actions shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California. Notwithstanding anything herein to the contrary, a Party's right to recover damages in the event of a default shall be limited to recovery of actual damages and shall exclude consequential damages.

Section 9.5 Remedies Cumulative; No Waiver. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

Section 9.6 Special Remedies Prior To Phase One Development Certificate of Completion.

9.6.1 Right of Reverter. If following conveyance of the Property to Developer and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) abandons or suspends construction of the Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property (or any portion thereof)

or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revest in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.6.1 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Property under the same or similar conditions specified in Section 9.6.2. Housing Authority's rights pursuant to this Section 9.6.1 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.6.1 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Property or any portion thereof as provided in this Section 9.6.1, Housing Authority shall use its best efforts to resell the Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by Housing Authority) who will assume the obligation of making or completing the Project in accordance with the uses specified for such Property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Property or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse Housing Authority for all costs and expenses incurred by Housing Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Property at the time of revesting of title thereto in Housing Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any other amounts owed to the Housing Authority by Developer and its successors or transferee.

(b) Second, to reimburse Housing Authority for damages to which it is entitled under this Agreement by reason of Developer's default.

(c) Third, to reimburse Developer, its successor or transferee, up to the amount equal to:

1. The Purchase Price paid to Housing Authority for the Property; plus

2. The fair market value of the improvements Developer has placed on the Property or applicable portion thereof; less

3. Any gains or income withdrawn or made by Developer from the Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to Housing Authority's exercise of the right of reverter.

(d) Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.6.1 are to be interpreted in light of the fact that Housing Authority will convey the Property to Developer for development as specified herein and not for speculation. The rights established in this Section 9.6.1 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

9.6.2 Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Property or any portion thereof owned by Developer with all improvements thereon (the "**Property Repurchase Option**"), if after conveyance of the Property and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development, Developer: (i) fails to begin construction of the Phase One Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) abandons or suspends construction of the Phase One Development for a period of sixty (60) days after written notice from Housing Authority; (iii) fails to complete construction of the Phase One Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property (or portion thereof) or this Agreement in violation of Article 7. The rights established in this Section 9.6.2 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase One Development.

To exercise the Property Repurchase Option, the Housing Authority shall pay to the Developer cash in an amount equal to:

(a) The Purchase Price paid to Housing Authority by Developer for the Property; plus

(b) The fair market value of any new improvements existing on the Property at the time of exercise of the Property Repurchase Option; less

(c) Any gains or income withdrawn or made by the Developer from the Property or the improvements thereon; less

(d) The value of any liens or encumbrances on the Property which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the Property Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.6.2, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Property, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.6.2.

Section 9.7 Special Remedies Prior To Phase Two Development Certificate of Completion.

9.7.1 Special Option to Purchase, Enter and Possess Upon Failure to Timely Commence Phase Two Development. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon (**"Special Phase Two Repurchase Option"**), if following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the date Developer commences construction of the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.1 shall terminate and be of no further force and effect upon the date that Developer commences construction of the Phase Two Development.

In order to exercise the Special Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise. Within thirty (30) days after Developer's receipt of Housing Authority's notice of exercise of the Special Phase Two Repurchase Option, Housing Authority shall pay into an escrow established for such purpose cash in the amount of One Dollar ($1.00), representing the portion of the Purchase Price paid by Developer attributable to the Phase Two Parcel, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel.

In no event shall the Special Phase Two Repurchase Option provided in this Section 9.7.1 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.2 Right of Reverter. If following the time Developer is entitled to issuance of a Certificate of Completion for the Phase One Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) fails to satisfy or obtain a waiver from Housing Authority for all conditions precedent and set forth in Articles 1 and 3 to commencement of construction of the Phase Two Development by

Developer within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (ii) fails to begin construction of the Phase Two Development within the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; (iii) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority; (iv) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof; or (v) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel, the Phase Two Development or this Agreement in violation of Article 7, Housing Authority may re-enter and take possession of the Phase Two Parcel or any portion thereof with all improvements thereon without payment or compensation to Developer, and revest in Housing Authority the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.7.2 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Housing Authority's option to purchase the Phase Two Parcel under the same or similar conditions specified in Sections 9.7.1 and 9.7.3. Housing Authority's rights pursuant to this Section 9.7.2 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Parties shall accomplish the re-entry, possession, and revesting contemplated by this Section 9.7.2 in the manner specified in Section 9.12.

Upon revesting in Housing Authority of title to the Phase Two Parcel or any portion thereof as provided in this Section 9.7.2, Housing Authority shall use its best efforts to resell the Phase Two Parcel or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by Housing Authority) who will assume the obligation of making or completing the Phase Two Development in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to Housing Authority. Upon such resale of the Phase Two Parcel or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse Housing Authority for all costs and expenses incurred by Housing Authority, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Phase Two Parcel; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Phase Two Parcel at the time of revesting of title thereto in Housing Authority or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Phase Two Development or any part thereof on the Phase Two Parcel; and any other amounts owed to Housing Authority by Developer and its successors or transferee.

(b) Second, to reimburse Housing Authority for damages to which it is entitled under this Agreement by reason of the Developer's default.

(c) Third, to reimburse Developer, its successor or transferee, up to the amount equal to:

1. The Purchase Price paid to Housing Authority for the Phase Two Parcel; plus

2. The fair market value of the improvements Developer has placed on the Phase Two Parcel or applicable portion thereof; less

3. Any gains or income withdrawn or made by the Developer from the Phase Two Parcel or applicable portion thereof or the improvements thereon.

4. Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Phase Two Parcel or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the Housing Authority's exercise of the right of reverter.

5. Any balance remaining after such reimbursements shall be retained by Housing Authority.

The rights established in this Section 9.7.2 are to be interpreted in light of the fact that Housing Authority will convey the Phase Two Parcel to the Developer for development as specified herein and not for speculation. The rights established in this Section 9.7.2 shall terminate and be of no further force and effect on the date Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development. In no event shall the right of reverter provided in this Section 9.7.2 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

9.7.3 General Option to Purchase, Enter and Possess. Housing Authority shall have the additional right at its option to purchase, enter and take possession of the Phase Two Parcel or any portion thereof owned by Developer with all improvements thereon (**"General Phase Two Repurchase Option"**), if after the time Developer has commenced construction of the Phase Two Development and prior to the time Developer is entitled to issuance of a Certificate of Completion for the Phase Two Development, Developer: (i) abandons or suspends construction of the Phase Two Development for a period of sixty (60) days after written notice from Housing Authority, (ii) fails to complete construction of the Phase Two Development by the time specified in the Schedule of Performance as such date may be extended pursuant to the terms hereof, or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Phase Two Parcel or this Agreement in violation of Article 7. The rights established in this Section 9.7.3 shall terminate and be of no further force and effect upon the date that Developer is first entitled to issuance of a Certificate of Completion for the Phase Two Development.

To exercise the General Phase Two Repurchase Option, Housing Authority shall pay to the Developer cash in an amount equal to:

(a) The Purchase Price paid to Housing Authority by Developer for the Phase Two Parcel; plus

(b) The fair market value of any new improvements existing on the Phase Two Parcel at the time of exercise of the Phase Two Parcel Repurchase Option; less

(c) Any gains or income withdrawn or made by Developer from the Phase Two Parcel or the improvements thereon; less

(d) The value of any liens or encumbrances on the Phase Two Parcel which Housing Authority assumes or takes subject to; less

(e) Any damages to which Housing Authority is entitled under this Agreement by reason of Developer's default.

In order to exercise the General Phase Two Repurchase Option, Housing Authority shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Housing Authority with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Housing Authority's receipt of such summary, Housing Authority shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.7.3, and Developer shall execute and deposit into such escrow a grant deed transferring to Housing Authority all of Developer's interest in the Phase Two Parcel, or portion thereof, as applicable and the improvements located thereon; provided, however, that Developer may contest by appropriate legal action Housing Authority's determination of the amount of all sums owing to Developer pursuant to this Section 9.7.3.

In no event shall the General Phase Two Repurchase Option provided in this Section 9.7.3 affect or apply in any manner whatsoever to the Phase One Parcel and the Phase One Development.

Section 9.8 Memorandum of Right of Reverter/Option to Purchase. The Parties shall cause a memorandum or memoranda of the rights granted Housing Authority in Sections 9.6 and 9.7 of this Agreement to be recorded in the official records of Santa Clara County at the time of the Closing for conveyance of the Property in its entirety to Developer. In lieu of such memorandum, the rights afforded Housing Authority pursuant to Sections 9.6 and 9.7 may be described in the Grant Deed for the Property.

Section 9.9 Construction Plans. If this Agreement is terminated pursuant to Section 9.1, Developer, at no cost to Housing Authority, shall deliver to Housing Authority copies of any construction plans and studies in Developer' possession or in the possession of Developer's consultants related to development of the Project on the Property (or the portion thereof that is the subject of such termination), subject to the rights of third parties. In the event Housing Authority utilizes the construction plans or studies, the Housing Authority shall indemnify Developer for any claims arising from the use of construction plans or studies by the Housing Authority pursuant to this Section 9.9.

Section 9.10 Rights of Mortgagees. Any rights of Housing Authority under this Article 9 shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or reverter of the Property (or portion thereof) to the Housing Authority pursuant to this Article 9 shall be subject to mortgages and deeds of trust permitted by this Agreement.

Section 9.11 Additional Provisions Regarding Options to Purchase. With respect to the Property Repurchase Option granted in Section 9.6.2, the Special Phase Two Repurchase Option granted in Section 9.7.1, and the General Phase Two Repurchase Option granted in Section 9.7.3 (collectively, **"Repurchase Options"**), Developer acknowledges and agrees that:

(a) Housing Authority has paid and provided valid and sufficient independent consideration for the grant by Developer of the Repurchase Options in the form of the duties and obligations to which Housing Authority has bound itself by execution of this Agreement;

(b) Housing Authority shall have the right and remedy, among any other available rights and remedies, to seek and obtain specific performance of the Repurchase Options in accordance with their respective terms;

(c) Developer expressly waives its right to contest a Housing Authority request to a court of competent jurisdiction to seek specific performance of one or more Repurchase Option(s) on the basis that the Repurchase Options are not subject to the remedy of specific performance (provided, however, that nothing in this Agreement shall prevent Developer from contesting Housing Authority's right to specific performance on the separate basis that the terms of this Agreement allowing Housing Authority to exercise one or more Repurchase Option(s) have not been met); and

(d) Housing Authority would not have entered into this Agreement without Housing Authority's right to enforce the Repurchase Options in accordance with their terms, including, without limitation, the right to obtain specific performance of the Repurchase Options.

Section 9.12 Mechanics of Revesting. The Parties shall implement the following procedures in the circumstances in which Housing Authority is authorized and desires to exercise the rights and remedies set forth in Section 9.6.1 or Section 9.7.2 ("**Revesting Rights**").

(a) Housing Authority shall provide written notice to Developer and to any holder of a security financing instrument for financing authorized by this Agreement with respect to the portion(s) of the Property to which the Revesting Rights apply ("**Holder**"), which notice shall state in reasonable detail the nature of Developer's alleged default and the manner in which Developer or Holder can cure the default. Developer or Holder shall have a period of twenty (20) business days after receipt of written notice (the "**Notice Period**") to cure such default. During the Notice Period, Developer or Holder shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer or Holder shall be deemed to have timely cured such default for purposes of this Section if Developer or Holder commences to cure the default within the Notice Period and prosecutes the same to completion within a reasonable time thereafter.

(b) Upon the failure to cure a default as described above, Housing Authority may exercise its Revesting Rights by delivering notice thereof in writing to Developer and any Holder and recording such notice ("Notice of Exercise"). The delivery and recording of the Notice of Exercise shall apply to re-vest in Housing Authority, or its successors or assigns, the portion(s) of the Property to which the Revesting Rights apply together with any and all improvements thereon and rights or interests appurtenant thereto on the terms and conditions set forth in this Section and Section 9.6.1 or Section 9.7.2, as applicable.

(c) Within ten (10) business days of Housing Authority delivering the Notice of Exercise, an escrow ("**Revesting Escrow**") shall be opened by Housing Authority with an escrow company selected by Housing Authority ("**Revesting Escrow Agent**") to evidence the re-vesting of fee title to Housing Authority of the portion(s) of the Property to which the Revesting Rights apply. Housing Authority and Developer shall execute any additional escrow instructions required by Revesting Escrow Agent.

(d) Fee title to the portion(s) of the Property to which the Revesting Rights apply shall revest to Housing Authority free of any and all liens, covenants, restrictions, easements, reservations, or encumbrances, except for (1) those of record existing prior to the conveyance of the Property to Developer, and (2) those permitted by this Agreement ("**Permitted Liens**"), including, without limitation, those liens, covenants, restrictions, easements, reservations, or encumbrances that constitute Permitted Transfers in accordance with Section 7.3. Any and all other liens, covenants, restrictions, easements, reservations, or encumbrances other than the Permitted Liens ("**Unpermitted Liens**") shall be removed by Developer at its sole cost and expense, prior to the applicable portion(s) of the Property revesting to Housing Authority. For any avoidance of doubt, it is understood that Housing Authority's Revesting Rights have first priority over any and all Unpermitted Liens and the applicable portion(s) of the Property shall automatically and without further action of Housing Authority re-vest to Housing Authority clear and free of any Unpermitted Liens. Furthermore, fee title shall revest to Housing Authority at no cost or expense to Housing Authority, including no reimbursement of any kind or payment to Developer or any other party, or any other consideration whatsoever, except as provided in Section 9.6.1 or Section 9.7.2, as applicable.

(e) Within thirty (30) calendar days following the open of the Revesting Escrow, Developer shall deliver to Revesting Escrow Agent an executed and acknowledged Grant Deed ("**Revesting Deed**") approved by Housing Authority for the portion(s) of the Property to which the Revesting Rights apply in favor of Housing Authority.

(f) Revesting Escrow Agent shall record the Revesting Deed upon written notice from Housing Authority that the Revesting Deed is acceptable to Housing Authority and the portion(s) of the Property to which the Revesting Rights apply is/are free and clear of all Unpermitted Liens.

(g) Developer shall cause Revesting Escrow Agent to issue, immediately upon recording the Revesting Deed, a CLTA title insurance policy, or, if requested by Housing Authority an ALTA extended coverage form of title insurance policy, with liability in an amount reasonably specified by Housing Authority insuring title to the portion(s) of the Property to which the Revesting Rights apply as vested in Housing Authority subject only to the Permitted Liens and any other matters agreed upon pursuant to the provisions of this Agreement. Except as otherwise provided herein, Developer shall pay all closing costs in connection with any exercise of the Revesting Rights.

Section 9.13 Mediation. Prior to exercising any right or remedy pursuant to Article 9, the Party that is considering a remedy shall notify the other Party, and the Parties shall mutually seek to conduct a non-binding mediation of the violation or alleged default that is at issue. The Parties shall conduct such mediation with a mediator and under such procedures as they mutually agree for a period not to exceed thirty (30) days, or such longer period as the Parties may agree

in writing. The Parties shall share equally any costs of such mediation process. Following the mediation process, if the mediation does not resolve the matter at issue, the Party that initiated the mediation may proceed to exercise its rights and remedies in accordance with Article 9.

ARTICLE 10.

MISCELLANEOUS PROVISIONS

Section 10.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the Closing for the Property and the expiration or earlier termination of this Agreement.

Section 10.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of Housing Authority which shall not excuse performance by Housing Authority), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement, including the Schedule of Performance (Exhibit D), may also be extended in writing by the mutual agreement of Developer and Housing Authority (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Housing Authority) pursuant to an Operating Memorandum (as defined and described in Section 10.20) without formal amendment of this Agreement.

Housing Authority and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of the applicable Development Phase shall not constitute grounds of enforced delay pursuant to this Section; provided, however, that Housing Authority shall accept as a ground of enforced delay with respect to procurement of loan financing consistent with the approved Financing Plan for the applicable Development Phase any delay in the lender's completion of its standard loan approval or funding procedures beyond the reasonable control of Developer, and under such circumstance

Housing Authority shall not unreasonably deny or delay its approval of an amendment to the Schedule of Performance (Exhibit D) to extend the time for obtaining such lender approval and delivery of loan funding consistent with the approved Financing Plan (and to extend the corresponding Closing Deadline with respect to Phase One Development, or the deadline for commencement of construction with respect to Phase Two Development, as applicable, under the Schedule of Performance (Exhibit D). Except as set forth in the preceding proviso, each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Amendment Effective Date.

Section 10.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Developer: South Main Senior Lifestyles, LLC
c/o Callahan Property Company, Inc.
5674 Stoneridge Drive, #212
Pleasanton, CA 94588
Attention: Joseph W. Callahan, Jr.

With a copy to: Collaborative Design Architects Inc.
6114 LaSalle Avenue
Oakland, CA 94611
Attention: James R. Burns II

Section 10.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 10.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 10.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article 7, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

Section 10.7 Provisions Not Merged With Deeds; Survival. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying either of the Development Parcels to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. All representations made by Developer and Housing Authority hereunder and Developer's and Housing Authority's respective indemnification obligations pursuant to Sections 4.1, 4.4.2, 5.7, 5.9, 5.14, 11.1 and 11.19 shall survive the expiration or termination of this Agreement and the issuance and recordation of any Certificate of Completion.

Section 10.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

Section 10.9 Action or Approval. Whenever action and/or approval by Housing Authority is permitted or required under this Agreement, Housing Authority's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Housing Authority's Board for consideration.

Section 10.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Housing Authority Documents, contains the entire agreement between the Parties with respect to the

subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Section 10.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

Section 10.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

Section 10.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

Section 10.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 10.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Housing Authority or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Housing Authority or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

Section 10.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

Section 10.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

Section 10.18 Inspection of Books and Records. Upon request, Developer shall permit the Housing Authority to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 10.19 General Indemnification. Developer shall indemnify, defend (with counsel approved by Housing Authority) and hold harmless Indemnitees from all Claims (including without limitation, attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by City or Housing Authority or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. Housing Authority will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. Housing Authority and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if Housing Authority or City chooses to do so, Developer shall reimburse Housing Authority and City for reasonable attorneys' fees and expenses incurred.

Section 10.20 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement required a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be executed on Housing Authority's behalf by its Executive Director, or the Executive Director's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 10.5, and must be approved by Housing Authority's Board.

IN WITNESS WHEREOF, Housing Authority and Developer have executed this Agreement effective as of the date first written above.

CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr.
Managing Member

By: _____
James R. Burns II,
Managing Member

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

ORDER NO. : 1117012669-JM

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Milpitas, State of California, and is described as follows:

PARCEL ONE:

Parcels 1 and 2 as shown on that certain Parcel Map recorded January 11, 1995 in Book 662 of Maps, at Pages 5 and 6, together with a portion of Parcel A and a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, and as described in the Lot Line Adjustment recorded March 22, 2013, Instrument No. 22142701 of Official Records, more particularly described as follows:

Beginning at the northwest corner of said Parcel 2; thence along the northerly line of said Parcel 2 and the easterly prolongation thereof, South 83° 39' 02" East, a distance of 427.71 feet; thence along a line drawn parallel to and 46.00 feet westerly, measured at right angles to the east line of said Parcel B, South 02° 30' 31" East, a distance of 194.14 feet to the south line of said Parcel B; thence along the south line of Parcel B, Parcel A and Parcel 1, North 83° 39' 02" West, a distance of 466.52 feet to the west line of said Parcel 1; thence along said west line along the arc of a non-tangent curve to the right having a radius of 1,952.00 feet, the center of which bears South 83° 10' 27" East, through a central angle of 02° 57' 55", an arc distance of 101.02 feet; thence North 09° 47' 28" East, a distance of 91.04 feet to the Point of Beginning.

EXCEPTING FROM that portion described as Parcel 2 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purposes of producing or development of such reserved substances, as reserved by Kaiser Aluminum and Chemical Corporation, a corporation in the Deed recorded March 31, 1972 in Book 9768 Page 368 Official Records.

EXCEPTING FROM that portion described as Parcel 1 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purpose of producing or development of such reserved substances.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-046

(Underlying APN'S: 086-22-033; 086-22-034; Portion APN: 086-22-041
Portion APN: 086-22-042)

PARCEL TWO:

A strip of land 46.00 feet in width, being a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the east line of said Parcel B, distant thereon south 83° 39′ 02″ west, a distance of 474.27 feet from the northwest corner of Parcel 2 of Parcel Map Book 662, Page 5 & 6; thence along the east line of said Parcel B south 02° 30′ 31″ east, a distance of 194.14 feet to the southeast corner of said Parcel B; thence along the south line of said Parcel B, north 83° 39′ 02″ west, a distance of 46.56 feet; thence north 02° 30′ 31″ west, a distance of 194.14 feet to the easterly prolongation of said Parcel 2; thence south 83° 39′ 02″ east, a distance of 46.56 feet to the point of beginning.

EXCEPTING THEREFROM: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-047 (underlying APN: portion 086-22-042)

PARCEL THREE:

A strip of land 50.00 feet in width being a portion of Parcels A and B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002, as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the west line of said Parcel A, said point being coincident with the northwest corner of Parcel 2 as shown on the Parcel Map in Book 662 of Maps, pages 5 and 6; thence along the common line between Parcel A and Parcel 2 and the easterly prolongation thereof, south 83° 39′ 02″ east, a distance of 474.27 feet to the east line of said Parcel B; thence along the east of said Parcel B, north 02° 32′ 31″ west, a distance of 50.61 feet to the

northeast corner of said Parcel B; thence along the north line of Parcel B, north 83° 39′ 02″ west, a distance of 463.44 feet to the northwest corner of said Parcel B; thence along the west line of said Parcels A and B, south 09° 47′ 28″ west, a distance of 50.10 feet to the point of beginning.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-048
(underlying APN's: portion 086-22-041 & 042)

PARCEL FOUR:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ETALTO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549, OF OFFICIAL RECORDS, AT PAGE 403, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28′ EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 465.57 FEET TO THE NORTHEASTERLY CORNER THEREOF IN THE WESTERLY-LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY; THENCE NORTH 3° 22' WEST ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY 114.76 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 1.718 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO J.H. GUERRERO, ET AL, RECORDED MAY 11, 1949, IN BOOK 1785 OF OFFICIAL RECORDS, AT PAGE 484, SANTA CLARA COUNTY RECORDS; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.718 ACRE TRACT 437.00 FEET TO THE NORTHWESTERLY CORNER THEREOF IN THE SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD ALONG AN ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 2033.00 FEET FROM WHICH THE CENTER POINT BEARS NORTH 80° 35' 30" WEST FOR AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF MILPITAS IN DEEDS RECORDED IN BOOK 5383, PAGE 29 AND IN BOOK 8420, PAGE 188, OFFICIAL RECORDS.

APN: PORTION 086-22-027

PARCEL FIVE:
PARCEL FIVE-A

A STRIP OF LAND 12 FEET WIDE WHICH IS THE WESTERLY 12 FEET OF THAT CERTAIN 1.178 ACRE PARCEL DESCRIBED IN DEED FROM J. H. GUERRARO ET AL TO THOMAS E. CARDOZA, ET UX, AND RECORDED JULY 15,1959 IN BOOK 4481, PAGE 251 SANTA CLARA COUNTY OFFICIAL RECORDS WHICH 12 FOOT STRIP IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549, PAGE 403 SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 12.13 FEET TO AN IRON PIPE; THENCE NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11" 47" AN ARC DISTANCE OF 114.09 FEET TO AN IRON PIPE; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND A DISTANCE OF 12.03 FEET TO A POINT IN THE EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD AND THE NORTHWESTERLY CORNER OF SAID 1.178 ACRE PARCEL; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF THE SAN JOSE-MILPITAS ,
ROAD ALONG AN ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 2033 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 80° 35' 30" WEST, THROUGH A CENTRAL ANGLE OF 3° 12' 56" AN ARC DISTANCE OF 114.10 FEETTO THE POINT OF EGINNING.

EXCEPTING THEREFROM THAT PORTION OF LAND LYING WESTERLY OF THE EASTERLY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DEED RECORDED SEPTEMBER 16, 1985 IN BOOK J458 OF OFFICIAL RECORDS AT PAGE 1705, SANTA CLARA COUNTY RECORDS.

PARCEL FIVE-B:

BEGINNING AT A POINT IN THE EASTERLY UNE OF SAN JOSE-MILPUAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL, TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549 AT PAGE 403, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE SOUTH 84° 28'
EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT, 12.13 FEET TO AN IRON PIPE IN THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.03 ACRE PARCEL OF LAND CONVEYED TO THE CITY OF MILPUAS BY DEED RECORDED NOVEMBER 30,1961 IN BOOK OF OFFICIAL RECORDS NUMBERED 5383, AT PAGE 29 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID 0.03 ACRE PARCEL OF LANE, NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47", AN ARC DISTANCE OF 114.09 FEET TO THE NORTHEASTERLY CORNER OF SAID 0.03 ACRE PARCEL OF LAND IN THE NORTHERLY LINE OF THAT CERTAIN 1.178 ACRE PARCEL OF LAND CONVEYED TO THOMAS E. CARDOZA,

ET UX, RECORDED JULY 15, 1959 IN BOOK 4481, PAGE 251, OF OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND SOUTH 84° 28′ EAST, .05 FEET; THENCE LEAVING SAID NORTHERLY LINE 8° 57′ 21″ WEST 113.75 FEET TO THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL CONVEYED TO PACIFIC GAS AND ELECTRIC ABOVE REFERRED TO; THENCE ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL OF LAND NORTH 84° 28′ WEST 4.06 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE MILPITAS RANCHO.

PARCEL FIVE-C:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED JULY 15, 1959 IN BOOK 4491 AT PAGE 251, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL NORTH 83° 39′ 47″ WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET SOUTH 9 46′ 43″ WEST, 72.81 FEET TO A POINT OF CUSP WITH A CURVE TO THE LEFT TO WHICH POINT A RADIAL LINE BEARS SOUTH 77° 43′ 56″ EAST; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK 4491 AT PAGE 251 OF OFFICIAL RECORDS, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 03′ 21″ HAVING A RADIUS FO 2033.00 FEET AN ARC LENGTH OF 72.95 FEET TO THE POINT OF BEGINNING.

APN: PORTION 086-22-027

PARCEL SIX:
PARCEL SIX-A:

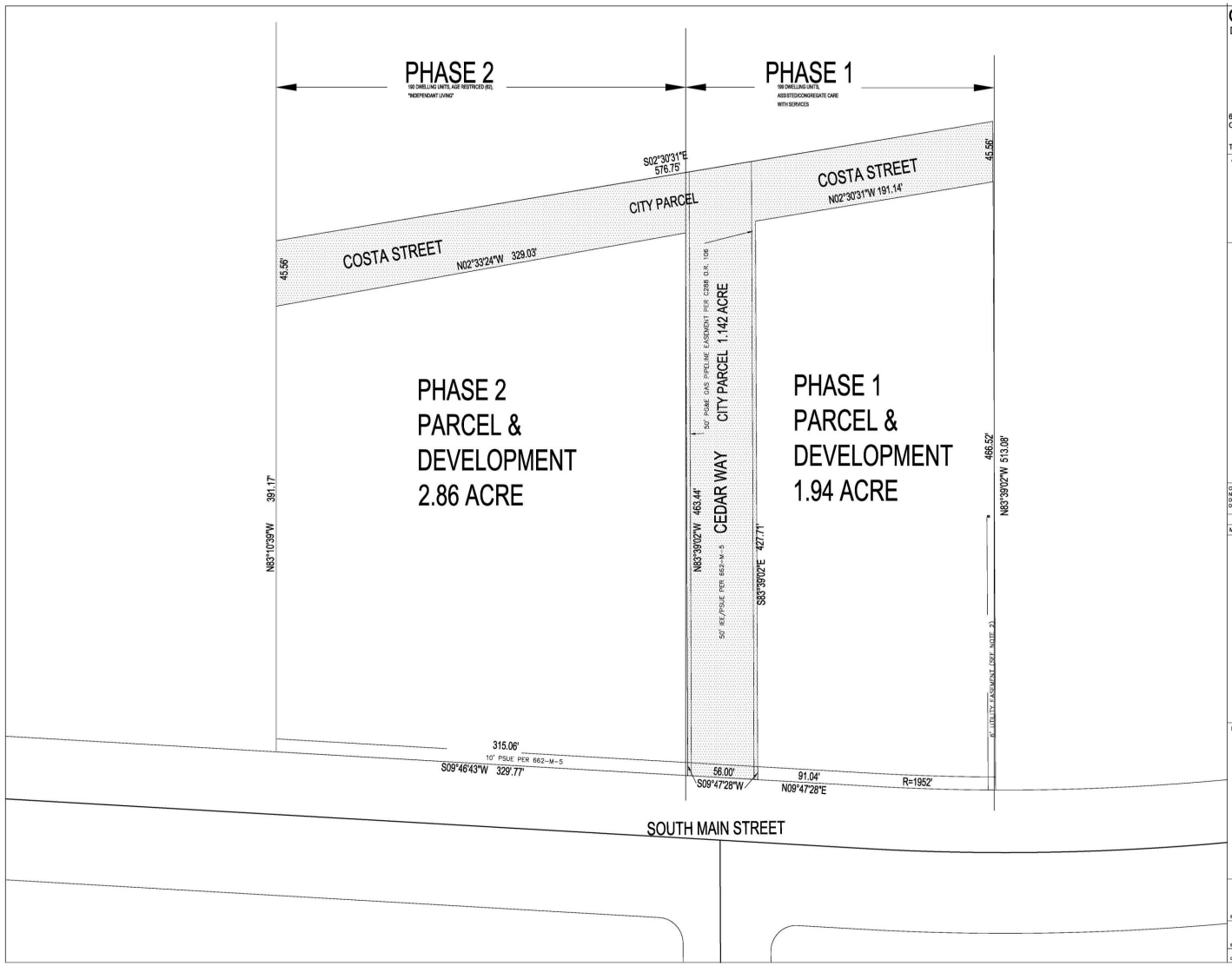
PORTION OF THE MILPITAS RANCH DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF MAIN STREET, ALSO KNOWN AS THE STATE HIGHWAY LEADING FROM SAN JOSE TO MILPITAS, DISTANT THEREON SOUTH 8° 38′ 30″ WEST, 202.70 FEET FROM THE WESTERLY CORNER OF THE 1 ACRE TRACT OF LAND CONVEYED TO ANGELO TORRES, ET UX, BY DEED RECORDED MAY 24, 1929, BOOK 468, OFFICIAL RECORDS, PAGE 50; THENCE FROM SAID POINT OF BEGINNING SOUTH 8° 58′ 30″ WEST ALONG SAID LINE OF MAIN STREET, 201.31 FEET TO A CONCRETE MONUMENT; THENCE CONTINUIJNG ALONG SAID LINE OF MAIN STREET ALONG A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 2033 FEET, FOR AN ARC DISTANCE OF 16.10 FEET TO AN IRON PIPE; THENCE SOUTH 84° 28′ EAST PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE TRACT OF LAND, 437 FEET TO AN IRON PIPE ON THE WESTERLY LINE OF THE LANDS OR RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 3° 22′ WEST ALONG SAID WESTERLY LINE 215.31 FEET TO A POINT FROM WHICH THE SOUTHEASTERLY CORNER OF SAID 1 ACRE TRACT OF LAND BEARS NORTH 3° 22′ WEST 208.10 FEET; THENCE WESTERLY IN A DIRECT LINE, 393 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL SIX-B:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED APRIL 15, 1981 IN BOOK G023, AT PAGE 734, DOCUMENT NO. 7031783 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH 9° 46'43" WEST, 201.31 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINEALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 27' 13" HAVING A RADIUS OF 2033 FEET AN ARC LENGTH OF 1610 FEET; THENCE ALONG THE NORTHWESERLY EXTENSION LINE OF THE SOUTHWESTERLY LINE OF SAID PARCEL NORTH 83° 39' 47" WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET NORTH 9° 46' 43" EAST, 217.42 FEET TO THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK G023 AT PAGE 734 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY EXTENSION LINE SOUTH 83° 10' 39" EAST, 1.92 FEET TO THE POINT OF BEGINNING.

APN: 086-22-028



COLLABORATIVE DESIGN ARCHITECTS INC

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ARCHITECT'S STAMP | CONSULTANT'S STAMP

Project Description:

MILPITAS SENIOR HOUSING
1504-1620
South Main Street
Milpitas, California

AMENDED & RESTATED DISPOSITION & DEVELOPMENT AGREEMENT

Owner / Applicant:

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SUBMITTALS / REVISIONS

MARK	DESCRIPTION	DATE
	AMENDED & RESTATED DDA	11-19-13

KEY PLAN: NTS

ILLUSTRATIVE "PLAT MAP" SUBJECT TO FINAL MAP

SHEET DESCRIPTION

SCALE: AS NOTED

DRWN: JRB
APPROVD: ZB003
CDA PROJECT NO.

CDA FILE PATH:

SHEET NO.

A-1

675\02\1422053.2

EXHIBIT A-1

LEGAL DESCRIPTION OF PHASE ONE PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-2

LEGAL DESCRIPTION OF PHASE TWO PARCEL

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT A-3

LEGAL DESCRIPTION OF PUBLIC USE PARCELS

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.5.2.]

EXHIBIT B

SCOPE OF DEVELOPMENT—PROJECT DESCRIPTION

This Exhibit B sets forth the proposed Scope of Development and project description for the Project. Attachment 1 to this Exhibit B provides a general depiction of the proposed Project described below, including showing the general location and scope of proposed on-site and off-site public improvements to be developed by Developer as part of the Project, and as further described below.

Capitalized terms used below have the meanings given in the Agreement to which this Exhibit B is attached.

A. Location.

The Property upon which the proposed Project will be developed is located at 1504-1620 South Main Street, Milpitas, California (APN's 086-22-027, 028, 046, 047, and 048) on the east side at its intersection of Cedar Way (see Attachment 1). The Property's gross land area is approximately 5.942 acres. The Property is subject to the Current Entitlements under Resolution No. 7734 as approved by the City Council on February 5, 2008. The Current Entitlements allow a 387-unit condominium project in three four-story buildings. The Property is located within the "R4-TOD-S" Multi Family Very High Density with a Transit Oriented Development Overlay in the Midtown Specific Plan Area.

B. Proposed Project.

The proposed Project is a two phase Continuum of Care Retirement Community providing a total of 389 units of mixed income, age restricted (62 years of age and older) rental senior housing. There are 199 units of congregate care and assisted living senior units in the Phase One Development on the Phase One Parcel (approximately 1.94 net developable acres), and 190 units of independent living senior housing in the Phase Two Development on the Phase Two Parcel (approximately 2.86 net developable acres). Three hundred fifty-six (356) units are allowed in "R-4-TOD-S." With 12.34% of the units restricted to occupancy by very low income households (whose income does not exceed 50% of the Area Median Income) for 55 years, the Project qualifies for a 35% density bonus, bringing the total number of units allowed on the site to 480 units. The Project's total of 389 units falls well below this cap.

1. Phase One Development.

(a) Overview.

The Phase One Development will consist of 199 units of rental "Continuum of Care Senior Housing," including 10 Affordable Units for very low income-qualified households (50% AMI) and 189 units at "Fair Market" unrestricted rental rates. The Phase One Development will be

located on the southern portion of the Property on the approximately 1.94 net developable acres Phase One Parcel. The Phase One Development will provide congregate care and assisted living services, and a full range of amenities, to the residents. The design construction standards for the project will be Type 1B and the units will be designed to be handicapped accessible enabling residents to age in place. The Phase One Development will be a "podium" design with the habitable structure located on a subterranean Type IA garage structure.

The building will provide approximately 221,542 habitable square feet, including 63,200 square feet for common areas and 158,342 gross square feet for resident units integrated around exterior courtyards, plus a 67,228 square foot subterranean parking structure. Superior junior one-bedroom, one-bedroom and two-bedroom units will meet the demand for larger living spaces with an abundance of storage area. Interior upgrades will include a full kitchen as well as a stacked washer and dryer in each unit.

The anticipated unit mix and sizes of the senior apartment units in the Phase One Development will be as follows:

Unit Type	# of Units	%	Net Rentable Sq. Ft.
Jr. 1 bedroom*	3	2%	500
Jr. 1 bedroom	8	5%	500
Jr. 1 bedroom	6	3%	601
1 bedroom	4	2%	642
1 bedroom	6	3%	670
1 bedroom	48	24%	701
1 bedroom	16	8%	726
1 bedroom	26	13%	737
1 bedroom	25	13%	744
2 bedroom	57	29%	1,046
Total	**199**	**100%**	**158,342**

*As defined in the Phase One Regulatory Agreement.

The ten units restricted to occupancy by very low income senior households will be of the junior one-bedroom (8 units) and one-bedroom (2 units) unit types.

(b) <u>The Phase One Development will be a single structure in an "H" configuration</u>:

(i) The configuration allows three distinctive exterior courtyards allowing use by both residents and members of the community and providing approximately 16,000 s.f. of private outdoor landscaped courtyards. The courtyards will be finished with concrete pavers with integrated plantered landscaping allowing the project to

integrate "C-3 water treatment" mitigation. One courtyard will have "alfresco dining" for the dining room and bistro areas. The center courtyard will have a swimming pool and outdoor spa and space for exercise programs and the third courtyard will have areas for private relaxation as well as additional area for exercise programs. Three of the exterior elevations are fronting public streets while the South elevation presents itself to a 20' wide "green" emergency access easement on the Southern property line constructed of concrete pavers that allow grass while maintaining and allowing a drivable surface for emergency vehicles.

(c) The Phase One Development will be 4 stories above subterranean parking:

(i) The subterranean parking garage (67,228 sf) area will have approximately 150 parking spaces, plus resident storage, mechanical support areas and a commercial laundry service for the complex. The parking will be accessed from Costas Street. The level of parking provided has been determined by historical data of projects of similar occupancy mix. It is anticipated that initial resident occupancy will be 65% congregate and 35% assisted living. As residents age in place this ratio is expected to reach 50% - 50%. The parking requirement for the proposed senior project is less than family housing, due to the age and non-ambulatory status of many residents. The parking provided in the garage is based on 0.7 parking space per congregate unit (130 DU at initial resident occupancy) or 91 parking spaces, plus staff parking of 40 spaces equating to 131 spaces. The balance of 19 spaces in the subterranean garage is allocated for visitor parking. No parking is provided for assisted living residents who are no longer capable of driving. There is additional visitor parking along Costas Street and Cedar Way.

(ii) The first floor main entry will have a "Porte Cochere" accessible from Cedar Way located outside the public-right-of way (which public right-of-way will be subject to refinement during the Entitlements process), allowing residents and visitors to have a protected vehicular drop off and "queing area" for resident activities and van pick up. As one enters the building, a vast lobby will have a "Reception Desk" and a "Concierge Station." An expanse of glass will open unto the main courtyard with a water feature center piece. A "Bistro" style café, gaming and activity areas, a library and the main dining area will be on the first floor East Wing. The kitchen, support areas, pick-up and deliveries and garbage pick-up will be off of Costas Street (East Wing). Administrative areas and an elevator core will be in the center of the building. Residential areas will comprise all of the West Wing of the first floor.

(iii) Floors 2 through 4 will be all residential units with the required support areas. A total of three elevators will be provided enabling resident and staff access from the parking structure to all floors in the building.

(iv) The Phase One Development will be 4 stories of steel frame construction (Type IB Construction) above a reinforced concrete (Type IA Construction) subterranean parking garage. The street level (first floor-floor podium) will be constructed of reinforced concrete, designed to all current codes for structural, occupancy, fire separation, area separations and other miscellaneous code compliance separation from the habitable areas on floors 1 through 4.

(d) Public Improvements Associated with Phase One Development:

The following public street, utility and infrastructure improvements will be constructed by Developer as part of the Phase One Development in accordance with all applicable City standards and requirements (see Attachment No. 1):

(i) On-Site.

- Construction and public dedication of Cedar Way (56' ROW) from S. Main Street to Costas Street.
- Construction and public dedication of Costas Street (anticipated 44' ROW) from the southern boundary of the property (Aspen Villages) to northern curb return of Cedar Way.
- Storm drain, C.3 stormwater treatment measures, sanitary sewer, water line, and joint utility trench within Cedar Way and the Phase One portion of Costas Street.
- 12' sound wall along eastern property boundary adjacent to railroad.
- All weather emergency access easement (EVA) (20' width) and improved pedestrian connection along the southern property boundary of the Phase One Development.

(ii) Off-Site.

- South Main Street frontage improvements including:
  - Curb, gutter, sidewalk removal and replacement;
  - Repair failed pavement and 2" AC overlay of Main Street frontage including signage and striping per S. Main Street plan line;
  - Connection of utilities to existing services (storm, water, irrigation, sanitary sewer, dry utilities);

- Streetlights, tree wells, street trees, irrigation, street furniture, and fire hydrants per S. Main Street plan line from Mihalakis Street north to South Abel Drive;
- New bus turnout and bus stop shelter (Phase Two Development frontage);
- New raised median installation including lights, landscaping and irrigation per S. Main Street plan line from Cedar Way north to South Abel Drive.

o Modification and upgrade of the existing traffic signal at S. Main Street and Cedar Way intersection per Midtown Specific Plan and South Main Street Plan line.

o Replacement of The Pines sound wall on the east side of S. Main Street along the entire frontage of The Pines between the southerly limits of Jerry's Market to Cedar Way and from Cedar Way to the northerly limits of the adjacent parcel to the south.

(e) Overview of Phase One Development Services and Amenities:

The facility will accommodate a range of seniors, from those who are healthy and active (Congregate Living residents) to those who are more frail (Assisted Living residents).

(i) Congregate Living - For residents who are ambulatory or semi-ambulatory, alert, and physically and mentally capable of independent management of daily activities.

(ii) Assisted Living - For ambulatory or semi-ambulatory residents who need limited and higher levels of assistance with daily living activities such as medications, grooming, mobility and other personal care and services. This program is designed to enable continued residency in the retirement community as residents age. No dementia, Alzheimer's or skilled nursing care will be offered at the Phase One Development.

This "continuum of care" approach allows residents to age within a home environment minimizing the discomfort of multiple moves. The facility will have a full service dining room, a "Bistro" dining option, a fitness center and indoor pool, a recreation center, a hair salon, an outdoor recreational area and a number of other amenities. The "lifestyle" created for the residents includes restaurant-style dining, housekeeping, scheduled transportation on the community shuttle bus, continuing education, programmed off campus events and "outings", a varied selection of health, fitness and recreational programs, and a unique approach to a "Northern California Style". Many of the programs for seniors will be open to the senior public for a fee, bringing added vitality to the community.

The services and amenities to be provided to residents of the Phase One Development will be provided by a professional staff, including departments for culinary services, health and wellness, housekeeping, administration, maintenance, and programs.

2. Phase Two Development.

(a) Overview.

The Phase Two Development will consist of 190 mixed income, age restricted (62 years of age and older), rental housing units for active, independent living seniors. The Phase Two Development will be located on the northern portion of the Property on the approximately 2.86 net developable acre Phase Two Parcel. The Phase Two Development residential structure will provide approximately 207,000 square feet of habitable area, including 41,000 square feet of common area and 166,000 square feet for the residential units. A four-story, 101,000 square foot, above grade parking structure will provide approximately 252 parking spaces (1.33 spaces/unit) for resident use. While less parking than a general market apartment project (1.7 spaces/unit), senior residents typically have only one car per unit.

The anticipated unit mix and sizes of the Phase Two Development senior independent living housing units will be as follows:

Unit Type	# of Units	%	Sq. Ft.
Jr. 1 bedroom*	28	15%	600
1 bedroom	44	23%	700
1 bed deluxe	44	23%	850
2 bed/2bath	32	17%	1,025
2 bed/2 bath deluxe	42	22%	1,150
	190	**100%**	**166,100**

*As defined in the Phase Two Regulatory Agreement.

The Phase Two Development will provide twenty-eight (28) affordable junior one-bedroom units for very low income senior households (50% AMI) and ten (10) affordable one-bedroom units for very low income senior households (50% AMI).

(b) The Phase Two Development will be three structures (see Site Development Plan attached):

(i) There will be two habitable Type V wood frame structures in the project totaling approximately 207,000 gross square feet. The four-story, 202,000 square foot residential community/building,

including approximately 37,000 square feet of common areas, will accommodate the 190 residential units in 166,000 habitable square feet (874 square feet / unit average). There will be an approximately 5,000 square foot, two-story administration and resident recreation building at the southwest corner of the property. The third structure will be the 101,000 square foot, Type IA, four-story above grade parking structure. The residential units will be located in wings off the parking structure with the wings separated by landscaped courtyards. The majority of units will have private exterior balconies.

(ii) The four-story, above grade parking structure will provide approximately 252 parking spaces, miscellaneous resident storage and mechanical support areas. The parking will be accessed via Costas Street to the northerly east-west emergency vehicle access easement between Costas and South Main streets.

(iii) The Community Center/Business Center, a two-story, 5,000 square foot structure will front onto Cedar Way. The structure will be a wood frame (Type V, A Construction), stucco exterior with detailing and color integrated into the overall complex. It will provide administrative offices, a resident gym, resident recreation and meeting areas and a visitor center.

The overall Phase Two Development design will be based on the "Texas Wrap" design concept, and will complement the design of the Phase One Development.

(c) Public Improvements Associated with Phase Two Development:

The following public street, utility and infrastructure improvements are proposed to be constructed by Developer as part of the Phase Two Development in accordance with all applicable City standards and requirements (see Attachment No. 1):

(i) On-Site.

- Construction of Costas Street from the northern Cedar Way curb return to the northern property line (which may be a private street at City's discretion).
- Construction and public dedication of a twenty (20) foot east/west street EVA from S. Main Street to Costas Street.
- Storm drain, sanitary sewer, water line, landscaping, irrigation, lights and joint utility trench within the Phase Two portion of Costas Street and the EVA.

(ii) Off-Site.

- Street conforms and associated signing and striping revisions associated with the connection of the EVA intersection with S. Main Street.

3. Proposed Revisions to Current Entitlements.

Following is a summary of some key features of the proposed Project that represent differences and changes from the previous project that had been entitled for the Property under a prior set of entitlements granted by City Council Resolution No. 08-004 of February 5, 2008. As detailed in Recital J and Section 1.3.5.1 of the Agreement, the Developer will be seeking a new set of Entitlements for the proposed Project that will be subject to Planning Commission and City Council review and approval in accordance with all required local procedures.

(a) Use:

The use would be changed to the housing description described in this Exhibit B, from the previously entitled use of 387 condominium family housing units all at market rate. As detailed in this Exhibit B and the Schedule of Performance (Exhibit D), and as will be specified in the phased Revised VTM, the Project would be built in two sequential phases.

(b) Site Utilization/Circulation:

The proposed Project requires the following modifications to site circulation from that shown in the previous entitlements:

(i) Diaz Street would be removed.

(ii) Access road right of way on the north of the Property would be reduced to a twenty (20) foot emergency vehicle access easement from the current 37' proposed public street right of way with the intent that the adjacent parcel to the north would have an additional thirty-six (36) foot public right of way condition at the time that parcel is developed, thus completing a total of a fifty-six (56) foot public street right of way.

(iii) An emergency access easement (EVA) and pedestrian connection of 20' width would be recorded and improved with a driving landscape surface acceptable to the Fire Department along the south property line of the Phase One Parcel (with all required fire and emergency access criteria). Final design of the EVA and pedestrian connection is subject to review and approval of the Planning Department.

(iv) A 12' decorative sound wall will be installed along the eastern property boundary adjacent to the railroad in lieu of an 8' sound wall required under the current entitlements

(c) Density Bonus:

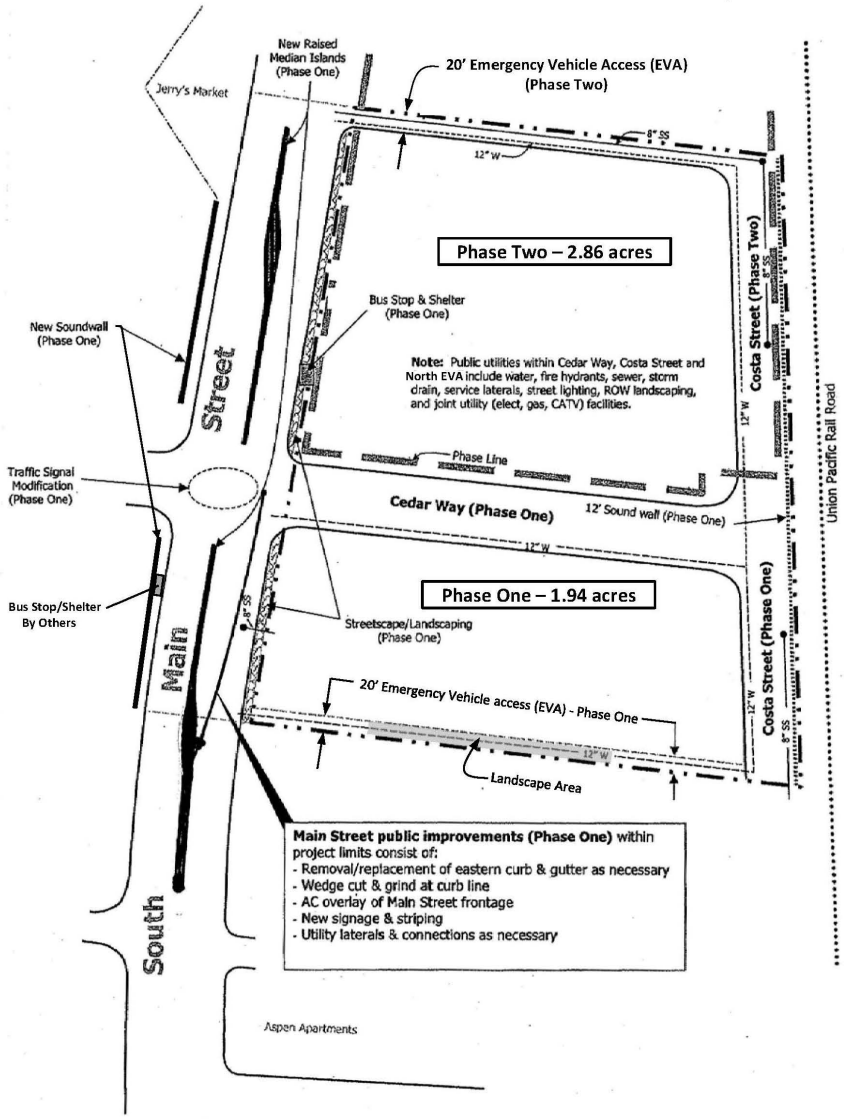
A density bonus will be sought for the proposed Project that differs from Density Bonus No. DB2008-0001 that had previously applied to the Property as follows:

(i) A density bonus of 33 units would be provided in exchange for the Project's provision of 48 units for very low income (50% AMI) senior households, and three (3) incentives or concessions would be granted that result in identifiable, financially sufficient and actual cost reductions for the Project.

(ii) A transfer of affordability rights from the developer of the Aspen Apartment project will not be required due to the proposed Project's inclusion of affordability as described above and earlier in this Exhibit B.

(iii) The obligation under the previous entitlements to provide the Aspen Apartment project approximately One Million Dollars ($1,000,000.00) would not apply as an "obligation" of the proposed Project due to the inclusion of the 48 Affordable Units in the Project.

EXHIBIT B Attachment 1



South Main Senior Lifestyle Project

675\02\1422053.2

EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Agreement to which this Exhibit is attached. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect. Times for performance are subject to Force Majeure, as further provided in Section 10.2 of the Agreement.

Whenever this Schedule of Performance calls for the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Housing Authority or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Developer shall consult with Housing Authority staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

As provided in Section 1.3 of the Agreement, this Schedule of Performance may be modified by Operating Memoranda executed in accordance with Section 10.20 of the Agreement. In addition, the Parties shall cooperate to monitor and implement the scheduling of activities to achieve the milestones set forth in this Schedule of Performance.

	Section Reference	Action	Due Date/Status
A. General Conditions			
1		Amendment Effective Date.	Assumed 11/19/2013. Other specific calendar dates below are premised on this assumed Amendment Effective Date.
2	1.3.4	Scope of Development approved by Housing Authority.	Completed 11/19/2013.
3	1.7	Execution and recordation of Memorandum of Agreement.	Promptly following the Amendment Effective Date upon date mutually chosen by parties.
4	3.3	Open escrow for conveyance of Property.	Prior to Closing for the Property.
5	1.3.5.1	Developer submits application for Revised Entitlements.	7 months prior to anticipated Closing Date.
6	1.3.5.1	City in its discretion approves Revised	Prior to Closing.

	Section Reference	Action	Due Date/Status
		Entitlements.	
B. <u>Phase One Development</u>			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days after receipt of lender commitment for construction and permanent financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to Closing.
4.	1.3.5	Developer obtains all approvals for Phase One Development, including CEQA review.	Prior to Closing.
5.	1.4.1	Developer submits Operator and Operating Agreement.	Not less than 60 days prior to anticipated Closing Date.
6.	1.4.1	Housing Authority approves Operator and Operating Agreement.	Within 30 business days after receipt from Developer.
7.	1.4.2	Developer submits Services Plan.	Not less than 60 days prior to anticipated Closing Date.
8.	1.4.2	Housing Authority approves Services Plan.	Within 30 business days after receipt from Developer.
9.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Within 90 days after lender commitment for construction and permanent financing.
10.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
11.	1.3.5.3	Developer payment for permits and fees.	As required by City.
12.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to Closing.

	Section Reference	Action	Due Date/Status
13.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to Closing.
14.	1.5	Execution and recordation of Phase One Regulatory Agreement and Phase Two Regulatory Agreement.	At Closing.
15.	1.3.5.1	Housing Authority records Final Map against Property, and Developer posts necessary public improvement bonds in connection therewith.	60 days prior to Closing.
16.	3.6	Closing. All conditions to Closing satisfied or waived.	By not later than Closing Deadline (24 months after Amendment Effective Date, or later agreed date). Based on an assumed 11/19/13 Amendment Effective Date, the Closing Deadline is currently 11/19/15.
17.	5.1	Commencement of Construction.	By the earlier of (a) 30 days after the Closing Date, or (b) 12/19/15.
18.	5.1	Completion of Construction.	By the earlier of (a) 24 months after commencement of construction, or (b) 12/19/17.
19.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy.
C. <u>Phase Two Development</u>			
1.	1.3.1	Developer submits Financing Plan.	Within 60 days of receipt of California Debt Limit Allocation Committee bond allocation for Phase Two Tax-Exempt Bonds or lender commitment for conventional financing.
2.	1.3.1	Housing Authority approves Financing Plan.	Within 30 days after receipt from Developer.

	Section Reference	Action	Due Date/Status
3.	1.3.3	Developer submits evidence that construction funds are available, all permits and approvals ready to be issued.	Prior to commencement of construction.
4.	1.3.5	Developer obtains all approvals for Phase Two Development, including CEQA review.	Prior to commencement of construction.
5.	5.3	Developer submits Construction Plans including final drawings, plans, and specifications to City Building Department.	Not less than 7 months prior to anticipated commencement of construction.
6.	5.4	Developer applies for building permits.	Within 30 days after City approval of Construction Plans.
7.	1.3.5.3	Developer payment for permits and fees.	As required by City.
8.	5.10.1	Developer delivers copies of performance and payment bonds.	Prior to commencement of construction.
9.	5.11, 1.6	Developer provides evidence of insurance, endorsement naming Housing Authority and City as additional insureds; copies of policies.	Prior to commencement of construction.
10.	5.1	Commencement of Construction.	Unless a later date is agreed upon, by the earlier of (a) 24 months after issuance of Certificate of Completion for Phase One Development, or (b) 12/19/19.
11.	5.1	Completion of Construction.	By the earlier of (a) 24 months after the commencement of construction, or (b) 12/19/21.
12.	5.12	Housing Authority issues Certificate of Completion.	Promptly following completion of construction and City issuance of Certificate of Occupancy for Phase Two Development.

EXHIBIT E-1

FINANCING PLAN
FOR PHASE ONE DEVELOPMENT

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

EXHIBIT E-2

FINANCING PLAN
FOR PHASE TWO DEVELOPMENT

[To be inserted at later date after execution of Agreement in accordance with Section 1.3.1]

EXHIBIT F

FORM OF GRANT DEED

Recording Requested by
and when Recorded, return to:

City of Milpitas Housing Authority
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Grantor**"), hereby grants and conveys to South Main Senior Lifestyle, LLC, a California limited liability company (the "**Grantee**"), the real property (the "**Property**") described in Exhibit A attached hereto and incorporated in this grant deed ("**Grant Deed"**) by this reference.

1. The Property is conveyed subject to that certain Amended and Restated Disposition and Development Agreement entered into by and between the Grantor and the Grantee dated as of November 19, 2013 (the "**DDA**"). The Grantor and the Grantee have executed a Memorandum of Disposition and Development Agreement dated as of November 19, 2013 (the "**Memorandum**") which shall be recorded in the Official Records of Santa Clara County ("**Official Records**") substantially concurrently herewith.

2. Pursuant to the DDA, the Property has been subdivided into various parcels, including:

(a) An approximately 1.94 acre parcel (the "**Phase One Parcel**") upon which a seniors "continuum of care" residential rental development (the "**Phase One Development**") will be constructed and operated, and which is the subject of the Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase One Regulatory Agreement**"); and

(b) An approximately 2.86 acre parcel (the "**Phase Two Parcel**") upon which a seniors "independent living" residential rental development (the "**Phase Two Development**") will be constructed and operated, and which is the subject of the Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Phase Two Regulatory Agreement**").

The Property is further conveyed subject to certain title conditions, including without limitation the Phase One Regulatory Agreement and the Phase Two Regulatory Agreement (collectively, the **"Regulatory Agreements**"). The Regulatory Agreements shall be recorded substantially concurrently herewith.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Phase One Development and the Phase Two Development in accordance with the DDA, including without limitation the provisions of the DDA that specify time periods for commencement and completion of construction.

Promptly following completion of the Phase One Development in accordance with the DDA and the issuance of a certificate of occupancy for the Phase One Development, the Grantor will furnish the Grantee with an instrument so certifying (a "**Phase One Certificate of Completion**"). Promptly following completion of the Phase Two Development in accordance with the DDA and the issuance of a certificate of occupancy for the Phase Two Development, the Grantor will furnish the Grantee with an instrument so certifying (a "**Phase Two Certificate of Completion**", and together with the Phase One Certificate of Completion, the "**Certificates of Completion**"). Such Certificates of Completion shall constitute conclusive determination of satisfactory completion of construction of the Phase One Development or the Phase Two Development, as applicable, and compliance with the covenants in the DDA and in this Grant Deed regarding the dates for the commencement and completion of such construction.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter until the expiration of the term of the Phase One Regulatory Agreement with respect to the Phase One Development, and the expiration of the term of the Phase Two Regulatory Agreement with respect to the Phase Two Development, the Grantee shall devote the Property, the Phase One Development, and the Phase Two Development thereon only to the uses specified in the DDA and the respective Regulatory Agreements.

5. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall operate and maintain the Property, the Phase One Development, and the Phase Two Development in compliance with all requirements for operation and maintenance set forth in the DDA and the respective Regulatory Agreements.

6. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, the Phase One Development and the Phase Two Development, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property, the Phase One Development, and the Phase Two Development.

All deeds, leases or contracts made relative to the Property and the Phase One Development or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

(a) In deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the

transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

7. The Grantee covenants, represents and agrees that the Property, the Phase One Development, and the Phase Two Development will be used for the purposes of timely redevelopment as set forth in the DDA and not for speculation in landholding. The Grantee further recognizes that Grantor entered into the DDA with Grantee and agreed to convey the Property to Grantee in reliance on the qualifications and identity of Grantee, and that the qualifications of Grantee are of particular concern to Grantor, particularly in view of the importance of the redevelopment of the Property to the general welfare of the community, the financial and other assistance provided by Grantor to facilitate development of the Property, and the reliance by Grantor upon the unique qualifications and ability of the Grantee to serve as the catalyst for development of the Property. Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA or the Property, the Phase One Development, or the Phase Two Development thereon or any part thereof, or of any ownership interest in the Grantee in violation of the DDA or the Phase One Regulatory Agreement with respect to the Phase One Parcel and Phase One Development, or the Phase Two Development with respect to the Phase Two Parcel and the Phase Two Development. No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDA except as expressly set forth in this Grant Deed or the DDA.

8. The covenants contained in Sections 3 regarding construction shall remain in effect until the issuance pursuant to the DDA of a Phase One Certificate of Completion with respect to the Phase One Development, and the Phase Two Certificate of Completion with respect to the Phase Two Development. The covenants in Section 4 and 5 regarding use, operation and maintenance and Section 7 regarding prohibited sales, transfers, assignments, conveyances, leases, pledges and encumbrances shall remain in effect for the life of the Phase One Regulatory Agreement with respect to the Phase One Parcel and the Phase One Development, and the life of the Phase Two Regulatory Agreement with respect to the Phase Two Parcel and the Phase Two Development. The covenants against discrimination contained in Section 6 shall remain in effect in perpetuity.

9. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property, the Phase One Development, or the Phase Two Development, as applicable, shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

10. The covenants contained in Sections 3, 4, 5, 6 and 7 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property, the Phase One Development, and the Phase Two Development or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

11. Subject to and in accordance with the procedures and provisions of Section 9.6.1 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.1 of the DDA.

12. Subject to and in accordance with the procedures and provisions of Section 9.6.2 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Property, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.6.2 of the DDA.

13. Subject to and in accordance with the procedures and provisions of Section 9.7.1 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.1 of the DDA.

14. Subject to and in accordance with the procedures and provisions of Section 9.7.2 of the DDA, the Grantor shall have the right, at its option, to re-enter and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.2 of the DDA.

15. Subject to and in accordance with the procedures and provisions of Section 9.7.3 of the DDA, the Grantor shall have the right, at its option, to repurchase and take possession of the Phase Two Parcel, or portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, in the event of a default described in Section 9.7.3 of the DDA.

16. The Grantor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate the purposes of Sections 11, 12, 13, 14, and 15 hereof. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of or limitation on such rights, nor operate to deprive Grantor of such rights, nor shall any waiver made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of Grantor's rights with respect to any other default by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

17. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property, the Phase One Development, or the Phase Two Development, as applicable, shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Property, the Phase One Development, or the Phase Two Development, as applicable, to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property, the Phase One Development, or the Phase Two Development, as applicable, in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property, the Phase One Development, or the Phase Two Development, as applicable.

18. In the event there is a conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties that the DDA shall control.

19. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant Deed as of this __ day of _____, 201_.

GRANTOR:

THE CITY OF MILPITAS HOUSING AUTHORITY,
a public body, corporate and politic

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Secretary

APPROVED AS TO FORM:

By: _____
Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

GRANTEE:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr.
Managing Member

By: _____
James R. Burns II,
Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT A

PROPERTY

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

[To Be Inserted]

EXHIBIT G

FORM OF MEMORANDUM OF
DISPOSITION AND DEVELOPMENT AGREEMENT

Recording Requested by
and when Recorded, return to:

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attn: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement (this "**Memorandum**") dated as of November 19, 2013, is entered into by and between the City of Milpitas Housing Authority, a public body, corporate and politic ("**Housing Authority**"), and South Main Senior Lifestyle, LLC, a California limited liability company ("**Developer**").

1. For the purposes fully set forth therein, Housing Authority and Developer have entered into that certain Amended and Restated Disposition and Development Agreement, dated as of the date hereof (the "**DDA**"), pursuant to which Housing Authority has agreed to convey to Developer and Developer has agreed to develop certain real property (the "**Property**") located at 1504-1620 South Main Street, Milpitas, California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference. Capitalized terms used but not defined in this Memorandum have the meanings given in the DDA.

2. Among other conditions, the DDA provides that Developer shall develop a two-phased seniors residential complex on portions of the Property generally as follows: (i) the Phase One Development on the Phase One Parcel portion of the Property, containing an approximately one hundred ninety-nine (199) unit continuum of care senior housing residential rental development, including ten (10) affordable rental units, as fully set forth in the Phase One Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith; and (ii) the Phase Two Development on the Phase Two Parcel portion of the Property, containing an approximately one hundred ninety (190) unit independent living senior housing residential rental development, including thirty-eight (38) affordable rental units, as fully set forth in the Phase Two Regulatory Agreement to be recorded in the Official Records of Santa Clara County substantially concurrently herewith.

3. The DDA further provides that (i) except as permitted by the DDA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance,

assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the Housing Authority; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the DDA which pertain to the portion of the Property transferred, including without limitation, the affordability restrictions imposed by the DDA, the Phase One Regulatory Agreement, and the Phase Two Regulatory Agreement, as applicable.

4. Developer and Housing Authority have executed and recorded this instrument to give notice of the DDA, the Phase One Regulatory Agreement (with respect to the Phase One Parcel only), the Phase Two Regulatory Agreement (with respect to the Phase Two Parcel only), and the respective rights of Developer and Housing Authority thereunder, including without limitation, the Housing Authority's reversionary interests in the Property in its entirety or the Phase Two Parcel only, as applicable, in the event of certain defaults under the DDA. Copies of the unrecorded DDA are available at the offices of the Housing Authority, 455 East Calaveras, Milpitas California, and such document is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the DDA, the DDA shall control.

5. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.

6. The DDA shall bind and inure to the benefit of the Developer and the Housing Authority and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE
CITY OF MILPITAS, a public body, corporate and politic

By: _____

Name: _____

Its: _____

Attest:

_____
Housing Authority Secretary

Approved as to Form:

_____
Housing Authority Counsel

SIGNATURES CONTINUE ON FOLLOWING PAGE

DEVELOPER:

SOUTH MAIN SENIOR LIFESTYLES, LLC
a California limited liability company

By: _____
Joseph W. Callahan, Jr.
Managing Member

By: _____
James R. Burns II,
Managing Member

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Notary Public

Exhibit A

PROPERTY

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

[To Be Inserted]

EXHIBIT H-1

FORM OF PHASE ONE REGULATORY AGREEMENT

Recording requested by and when recorded mail to:

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space above this line for Recorder's use.)

PHASE ONE

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

This Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 201__ (the "**Effective Date**") by and between the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority"**), and South Main Senior Lifestyles, LLC, a California limited liability company ("**Owner**"). Housing Authority and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase One Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase One Parcel a one hundred ninety-nine (199)-unit "continuum of care" senior housing rental development (the "**Phase One Development**"), including specified units for very low-income households as set forth in this Agreement. The Phase One Development will provide congregate care or assisted living services to its residents, as appropriate for each resident. Care for Alzheimer's and dementia, and skilled nursing care, will not be available.

E. Specifically, the DDA and this Agreement provide that ten (10) of the residential units in the Phase One Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to

convey the Phase One Parcel to Owner for its "fair reuse value" of One Dollar ($1.00), as authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase One Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase One Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase One Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Phase One Development's Restricted Units (as defined below) for the benefit of the Phase One Development's occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Adjusted Income" means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Housing Authority shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development (**"HCD"**) as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Assisted Living Supportive Services Fees" means the total of monthly payments by the tenants of a Restricted Unit for the following assisted living supportive services: three(3) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; twenty-four (24) hour emergency system monitoring; and assistance with activities of daily living such as medications, bathing, dressing, mobility needs and other health care and personal care needs.

"Assumed Household Size" means one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit.

"Congregate Care Supportive Services Fee" means the total monthly payment by the tenants of a Restricted Unit for the following congregate care supportive services: two (2) meals daily; scheduled transportation on the community shuttle bus; weekly housekeeping; social, cultural, physical fitness and educational programs; and twenty-four (24) hour emergency system monitoring.

"Eligible Household" means a Very Low-Income Household that also meets the requirements set forth in Section 2.1.

"**Junior One Bedroom Unit**" means a unit in the Phase One Development containing less than 625 net rentable square feet.

"**One Bedroom Unit**" means a one bedroom unit in the Phase One Development containing 625 or more rentable square feet.

"Qualifying Rent" has the meaning given in Section 2.4.

"Rent" means the total of monthly payments by the tenants of a dwelling unit for the following: use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by Owner which are required of all tenants, except as otherwise provided in the following sentence; the cost of electricity, gas, water and sewer, and garbage collection, which shall be paid by Owner; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the tenant. "Rent" shall not include cable and telephone service (which shall be paid by tenants), Congregate Care Supportive Services Fees and Assisted Living Supportive Services Fees, and security deposits.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4.

"Very Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that during the term of this Agreement the Phase One Parcel shall be used solely for the construction and operation of the Phase One Development, consisting of a one hundred ninety-nine (199)-unit "continuum of care" multifamily rental housing development in compliance with the DDA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent

of Housing Authority. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase One Development require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1. Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, all one hundred ninety-nine (199) of the dwelling units in the Phase One Development shall be restricted for occupancy by households in which each household member is a person sixty-two (62) years of age or older. Residency by other persons in such dwelling units shall be in compliance with Section 51.3 of the California Civil Code.

2.2. Affordability Requirements In General. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase One Development, ten (10) of the dwelling units in the Phase One Development shall be Restricted Units occupied (or if vacant, available for occupancy) by Eligible Households with incomes as set forth in Section 2.3, and rented at Qualifying Rents as set forth in Section 2.4.

2.3. Eligible Households Occupancy of Restricted Units. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

(a) Eight (8) of the Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development; and

(b) Two (2) of the One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households, each of whose members receive congregate care or assisted living supportive services provided by the Phase One Development.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the **"Qualifying Rent"**).

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Qualifying Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable unit size and type (i.e., a Junior One Bedroom Unit if the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom Unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. Each member of an Eligible Household occupying a Restricted Unit shall receive congregate care or assisted living supportive services provided by the Phase One Development for a fee in addition to the Qualifying Rent. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Phase One Development.

2.7. No Condominium Conversion. Owner shall not convert the Phase One Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase One Development during the term of this Agreement.

2.8. Non-Discrimination; Compliance with Fair Housing Laws.

2.8.1. Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Phase One Development. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.8.2. Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase One Parcel or the Phase One Development, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Phase One Development. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Phase One Parcel or the Phase One Development shall contain the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) <u>In Leases</u>:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) <u>In Contracts</u>.

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of

the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Housing Authority may reasonably require:

(a) The identity and age of the resident who is age sixty-two (62) or older;

(b) The identity and age of each other member of the household or such other information reasonably required to demonstrate compliance with Section 2.1 above; and

(c) Total household income.

Owner shall retain such certificates for not less than three (3) years, and upon Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to Housing Authority in form satisfactory to Housing Authority, together with a certification that the Phase One Development is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Unit in the Phase One Development: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon Housing Authority's request, Owner shall include with the Annual Report the following documentation for each Restricted Unit: an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Housing Authority may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Housing Authority; provided however, during such time that the Phase One Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority to enter and inspect the Phase One Parcel and the Phase One Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1. Term of Restrictions. This Agreement shall remain in effect through the (fifty-fifth) 55th anniversary of the issuance of the final certificate of occupancy for the Phase One Development.

4.2. Effectiveness Succeeds Conveyance of Phase One Parcel. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Phase One Parcel or the Phase One Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Housing Authority in a recorded writing.

4.3. Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Phase One Parcel and the Phase One Development to the covenants and restrictions set forth in this Agreement. The Housing Authority and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Housing Authority, regardless of any sale, assignment, conveyance or transfer of the Phase One Parcel, the Phase One Development or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Phase One Parcel or the Phase One Development (other than the tenants of the individual dwelling units within the Phase One Development) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Phase One Parcel or the Phase One Development or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Housing Authority an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Phase One Parcel and the Phase One Development in favor of Housing Authority.

6. Property Management; Repair and Maintenance; Marketing.

6.1. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase One Parcel and the Phase One Development,

including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase One Parcel or the Phase One Development.

6.2. Management Entity. Housing Authority shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Phase One Development (the **"Operator"**) in the manner set forth in Section 1.4.1 of the DDA. The Housing Authority hereby approves _____ as the initial Operator for the Phase One Development. The contracting of management services to an Operator shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3. Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase One Parcel and the Phase One Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase One Parcel and the Phase One Development (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Phase One Parcel or at the Phase One Development. Owner shall prevent and/or rectify any physical deterioration of the Phase One Parcel and the Phase One Development and shall make all repairs, renewals and replacements necessary to keep the Phase One Parcel and the Phase One Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase One Development.

6.3.1. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default then Housing Authority, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Phase One Parcel and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Phase One Parcel. All costs expended by Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority's invoice therefor shall bear interest at the rate of ten percent (10%) per annum.

6.4. Services Plan; Marketing and Management Plan.

6.4.1. Services Plan. Owner shall submit and obtain Housing Authority approval of a services plan for the provision of support services and amenities to residents of the Phase One Development (the "**Services Plan**"), and any subsequent material revisions to a

previously approved Services Plan, within the time and in the manner set forth in Section 1.4.2 of the DDA. As of the Effective Date, Housing Authority has approved the initial Services Plan. Owner shall abide by the terms of the approved Services Plan in providing support services and amenities to residents of the Phase One Development.

6.4.2. Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase One Development, Owner shall submit for Housing Authority review and approval, a plan for marketing and managing the Restricted Units in the Phase One Development ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's selection criteria for Eligible Households, and how Owner plans to certify the eligibility of Eligible Households. The Marketing and Management Plan shall also describe the management team and shall address the division of responsibilities between the Owner and the Operator in the management and maintenance of the Phase One Parcel and the Phase One Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase One Development Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase One Parcel and the Phase One Development, and throughout the term of this Agreement, shall submit proposed modifications to Housing Authority for its review and approval.

6.5. Approvals. If Housing Authority has not responded to any submission of the Services Plan or the Management and Marketing Plan in accordance with Section 6.4, the proposed Operator in accordance with Section 6.2, or a proposed amendment or change to any of the foregoing within thirty (30) days following Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

6.6. Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Phase One Parcel or the Phase One Development, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7. Insurance Coverage. Prior to issuance of a building permit for the Phase One Development, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders or equity investors providing financing for the Phase One Development impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Housing Authority of proof of insurance for

the Phase One Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority of notice of cancellation or reduction in coverage.

6.8. Property Damage or Destruction. If any part of the Phase One Development is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or equity investors providing financing for the Phase One Development impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Phase One Parcel or the Phase One Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase One Development in position superior to this Agreement, upon the request of Housing Authority, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority shall not unreasonably withhold, delay or condition its consent to subordination of the lien of this Agreement to a lien or encumbrance required by a lender or governmental entity in connection with financing for the Phase One Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA).

8. Transfer and Encumbrance.

8.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDA or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the DDA) of the Phase One Development or the Phase One Parcel without the prior written consent of the Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, **"Joint Venture Entity"**) in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase One Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to an Operator (or affiliate of the Operator) approved pursuant to Section 1.4.1 of the DDA; (b) the admission of an equity investor or an approved Operator (or an affiliate of an approved Operator) to such Joint Venture

Entity; and/or (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a **"Controlled Affiliate"**); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase One Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase One Development or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing Transfers (other than to a third party following foreclosure), Owner, the Joint Venture Entity or the proposed owner shall provide Housing Authority with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase One Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority shall not withhold, delay or condition its consent to the sale, transfer or other disposition of the Phase One Parcel and the Phase One Development, in whole or in part, provided that (1) the Phase One Development is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three (3) years' experience in the ownership, operation and management of a "continuum of care" senior rental housing project that includes very low-income tenants and that is of similar size to that of the Phase One Development, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

In the event a general partner, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor and approved by Phase One Development

lender(s); provided that (i) following such transfer, the Phase One Development shall continue to be operated in compliance with this Agreement, and (ii) such party meets the requirements of clause (4) of the preceding paragraph.

8.3. Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Phase One Development for the benefit of a lender other than Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Housing Authority shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase One Parcel and Phase One Development, Housing Authority shall have the right to transfer the Phase One Parcel and Phase One Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase One Development in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Phase One Development or the Phase One Parcel, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Housing Authority shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase One Development or the Phase One Parcel that such violation has occurred.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase One Development should, as a condition of providing financing for development of all or a portion of the Phase One Development, request any modification of this Agreement in order to protect its interests in the Phase One Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

9. Default and Remedies.

9.1. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) The occurrence of a Transfer in violation of Section 8 hereof;

(b) Owner's failure to maintain insurance on the Phase One Parcel and the Phase One Development as required hereunder, and the failure of Owner to cure such default within 10 days of receipt of written notice from Housing Authority of such default.

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase One Parcel or the Phase One Development or failure to pay any other charge that may result in a lien on the Phase One Parcel or the Phase One Development, and Owner's failure to cure such default within 10 days of receipt of written notice from Housing Authority of such default.

(d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Housing Authority shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default.

The equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 11.4.

9.2. Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Housing Authority may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to Qualifying Rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Housing Authority may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Housing Authority and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Phase One Development or the Phase One Parcel, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Phase One Development or the Phase One Parcel with counsel reasonably approved by Housing Authority. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1. Reserved.

11.2. Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.3. No Waiver. Any waiver by Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Housing Authority at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.4. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC
_____
_____
Attention: _____

Equity Investor: _____
_____
_____
_____
Attention: _____

11.5. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.7. Action by the Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority under this Agreement.

11.9. Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.10. Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.12. Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14. Entire Agreement; Exhibits. This Agreement, together with the Housing Authority Documents (as defined in the DDA) contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Phase One Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

By: _____
Joseph W. Callahan, Jr., Managing Member

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)

)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT A

PHASE ONE PARCEL

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

[To Be Inserted]

EXHIBIT B

INSURANCE REQUIREMENTS

Except as otherwise provided in Section 6.7 of the Agreement to which this Exhibit is attached, prior to issuance of building permits for the Phase One Development and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Phase One Parcel or the Phase One Development, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Phase One Parcel, and (b) cover floods if the Phase One Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Housing Authority or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars ($10,000) deductible (or such higher deductible approved by the Housing Authority, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Phase One Parcel and the Phase One Development. The limits of liability under this Paragraph B shall be not less than Two Million Dollars ($2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars ($10,000) or such higher deductible as may be approved by Housing Authority, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Phase One Development or the Phase One Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase One Parcel or the Phase One Development on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase One Parcel or engaged in services or operations in connection with the Phase One Development or the Phase One Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase One Parcel include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Phase One Parcel.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Phase One Development, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit B, Owner shall deliver to Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Housing Authority, the City of Milpitas, Owner or any tenant of the Phase One Development for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Housing Authority and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Housing Authority shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Housing Authority.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Housing Authority prior to commencement of construction of the Phase One Development.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit B may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Phase One Parcel and the Phase One Development shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Housing Authority and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Phase One Parcel or the Phase One Development or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Housing Authority or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Phase One Parcel, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

EXHIBIT H-2

FORM OF PHASE TWO REGULATORY AGREEMENT

Recording requested by and when recorded mail to:

City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(Space above this line for Recorder's use.)

PHASE TWO

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF MILPITAS HOUSING AUTHORITY

and

SOUTH MAIN SENIOR LIFESTYLES, LLC

This Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 201__ (the "**Effective Date**") by and between the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority"**), and South Main Senior Lifestyles, LLC, a California limited liability company ("**Owner**"). Housing Authority and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Owner has purchased an approximately 5.94 acre parcel of real property from the Housing Authority located at 1504-1620 South Main Street, Milpitas (the "**Property**") pursuant to the terms of an Amended and Restated Disposition and Development Agreement dated as of November 19, 2013 by and between the Housing Authority and Owner (the "**DDA**"), a memorandum of which has been recorded substantially concurrently herewith in the Official Records of Santa Clara County.

B. The Property was purchased by the former Redevelopment Agency of the City of Milpitas (the "**Former RDA**") using funds from its Low and Moderate Income Housing Fund (the "**Housing Fund**") in accordance with the requirements of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "**CRL**"). Upon dissolution of the Former RDA pursuant to ABx1 26 (as amended by AB 1484, the "**Redevelopment Dissolution Law**") as of February 1, 2012, the Housing Authority was designated to perform the housing functions and administer the housing assets of the Former RDA, which housing assets include the Property, as more fully described in the recitals of the DDA. In accordance with the DDA and the requirements imposed upon the Housing Authority pursuant to the Redevelopment Dissolution Law and the CRL, the Housing Authority has required that specified units of affordable housing be developed and operated by Owner on the Property.

C. In accordance with the DDA, the Property has been subdivided into various parcels, including the parcel of real property more particularly described in Exhibit A attached hereto (the "**Phase Two Parcel**").

D. Also in accordance with the DDA, Owner intends to construct, own and operate on the Phase Two Parcel a one hundred ninety (190) unit "independent living" senior housing rental development (the "**Phase Two Development**"), including specified units for very low-income households as set forth in this Agreement.

E. Specifically, the DDA and this Agreement provide that thirty-eight (38) of the residential units in the Phase Two Development shall be affordable to and occupied by or available for occupancy by very low-income senior households for a period of not less than fifty-five (55) years.

F. Pursuant to the DDA, and to facilitate the financially feasible provision of the units of affordable housing as set forth in this Agreement, the Housing Authority agreed to convey the Phase Two Parcel to Owner for its "fair reuse value" of One Dollar ($1.00), as

authorized by the CRL to facilitate such affordability (the "**Affordable Housing Facilitated Purchase Price**").

G. In recognition that the Property, including the Phase Two Parcel, was purchased by the Former RDA with Housing Funds, and as a condition to its agreement to convey the Phase Two Parcel to Owner at the Affordable Housing Facilitated Purchase Price, the Housing Authority requires the Phase Two Parcel to be subject to the conditions, restrictions, reservations and rights of the Housing Authority set forth herein.

H. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Phase Two Development's Restricted Units (as defined below) for the benefit of the Phase Two Development's occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Adjusted Income" means, except as provided in the following sentence, the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the Housing Authority shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914. If any federal statute or regulations applicable to the Phase Two Development use an alternative definition of household income in determining household income qualification, such federally-mandated household income definition shall be used instead of the definition provided above.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development (**"HCD"**) as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Assumed Household Size" means one (1) person for each studio apartment unit (including each Junior One Bedroom Unit) that is a Restricted Unit, and means two (2) persons for each One Bedroom Unit that is a Restricted Unit; provided, however, that if any federal statute or regulations applicable to the Phase Two Development use alternative household size

assumptions in calculating affordable rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided above.

"Eligible Household" means a Very Low-Income Household that also meets the requirements set forth in Section 2.1.

"**Junior One Bedroom Unit**" means a unit in the Phase Two Development containing less than 625 net rentable square feet.

"**One Bedroom Unit**" means a one bedroom unit in the Phase Two Development containing 625 or more rentable square feet.

"Qualifying Rent" has the meaning given in Section 2.4.

"Rent" means the total of monthly payments by the tenants of a dwelling unit for the following: use and occupancy of the unit and land and associated facilities; any separately charged fees or service charges assessed by Owner which are required of all tenants, but excluding security deposits; the cost of an adequate level of service for utilities paid by the tenant, pursuant to the tenant-paid utility allowances published by the Santa Clara County Housing Authority, including sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the tenant.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at a Qualifying Rent by a Very Low-Income Household in accordance with and as set forth in Sections 2.2, 2.3, and 2.4.

"Very Low-Income Household" means a household that meets the requirements set forth in Section 2.1 and that has an annual Adjusted Income that is less than or equal to fifty percent (50%) of AMI.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that during the term of this Agreement the Phase Two Parcel shall be used solely for the construction and operation of the Phase Two Development, consisting of a one hundred ninety (190) unit "independent living" multifamily rental housing development in compliance with the DDA, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Housing Authority. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Phase Two Development require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1. Senior Housing. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase Two Development, all one

hundred ninety (190) of the dwelling units in the Phase Two Development shall be restricted for occupancy by households in which each household member is a person sixty-two (62) years of age or older. Residency by other persons in such dwelling units shall be in compliance with Section 51.3 of the California Civil Code.

2.2. Affordability Requirements In General. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Phase Two Development, thirty-eight (38) of the dwelling units in the Phase Two Development shall be Restricted Units occupied (or if vacant, available for occupancy) by Eligible Households with incomes as set forth in Section 2.3, and rented at Qualifying Rents as set forth in Section 2.4.

2.3. Eligible Households Income Limits. The Restricted Units shall be occupied (or if vacant, available for occupancy) as follows:

(a) Twenty-eight (28) Junior One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households; and

(b) Ten (10) One Bedroom Units shall be occupied (or if vacant, available for occupancy) by Eligible Households.

2.4. Rents for Restricted Units. Rents for the Restricted Units shall be limited to Rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size (the **"Qualifying Rent"**).

2.5. Increased Income of Households. In the event that recertification of an Eligible Household's income indicates that the household's Adjusted Income exceeds one hundred twenty percent (120%) of the qualifying income for a Very Low-Income Household, then (a) such household's dwelling unit shall still be considered a Restricted Unit, (b) the Rent for such unit shall remain at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of AMI, adjusted for Assumed Household Size, and (c) Owner shall rent the next available dwelling unit of the applicable size (i.e., a Junior One Bedroom Unit of the applicable over-income household is occupying a Junior One Bedroom Unit, or a One Bedroom Unit if the applicable over-income household is occupying a One Bedroom unit) to an Eligible Household to comply with the requirement of Section 2.3. Once the next available unit has been rented to an Eligible Household in accordance with clause (c) above, the Rent for the over-income household may be increased to market rate rent. Notwithstanding the foregoing provisions of this Section 2.5, if any federal statute or regulations applicable to the Phase Two Development use alternative requirements with respect to treatment of Eligible Households whose incomes exceed qualifying incomes upon recertification, such federally-mandated requirements shall be used instead of the requirements provided above.

2.6. Unit Sizes, Design and Preferences. The Restricted Units shall consist of Junior One Bedroom Units and One Bedroom Units. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless

compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Phase Two Development.

2.7. No Condominium Conversion. Owner shall not convert the Phase Two Development to condominium or cooperative ownership or sell condominium or cooperative rights to the Phase Two Development during the term of this Agreement.

2.8. Non-Discrimination; Compliance with Fair Housing Laws.

2.8.1. Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Phase Two Development. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.8.2. Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Phase Two Parcel or the Phase Two Development, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Phase Two Development. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Phase Two Parcel or the Phase Two Development shall contain the following language:

(c) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(d) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(e) In Contracts.

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary

thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Housing Authority may reasonably require:

(a) The identity and age of the resident who is age sixty-two (62) or older;

(b) The identity and age of each other member of the household or such other information reasonably required to demonstrate compliance with Section 2.1 above; and

(c) Total household income.

Owner shall retain such certificates for not less than three (3) years, and upon Housing Authority's request, shall make the originals available for inspection by Housing Authority and shall provide copies of such certificates to Housing Authority.

3.2. Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to Housing Authority in form satisfactory to Housing Authority, together with a certification that the Phase Two Development is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Unit in the Phase Two Development: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Upon Housing Authority's request, Owner shall include with the Annual Report the following documentation for each Restricted Unit: an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Housing Authority may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Housing Authority; provided however, during such time that the Phase Two Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Housing Authority with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Housing Authority to enter and inspect the Phase Two Parcel and the Phase Two Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1. Term of Restrictions. This Agreement shall remain in effect through the (fifty-fifth) 55th anniversary of the issuance of the final certificate of occupancy for the Phase Two Development.

4.2. Effectiveness Succeeds Conveyance of Phase Two Parcel. This Agreement shall remain effective and fully binding for the full term hereof regardless of any sale, assignment, transfer, or conveyance of the Phase Two Parcel or the Phase Two Development or any part thereof or interest therein, unless this Agreement is terminated earlier by Housing Authority in a recorded writing.

4.3. Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Phase Two Parcel and the Phase Two Development to the covenants and restrictions set forth in this Agreement. The Housing Authority and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Housing Authority, regardless of any sale, assignment, conveyance or transfer of the Phase Two Parcel, the Phase Two Development or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Phase Two Parcel or the Phase Two Development (other than the tenants of the individual dwelling units within the Phase Two Development) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Phase Two Parcel or the Phase Two Development or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Housing Authority an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Phase Two Parcel and the Phase Two Development in favor of Housing Authority.

6. Property Management; Repair and Maintenance; Marketing.

6.1. Management Responsibilities. Owner shall be responsible for all management functions with respect to the Phase Two Parcel and the Phase Two Development, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Housing Authority may otherwise agree in writing, Housing Authority shall have no responsibility for management or maintenance of the Phase Two Parcel or the Phase Two Development.

6.2. Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Phase Two Parcel and the Phase Two Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Phase Two Parcel and the Phase Two Development (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Phase Two Parcel or at the Phase Two Development. Owner shall prevent and/or rectify any physical deterioration of the Phase Two Parcel and the Phase Two Development and shall make all repairs, renewals and replacements necessary to keep the Phase Two Parcel and the Phase Two Development in good condition and repair. Owner shall provide adequate security services for occupants of the Phase Two Development.

6.2.1. Housing Authority's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and Owner fails, within ten (10) days after written notice from Housing Authority (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Housing Authority (with respect to landscaping, building improvements and general maintenance), to cure or commence to cure and thereafter diligently pursue to completion the cure of such default, then Housing Authority, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Phase Two Parcel and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Phase Two Parcel. All costs expended by Housing Authority in connection with the foregoing, shall constitute an indebtedness, and shall be paid by Owner to Housing Authority upon demand. All such sums remaining unpaid thirty (30) days following delivery of Housing Authority's invoice therefor shall bear interest at the rate of ten percent (10%) per annum.

6.3. Marketing and Management Plan. Not later than one hundred eighty (180) calendar days following the issuance of the first building permit for the Phase Two Development, Owner shall submit for Housing Authority review and approval, a plan for marketing and managing the Restricted Units in the Phase Two Development ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's selection criteria for Eligible Households, and how Owner plans to certify the eligibility of Eligible Households. The Marketing and Management Plan shall also describe the management team and shall address the division of responsibilities between Owner and the Operator in the management and maintenance of the Phase Two Parcel and the Phase Two Development. The Marketing and Management Plan shall include the proposed form of rental agreement that Owner proposes to enter into with Phase Two Development Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Phase Two Parcel and the Phase Two Development, and throughout the term of this Agreement, shall submit proposed modifications to Housing Authority for its review and approval.

6.4. Approvals. If Housing Authority has not responded to any submission of the Management and Marketing Plan in accordance with Section 6.3 or a proposed amendment or change to a Management and Marketing Plan within thirty (30) days following Housing Authority's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Housing Authority.

6.5. Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Phase Two Parcel or the Phase Two Development, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.6. Insurance Coverage. Prior to issuance of building permits for the Phase Two Development, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders or equity investors providing financing for the Phase Two Development impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Housing Authority of proof of insurance for the Phase Two Development, (ii) naming of Housing Authority and the City of Milpitas as additional insureds, and (iii) provision to Housing Authority of notice of cancellation or reduction in coverage.

6.7. Property Damage or Destruction. If any part of the Phase Two Development is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or equity investors providing financing for the Phase Two Development impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Housing Authority Documents (as defined in the DDA) and easements of record, absent the written consent of Housing Authority, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Phase Two Parcel or the Phase Two Development. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Phase Two Development in position superior to this Agreement, upon the request of Housing Authority, Owner hereby covenants and agrees to promptly undertake all action necessary to

clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Housing Authority may reasonably request. Notwithstanding the foregoing, Housing Authority shall not unreasonably withhold, delay or condition its consent to subordination of the lien of this Agreement to a lien or encumbrance required by a lender or governmental entity in connection with financing for the Phase Two Development consistent with the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA).

8. Transfer and Encumbrance.

8.1. Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDA or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the DDA) of the Phase Two Development or the Phase Two Parcel without the prior written consent of the Housing Authority; provided however, that none of the following Transfers shall require Housing Authority consent and each of the following Transfers shall be permitted: (a) a Transfer by Owner to a limited partnership, limited liability company, or other joint venture entity (collectively, **"Joint Venture Entity"**) in which Owner is the managing general partner, managing member, or other managing entity of the Joint Venture Entity, which Transfer is undertaken (1) for purposes of creating an ownership structure to obtain equity for development of the Phase Two Development consistent with the Financing Plan approved by Housing Authority pursuant to Section 1.3.1 of the DDA, or (2) for purposes of providing an ownership interest in Owner to the operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; (b) the admission to such Joint Venture Entity of an equity investor or an operator (or an affiliate of the operator) retained by Owner to operate the Phase Two Development; and/or, (c) the transfer by the investor to an entity in which an affiliate is the general partner or managing member.

8.2. Permitted Transfers. In addition to Transfers otherwise permitted pursuant to the DDA and Section 8.1 above, the Housing Authority shall not withhold, delay or condition its consent to the following Transfers: (i) a transfer from the Joint Venture Entity to an entity which is controlled by or is under common control with the Joint Venture Entity's managing general partner (a **"Controlled Affiliate"**); (ii) a transfer of the initial equity investor's interest into an investor limited partner or partners, or subsequent transfers of such interests by the equity investor(s); (iii) a transfer from an equity investor to the Joint Venture Entity's managing general partner or a Controlled Affiliate; (iv) a transfer of the managing general partner's interest in the Joint Venture Entity to a Controlled Affiliate; or (v) a transfer to the construction or permanent lender for the Phase Two Development or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Phase Two Development or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing Transfers (other than to a third party following foreclosure), Owner, the Joint Venture Entity or the proposed owner shall provide Housing Authority with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Phase Two Development is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's or the Joint Venture Entity's obligations under this Agreement, and upon reasonable request of Housing Authority, delivers to the Housing Authority an opinion

of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Housing Authority shall not withhold, delay or condition its consent to the sale, transfer or other disposition of the Phase Two Parcel and the Phase Two Development, in whole or in part, provided that (1) the Phase Two Development is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Housing Authority with respect to the assumption of the Owner's obligations under this Agreement, and upon Housing Authority's request, delivers to the Housing Authority an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three (3) years' experience in the ownership, operation and management of an "independent living" senior rental housing project that includes very low-income tenants and that is of similar size to that of the Phase Two Development, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

In the event a general partner, managing member, or other managing entity of Owner or the Joint Venture Entity is removed by the equity investor thereof for cause following default under the applicable Joint Venture partnership or operating agreement, Housing Authority hereby approves the transfer of the general partner or managing member interest to another party that is selected by the equity investor and approved by Phase Two Development lender(s); provided that (i) following such transfer, the Phase Two Development shall continue to be operated in compliance with this Agreement, and (ii) such party meets the requirements of clause (4) of the preceding paragraph.

8.3. Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Phase Two Development for the benefit of a lender other than Housing Authority ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Housing Authority a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Housing Authority shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) Housing Authority shall have the right to exercise any remedies afforded to it under the Housing Authority Documents (as defined in the DDA) in connection with any default declared by the Third-Party Lender, provided that Housing Authority has cured any default under Third-Party Lender's deed of trust and other loan documents; and (iv) if Housing Authority acquires the Phase Two Parcel and Phase Two Development, Housing Authority shall have the right to transfer the Phase Two Parcel and Phase Two Development without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Phase Two Development in accordance with this Agreement, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Housing Authority a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4. Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Phase Two Development or the Phase Two Parcel, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Housing Authority shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Phase Two Development or the Phase Two Parcel that such violation has occurred.

8.5. Modifications; FHA-Required Provisions. If a lender with respect to debt financing described in the approved Financing Plan (as defined and described in Section 1.3.1 of the DDA) for the Phase Two Development should, as a condition of providing financing for development of all or a portion of the Phase Two Development, request any modification of this Agreement in order to protect its interests in the Phase Two Development, Housing Authority shall consider and act upon such request in good faith and within a reasonable time period.

9. Default and Remedies.

9.1. Events of Default. The occurrence of any Two or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) The occurrence of a Transfer in violation of Section 8 hereof;

(b) Owner's failure to maintain insurance on the Phase Two Parcel and the Phase Two Development as required hereunder, and the failure of Owner to cure such default within 10 days of receipt of notice from Housing Authority of such default.

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Phase Two Parcel or the Phase Two Development or failure to pay any other charge that may result in a lien on the Phase Two Parcel or the Phase Two Development, and Owner's failure to cure such default within 10 days of receipt of notice from Housing Authority of such default..

(d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Housing Authority Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Housing Authority shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from receipt of the notice of default.

The equity investors of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Housing

Authority has been given written notice of the address for delivery of notices to the equity investors, Housing Authority shall provide any notice of default hereunder to the equity investors concurrently with the provision of such notice to Owner, and as to the equity investors, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Section 11.4.

9.2. Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Housing Authority may proceed with any of the following remedies:

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to Qualifying Rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Housing Authority may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Housing Authority and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Phase Two Development or the Phase Two Parcel, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Phase Two Development or the Phase Two Parcel with counsel reasonably approved by Housing Authority. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1. Reserved.

11.2. Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.3. No Waiver. Any waiver by Housing Authority of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Housing Authority to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Housing Authority at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.4. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Housing Authority: City of Milpitas Housing Authority
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: South Main Senior Lifestyles, LLC
_____
_____
Attention: _____

Equity Investor: _____
_____
_____

_____
Attention: _____

11.5. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.7. Action by the Housing Authority. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Housing Authority is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Housing Authority Executive Director or by any person who shall have been designated by the Housing Authority Executive Director, without further approval by the governing board of the Housing Authority.

11.8. Non-Liability of Housing Authority and Housing Authority Officials, Employees and Agents. No member, official, employee or agent of the Housing Authority or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Housing Authority, or for any amount of money which may become due to Owner or its successor or for any obligation of Housing Authority under this Agreement.

11.9. Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.10. Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.12. Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13. Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14. Entire Agreement; Exhibits. This Agreement, together with the Housing Authority Documents (as defined in the DDA) contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Phase Two Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

SOUTH MAIN SENIOR LIFESTYLES, LLC,
a California limited liability company

By: _____
Joseph W. Callahan, Jr., Managing Member

By: _____
James R. Burns II, Managing Member

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____

Name: _____
Executive Director

ATTEST:

By: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)

)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT A

PHASE TWO PARCEL

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

[To Be Inserted]

EXHIBIT B

INSURANCE REQUIREMENTS

Except as otherwise provided in Section 6.6 of the Agreement to which this Exhibit is attached, prior to issuance of building permits for the Phase Two Development and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Phase Two Parcel or the Phase Two Development, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Phase Two Parcel, and (b) cover floods if the Phase Two Parcel is in a Special Hazard Area, as determined by the Federal Emergency Management Housing Authority or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars ($10,000) deductible (or such higher deductible approved by the Housing Authority, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Phase Two Parcel and the Phase Two Development. The limits of liability under this Paragraph B shall be not less than Two Million Dollars ($2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars ($10,000) or such higher deductible as may be approved by Housing Authority, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Phase Two Development or the Phase Two Parcel;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Phase Two Parcel or the Phase Two Development on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Housing Authority, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

C. Workers' Compensation Insurance. Workers' compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Phase Two Parcel or engaged in services or operations in connection with the Phase Two Development or the Phase Two Parcel. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Phase Two Parcel include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Phase Two Parcel.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Phase Two Development, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit B, Owner shall deliver to Housing Authority certificates evidencing the insurance required to be carried by Owner under this Exhibit B. If requested by Housing Authority, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Housing Authority, the City of Milpitas, Owner or any tenant of the Phase Two Development for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Housing Authority and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Housing Authority shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Housing Authority.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Housing Authority prior to commencement of construction of the Phase Two Development.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Housing Authority may carry.

(h) Each policy shall expressly provide that Housing Authority shall not be required to give notice of accidents or claims and that Housing Authority shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit B may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Phase Two Parcel and the Phase Two Development shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Housing Authority and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Phase Two Parcel or the Phase Two Development or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Housing Authority or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Phase Two Parcel, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

EXHIBIT I

FORM OF CERTIFICATE OF COMPLETION

NOTE: The following form of Certificate of Completion has been prepared for the Phase One Development. With appropriate changes in parcel and phase designation, the same form of Certificate of Completion will be used for the Phase Two Development.

Recording requested by and when recorded mail to: City of Milpitas Housing Authority 455 East Calaveras Milpitas, CA 95035 Attention: Executive Director EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

(Space above this line for Recorder's use.)

CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the City of Milpitas Housing Authority, a public body, corporate and politic (the "**Housing Authority**") effective as of _____, 20__.

RECITALS

A. Housing Authority and South Main Senior Lifestyle, LLC, a California limited liability company (the "**Developer**") entered into that certain Amended and Restated Disposition and Development Agreement (the "**DDA**"), dated as of November 19, 2013, concerning the redevelopment of certain real property located in the City of Milpitas, California, including that certain parcel more fully described in Exhibit A attached hereto (the "**Phase One Parcel**"). A Memorandum of the DDA was recorded in the Official Records of Santa Clara County as Instrument No._____, Book_____, Page_____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 5.12 of the DDA, the Housing Authority is required to furnish the Developer or its successors with a Certificate of Completion upon completion of construction of the Phase One Development on and in the vicinity of the Phase One Parcel in accordance with the DDA and issuance by the City of Milpitas of a Certificate of Occupancy for the Phase One Development.

C. The Housing Authority has determined that the Phase One Development has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, Housing Authority hereby certifies as follows:

1. The Phase One Development has been satisfactorily completed in conformance with the DDA.

2. All use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate, including without limitation, compliance with the Phase One Regulatory Agreement entered into pursuant to the DDA.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Phase One Development or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.

4. Nothing contained in this instrument shall modify any provisions of the DDA or any other document executed in connection therewith.

IN WITNESS WHEREOF, Housing Authority has executed and issued this Certificate of Completion as of the date first written above.

THE CITY OF MILPITAS HOUSING AUTHORITY

By: _____***FORM-DO NOT SIGN***_____

Name: _____
Executive Director

ATTEST:

By: _____***FORM- DO NOT SIGN*** _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: _____***FORM-DO NOT SIGN*** _____
Housing Authority Counsel

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

PHASE ONE PARCEL

(Attach legal description.)

HA3-C

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Milpitas Housing Authority
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

No Fee for Recording pursuant to Government Code Section 27383

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Disposition and Development Agreement
For South Main Street Housing Development)

This Assignment and Assumption Agreement (the "Agreement") is entered into as of November 19, 2013 (the "Effective Date"), by and between the Successor Agency to the Redevelopment Agency of the City of Milpitas (the "Successor Agency"), a public entity, as successor agency to the dissolved Redevelopment Agency of the City of Milpitas (the "RDA") pursuant to Health and Safety Code Section 34173, and the City of Milpitas Housing Authority (the "Housing Authority"), a public body, corporate and politic, as housing successor to the RDA pursuant to Health and Safety Code Section 34176. The Successor Agency and the Housing Authority have entered into this Agreement with reference to the following facts and purpose.

RECITALS

A. Pursuant to authority granted under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "CRL"), the RDA had the responsibility to implement the redevelopment plan adopted in 1976 (as subsequently amended, the "Redevelopment Plan") by the City Council (the "City Council") of the City of Milpitas (the "City") for the Milpitas Redevelopment Project Area No. 1 (the "Project Area") as more particularly described in the Redevelopment Plan.

B. In furtherance of the Redevelopment Plan, the RDA and South Main Street Senior Lifestyles, LLC (the "Developer") entered into a Disposition and Development Agreement dated as of August 18, 2009, as amended by a First Amendment dated as of October 18, 2011 (as so amended, the "DDA"), concerning an approximately 5.94-acre parcel of land owned by the RDA and located at 1504-1620 South Main Street, Milpitas, CA (the "Property") within the Project Area. The legal description of the Property is set forth in both Exhibit A of the DDA and the attached Exhibit A of this Agreement, which is incorporated in this Agreement by this reference. The Property was purchased by the RDA with funds from the RDA's Low and Moderate Income Housing Fund (the "Housing Fund") pursuant to the CRL.

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C. The DDA provides for:

1. the disposition to the Developer of the Property upon satisfaction or waiver of specified pre-disposition requirements;

2. the development on the Property by the Developer of a development (the "Project") containing approximately three hundred eighty-seven (387) residential units, including no fewer than sixty-three (63) units affordable to low income and very low income households (the "Affordable Units"); and

3. the provision by the RDA to the Developer of $7.7 million of financial assistance from the Housing Fund to facilitate development of the Affordable Units (the "Housing Fund Assistance").

D. Pursuant to ABx1 26 enacted effective June 28, 2011, as clarified and amended by AB 1484 effective June 27, 2012 (collectively, the "Redevelopment Dissolution Law"):

1. The RDA, together with every redevelopment agency in California, was dissolved as of February 1, 2012; and

2. The Housing Authority, the City Council, and the RDA adopted joint resolution HA3/8151/RA426 on January 4, 2012, whereby (a) the City, acting in a separate legal capacity and as a separate legal entity, elected to be the Successor Agency to the dissolved RDA for purposes of paying the obligations, unwinding the affairs, and liquidating specified assets of the dissolved RDA; and (b) the City selected the Housing Authority and the Housing Authority elected to take on the responsibility of performing the housing functions of the dissolved RDA.

E. The Property constitutes a "housing asset" of the RDA that transferred to the Housing Authority as of February 1, 2012 pursuant to the provisions of Health and Safety Code Section 34176, as confirmed by:

1. a letter of August 31, 2012 from the California Department of Finance to the Housing Authority;

2. the Housing Fund Due Diligence Review report submitted by the County of Santa Clara Finance Agency dated October 2, 2012 as prepared in accordance with Health and Safety Code Section 34179.5; and

3. the Agreed Upon Procedures report submitted by the County of Santa Clara Finance Agency dated October 10, 2012 as prepared in accordance with Health and Safety Code Section 34182(a).

F. Within the meaning of Health and Safety Code Section 34176, the DDA constitutes:

1. a "housing obligation" and a "housing duty" of the dissolved RDA, in that it commits the RDA to convey the Property (which is a housing asset of the dissolved RDA, as described in Recital E) to the Developer and to provide the Housing Fund Assistance to the Developer;

2. a "housing asset" of the dissolved RDA, in that the DDA includes an express obligation of the Developer to develop and operate the Affordable Units for the benefit of the former RDA's affordable housing program; and

3. a "housing function" of the dissolved RDA, in that the DDA directs the RDA to perform various functions and actions with respect to the above described housing obligations, duties, and assets in order to facilitate development of the Project on the Property and provision of the Affordable Units using moneys from the Housing Fund.

G. As a contract embodying housing obligations, duties, assets, and functions of the dissolved RDA, the DDA itself also transferred to the Housing Authority as of February 1, 2012 pursuant to the provisions of Health and Safety Code Section 34176.

H. Health and Safety Code Section 34177(g) requires the Successor Agency to effectuate the transfer of housing functions and assets to the Housing Authority, as housing successor to the dissolved RDA pursuant to Health and Safety Code Section 34176. In compliance with that requirement, the Successor Agency, as general successor to the rights and obligations of the dissolved RDA, and the Housing Authority desire to enter into this Agreement to confirm and document the transfer and assignment of the rights and obligations of the former RDA in the DDA to the Housing Authority.

I. The actions set forth in this Agreement consist of effectuating the assignment of the dissolved RDA's rights and obligations under the previously executed DDA. The DDA was adopted in compliance with CEQA, as fully set forth in Recital F of the DDA. This Agreement makes no changes in the Project that is the subject of the DDA or the potential environmental effects of implementation of the Project pursuant to the DDA, but instead simply effectuates the assignment to the Housing Authority of the dissolved RDA's rights and obligations under the DDA. Since it can be seen with certainty that there is no possibility that the mere assignment of such rights and obligations will have a significant effect on the environment, this Agreement and the actions set forth in this Agreement are exempt from CEQA pursuant to State CEQA Guidelines, with particular reference to 14 California Code of Regulations Sections 15061(b)(3) and 15378(b)(5).

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Successor Agency and the Housing Authrority mutually agree as follows:

Section 1. Assignment of DDA. To confirm, document and effectute the transfer of the DDA to the Housing Authority pursuant to Health and Safety Code Section 34176, the Successor Agency, as successor agency to the dissolved RDA, hereby assigns and delegates to the Housing Authority all of the dissolved RDA's rights, obligations, title and interest under, in

and to the DDA, and any rights, obligations, title and interest that the Successor Agency may have under, in and to the DDA.

Section 2. Acceptance of DDA. To confirm, document and effectuate the transfer of the DDA to the Housing Authority pursuant to Health and Safety Code Section 34176, the Housing Authority accepts the above assignment, and assumes the RDA's rights, obligations, title and interest under, in and to the DDA, and any rights, obligations, title and interest that the Successor Agency may have under, in and to the DDA. In so doing, the Housing Authority expressly agrees for the benefit of the Developer to perform and observe all obligations and covenants of the RDA set forth in the DDA. The Housing Authority further acknowledges and agrees for the benefit of the Developer that it is aware of and has a copy of the DDA, is aware of the dissolved RDA's obligations under the DDA, and shall be bound by the covenants and conditions of the DDA.

Section 3. California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

Section 4. Invalidity. Any provision of the Agreement which is determined by a court to be invalid or unenforceable shall be deemed severed herefrom, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof. If the transfer and assignment that is confirmed and effectuated by this Agreement is for any reason found to be invalid, the DDA shall remain in force and effect in accordance with its terms.

Section 5. Headings. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement.

Section 6. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute one and the same instrument.

Section 7. Recordation. Promptly following the Effective Date, the Housing Authority shall cause this Agreement to be recorded in the official records of the County of Santa Clara against the Property.

[*Signatures on following page*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public entity

By: _____
Thomas C. Williams
Executive Director

HOUSING AUTHORITY:

CITY OF MILPITAS HOUSING AUTHORITY, a public body, corporate and politic

By: _____
Thomas C. Williams
President

APPROVED AS TO FORM:

_____

ATTEST:

_____

[NOTE: SIGNATURES TO BE NOTARIZED]

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

ORDER NO. : 1117012669-JM

EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of Milpitas, State of California, and is described as follows:

PARCEL ONE:

Parcels 1 and 2 as shown on that certain Parcel Map recorded January 11, 1995 in Book 662 of Maps, at Pages 5 and 6, together with a portion of Parcel A and a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, and as described in the Lot Line Adjustment recorded March 22, 2013, Instrument No. 22142701 of Official Records, more particularly described as follows:

Beginning at the northwest corner of said Parcel 2; thence along the northerly line of said Parcel 2 and the easterly prolongation thereof, South 83° 39' 02" East, a distance of 427.71 feet; thence along a line drawn parallel to and 46.00 feet westerly, measured at right angles to the east line of said Parcel B, South 02° 30' 31" East, a distance of 194.14 feet to the south line of said Parcel B; thence along the south line of Parcel B, Parcel A and Parcel 1, North 83° 39' 02" West, a distance of 466.52 feet to the west line of said Parcel 1; thence along said west line along the arc of a non-tangent curve to the right having a radius of 1,952.00 feet, the center of which bears South 83° 10' 27" East, through a central angle of 02° 57' 55", an arc distance of 101.02 feet; thence North 09° 47' 28" East, a distance of 91.04 feet to the Point of Beginning.

EXCEPTING FROM that portion described as Parcel 2 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purposes of producing or development of such reserved substances, as reserved by Kaiser Aluminum and Chemical Corporation, a corporation in the Deed recorded March 31, 1972 in Book 9768 Page 368 Official Records.

EXCEPTING FROM that portion described as Parcel 1 (662 PM 5) above: all oil, gas, petroleum, other hydrocarbon substances and minerals lying 500 feet or more below the surface of the herein described land, without however, the right to enter upon the surface of said described land or within 500 feet of the subsurface thereof for the purpose of producing or development of such reserved substances.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-046

(Underlying APN'S: 086-22-033; 086-22-034; Portion APN: 086-22-041
Portion APN: 086-22-042)

PARCEL TWO:

A strip of land 46.00 feet in width, being a portion of Parcel B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002 as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the east line of said Parcel B, distant thereon south 83° 39′ 02″ west, a distance of 474.27 feet from the northwest corner of Parcel 2 of Parcel Map Book 662, Page 5 & 6; thence along the east line of said Parcel B south 02° 30′ 31″ east, a distance of 194.14 feet to the southeast corner of said Parcel B; thence along the south line of said Parcel B, north 83° 39′ 02″ west, a distance of 46.56 feet; thence north 02° 30′ 31″ west, a distance of 194.14 feet to the easterly prolongation of said Parcel 2; thence south 83° 39′ 02″ east, a distance of 46.56 feet to the point of beginning.

EXCEPTING THEREFROM: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-047 (underlying APN: portion 086-22-042)

PARCEL THREE:

A strip of land 50.00 feet in width being a portion of Parcels A and B as described in Resolution No. 7208, a Lot Line Adjustment filed August 28, 2002, as Document No. 16444465, Records of Santa Clara County, California, more particularly described as follows:

Beginning at a point on the west line of said Parcel A, said point being coincident with the northwest corner of Parcel 2 as shown on the Parcel Map in Book 662 of Maps, pages 5 and 6; thence along the common line between Parcel A and Parcel 2 and the easterly prolongation thereof, south 83° 39′ 02″ east, a distance of 474.27 feet to the east line of said Parcel B; thence along the east of said Parcel B, north 02° 32′ 31″ west, a distance of 50.61 feet to the

northeast corner of said Parcel B; thence along the north line of Parcel B, north 83° 39′ 02″ west, a distance of 463.44 feet to the northwest corner of said Parcel B; thence along the west line of said Parcels A and B, south 09° 47′ 28″ west, a distance of 50.10 feet to the point of beginning.

EXCEPTING FROM that portion described as parcel A above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

EXCEPTING FROM that portion described as parcel B above: all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet below the surface of the ground, provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drilling or tunneling from lands adjacent to said real property or other methods not requiring operations on the surface of said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or construction thereon.

APN: 086-22-048
(underlying APN's: portion 086-22-041 & 042)

PARCEL FOUR:

BEGINNING AT A POINT IN THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ETALTO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549, OF OFFICIAL RECORDS, AT PAGE 403, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTH 84° 28′ EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 465.57 FEET TO THE NORTHEASTERLY CORNER THEREOF IN THE WESTERLY-LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY; THENCE NORTH 3° 22' WEST ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY 114.76 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 1.718 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J.H. GUERRERO, ET AL TO J.H. GUERRERO, ET AL, RECORDED MAY 11, 1949, IN BOOK 1785 OF OFFICIAL RECORDS, AT PAGE 484, SANTA CLARA COUNTY RECORDS; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.718 ACRE TRACT 437.00 FEET TO THE NORTHWESTERLY CORNER THEREOF IN THE SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SAN JOSE-MILPITAS ROAD ALONG AN ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 2033.00 FEET FROM WHICH THE CENTER POINT BEARS NORTH 80° 35' 30" WEST FOR AN ARC DISTANCE OF 114.10 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF MILPITAS IN DEEDS RECORDED IN BOOK 5383, PAGE 29 AND IN BOOK 8420, PAGE 188, OFFICIAL RECORDS.

APN: PORTION 086-22-027

PARCEL FIVE:
PARCEL FIVE-A

A STRIP OF LAND 12 FEET WIDE WHICH IS THE WESTERLY 12 FEET OF THAT CERTAIN 1.178 ACRE PARCEL DESCRIBED IN DEED FROM J. H. GUERRARO ET AL TO THOMAS E. CARDOZA, ET UX, AND RECORDED JULY 15,1959 IN BOOK 4481, PAGE 251 SANTA CLARA COUNTY OFFICIAL RECORDS WHICH 12 FOOT STRIP IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN JOSE-MILPITAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549, PAGE 403 SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 84° 28' EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT 12.13 FEET TO AN IRON PIPE; THENCE NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11" 47" AN ARC DISTANCE OF 114.09 FEET TO AN IRON PIPE; THENCE NORTH 84° 28' WEST ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND A DISTANCE OF 12.03 FEET TO A POINT IN THE EASTERLY LINE OF THE SAN JOSE-MILPITAS ROAD AND THE NORTHWESTERLY CORNER OF SAID 1.178 ACRE PARCEL; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF THE SAN JOSE-MILPITAS ,
ROAD ALONG AN ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 2033 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 80° 35' 30" WEST, THROUGH A CENTRAL ANGLE OF 3° 12' 56" AN ARC DISTANCE OF 114.10 FEETTO THE POINT OF EGINNING.

EXCEPTING THEREFROM THAT PORTION OF LAND LYING WESTERLY OF THE EASTERLY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DEED RECORDED SEPTEMBER 16, 1985 IN BOOK J458 OF OFFICIAL RECORDS AT PAGE 1705, SANTA CLARA COUNTY RECORDS.

PARCEL FIVE-B:

BEGINNING AT A POINT IN THE EASTERLY UNE OF SAN JOSE-MILPUAS ROAD AT THE NORTHWESTERLY CORNER OF THAT CERTAIN 0.54 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM J. H. GUERRERO ET AL, TO PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION, RECORDED JULY 13,1956 IN BOOK 3549 AT PAGE 403, SANTA CLARA COUNTY OFFICIAL RECORDS; THENCE SOUTH 84° 28'
EAST ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE TRACT, 12.13 FEET TO AN IRON PIPE IN THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.03 ACRE PARCEL OF LAND CONVEYED TO THE CITY OF MILPUAS BY DEED RECORDED NOVEMBER 30,1961 IN BOOK OF OFFICIAL RECORDS NUMBERED 5383, AT PAGE 29 AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE EASTERLY LINE OF SAID 0.03 ACRE PARCEL OF LANE, NORTHERLY ALONG AN ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 2045 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 77° 25' 05" WEST, THROUGH A CENTRAL ANGLE OF 3° 11' 47", AN ARC DISTANCE OF 114.09 FEET TO THE NORTHEASTERLY CORNER OF SAID 0.03 ACRE PARCEL OF LAND IN THE NORTHERLY LINE OF THAT CERTAIN 1.178 ACRE PARCEL OF LAND CONVEYED TO THOMAS E. CARDOZA,

ET UX, RECORDED JULY 15, 1959 IN BOOK 4481, PAGE 251, OF OFFICIAL RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID 1.178 ACRE PARCEL OF LAND SOUTH 84° 28′ EAST, .05 FEET; THENCE LEAVING SAID NORTHERLY LINE 8° 57′ 21″ WEST 113.75 FEET TO THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL CONVEYED TO PACIFIC GAS AND ELECTRIC ABOVE REFERRED TO; THENCE ALONG THE NORTHERLY LINE OF SAID 0.54 ACRE PARCEL OF LAND NORTH 84° 28′ WEST 4.06 FEET TO THE TRUE POINT OF BEGINNING, AND BEING A PORTION OF THE MILPITAS RANCHO.

PARCEL FIVE-C:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED JULY 15, 1959 IN BOOK 4491 AT PAGE 251, OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL NORTH 83° 39′ 47″ WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET SOUTH 9 46′ 43″ WEST, 72.81 FEET TO A POINT OF CUSP WITH A CURVE TO THE LEFT TO WHICH POINT A RADIAL LINE BEARS SOUTH 77° 43′ 56″ EAST; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK 4491 AT PAGE 251 OF OFFICIAL RECORDS, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2° 03′ 21″ HAVING A RADIUS FO 2033.00 FEET AN ARC LENGTH OF 72.95 FEET TO THE POINT OF BEGINNING.

APN: PORTION 086-22-027

PARCEL SIX:
PARCEL SIX-A:

PORTION OF THE MILPITAS RANCH DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF MAIN STREET, ALSO KNOWN AS THE STATE HIGHWAY LEADING FROM SAN JOSE TO MILPITAS, DISTANT THEREON SOUTH 8° 38′ 30″ WEST, 202.70 FEET FROM THE WESTERLY CORNER OF THE 1 ACRE TRACT OF LAND CONVEYED TO ANGELO TORRES, ET UX, BY DEED RECORDED MAY 24, 1929, BOOK 468, OFFICIAL RECORDS, PAGE 50; THENCE FROM SAID POINT OF BEGINNING SOUTH 8° 58′ 30″ WEST ALONG SAID LINE OF MAIN STREET, 201.31 FEET TO A CONCRETE MONUMENT; THENCE CONTINUIJNG ALONG SAID LINE OF MAIN STREET ALONG A TANGENT CURVE TO THE RIGHT, WITH A RADIUS OF 2033 FEET, FOR AN ARC DISTANCE OF 16.10 FEET TO AN IRON PIPE; THENCE SOUTH 84° 28′ EAST PARALLEL WITH THE SOUTHERLY LINE OF SAID 1 ACRE TRACT OF LAND, 437 FEET TO AN IRON PIPE ON THE WESTERLY LINE OF THE LANDS OR RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 3° 22′ WEST ALONG SAID WESTERLY LINE 215.31 FEET TO A POINT FROM WHICH THE SOUTHEASTERLY CORNER OF SAID 1 ACRE TRACT OF LAND BEARS NORTH 3° 22′ WEST 208.10 FEET; THENCE WESTERLY IN A DIRECT LINE, 393 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

PARCEL SIX-B:

BEGINNING AT THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY THE DEED RECORDED APRIL 15, 1981 IN BOOK G023, AT PAGE 734, DOCUMENT NO. 7031783 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL SOUTH 9° 46′43″ WEST, 201.31 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINEALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 27′ 13″ HAVING A RADIUS OF 2033 FEET AN ARC LENGTH OF 1610 FEET; THENCE ALONG THE NORTHWESERLY EXTENSION LINE OF THE SOUTHWESTERLY LINE OF SAID PARCEL NORTH 83° 39′ 47″ WEST, 1.86 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH MAIN STREET AS DESCRIBED IN THE DOCUMENT RECORDED SEPTEMBER 16, 1985 IN BOOK 3458, PAGE 1705 OF OFFICIAL RECORDS; THENCE ALONG SAID RIGHT OF WAY LINE OF SOUTH MAIN STREET NORTH 9° 46′ 43″ EAST, 217.42 FEET TO THE NORTHWESTERLY EXTENSION LINE OF THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND CONVEYED IN SAID DEED RECORDED IN BOOK G023 AT PAGE 734 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY EXTENSION LINE SOUTH 83° 10′ 39″ EAST, 1.92 FEET TO THE POINT OF BEGINNING.

APN: 086-22-028

TJKM
Vision That Moves Your Community
Transportation Consultants

HA3-E

RECEIVED
NOV 08 2013
HNP DIVISION

November 7, 2013

Mr. Joseph Callahan
Callahan Property Company
5674 Stoneridge Drive, Suite 212
Pleasanton, CA 94588

Re: Trip Generation Comparison for Milpitas Senior Housing on South Main Street

Dear Mr. Callahan:

The City of Milpitas approved a 387 unit rental residential project with a condo map in 2008 at South Main Street and Cedar Way in Milpitas. Your current application on the same parcels involves 70 assisted living rental units, 129 congregate care rental units, and 190 rental senior (age-restricted) units. You asked for a comparison of the trips generated by the new development as compared with the City of Milpitas Midtown Specific Plan and also the previously entitled development.

Land Use (ITE Category)	Units	Trip Rates per dwelling unit			Trips		
		Daily	a.m. peak	p.m. peak	Daily	a.m. peak	p.m. peak
2008 APPROVED PROJECT [1]							
Apartments (220)	387	6.65	0.51	0.62	2,574	198	240
MIDTOWN MILPITAS SPECIFIC PLAN [2]							
Opportunity Site – S. Main/Midblock					1,020	87	102
CURRENT PROPOSED PROJECT [3]							
Assisted Living (254)	70	2.74	0.18	0.29	192	13	21
Congregate Care (253)	129	2.02	0.06	0.17	261	8	22
Senior Housing (252)	190	3.44	0.20	0.25	654	38	48
Total Proposed Project	389	--	--	--	1,107	59	91

[1] The City approved a 387 unit project on the same site in 2008. Applying appropriate ITE trip rates to this apartment project yields the information in this category.
[2] In the Midtown Milpitas Specific Plan, whose FEIR was certified by the City in 2002, this site is described as an "opportunity site" with these traffic characteristics. This information is from Table 3.9-25 in the DEIR.
[3] Traffic generation from the current proposal is evaluated using ITE's *Trip Generation, 9th Edition.*

In the table above, the traffic generation from the proposed project is compared first with traffic from the apartment project approved in 2008. In this case, the current project produces less than half the traffic as the approved project. When compared with the earlier Midtown Milpitas Specific Plan, the current project generates about 10 percent fewer peak hour trips, and generates slightly higher daily trips. The peak hour trips are used in evaluating levels of service comparisons, so the new project will operate within the level of service limits of the Midtown Milpitas Specific Plan.

Pleasanton
4305 Hacienda Drive
Suite 550
Pleasanton, CA
94588-2798
925.463.0611
925.463.3690 fax

Fresno
516 W. Shaw Avenue
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Fresno, CA
93704-2515
559.325.7530
559.221.4940 fax

Sacramento
980 Ninth Street
16th Floor
Sacramento, CA
95814-2736
916.449.9095

Santa Rosa
1400 N. Dutton Avenue
Suite 21
Santa Rosa, CA
95401-4643
707.575.5800
707.575.5888 fax

tjkm@tjkm.com
www.tjkm.com

It can be seen that the new development generates significantly fewer trips (less than half) during all three time periods as compared with the development that was approved in 2008, and slightly fewer peak hour trips when compared with the Midtown Milpitas Specific Plan.

Let me know if there is additional information that you may need on this matter.

Very truly yours,

Chris D. Kinzel

Chris D. Kinzel, P.E.
Vice President

Felix Reliford

HA3-F

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HNP DIVISION

From: Mary Brown <mapabrown@yahoo.com>
Sent: Sunday, October 20, 2013 3:15 PM
To: Felix Reliford
Cc: chom@cimilpitas.ca.gov
Subject: South Main Senior Lifestyles LLC

We received a **Notice of Public Hearing** for the above and would like the issue of where will these people park their cars, **389** units could easily mean **778** cars.

Our **concerns** are the usual traffic, **car** parking (south main is full now with the apartments that obviously do not have enough parking), another **park** would be a good addition for seniors (they need to exercise and visit), plus a **grocery store** within walking distance (it's hard to carry groceries on a bus or light rail so a car or two will be necessary). I guess we see plans for more and more apartments but do not see the things that seniors need close by in order to maintain their quality of life as they age.

We will be looking forward to seeing the plans for this project the Monday prior to the scheduled Planning commission meeting which is the 23rd, a Wednesday.

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Chair Mandal would like to understand if R3, R4, R5 designation is only for the Transitional and Supportive Housing. Mr. Reliford said no in regards to this type of land use. R3, R4, R5 districts are for SROs; rationale behind these zoning districts is those are multi-family housing districts not single-family housing districts. Would MXD apply to Town Center and Transit Area? Mr. Reliford replied it will not apply to Town Center.

Chair Mandal opened the public hearing for comments and heard none.

Motion: to close the public hearing after hearing no comments.

Motion/Second: Commissioner Madnawat / Commissioner Mohsin

AYES: 6

NOES: 0

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Chair Mandal asked fellow Commissioners for any discussion. Commissioner Madnawat commented that this is something required by State law; however, he understands that it does not mean the City needs to provide services that is just zoning amendments being considered here. State is not forcing the City to provide services.

Motion: to adopt Resolution No, 13-023 recommending the City Council adopts an ordinance amending the zoning code to include provision relating to emergency shelters, single room occupancy (excluding from Mixed Use district) residences, supporting housing, transitional housing, ad reasonable accommodation based on the findings set as amended by excluding SROs from Mixed-Used district and adopt a Negative Declaration for the project.

Motion/Second: Commissioner Madnawat / Commissioner Luk

AYES: 6

NOES: 0

ABSENT: 2 Vice Chair Ciardella / Commissioner Sandhu

Chair Mandal inquired of staff how far the City has met the State requirements in 2010. Mr. Reliford required that we have met all the requirements besides the items that are being proposed right now.

IX-3 DEVELOPMENT AGREEMENT NO, DA13-0001: request for a Disposition and Development Agreement between the Milpitas Housing Authority and South Main Senior Lifestyles LLC, involving the purchase of 5.94 acres and the development of up to 389 housing units (Senior Congregate Care and Independent Living), located at 1504-1620 South Main Street (APNs: 86-22-027, -028, -033, -041, and -042) zoned multi-family residential, very high density with site and architectural overlay (R4-S).

Principal Housing Planner gave an overview of the project to the Commission stating that the site is owned by Milpitas Housing Authority and pursuant to the Department of Finance, the MHA funds and site must be used for housing with affordable units . It is a conformance of finding with the Milpitas General Plan and Milpitas Specific Plan.

What Sate law requires is that before the disbursement of the property, the Planning Commission has to make a finding that the proposed project is consistent with the City's General Plan and Midtown Specific Plan. The developers are proposing a senior housing project to be located at 1504-1620 South Main Street.

Mr. Reliford continued presenting conceptually the new project being proposed by the developers which is a continuum of care retirement community. This is a full service community with activity and amenity-enriched where one can age in place. Mr. Reliford reminded everyone that the City has 2 existing Senior Housing projects namely Terrace Garden built in 1988 and the other one is the DeVries Place across the Milpitas Library built in 2009. Both current senior housing projects will not have the same amenities Senior Lifestyles is proposing; and the City of Milpitas will be the first City in the South Bay to potentially have this type of project.

He went on reviewing the conceptual project description in order for the Commission to make a finding. The Integrated Retirement Community would consist of 389 apartment homes; all residents 62 years of age and older; would be a two-phase development; complementary and cohesive design with integrated management and operations.

Phase 1 is a congregate care and assisted living that would consist of 199 spacious apartment homes with 24-hour staffing, daily check-in, emergency response services, and a secure building with a subterranean parking. Phase 2 of the project will consist of active, independent living with 190 spacious apartment homes. These units will have full high-end amenities and features; will have expansive common areas to promote interaction; Phase 1 units will have first priority.

Mr. Reliford enumerated the benefits to the City to have this type of project and that include a unique landmark asset; property, sales, and special taxes annually; $2.5 million worth of public infrastructure; jobs and economic development; there will be 48 very low income (50% AMI) housing units and first preference to Milpitas seniors; and $7.7 million DDA grant will be eliminated.

Staff is recommending that the Commission finds the project to be consistent with the General Plan Policy Number 2.a-I-12: Encourage variety/mix in housing; Policy Number 2.a-G-3: Provide variety of housing types/densities; and Policy Number C-G-3: Support diversity and creativity. As to the Midtown Specific Plan, staff is also recommending that the Commission finds the project meeting the Midtown Specific Plan Policy Number 3.5: Provide housing for all income levels throughout Midtown area; Policy Number 3.6: Provide affordable housing in new developments. Set affordable requirement on project-specific basis; and Policy Number 3.7: Architecturally integrate affordable with market rate units. At this time, no environmental review is required and staff recommends that this project is consistent with the zoning and CEQA requirements.

Commission Morris commented this sounds like an innovative project; her only question is in regards to with fire and police service demand, would this provide for increased police and fire services or would this keep them at status quo. Mr. Reliford responded that the developer would pay a Community Facilities District fee that allows for potential expansion of police and fire services. Planning Director clarified that Community Facilities District CFD-2005 fees are used only for landscape and park maintenance and not for police and fire services.

Commission Madnawat asked what AMI stands for and how much would a unit cost for this project. Principal Housing Planner Reliford said that this project would have 48

units that are substantially 50% less than the market rate. Commissioner Madnawat would like to confirm with staff that this is not a request to approve a project; and staff replied that is correct. This public hearing item is only for the Commission to make a finding that the project conforms to the consistency within the General Plan and Midtown Specific Plan policies. The purpose of clarification is Commissioner Madnawat has a parking issue questions but those questions are premature since the Commission is not considering a development project. Staff informed the Commission that City received a comment letter from PUC and a resident but those comments would be addressed if/when a project application is proposed to the City.

Chair Mandal asked staff to bring up the findings on the screen so the Commissioners could see them again. Commissioner Madnawat asked if this would be categorized as a housing or commercial project, staff replied housing project. Chair Mandal asked about timeline of the project for it sounds like an exciting program. Mr. Reliford deferred the question to the developers and simply stated that the Disposition and Development Agreement would have the performance and milestones that the developer would have to meet.

Commissioner Barbadillo stated this is a good program catered to seniors that is needed in our City. His question is, was there any data back in 2008 to support the market for senior housing market. Mr. Reliford said there is; and an analysis has been done in regards to the market needs.

Commissioner Luk opined that this is more applicable to seniors and a visionary project given the location of this project the developers are putting the location into good use and providing for the needs of seniors.

Commissioner Madnawat asked how they came up with the number 48 for affordable units and asked if all the units are for sale. Staff replied these are rental units and the affordability of these units is sanctioned by the Regulatory Agreement between the Milpitas Housing Authority and the developers for 45 years. Commissioner Madnawat asked if there will be audits; staff answered yes. Commissioner Madnawat asked if the developers have any other projects like this. Mr. Reliford responded yes, and it is located in Livermore. At this point he asked the developers to come up to the podium.

Joseph Callahan and Terry Freeman representing South Main Senior Lifestyles LLC addressed the Commission. Mr. Callahan informed the Commission that the first phase of their Livermore Senior Housing project opened in 2004, while the second phase opened its doors in 2007. Commissioner Madnawat asked if there has been any complaint from the facility renters like abuse of taking advantage of seniors. Mr. Callahan said they have regular reports into the City of Livermore for their project per their Regulatory Agreement and in almost 10 years of operation there have not been any reports of abuse.

Commissioner Madnawat commented that at least this project for two reasons; first we need good projects like this on our dilapidated street and second, will not have school impact since the residents would be seniors. Mr. Joe Callahan is looking forward to bringing a unique project to the City of Milpitas.

Chair Mandal opened the public hearing for comments and heard none.

Motion: to close the public hearing after hearing no comments.

Motion/Second: Commissioner Madnawat / Commissioner Luk