RESOLUTION NO. 14-036

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE CITY COUNCIL DENY MAJOR TENTATIVE MAP NO. MT13-0006, SITE DEVELOPMENT PERMIT NO. SD13-0012 AND CONDITIONAL USE PERMIT NO. UP13-0011 TO AMEND THE PREVIOUSLY APPROVED DISTRICT ONE, LOTS 2, 3 AND 4 MAJOR TENTATIVE MAP, SITE DEVELOPMENT PERMIT AND CONDITIONAL USE PERMIT TO ELIMINATE LOT 3 (MIXED-USE BUILDING WITH APPROXIMATELY 169 DWELLING UNITS AND 27,187 OF COMMERCIAL-RETAIL SPACE) FROM THE DISTRICT 1 PROJECT, AND REPLACE THE TWO APPROXIMATELY 400,000 SQUARE FOOT MIXED-USE BUILDINGS ON LOTS 2 AND 4 TOTALING 392 RESIDENTIAL UNITS AND 6,000 SQUARE FEET OF COMMERCIAL-RETAIL SPACE WITH 108 TOWNHOUSE DWELLING UNITS ON 4.79 ACRES LOCATED AT 1400 MCCANDLESS DRIVE

WHEREAS, in June 2008, the City Council of the City of Milpitas approved the Milpitas Transit Area Specific Plan ("TASP") to create a framework and blueprint for an attractive and livable neighborhood; to transform an older light industrial district to meet high demand for housing, offices, hotels, and retails; and to guide development in the area around the VTA light rail and future BART Station; and

WHEREAS, in 2008, an application was submitted by Glenn Brown, Integral Communities ("Applicant") at 675 Hartz Avenue #202, Danville, CA 94526 for a tentative map and conditional use permit requesting the approval of eight high-density residential buildings (Lots 1-8) along McCandless Drive with significant retail and commercial space in the first two buildings along Great Mall Parkway ("Original Project"). The Original Project included a maximum of 1,328 dwelling units and over 75,000 square feet of commercial-retail space; and

WHEREAS, on August 3, 2010, the City Council and the Board of Directors of the Milpitas Redevelopment Agency held a duly noticed public hearing on the Original Project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission, and adopted Resolution No. 8017 approving an Owner Participation Agreement between the Milpitas Redevelopment Agency and Applicant outlining the financial assistance and redevelopment aspects of the Original Project and adopted a Mitigated Negative Declaration for the Original Project pursuant to Sections 15074 and 15168 of the California Environmental Quality Act ("CEQA") guidelines; and

WHEREAS, on September 7, 2010, the City Council held a duly noticed public hearing on the Original Project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission, and adopted Resolution No. 8029 approving a Major Tentative map and Conditional Use Permit for the Original Project; and

WHEREAS, on January 21, 2011, the Applicant submitted an application to amend the approved Original Project to eliminate four high-density residential buildings along McCandless Drive (Lots 5, 6, 7, 8) totaling 426 residential units to construct a sprawling 200 townhouse units and to add approximately 6,000 square feet of commercial-retail space to the remaining high-density residential buildings (Lots 2 and 4) ("Amended Project"); and

WHEREAS, on March 20, 2012, the City Council held a duly noticed public hearing on the Amended Project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence previously presented to the Planning Commission, and adopted Resolution No. 8165 approving the Amended Project; and

WHEREAS, on June 12, 2013, the Applicant submitted an application for an amendment to the Amended Project to eliminate Lot 3 (mixed-use building with approximately 169 dwelling units and 27,187 of commercial-retail space) from the Amended Project, and replace the remaining two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with 108 townhouse dwelling units on 4.79 acres (collectively the "Current Proposed Project") resulting in a net decrease of 528 residential units and a net decrease of 30,000 square feet of commercial-retail space from the Original Project approved in 2010 to the Current Proposed Project; and

WHEREAS, Milpitas City Staff reviewed the application for the Current Proposed Project and informed the Applicant on several different occasions that the application for the Current Proposed Project is incomplete and the Current Proposed Project is inconsistent and violates the TASP; and

WHEREAS, the Applicant has requested a public hearing for the Planning Commission to conduct a public hearing and consider the application for the Current Proposed Project and on November 24, 2014 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 Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: ***Major Tentative Map Findings (Section XI-1-20.01)*** - The Planning Commission makes the following findings based on the evidence in the public record in support of recommending denial of Major Tentative Map No. MT13-0006.

a. ***The Current Proposed Project is inconsistent with the Milpitas General Plan and Transit Area Specific Plan.***

Inconsistent Commercial Uses

As discussed in detail in the staff report and herein, the Current Proposed Project site has a General Plan and TASP land use designation and zoning of Residential – Retail High Density Mixed Use and the Current Proposed Project is also located within the McCandless/Centre Point Sub-District. This land use designation is intended for residential, hotels, ground floor retail and restaurants with residential densities between 31-50 units per acre with allowances up to 80 units per acre with Density Bonus under State and local laws. In addition, this district requires a minimum of 200 square feet of ground floor retail space for each dwelling unit required based on the minimum density.

Based on the lot size totaling 4.79 acres, the Current Proposed Project requires a minimum density of 149 units and 29,698 square feet of retail on Lots 2 and 4. The Current Proposed Project is inconsistent and violates the General Plan and TASP because it has removed the required commercial-retail space from Lots 2 and 4 entirely. Additionally, with the proposed removal of Lot 3 from the Current Proposed Project, the TASP requires a minimum of approximately 60,000 square feet of ground floor retail between Lots 1 and 2 and there is only 52,000 square feet proposed for Lot 1, resulting in a 8,000 square foot deficiency in violation of the TASP. The total retail square footage required for Lots 1-4 is approximately 80,000 square feet, and only 52,000 square feet is proposed as part of the Current Proposed Project.

Further, the Current Proposed Project is inconsistent with the following General Plan Principles and Policies:

- *2.a.1-25: Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.*

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with this General Plan Principle because it does not include the required minimum commercial-retail space and does not include any commercial-retail space on Lots 2 and 4 as required by the TASP. The TASP requires a minimum of 200 square feet of ground floor retail based on the residential units required for the minimum density, which would require approximately 60,000 square feet of ground floor retail for the Current Proposed Project, but only 52,000 is proposed. In addition, the TASP vision is to provide the commercial-retail space throughout the designated mixed use zone area instead of isolating and concentrating on one parcel as proposed in the Current Proposed Project.

- ***2.a-G-2** Maintain a relatively compact urban 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.*

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with this General Plan Principle because it includes replacing two mixed-use buildings on Lots 2 and 4 with 108 townhouse units. The proposed development will also

eliminate all required neighborhood serving commercial-retail space on Lots 2 and 4 in violation of the TASP.

- ***2.a 1-31*** *Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with this policy because the Current Proposed Project substantially deviates from the high-density urban form and character of the approved Original Project and TASP and approval of the Current Proposed Project will re-write the TASP without the required specific plan amendments in violation of State and local laws.

- ***2.a 1-32*** *Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with this policy because the proposed changes result in a variety of incompatible architectural styles which detract from the neighborhood and overall vision and goal of an urban mixed use neighborhood for the TASP area.

Inconsistent Residential Density

The Current Proposed Project is zoned High Density Residential (MXD2) with site and Architectural and Transit Oriented Development Overlays focusing on design and treatment of projects near transit nodes.

As discussed in detail in the staff report and herein, the Current Proposed Project reduces the residential density from 1,328 residential units in the Original Project to 828 residential units in Current Proposed Project. The Current Proposed Project transforms a major area of the TASP into an isolated and sprawling development that fails to meet the vision, goals, and policies of the TASP for a high-density, urban form, and walkable neighborhood.

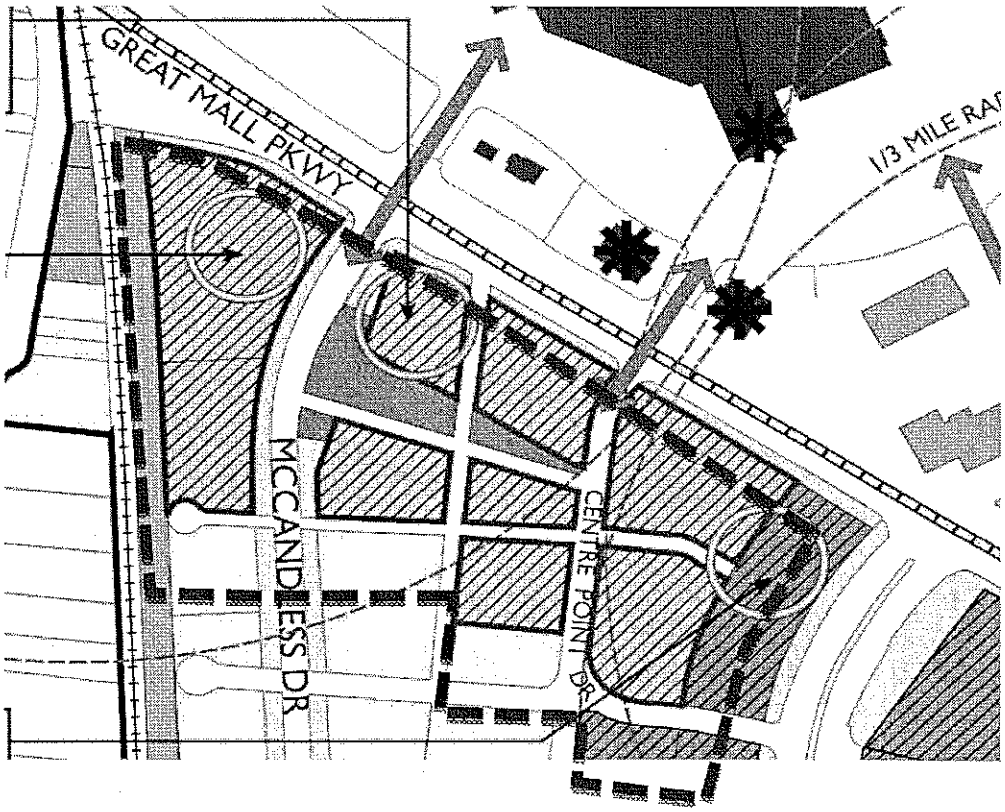
Inconsistent Retail/Commercial Space

As discussed in detail in the staff report and herein, the MXD2 Zoning requires 200 square feet of retail/commercial space based on the number of dwelling units allowed under the minimum zoning. The Current Proposed Project does not include any commercial/retail space in Lots 2 and 4 as required under the TASP. Further, the intent of the MXD2 designation is to provide neighborhood retail space for the new TASP area and to integrate the retail area along the mixed use character TASP streets such as McCandless Drive and Market Street. The proposed changes would result in a deficiency of 8,000 square feet and all the retail area concentrated on Lot 1 and eliminates the mixed use building on Lot 3 from the Current Proposed

Project altogether. This does not meet the intent of the TASP and will make Lot 1 difficult to finance, impractical to be built, and likely to remain vacant.

The TASP Land Use Plan illustrates the intent by designating specific amounts of land as MXD2 to provide retail services accessible to the new community as outlined in red in Figure 7 below.

Figure 7
TASP Retail Areas – McCandless/Centre Point



Development Standards

The following table indicates the Current proposed Project conformance to the development standards required in the MXD2 and TOD Overlay Districts.

Table 1:
Summary of Development Standards

MXD2-TOD	Standard	Proposed	Complies?
Setbacks (Minimum)			
Front			
o Lot 2	8-15 feet	19 feet	Yes
o Lot 4	8-15 feet	19 feet	Yes
Interior (North)			
o Lot 2	10 feet	28 feet	Yes
o Lot 4	10 feet	8 feet	**No**
Interior (South)			
o Lot 2	10 feet	7.2 feet	**No**
o Lot 4	10 feet	8 feet	**No**
Rear			
o Lot 2	10 feet	25 feet	Yes
o Lot 4 (Bond)	10 feet	6 feet	**No**
Creek Setback	25 Feet	25 feet	Yes
Floor Area Ratio (Maximum)	Up to 1.88	1.03	Yes
Density (Units/Acre)	31-50 Unit/Acre	23 Units/Acre	**No**
Building Height (Maximum)	Up to 12 stories	3 Stories	Yes
Ground Floor Retail	60,574 sf	52,400	**No**

As indicated in this table, the Current Proposed Project is inconsistent with required setbacks for interior side and rear. In addition, the Current Proposed Project is also below the minimum density for the MXD2 area, which requires a minimum of 31 units per acre and the Current Proposed Project is at 23 units per acre.

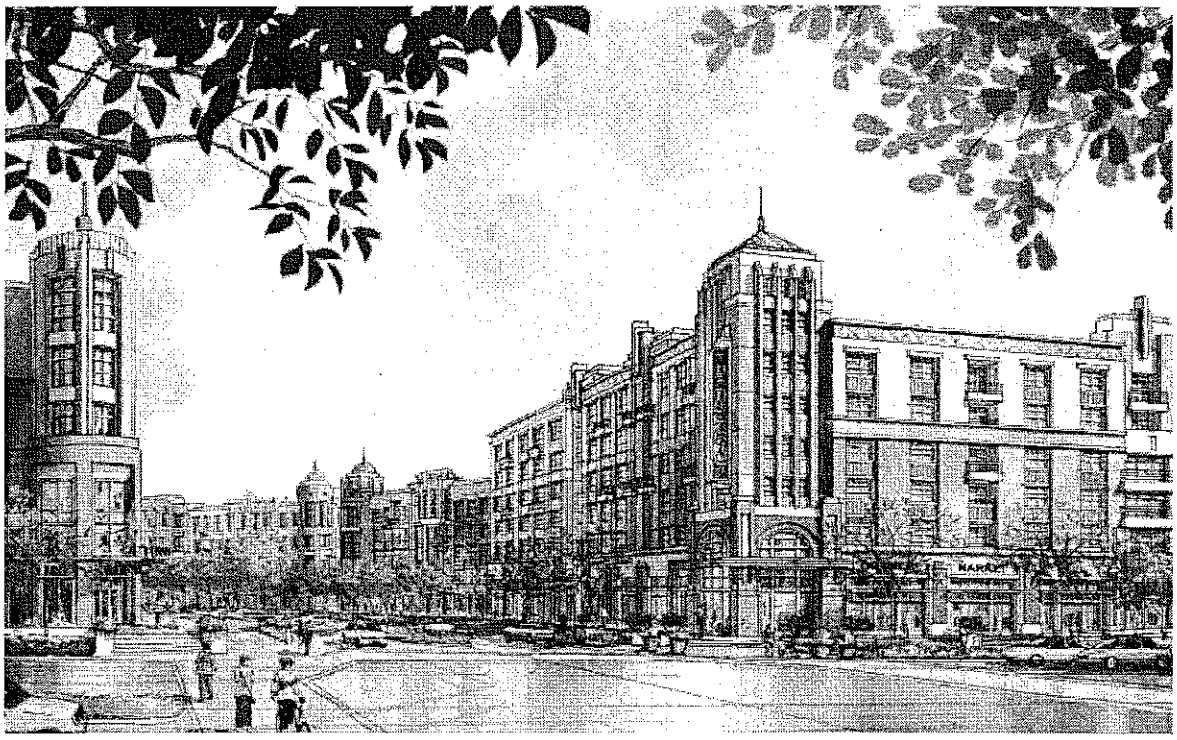
Section 3: ***Site Development Permit (Section XI-10-57-03-1(F))*** - The Planning Commission makes the following findings based on the evidence in the public record in recommending denial of Site Development Permit No. SD13-0012:

a. ***The layout of the site and design of the proposed buildings, structures and landscaping are not compatible or aesthetically harmonious with adjacent and surrounding development.***

Architecture

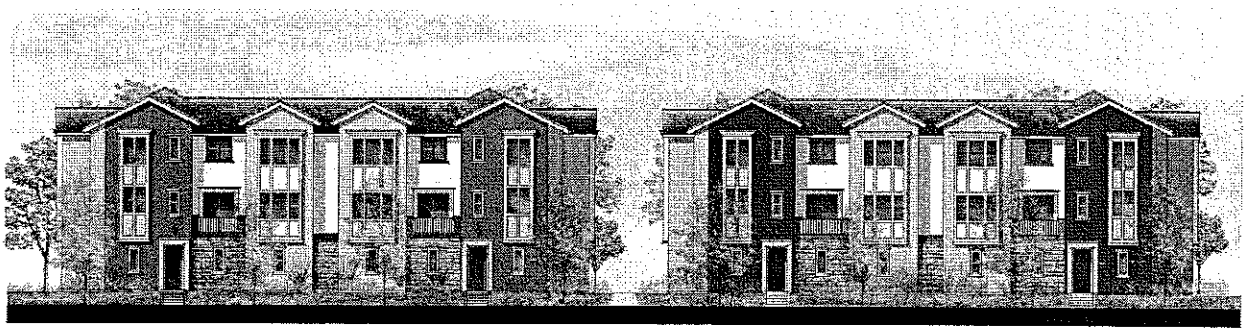
The Proposed architecture is inconsistent with the existing neighborhood. The proposed architectural styles are two distinct styles for each lot. Lot 2 is a contemporary style, using varied roof forms including arched, metal awnings, stucco reveals and complimentary colors. Lot 4 is a modern style using varied massing's of rectangular forms and contrasting colors.

Lot 2 is proposed to have a cool color palate with soft blues and white and Lot 4 is proposed to have earth tones at the base and lighter earth tones and whites for the upper floors. The proposed architecture is very different than the architecture proposed for the Taylor Morrison development in District 2 and represents a stark contrast to the Art Deco building proposed on Lot 1. In addition, the proposed architecture for Lots 2 and 4 is a stark contrast to the homes in District 2 and the remaining Art Deco building on Lot 1. The proposed architecture would result in architectural style inconsistencies along McCandless.



View of Lot 1 from Great Mall Pkwy down McCandless

View of District 2 frontage on McCandless



View of Lot 2 frontage on McCandless

Parking

The Current Proposed Project fails to provide the require guest parking spaces as shown below.

Table 2
Proposed and Required Parking

Site	Garage		Guest	
	Required	Proposed	Required	Proposed
Lot 2	68	110	14	17
Lot 4	99	106	20	***16***

b. The Current Proposed Project is inconsistent with the Milpitas Zoning Ordinance.

As discussed in detail in the staff report and herein, the Current Proposed Project results in an additional reduction in the proposed density for Lots 2 and 4 from 392 residential units to 108 units and the Current Proposed Project does not meet the minimum residential density of 31 units per acre required under TASP for those two lots. In addition, the Current Proposed Project does not include any commercial/retail space on Lots 2 and 4 and simply eliminates Lot 3 altogether in violation of TASP. The Current Proposed Project also results in a deficiency of 8,000 square feet of commercial retail space and eliminates almost 30,000 square feet of commercial retail space from the Current Proposed Project, which is in violation of the TASP.

c. The Current Proposed Project is inconsistent with the Milpitas General Plan.

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with the Milpitas General Plan.

d. The Current Proposed Project is inconsistent with the Transit Area Specific Plan.

In addition to what was discussed in the staff report and herein, the Current Proposed Project fails to comply with the following TASP Policies:

Transit Area Specific Plan	
Policy	**Compliance**
Policy 3.4: Provide a variety of housing types for different types of households, different income levels, different age groups, and different lifestyles.	**No.** The Current Proposed Project is eliminating condo/apartment flats and replacing with Townhouse (3-story) units.
Policy 3.6: Encourage creativity in high-density residential design. Allow housing types, such as live/work lofts, that are not currently developed in the city.	**No.** The Current Proposed Project only includes townhouse style units.
Policy 4.66 (MC-C): Create new streets between McCandless Drive and Lower Penitencia Creek which will provide access to parking garages, and will also provide on-street parking.	**No.** None are proposed. Pedestrian paseos are provided.

Policy 4.67 (MC-C): Do not create new curb cuts along McCandless Drive or Centre Point Drive, in order to preserve the existing trees and to create a pedestrian environment along the street.	**No.** New curb cuts are proposed and no street trees are preserved along McCandless.
Policy 4.69 (MC-C): Create a mixed use area with retail, restaurant, and personal service uses in the area closest to Great Mall Parkway.	**No.** The Current Proposed Project over concentrates retail on Lot 1 and eliminate retail from Lot 2.
Policy 4.70 (MC-C): Create a high-density residential neighborhood at the interior of the subdistrict, centered along McCandless Drive.	**No.** Although the proposed developments on Lots 2 and 4 meet the minimum density they do not create a high density residential neighborhood.

Section 4: ***Condition Use Permit Findings - (Section XI-10-57.04(F))*** - The Planning Commission makes the following findings based on the evidence in the public record in recommending denial of Condition Use Permit Findings No. UD13-0011:

a. The proposed use, at the proposed location will be detrimental or injurious to property or improvements in the vicinity and negatively impact the public health, safety, and general welfare;

Based on the details in the staff report and herein, the Current Proposed Project will be detrimental to public health, safety and general welfare. In addition, the proposed townhouses will result in a footprint that is difficult to accommodate on both lots resulting in needed exceptions from the required setback as noted in the Zoning Inconsistencies section above. In addition, the proposed tandem garages will result in underutilized parking in the area, which may be problematic due to the housing product type. In addition, the Current Proposed Project is deficient in guest parking spaces for the site, which can exacerbate future parking issues.

b. The Current Proposed Project is inconsistent with the Milpitas General Plan.

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with the Milpitas General Plan.

c. The Current Proposed Project is inconsistent with the Milpitas Zoning Ordinance.

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with the Milpitas Zoning Ordinance.

d. The Current Proposed Project is inconsistent with the Transit Area Specific Plan.

As discussed in detail in the staff report and herein, the Current Proposed Project is inconsistent with the Milpitas Transit Area Specific Plan.

*e. **The deviation from the Transit Area Specific Plan Standard will not meet the design intent identified within the Specific Plan and will detract from the overall architectural, landscaping and site planning integrity of the proposed development.***

As discussed in detail in the staff report and herein, the Current Proposed Project does not meet the design intent of the TASP and detracts from the overall architectural and landscaping of the TASP and proposed development.

*f. **The deviation from the Transit Area Specific Plan Standard will not allow for a public benefit not otherwise obtainable through the strict application of the Zoning Standard.***

As discussed in detail in the staff report and herein, the Current Proposed Project does not provide any public benefit to the City.

Section 5: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-036 recommending the City Council deny **MAJOR TENTATIVE MAP NO. MT13-0006, SITE DEVELOPMENT PERMIT NO. SD13-0012 AND CONDITIONAL USE PERMIT NO. UP13-0011 based on the Findings herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on November 24, 2014.

Sudhir Mandal
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 November 24, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella			✓	
John Luk	✓			
Rajeev Madnawat			✓	
Sudhir Mandal	✓			
Demetress Morris	✓			
Gurdev Sandhu	✓			

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Garry Barbadillo			✓	
Hon Lien (alternate)	✓			