List of Attachments for Public Hearing No. 1

Conduct a Public Hearing and Introduce an Ordinance Approving a Development Agreement Vesting and Deferring Transit Area Specific Plan Fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge (Staff Contact: Steve McHarris, 408-586-3273)

Attachments:

1-A.	Ordinance No 38.819 Approving A Development Agreement by and between the City of Milpitas & SCS Development Co.; Amalfi Milpitas, LLC; and DPD Investments, LLC
1-B.	Development Agreement, Exhibit A to Ordinance No. 38.819
1-C.	Amalfi I Legal Description
1-D.	Amalfi II Legal Description
1-E.	The Edge Legal Description
1-F.	Planning Commission Staff Report – 01/14/2015
1-G.	Planning Commission Meeting Minutes – 01/14/2015
1-H.	Adopted Planning Commission Resolution No. 15-003

REGULAR **1-A**

NUMBER: **38.819**

TITLE: **AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MILPITAS AND SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND DPD INVESTMENTS, LLC, RELATING TO THE CITATION I (ALMALFI I AND AMALFI II) AND CITATION II (THE EDGE) RESIDENTIAL AND MIXED-USE DEVELOPMENT PROJECTS**

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 Milpitas General Plan and Transit Area Specific Plan land use designation for the area that is subject to the proposed Development Agreement (the "Agreement") is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the Subject Project is consistent with the General Plan and Transit Area Specific Plan; and

WHEREAS, SCS Development Company, Amalfi Milpitas, LLC and DPD Investments, LLC (collectively "Developer") proposes to develop on certain Subject Property more particularly described in the Agreement, consistent with the General Plan, Transit Area Specific Plan and the Development Approvals set forth in the Agreement, the "Amalfi I Building" consisting of up to three hundred and seventy-eight (378) multi-family residential units and "Amalfi II Building" consisting of up to two hundred sixty (260) multi-family residential units (collectively "Citation I Project"), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the "Edge Project" or "Citation II Project") (collectively, all the "Project"), all as more specifically set forth in the Agreement; and

WHEREAS, Developer requests a Development Agreement to enable and assure phased and orderly development of the Project on the subject Property site; and

WHEREAS, consistent with the information contained in the Agreement:

a. Development of the Project as set forth in the Agreement is consistent with the General Plan and all applicable specific and area plans and policies, as amended;

b. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City;

c. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;

d. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement, and Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and

e. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

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 herein are found to be true and correct and are incorporated herein by reference.

SECTION 2. AUTHORITY

This Ordinance is adopted under the authority of California Government Code Section 65868 and pursuant to the provisions of the City Council Resolution No. 6642 (the "Enabling Resolution"), both of which provide for the ability of City to adopt development agreements and set forth procedures and requirements for the consideration of those agreements.

SECTION 3. INCORPORATION BY REFERENCE

This Ordinance incorporates by reference as though fully set forth herein that certain "Development Agreement By and Between the City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC" relative to the Development of the Citation I (Amalfi I and Amalfi II) and the Citation II (the Edge) multifamily residential and mixed-use projects in the City of Milpitas (the "Agreement"), the substantive form of which is attached hereto as Exhibit "A."

SECTION 4. ENVIRONMENTAL IMPACTS

The environmental impacts of the residential development project described within the Agreement were disclosed, analyzed and evaluated as a part of that certain Final Environmental Impact Report prepared for the Transit Area Specific Plan (the "EIR" State Clearinghouse No. 2006032091) in conformance with the California Environmental Quality Act of 1970, together with state and local guidelines implementing CEQA, all as amended from time to time, which Project Environmental Clearance was considered by the Planning Commission of the City Council City of Milpitas and was considered and approved by the City Council prior to taking any approval actions on this Ordinance.

SECTION 5. FINDINGS ADOPTED

Based upon the foregoing facts, findings, and conclusions, and as required by the Enabling Resolution, the City Council hereby adopts the following as its findings based on the record:

1. The proposed Developer Project development is consistent with the General Plan, as amended, and all applicable specific or area plans of the City.

2. The proposed Developer Project development should be encouraged in order to meet important economic, social, environmental or planning goals of the City.

3. The proposed Agreement will facilitate the development of the Project on the Subject Property in the manner proposed in the Agreement.

4. The proposed Developer Project development will make a substantial contribution to the economic development of the City in that:
    a. Developer will incur unusually substantial costs to provide public improvements, facilities or services, including without limitation an extraordinary contribution towards housing in the City, all as more specifically described in the Agreement, from which the public will benefit, and Developer has made a commitment to a very high

standard of quality for the Project and has agreed to development standards beyond that required by applicable existing laws.

b. The Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

5. The proposed Agreement is consistent with the provisions of the Enabling Resolution and is in the public interest.

SECTION 6. APPROVAL

The City Council hereby approves the proposed Agreement in substantially the form attached hereto as EXHIBIT "A" and hereby authorizes and directs the City Manager to execute the Agreement, substantially in the form attached hereto as EXHIBIT "A," on behalf of the City as soon as this ordinance becomes effective.

SECTION 7. 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 8. EFFECTIVE DATE AND POSTING

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

EXHIBIT A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Milpitas
Department of Planning and Neighborhood Services
455 East Calaveras Boulevard, Second Floor
Milpitas, CA 95035

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MILPITAS

AND

SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND

DPD INVESTMENTS, LLC

REGARDING

THE CITATION I (AMALFI I AND AMALFI II) AND CITATION II (THE EDGE)
RESIDENTIAL AND MIXED–USE DEVELOPMENT PROJECTS

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Milpitas, a California municipal corporation, (hereinafter "**City**"), and SCS DEVELOPMENT CO., a California corporation, Amalfi Milpitas, LLC, a California limited liability company, DPD Investments, LLC, a California limited liability company, and all of their successors and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq*. of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

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

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq*. ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its City Council Resolution No. 6642 adopted on May 6, 1997 ("**Enabling Resolution**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Resolution.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. City Council Resolution No. 7830 adopted on February 17, 2009 approving Major Tentative Map No. MT08-0004, Site Development Permit No. SD08-0002, and Conditional Use Permit No. UP08-0049 for the development of up to Six Hundred and Thirty-Nine (639) residential units located near 1200 Piper Drive within the Piper-Montague Subdistrict of the Transit Area Specific Plan.

2. City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("Citation I Project"). The Citation I Project includes the "Amalfi I Building" consisting of Three Hundred and Seventy-Eight (378) apartment units, "Amalfi II Building" consisting of Two Hundred and Sixty (260) apartment units, and ninety-four (94) townhomes. The ninety-four (94) townhomes is under construction on the Effective Date and is not a part of this Agreement; and

3. City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit

No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway (the “Edge Project” or “Citation II Project”).

E. For the reasons recited herein and in the accompanying staff report, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 14, 2015, following a duly noticed and conducted public hearing, the Milpitas Planning Commission ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Resolution, adopted Resolution **No. 15-003** that affirmed the CEQA exemption for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 3, 2015, following a duly noticed and conducted public hearing, the Milpitas City Council ("**City Council**") introduced Ordinance No. 38.819, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("**Approving Ordinance**"). The City adopted the Approving Ordinance on February 17, 2015, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Existing Approvals**" shall have that meaning set forth in Recital Paragraph D of this Agreement.

(2) "**Existing City Laws**" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(3) “**Impact Fees**” shall mean those fees, excluding Transit Area Specific Plan Development Impact Fee, imposed so that developments bear a proportionate share of the **cost of** public facilities and service improvements that are reasonably related to the impacts and burdens of the

Project, adopted pursuant to Milpitas Municipal Code Title VIII, Chapter 4 and California Government Code Section 66001 et seq.

(4) "**Legal Effect**" shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(5) "**New City Laws**" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.

(6) "**Project**" shall mean the developments as described in (i) City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("TASP"), excluding the ninety-four (94) townhomes residential units as further depicted in **Exhibit A**; and (ii) City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway. Any reference in this Agreement to the "Project" shall mean and include the "Property"; provided however, that the Project to which this Agreement applies may be only occupying a part of the Property and may be only a phase of a larger development on the Property.

(7) "**Project Approvals"** shall mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(8) "**Property**" shall mean that certain real property consisting of approximately 12.6 acres located within the City, as more particularly described and shown on ***Exhibit A*** to this Agreement.

(9) "**Subsequent Approvals**" a**nd "Subsequent Approval**" shall mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any subdivision document.

(10) "**Transit Area Specific Plan Development Impact Fee**" shall mean the impact fee established by the City Council as set forth in City Council Resolution No. 7778 adopted on September 2, 2008, as may subsequently be updated or amended, to pay for public infrastructure within the Transit Area Specific Plan Area.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term.

(a) The term of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated as provided in this Agreement) until the date of March 20, 2020 ("**Initial Term**"), provided the Parties may mutually agree to extend this Agreement for an additional five (5) years by written amendment to this Agreement ("**Extended Term**").

ARTICLE 2

RIGHTS AND OBLIGATIONS

2.01 Transit Area Specific Plan Development Impact Fees and Continued and Future Obligations.

(a) During the Initial Term or Extended Term of this Agreement, Developer shall pay the Transit Area Specific Plan Development Impact Fee for each residential unit located within the Project to the City as follows:

(1) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi I Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) for each residential units constructed in the Amalfi I Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Almalfi I Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi I Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(2) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi II Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) for each residential units constructed in the Amalfi II Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Almalfi II Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi II Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(3) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in the Edge Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) for each residential units constructed in the Edge Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars ($29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Edge Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Edge Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(b) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to the Transit Area Specific Plan Development Fee amount for the Project in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law. Further, Developer agrees acknowledges that other than the vesting of the Transit Area Specific Plan Development Impact Fee for the Project as set forth in Section 2.01(a) above, this Agreement shall ***not*** vest any **Existing Approvals, Existing City Laws, Impact Fees, New City Laws, Project Approvals, Subsequent Approvals**, or shall in any way whatsoever vest any other rights, interests, fees, laws, policies or otherwise related to the Project.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the then currently adopted California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis and the plan check application has not expired.

2.03 Timing of Development.

(a) Securing Building Permits and Beginning Construction. The Amalfi I Building is under construction as of the Effective Date of this Agreement. In exchange for the vesting of the Transit Area Specific Plan Development Impact Fee and public benefit to the City to enter into this Agreement, Developer agrees to secure building permits, begin construction, and receive Certificate of Occupancy (temporary or final) for all residential units and commercial-retail space located in the Edge Building prior to receiving Certificate of Occupancy (temporary or final) for any residential unit located in the Amalfi II Building.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, Developer shall comply with the City's Municipal Code, rules, regulations, policies, guidelines or customary practice for such Subsequent Approvals. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by law.

3.02 Amendments.

Any request by Developer for an amendment or modification to this Agreement shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification application is deemed complete.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) **A**ny failure by Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the City (unless such period is extended by written mutual consent) ("Notice of Default"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. If the alleged failure is cured, then no Default shall exist and the City shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the City may exercise any of the remedies available under law.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Resolution of Disputes.

(a) In the event Developer is in Default under the terms of this Agreement and fails to cure as set forth in Section 4.01 above, the City may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided under law; (iii) pursue judicial remedies as provided for under law; and/or (iv) terminate this Agreement.

4.03 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.04 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any proposed assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be subject to approval by the City Attorney.

(b) **Covenants Run with the Land.** This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs,

successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.05 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara County Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's

contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the sole active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence $2,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss $2,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this Agreement and before permitting any Contractor or Subcontractors to perform work under this Agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Manager

455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3003

With a Copy To: City Attorney
455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3041

If to Developer: Stephen C. Schott, President
SCS Development Co.
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

Stephen C. Schott, Manager
Amalfi Milpitas, LLC
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

Stephen C. Schott, Manager
DPD Investments, LLC
404 Saratoga Ave. Suite 100
Santa Clara, CA. 95050
(408) 985-6000

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address.

(g) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(h) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(i) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(j) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(k) Signatures and Joint Liability. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement

may be executed in multiple originals, each of which is deemed to be an original. Developer, individually, agrees and acknowledges, that each Developer Party is jointly and severally responsible and liable for all terms, conditions and obligations under this Agreement.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(m) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Project and Plat Maps.

5.02 **Limitations on Time to Challenge Validity of this Agreement**. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and effect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 **Notice of 90-day Right to Protest**. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MILPITAS:

_____
Tom Williams
City Manager

Date: _____

DEVELOPER:

SCS Development Co.

_____
Stephen C. Schott, President

Amalfi Milpitas, LLC

_____
Stephen C. Schott, Manager

DPD Investments, LLC

_____
Stephen C. Schott, Manager

Approved as to Form:

_____

_____
Michael J. Ogaz
City Attorney

Date: _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT AND PLAT MAPS

Legal Description

1-C

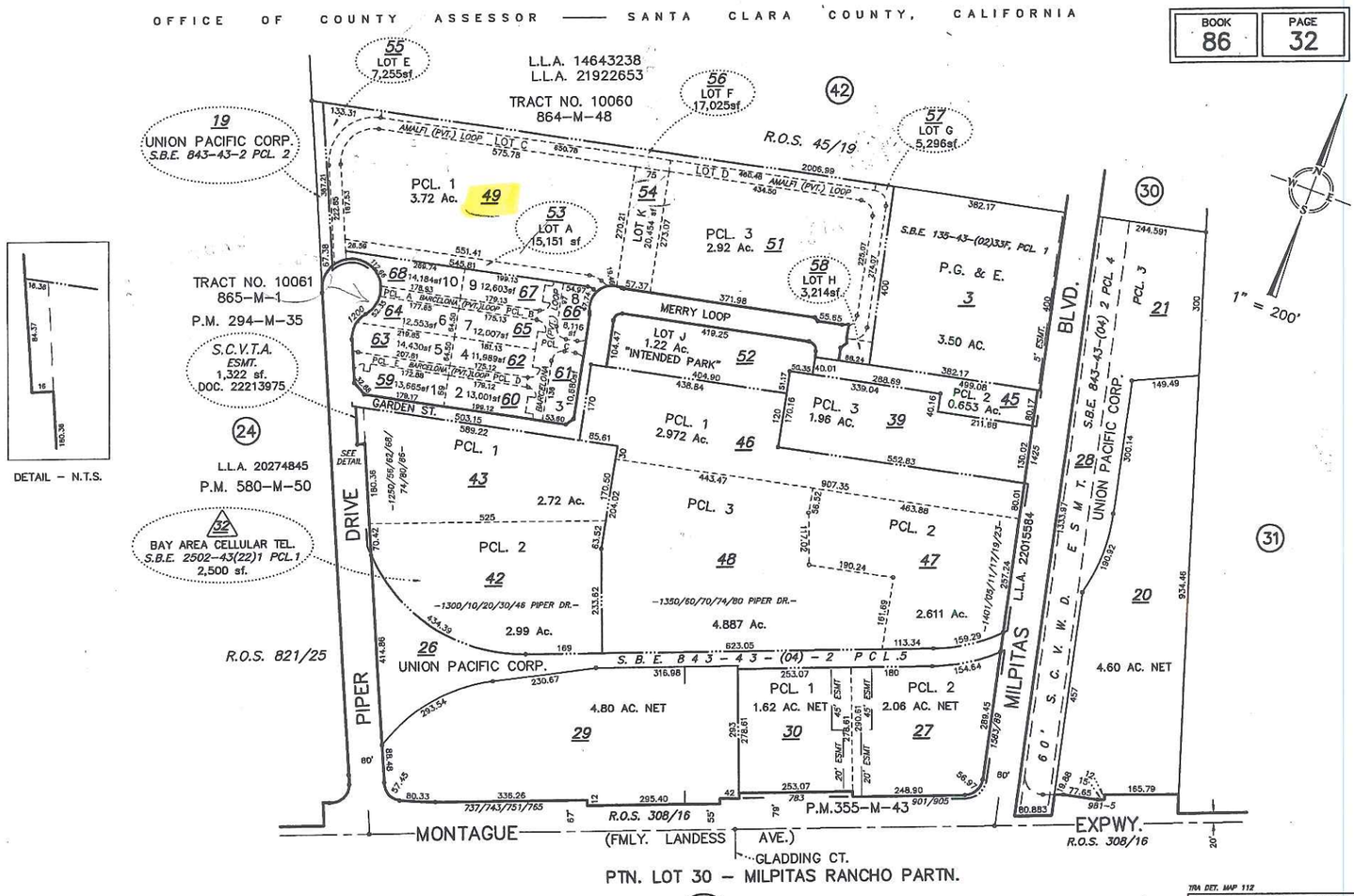
Amalfi 1

Parcel 1 of Tract 10060 filed the 2nd day of October, 2013 in book of maps 864 at pages 48-53 series numbers 22404820 in Santa Clara County.

A.P.N. 86-32-49

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
86	32



PTN. LOT 30 – MILPITAS RANCHO PARTN.

BOOK 92

TRA DET. MAP 112

LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2014–2015

CONFORMED COPY: This document has not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS IN FEE FOR PUBLIC USE FOR ROADWAY PURPOSES, OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. GARDEN STREET AND MERRY LOOP

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS AN EASEMENT FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).

2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).

THE ABOVE MENTIONED EASEMENTS (PSUE & EVAE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

WE ALSO HEREBY RETAIN FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS, AND TENANTS WITH MAINTENANCE THEREOF BY THEIR LOT OWNERS IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS SUBDIVISION THE FOLLOWING:

1. LOTS 'C' AND 'D' FOR PRIVATE STREET PURPOSES. PRIVATE STREET IS TO BE KNOWN AS AMALFI LOOP.

THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

PARCELS 1 AND 3 ARE FOR CONDOMINIUM PURPOSES (545 UNITS).

PARCEL 2 TO BE RETAINED BY OWNER FOR FUTURE SUBDIVISION.

LOT J TO BE RETAINED BY THE OWNER AND DEDICATED TO THE CITY OF MILPITAS FOR PARK PURPOSES BY SEPARATE INSTRUMENT.

LOTS A, E, F, G, H, & K ARE TO BE RETAINED BY OWNER.

OWNER:
SCS DEVELOPMENT CO. A CALIFORNIA CORPORATION

BY: Stephen E. Schott

NAME: Stephen E. Schott

TITLE: Vice President

ACKNOWLEDGMENT CERTIFICATE (OWNER'S)

STATE OF California)
COUNTY OF Santa Clara)

ON September 10, 2013, BEFORE ME, Pamela M. Takeshita, A NOTARY PUBLIC, PERSONALLY APPEARED Stephen E. Schott, 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 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:

SIGNATURE: Pam Tak

NAME (PRINT): Pamela M. Takeshita

PRINCIPAL COUNTY OF BUSINESS: Santa Clara

MY COMMISSION NUMBER: 1924873

MY COMMISSION EXPIRES: March 8, 2015

SURVEYOR'S STATEMENT

I, CHRISTOPHER S. HARMISON, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION IN JUNE 2011, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SCS DEVELOPMENT CO., IN MARCH 2008, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE MONUMENTS WILL OCCUPY THE POSITIONS INDICATED BY DECEMBER 2014, AND ARE OF THE CHARACTER INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: 9-9-2013

Christopher S. Harmison
CHRISTOPHER S. HARMISON
L.S. NO. 7176

LICENSED LAND SURVEYOR CHRISTOPHER S. HARMISON 7176 STATE OF CALIFORNIA

RECORDER'S STATEMENT

FILED THIS 2nd DAY OF October, 2013 AT 2:19 PM. IN BOOK OF MAPS 804, AT PAGES 48-53, SERIES NUMBERS 22404820 AT THE REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY.

FEE $18—

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER

BY: Jane Alison
DEPUTY

804/48/53

1543-00

SHEET 1 OF 6

22404820

48

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922854 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

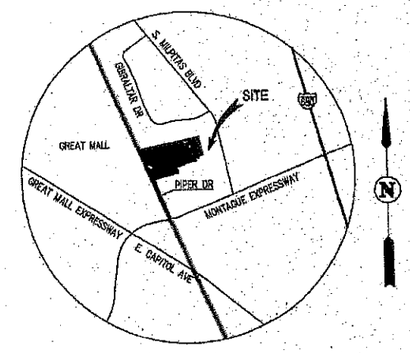
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013



VICINITY MAP

NOT TO SCALE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: _____ DATE: 9/27/2013

EBRAHIM SOHRABI
PRINCIPAL CIVIL ENGINEER, CITY OF MILPITAS
R.C.E. NO. 42982, EXPIRATION DATE MARCH 31, 2014

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: _____ DATE: 9/27/13

ROBERT S. GULETZ
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 24184
EXPIRATION DATE: DECEMBER 31, 2013

REGISTERED PROFESSIONAL ENGINEER ROBERT S. GULETZ 24184 EXP. CIVIL STATE OF CALIFORNIA

CITY CLERK'S CERTIFICATE

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON Sept. 17, 2013, HAS TAKEN THE FOLLOWING ACTIONS:

1. APPROVED THIS TRACT MAP NO. 10060
2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
   1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
   2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
   3. GARDEN STREET AND MERRY LOOP IN FEE.

DATED: 9/30/2013 _____

MARY LAVELLE
CITY CLERK, CITY OF MILPITAS

864/49/53

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

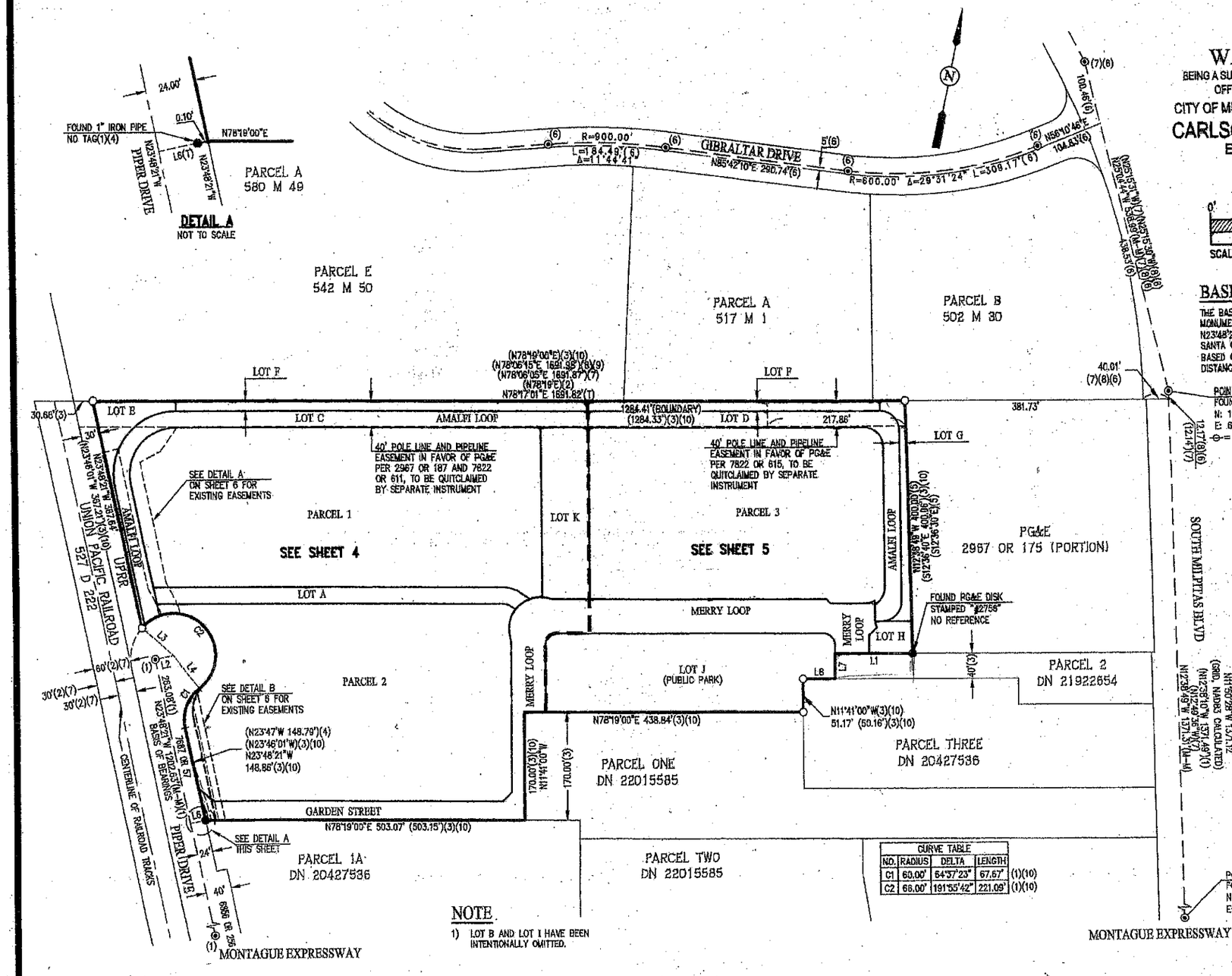
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

0' 100' 200' 300' 400'

SCALE: 1"=100'



BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

REFERENCES

(#) INDICATES REFERENCE NUMBER.
(1) PARCEL MAP (580 M 49)
(2) RECORD OF SURVEY (79 M 43)
(3) LOT LINE ADJUSTMENT (DN 14843238) SEE ALSO DEEDS DN 14835097 AND DN 18592170
(4) PARCEL MAP (294 M 35)
(5) DEED (2967 OR 175)
(6) PARCEL MAP (502 M 30)
(7) RECORD OF SURVEY (432 M 30)
(8) PARCEL MAP (484 M 13)
(9) CITY OF MILPITAS BENCHMARK SYSTEM, DATED FEBRUARY 21, 2002.
(10) LOT LINE ADJUSTMENT (DN 21922654)

LEGEND

SEE SHEETS 4 AND 5

LINE TABLE			
NO.	BEARING	LENGTH	
L1	N78°17'01"E	122.24'	(S78°19'00"W 122.37')(10)
L2	N66°54'48"E(R)	30.00'	
L3	N61°06'40"W(R)	66.00'	(N61°04'20"W(R))(10)
L4	N49°10'58"W(R)	66.00'	(1)
L6	N66°11'39"E	24.00'	(23.93')(1)
L7	N11°41'00"W	40.00'	(10)
L8	N78°17'01"E	50.35'	(S78°19'00"W)(10)

CURVE TABLE				
NO.	RADIUS	DELTA	LENGTH	
C1	60.00'	64°57'23"	67.67'	(1)(10)
C2	66.00'	191°55'42"	221.09'	(1)(10)

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

SHEET 3 OF 6

804

50/53

50

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

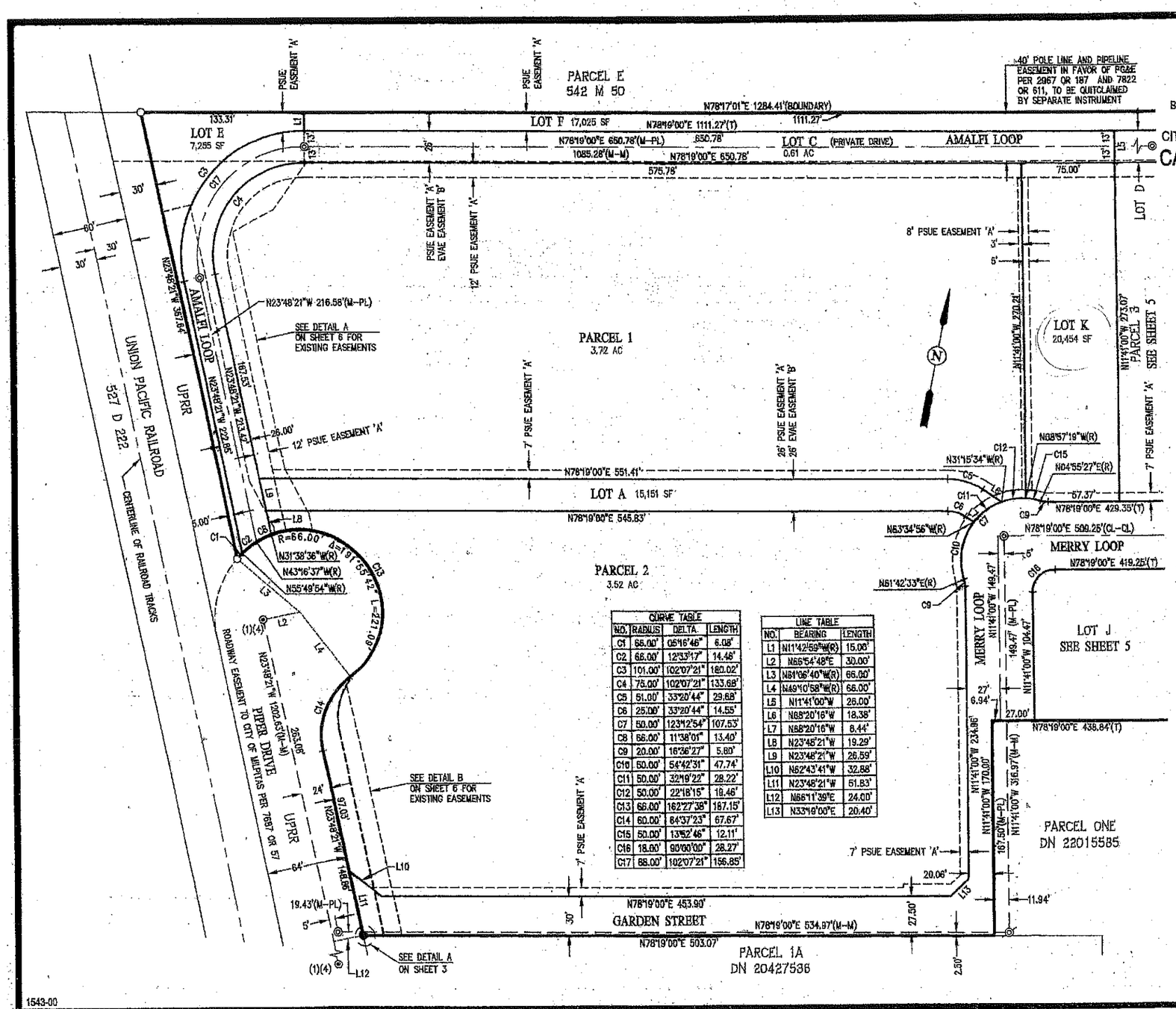
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

0' 50' 100' 150' 200'

SCALE: 1"=50'



CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	12°33'17"	14.46'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	51.00'	33°20'44"	29.68'
C6	25.00'	33°20'44"	14.55'
C7	50.00'	123°12'54"	107.53'
C8	66.00'	11°38'01"	13.40'
C9	20.00'	16°36'27"	5.80'
C10	50.00'	54°42'31"	47.74'
C11	50.00'	32°19'22"	28.22'
C12	50.00'	22°18'15"	19.46'
C13	66.00'	162°27'38"	187.15'
C14	60.00'	64°37'23"	67.67'
C15	50.00'	13°52'46"	12.11'
C16	18.00'	90°00'00"	28.27'
C17	88.00'	102°07'21"	156.85'

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°42'59"W(R)	15.06'
L2	N66°54'48"E	30.00'
L3	N81°06'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L5	N11°41'00"W	26.00'
L6	N68°20'16"W	18.38'
L7	N68°20'16"W	8.44'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N52°43'41"W	32.88'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'
L13	N33°19'00"E	20.40'

BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

LEGEND

- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- EASEMENT LINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- FOUND MONUMENT, AS NOTED
- SET 5/8" REBAR AND CAP, LS 7176
- SET STANDARD STREET MONUMENT, LS 7176
- STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
- PSUE PUBLIC SERVICE UTILITY EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- AC ACRE
- SF SQUARE FEET
- SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- (#) RECORD DATA
- (CL-CL) CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

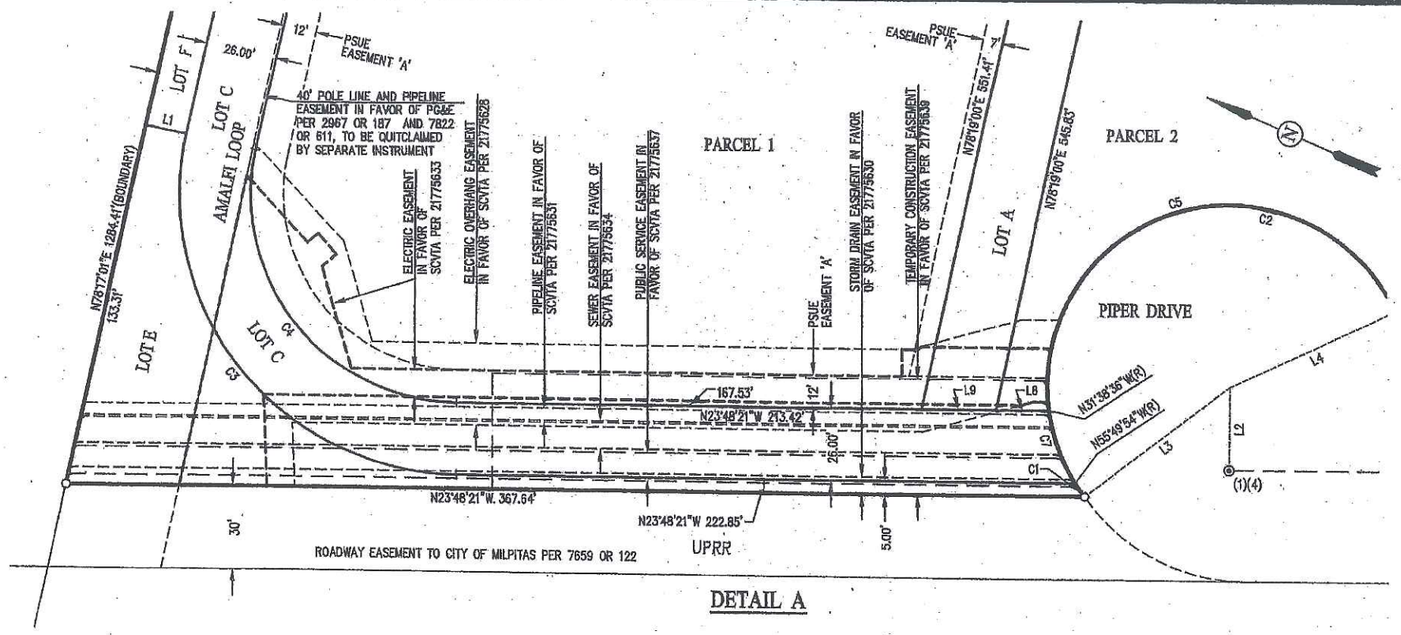
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

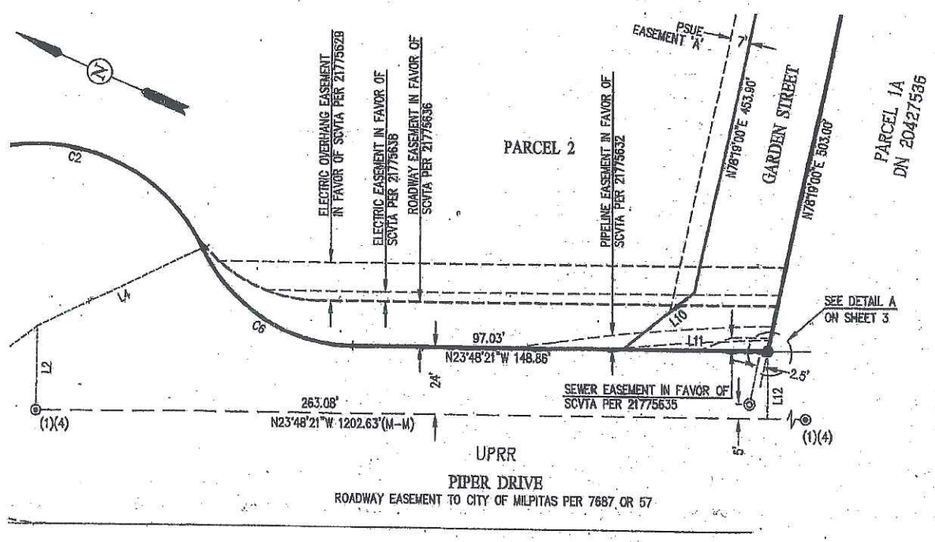
JUNE 2013

0' 30' 60' 90' 120'

SCALE: 1"=30'



DETAIL A



DETAIL B

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	191°55'42"	221.09'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	66.00'	162°27'38"	187.14'
C6	60.00'	64°37'23"	67.67'
C7	66.00'	24°11'18"	27.86'

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°42'59"W	15.00'
L2	N66°54'48"E(R)	30.00'
L3	N61°05'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N62°43'41"W	32.88'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'

BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

LEGEND

- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- EASEMENT LINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- FOUND MONUMENT, AS NOTED
- SET 5/8" REBAR AND CAP, LS 7176
- SET STANDARD STREET MONUMENT, LS 7176
- STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
- PSUE PUBLIC SERVICE UTILITY EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- AC ACRE
- SF SQUARE FEET
- SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- (#) RECORD DATA
- (CL-CL) CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

804

53

53

53

Legal Description

1-D

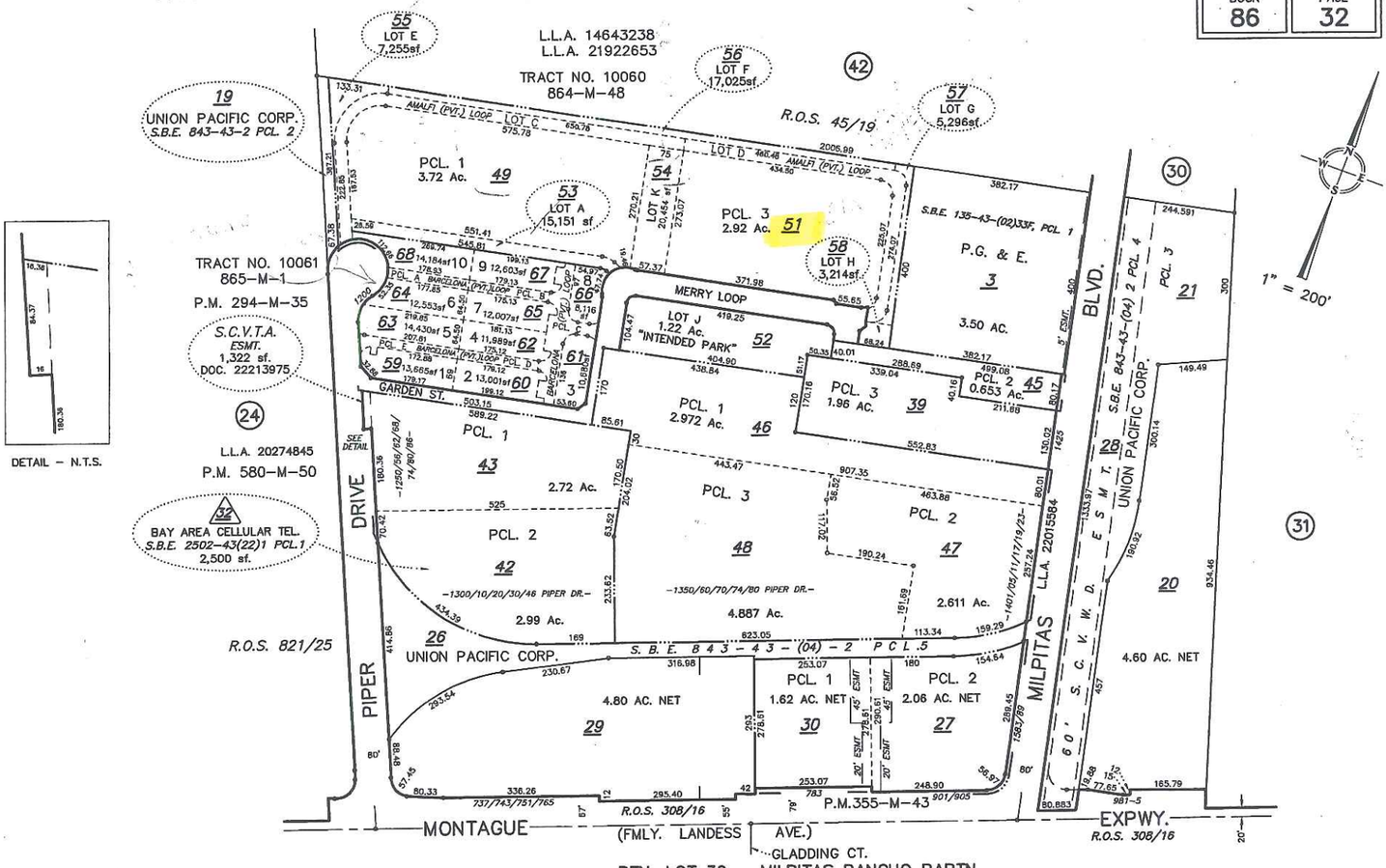
Amalfi II

Parcel 3 of Tract 10060 filed the 2nd day of October, 2013 in book of maps 864 at pages 48-53 series numbers 22404820 in Santa Clara County.

A.P.N. 86-32-51

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
86	32



PTN. LOT 30 – MILPITAS RANCHO PARTN.

BOOK 92

TRA DET. MAP 112

LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2014–2015

CONFORMED COPY: This document has not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS IN FEE FOR PUBLIC USE FOR ROADWAY PURPOSES, OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. GARDEN STREET AND MERRY LOOP

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS AN EASEMENT FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).

2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).

THE ABOVE MENTIONED EASEMENTS (PSUE & EVAE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

WE ALSO HEREBY RETAIN FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS, AND TENANTS WITH MAINTENANCE THEREOF BY THEIR LOT OWNERS IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS SUBDIVISION THE FOLLOWING:

1. LOTS 'C' AND 'D' FOR PRIVATE STREET PURPOSES. PRIVATE STREET IS TO BE KNOWN AS AMALFI LOOP.

THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

PARCELS 1 AND 3 ARE FOR CONDOMINIUM PURPOSES (545 UNITS).

PARCEL 2 TO BE RETAINED BY OWNER FOR FUTURE SUBDIVISION.

LOT J TO BE RETAINED BY THE OWNER AND DEDICATED TO THE CITY OF MILPITAS FOR PARK PURPOSES BY SEPARATE INSTRUMENT.

LOTS A, E, F, G, H, & K ARE TO BE RETAINED BY OWNER.

OWNER:
SCS DEVELOPMENT CO. A CALIFORNIA CORPORATION

BY: Stephen E. Schott

NAME: Stephen E. Schott

TITLE: Vice President

ACKNOWLEDGMENT CERTIFICATE (OWNER'S)

STATE OF California)
COUNTY OF Santa Clara)

ON September 10, 2013, BEFORE ME, Pamela M. Takeshita, A NOTARY PUBLIC, PERSONALLY APPEARED Stephen E. Schott, 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 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:

SIGNATURE: Pam Takeshita

NAME (PRINT): Pamela M. Takeshita

PRINCIPAL COUNTY OF BUSINESS: Santa Clara

MY COMMISSION NUMBER: 1924873

MY COMMISSION EXPIRES: March 8, 2015

SURVEYOR'S STATEMENT

I, CHRISTOPHER S. HARMISON, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION IN JUNE 2011, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SCS DEVELOPMENT CO., IN MARCH 2008, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE MONUMENTS WILL OCCUPY THE POSITIONS INDICATED BY DECEMBER 2014, AND ARE OF THE CHARACTER INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: 9-9-2013

Christopher S. Harmison
CHRISTOPHER S. HARMISON
L.S. NO. 7176

LICENSED LAND SURVEYOR CHRISTOPHER S. HARMISON 7176 STATE OF CALIFORNIA

RECORDER'S STATEMENT

FILED THIS 2nd DAY OF October, 2013 AT 2:19 PM, IN BOOK OF MAPS 804, AT PAGES 48-53, SERIES NUMBERS 22404820 AT THE REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY.

FEE $18—

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER

BY: June Alicia
DEPUTY

804/48/53

1543-00

SHEET 1 OF 6

22404820

48

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

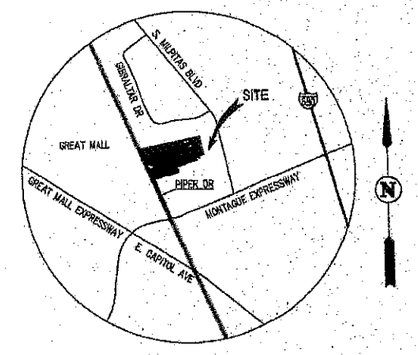
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013



VICINITY MAP

NOT TO SCALE

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP; THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT THIS SUBDIVISION COMPLIES WITH PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

SIGNED: _____ DATE: 9/27/2013

EBRAHIM SOHRABI
PRINCIPAL CIVIL ENGINEER, CITY OF MILPITAS
R.C.E. NO. 42982, EXPIRATION DATE MARCH 31, 2014

CITY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

SIGNED: _____ DATE: 9/27/13

ROBERT S. GULETZ
ACTING CITY SURVEYOR, CITY OF MILPITAS
HARRIS & ASSOCIATES
R.C.E. NO. 24184
EXPIRATION DATE: DECEMBER 31, 2013

REGISTERED PROFESSIONAL ENGINEER ROBERT S. GULETZ 24184 EXP. CIVIL STATE OF CALIFORNIA

CITY CLERK'S CERTIFICATE

I, MARY LAVELLE, CITY CLERK OF THE CITY OF MILPITAS, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS GOVERNING BODY OF SAID CITY AT A REGULAR MEETING HELD ON Sept. 17, 2013, HAS TAKEN THE FOLLOWING ACTIONS:

1. APPROVED THIS TRACT MAP NO. 10060
2. ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC THOSE PARCELS OF LAND OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF OFFER OF DEDICATION TO WIT:
   1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
   2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EVAE).
   3. GARDEN STREET AND MERRY LOOP IN FEE.

DATED: 9/30/2013 _____

MARY LAVELLE
CITY CLERK, CITY OF MILPITAS

804/49/53

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

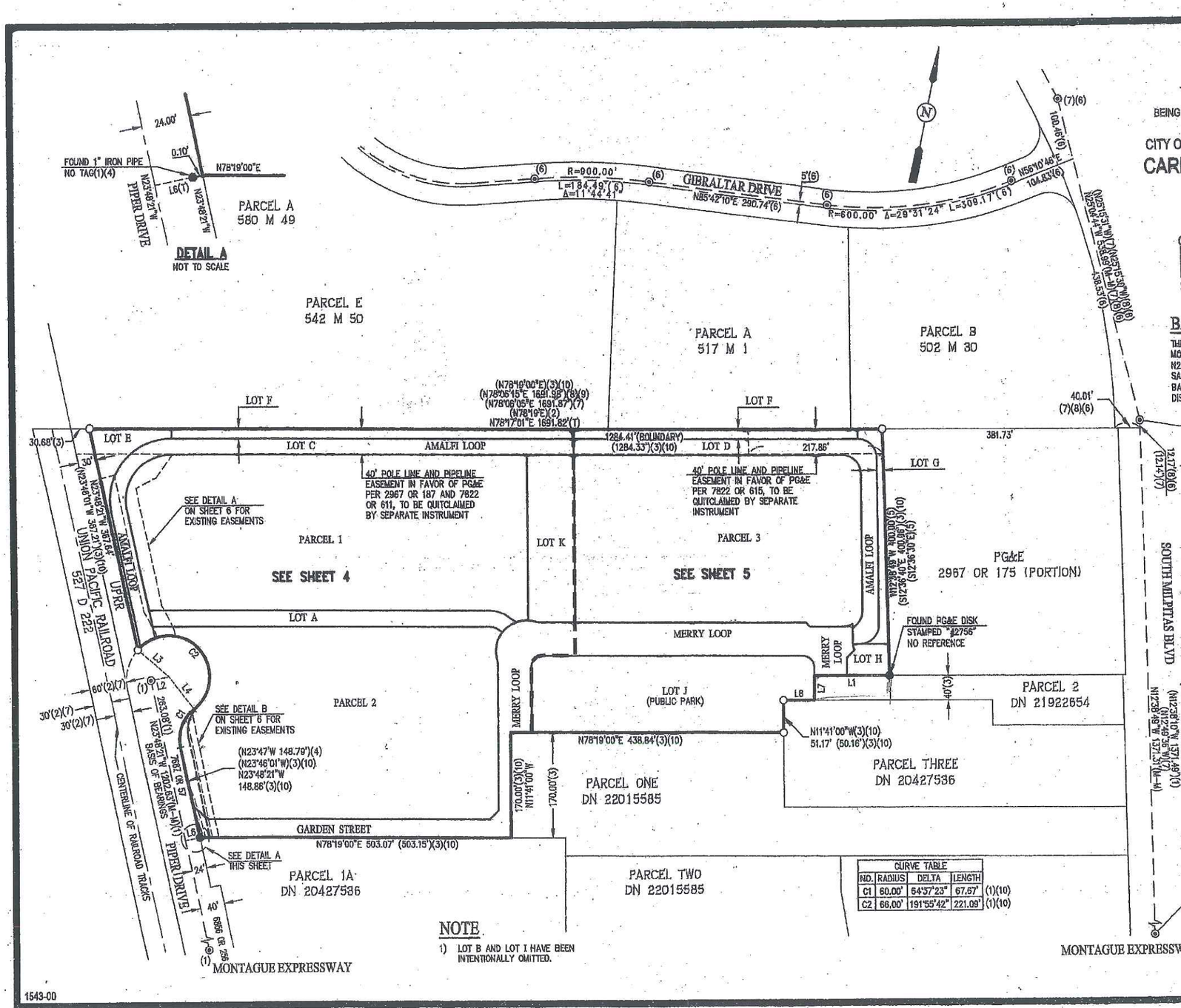
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

0' 100' 200' 300' 400'

SCALE: 1"=100'



BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

REFERENCES

(#) INDICATES REFERENCE NUMBER.
(1) PARCEL MAP (580 M 49)
(2) RECORD OF SURVEY (79 M 43)
(3) LOT LINE ADJUSTMENT (DN 14843238) SEE ALSO DEEDS DN 14835097 AND DN 18592170
(4) PARCEL MAP (294 M 35)
(5) DEED (2967 OR 175)
(6) PARCEL MAP (502 M 30)
(7) RECORD OF SURVEY (432 M 30)
(8) PARCEL MAP (484 M 13)
(9) CITY OF MILPITAS BENCHMARK SYSTEM, DATED FEBRUARY 21, 2002.
(10) LOT LINE ADJUSTMENT (DN 21922654)

LEGEND

SEE SHEETS 4 AND 5

LINE TABLE

NO.	BEARING	LENGTH	
L1	N78°17'01"E	122.24'	(S78°19'00"W 122.37')(10)
L2	N66°54'46"E(R)	30.00'	
L3	N61°06'40"W(R)	66.00'	(N61°04'20"W(R))(10)
L4	N49°10'58"W(R)	66.00'	(1)
L6	N66°11'39"E	24.00'	(23.93')(1)
L7	N11°41'00"W	40.00'	(10)
L8	N78°17'01"E	50.35'	(S78°19'00"W)(10)

CURVE TABLE

NO.	RADIUS	DELTA	LENGTH	
C1	60.00'	64°37'23"	67.67'	(1)(10)
C2	66.00'	191°55'42"	221.09'	(1)(10)

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

SHEET 3 OF 6

804/50/53

50

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

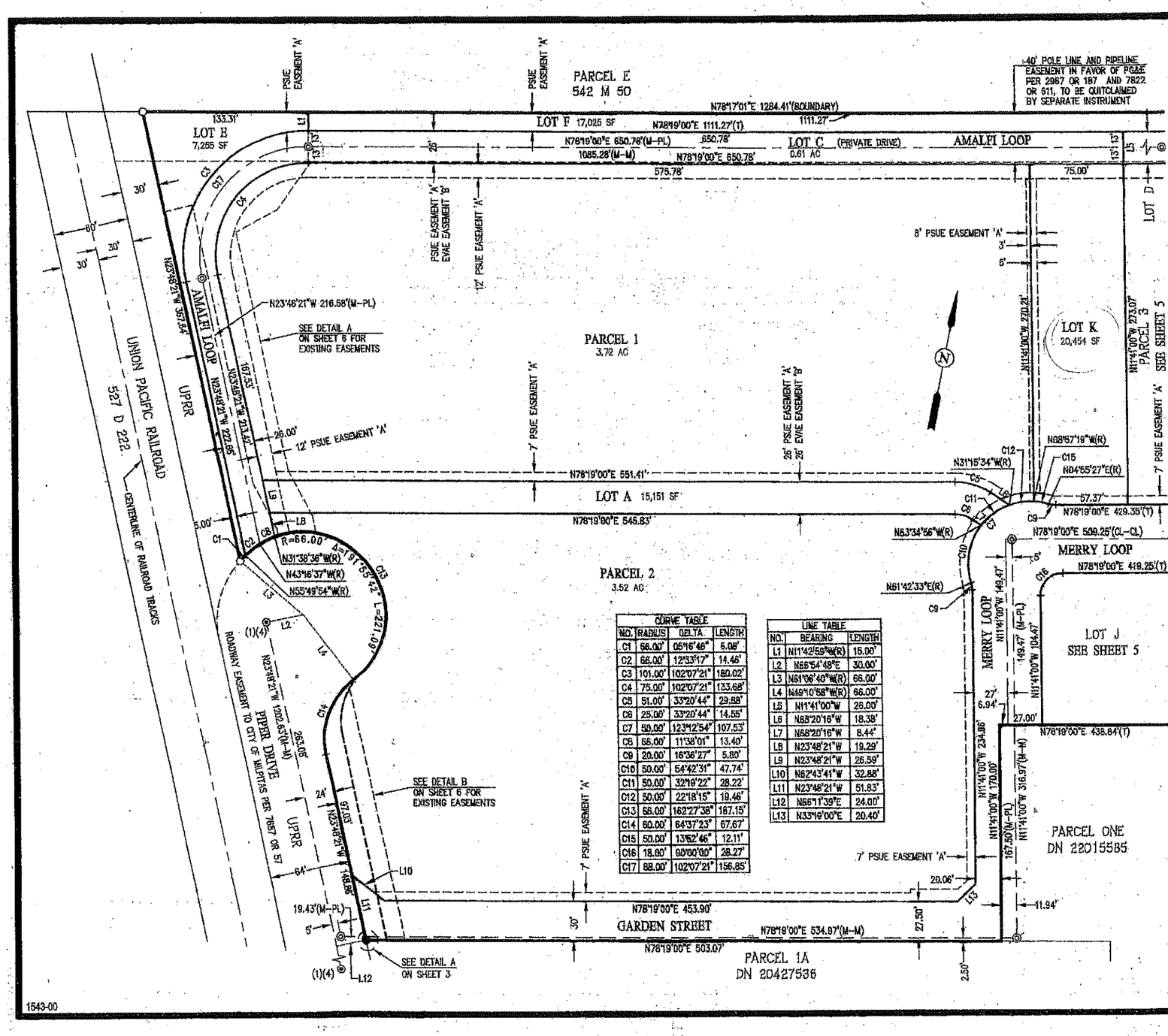
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

JUNE 2013

0' 50' 100' 150' 200'

SCALE: 1"=50'



CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	12°33'17"	14.46'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	51.00'	33°20'44"	29.68'
C6	25.00'	33°20'44"	14.55'
C7	50.00'	123°12'54"	107.53'
C8	66.00'	11°38'01"	13.40'
C9	20.00'	16°36'27"	5.80'
C10	50.00'	54°42'31"	47.74'
C11	50.00'	32°19'22"	28.22'
C12	50.00'	22°18'15"	19.46'
C13	66.00'	162°27'38"	187.15'
C14	60.00'	64°37'23"	67.67'
C15	50.00'	13°52'46"	12.11'
C16	18.60'	90°00'00"	28.27'
C17	88.00'	102°07'21"	156.85'

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°42'59"W(R)	15.00'
L2	N65°54'48"E	30.00'
L3	N61°06'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L5	N11°41'00"W	28.00'
L6	N68°20'16"W	18.38'
L7	N68°20'16"W	8.44'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N62°43'41"W	32.88'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'
L13	N33°19'00"E	20.40'

BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

LEGEND

- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- EASEMENT LINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- FOUND MONUMENT, AS NOTED
- SET 5/8" REBAR AND CAP, LS 7176
- SET STANDARD STREET MONUMENT, LS 7176
- STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
- PSUE PUBLIC SERVICE UTILITY EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- AC ACRE
- SF SQUARE FEET
- SCVTA SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- (#) RECORD DATA
- (CL-CL) CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

TRACT 10060

FOR CONDOMINIUM PURPOSES

WAUKESHA PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF DOCUMENT NO. 21922654 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.

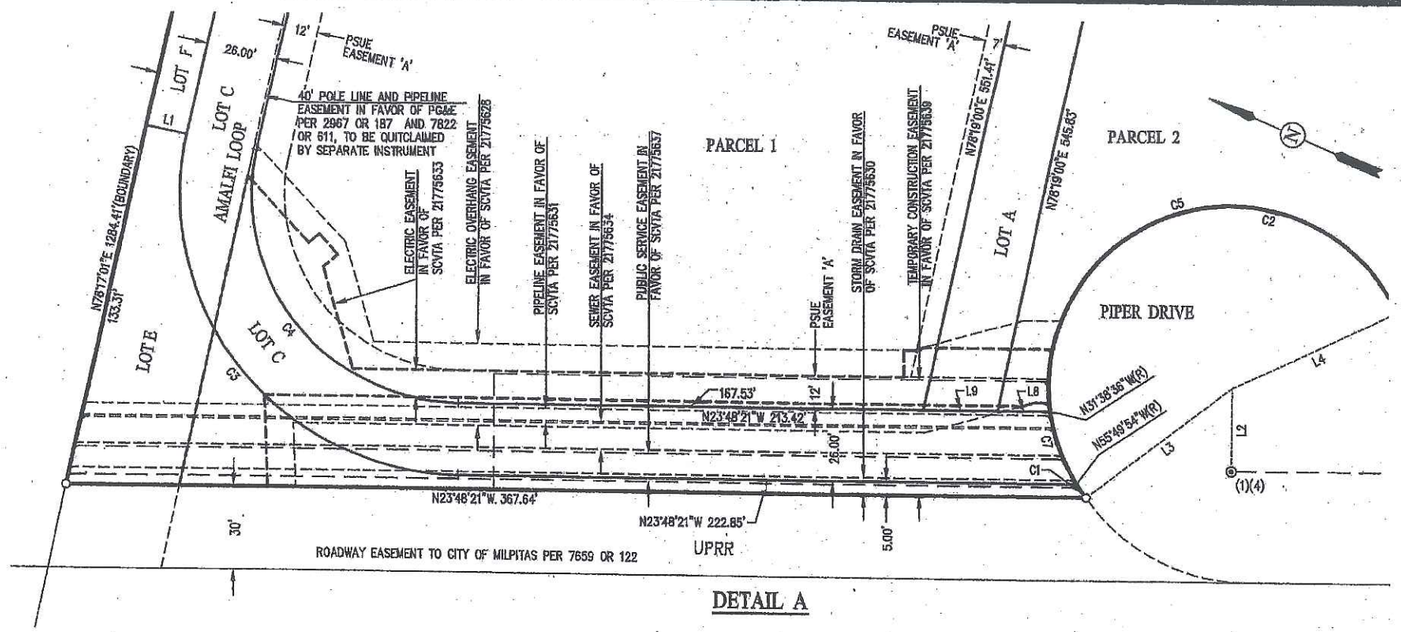
ENGINEERS SURVEYORS PLANNERS

SAN RAMON, CALIFORNIA

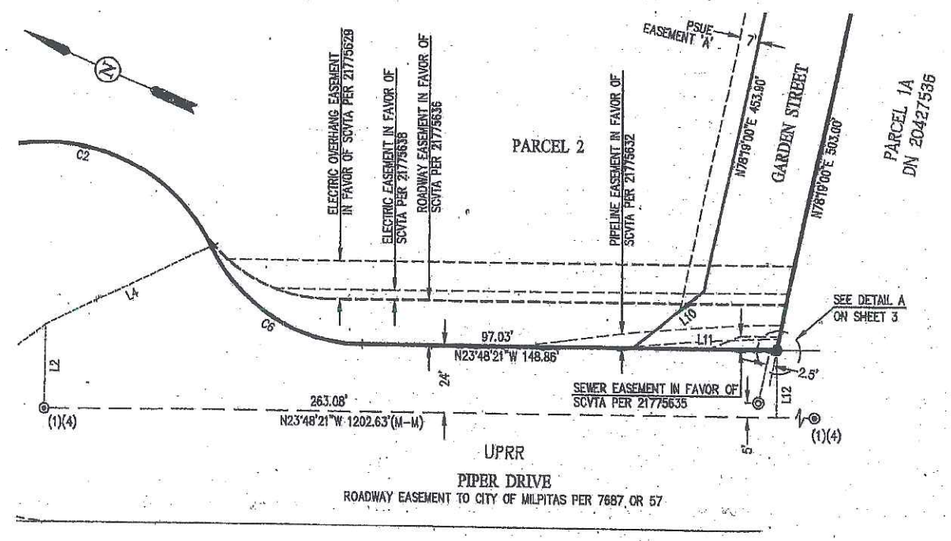
JUNE 2013

0' 30' 60' 90' 120'

SCALE: 1"=30'



DETAIL A



DETAIL B

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	66.00'	05°16'46"	6.08'
C2	66.00'	191°55'42"	221.09'
C3	101.00'	102°07'21"	180.02'
C4	75.00'	102°07'21"	133.68'
C5	66.00'	162°27'38"	187.14'
C6	60.00'	64°37'23"	67.67'
C7	66.00'	24°11'18"	27.86'

LINE TABLE		
NO.	BEARING	LENGTH
L1	N11°42'59"W	15.00'
L2	N86°54'48"E(R)	30.00'
L3	N61°06'40"W(R)	66.00'
L4	N49°10'58"W(R)	66.00'
L8	N23°48'21"W	19.29'
L9	N23°48'21"W	26.59'
L10	N62°43'41"W	32.88'
L11	N23°48'21"W	51.83'
L12	N66°11'39"E	24.00'

BASIS OF BEARINGS:

THE BASIS OF BEARING FOR THIS MAP IS DETERMINED BY FOUND MONUMENTS ON THE CENTERLINE OF PIPER DRIVE. THE BEARING BEING N23°48'21"W PER PARCEL MAP FILED IN BOOK 580 OF MAPS AT PAGE 49 SANTA CLARA COUNTY RECORDS. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3 (NAD 27). MULTIPLY DISTANCE SHOWN BY 0.99994617 TO OBTAIN GRID DISTANCES.

LEGEND

- BOUNDARY LINE
- LOT LINE
- MONUMENT LINE
- CENTER LINE
- EASEMENT LINE

(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STANDARD STREET MONUMENT
●	FOUND MONUMENT, AS NOTED
○	SET 5/8" REBAR AND CAP, LS 7176
◎	SET STANDARD STREET MONUMENT, LS 7176
⊘	STANDARD STREET MONUMENT TO BE SET PER TRACT 10037
PSUE	PUBLIC SERVICE UTILITY EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
AC	ACRE
SF	SQUARE FEET
SCVTA	SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
(#)	RECORD DATA
(CL-CL)	CENTERLINE TO CENTERLINE

NOTE

1) LOT B AND LOT I HAVE BEEN INTENTIONALLY OMITTED.

1543-00

8/04

53

53

53

Legal Description

1-E

The Edge

(See attached)

A.P.N.'s 86-32-29 and a portion of 86-32-26

LEGAL DESCRIPTION

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

PARCEL ONE:

COMMENCING AT A POINT OF INTERSECTION OF THE NORTHERLY LINE OF LANDESS AVENUE WITH THE EASTERLY LINE OF THAT CERTAIN 60.00 FOOT STRIP OF LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD COMPANY BY DEED RECORDED DECEMBER 29, 1920 IN BOOK 527, PAGE 222 OF DEEDS, SANTA CLARA COUNTY RECORDS; THENCE NORTH 69° 00' EAST ALONG LAST MENTIONED NORTHERLY LINE A DISTANCE OF 80.09 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL NO. 1 OF THE LAND CONVEYED TO LINCOLN LAND CORPORATION, BY DEED RECORDED JULY 15, 1966 IN BOOK 7442, PAGE 670, OFFICIAL RECORDS, AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 69° 00' EAST ALONG THE NORTHERLY LINE OF SAID LANDESS AVENUE A DISTANCE OF 334.14 FEET TO A POINT IN THE WESTERLY LINE OF THE LAND CONVEYED TO THE CITY OF MILPITAS, BY DEED RECORDED MARCH 7, 1968 IN BOOK 8048, PAGE 193, OFFICIAL RECORDS; THENCE NORTH 21° 00' WEST ALONG LAST MENTIONED WESTERLY LINE A DISTANCE OF 35.00 FEET TO THE NORTHWESTERLY CORNER OF SAID LAND CONVEYED TO THE CITY OF MILPITAS; THENCE NORTH 69° 00' EAST ALONG THE NORTHERLY LINE OF THE SAID LAND CONVEYED TO THE CITY OF MILPITAS AND BY DEED RECORDED NOVEMBER 25, 1966 IN BOOK 7572, PAGE 447, OFFICIAL RECORDS, A DISTANCE OF 331.50 FEET TO A POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF PARCEL NO. 2 OF THE SAID LAND CONVEYED TO LINCOLN LAND CORPORATION; THENCE NORTH 21° 00' WEST ALONG SAID WESTERLY LINE A DISTANCE OF 305.00 FEET; THENCE SOUTH 69° 00' WEST 196.48 FEET TO THE MOST EASTERLY CORNER OF THE LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD BY DEED RECORDED JULY 15, 1966 IN BOOK 7442, PAGE 670, OFFICIAL RECORDS; THENCE SOUTH 62° 16' WEST ALONG THE SOUTHERLY LINE OF SAID LAND CONVEYED TO THE WESTERN PACIFIC RAILROAD, A DISTANCE OF 230.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 367.25 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45° 47' 45" AN ARC DISTANCE OF 293.54 FEET TO A POINT IN THE EASTERLY LINE OF PIEPER DRIVE; THENCE SOUTH 23° 47' EAST ALONG SAID EASTERLY LINE A DISTANCE OF 171.86 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL TWO:

COMMENCING AT THE SAID POINT OF INTERSECTION OF THE SAID NORTHERLY LINE OF THE LAND CONVEYED TO THE CITY OF MILPITAS, WITH THE WESTERLY LINE OF PARCEL NO. 2 OF THE LAND CONVEYED TO LINCOLN LAND CORPORATION; THENCE NORTH 21° 00' WEST ALONG LAST WESTERLY LINE 305.00 FEET; THENCE NORTH 69° 00' EAST 120.50 FEET; THENCE SOUTH 21° 00' EAST 305.00 FEET, TO THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SAID LAND CONVEYED TO THE CITY OF MILPITAS; THENCE SOUTH 69° 00' WEST ALONG LAST MENTIONED NORTHERLY LINE A DISTANCE OF 120.50 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM PARCELS ONE AND TWO, THOSE PORTIONS THEREOF CONVEYED TO THE COUNTY OF SANTA CLARA BY DEED RECORDED JUNE 22, 1973 IN BOOK 0436, PAGE 167, OFFICIAL RECORDS.

APN: 086-32-029

"EXHIBIT A"
LEGAL DESCRIPTION

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, being a portion of the 63.063 acre parcel shown on the Record of Survey filed September 4, 1953 in Book 45 of Maps, Page 19, Records of Santa Clara County, California, being more particularly described as follows:

Commencing at the intersection of the south line of "Parcel B" with the east line of Piper Drive, as shown on the Parcel Map filed November 20, 1987 in Book 580 of Maps, Pages 49 and 50, Records of Santa Clara County, California; thence along said east line, S23°00'05"E, a distance of 143.47 feet to the **Point of Beginning**; said point also being the beginning of a curve to the left, of which the radius point lies N19°07'13"E, a radial distance of 474.28 feet; thence leaving said east line, easterly along the arc, through a central angle of 39°20'39", a distance of 325.68 feet; thence N69°46'34"E, a distance of 145.88 feet to the north line of lands described in the Grant Deed recorded September 9, 2005 as Document No. 18569453, Official Records of Santa Clara County, California; thence along said north line, S63°02'18"W, a distance of 186.32 feet to a tangent curve to the left having a radius of 367.25 feet; thence continuing along said north line, southwesterly along said curve, through a central angle of 45°47'45", a distance of 293.54 feet to the east line of Piper Drive; thence along said east line, N23°00'05"W, a distance of 270.99 feet to the **Point of Beginning.**

Containing 30,044 square feet or 0.69 acres, more or less.
As shown on "Exhibit B", attached hereto and made a part hereof.

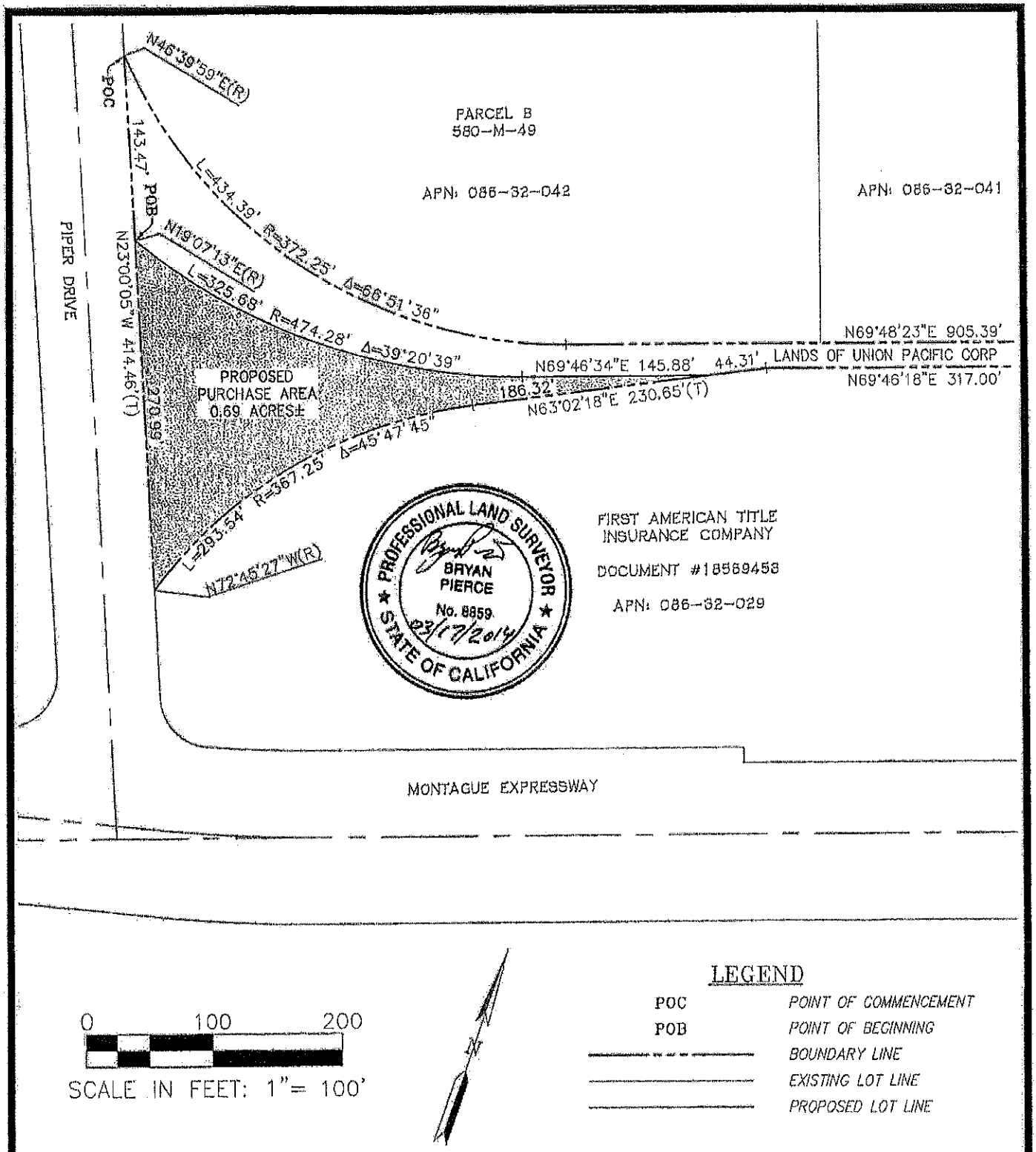
END OF DESCRIPTION.

This description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.

03/17/2014

Bryan Pierce, PLS 8859 Date
Expires: 12/31/2015

PROFESSIONAL LAND SURVEYOR ★ STATE OF CALIFORNIA ★
BRYAN PIERCE
No. 8859



LEGEND

POC	*POINT OF COMMENCEMENT*
POB	*POINT OF BEGINNING*
———	*BOUNDARY LINE*
———	*EXISTING LOT LINE*
———	*PROPOSED LOT LINE*

"EXHIBIT B"

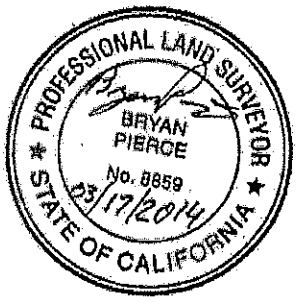
A PORTION OF THE 63.063 ACRE PARCEL SHOWN ON THE RECORD OF SURVEY FILED SEPTEMBER 4, 1953 IN BOOK 45 OF MAPS, PAGE 19, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

MILPITAS, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

SCALE:	DATE:	JOB NO.:
1"= 100'	03/17/2014	132003

Project: RR Purchase Parcel Monday March 17, 2014
Description: Piper Drive
Number of Lots: 1
Report Created by: RJA-Gilroy



Direction	Distance	Northing	Easting

RR Purchase1
Courses: 5

1975583.9031 6157465.8050

Radius Pt: (1976032.0185) (6157621.1565)
Radius: 474.28'
Included Angle: 39°20'38.90"
Length: 325.6808'
Radial In: N19°07'12.98"E Tangent In: S70°52'47.02"E
Radial Out: S20°13'25.92"E Tangent Out: N69°46'34.08"E
Chord: N 89°26'54" E 319.3197'
1975586.9783 6157785.1099

N 69°46'34.08" E 145.8847'
1975637.4090 6157922.0007
S 63°02'18.21" W 186.3203'
1975552.9326 6157755.9314

Radius Pt: (1975225.5988) (6157922.4401)
Radius: 367.25'
Included Angle: 45°47'45.00"
Length: 293.5385'
Radial In: S26°57'41.79"E Tangent In: S63°02'18.21"W
Radial Out: N72°45'26.79"W Tangent Out: S17°14'33.21"W
Chord: S 40°08'26" W 285.7869'
1975334.4582 6157571.6949

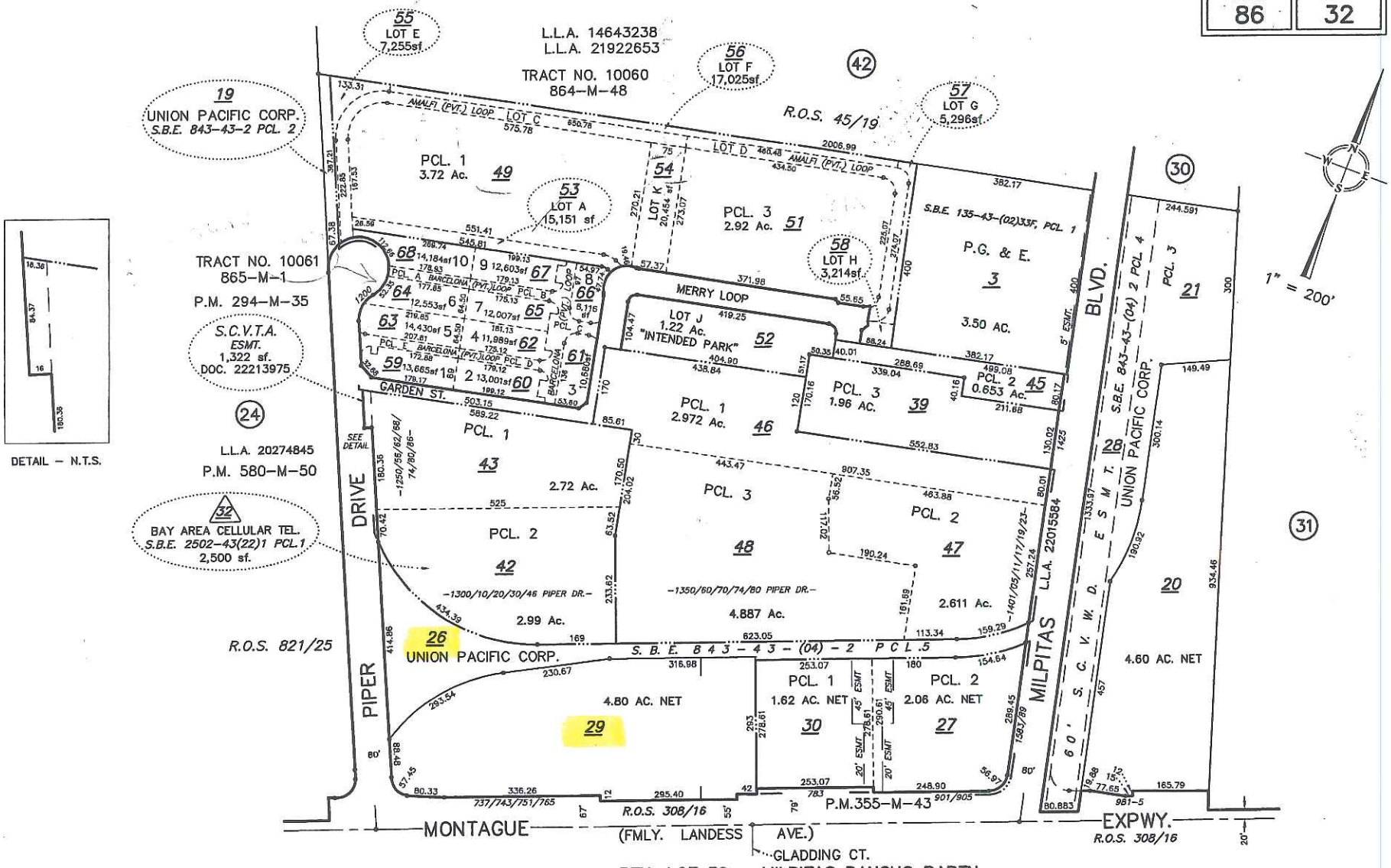
N 23°00'04.79" W 270.9897'
1975583.9031 6157465.8050

Perimeter: 1222.41 Area: 30043.92 Sq. Ft., 0.690 Acres

Error of Closure: S 33°41'24" W 0.001'
Error North: -0.001
Error East: -0.000
Precision: 1 in 1541076

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
86	32



TRA DET. MAP 112

LAWRENCE E. STONE — ASSESSOR
Codastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2014-2015

AGENDA ITEM: X-3

1-F

MILPITAS PLANNING COMMISSION STAFF REPORT

January 14, 2015

APPLICATION: **Development Agreement No. DA15-0001 –** Adoption of an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

RECOMMENDATION: **Staff recommends that the Planning Commission:**
Conduct the public hearing and Adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

LOCATION:

Address/APN:	1200 Piper Drive and 765 Montague Expressway 086-32-049; -051;-052 -054; -055; -056; -057 086-32-029; -026
Area of City:	Transit Area Specific Plan – Piper/Montague Subdistrict

PEOPLE:

Project Applicant:	Stephen E. Schott, Vice President, SCS Development
Consultant(s):	NA
Property/Business Owner:	SCS Development Company, 404 Saratoga Ave Ste 100, Saratoga, CA 95050
Project Planner:	Adam Petersen, Senior Planner

LAND USE:

General Plan Designation:	Boulevard Very High Density Mixed Use (BVHDMU) Multi-Family Very High Density (VHD) Multi-Family High Density (MFH)
Zoning District:	Very High Density Mixed Use District (MXD3) Multiple Family Very High Density District (R4) Multiple Family-Family District (R3)
Overlay District:	Transit Oriented Development (TOD) and Site and Architectural Overlay (S)

ENVIRONMENTAL: Pursuant to Section 15061(b)(3) of the CEQA Guidelines, the project is exempt from CEQA since it does not have the potential to significantly affect the environment. It is further exempt pursuant to CEQA Guidelines Section 15183(a), a project

consistent with a Specific Plan for which an environmental impact report has been certified. Furthermore, pursuant to Section 15162 of the CEQA Guidelines, no further environmental documentation is required. An EIR was certified for this previously approved project, including the development of the high rise.

BACKGROUND

The Milpitas City Council adopted Resolution No. 8132 on November 11, 2011 approving the Citation I project. The Citation I project consisted of up to 732 dwelling units, public parks, streets and infrastructure improvements located at 1200 Piper Drive. Of these 732 units, 638 were allocated to two wrap buildings, which comprise the Amalfi I and Amalfi II development. Amalfi I, consisting of 378 apartment units is currently under construction. Amalfi II consists of 260 apartments, but construction has not commenced for this project. Additionally, 94 townhomes are under construction as part of the Citation I project approvals, but the 94 townhomes will not be a part of the development agreement.

On June 17, 2014, the City Council adopted Resolution No. 8382 approving the Citation II project. That project consisted of 381 apartments and 8,100 square feet of commercial and office space that fronts Montague Expressway. Map 1 illustrates the location of these two projects.

The projects are comprised of three buildings with 1,019 dwelling units on approximately 12.6 acres. The sites were previously improved with the existing industrial office buildings, outdoor storage areas, utilities and landscaping. The project site is located along Montague Expressway, tangential to the eastern property line of the Great Mall. Commercial uses are proposed in the Edge project.

The site is accessed by Montague Expressway, the proposed Piper Drive, and a public street from South Milpitas Boulevard.

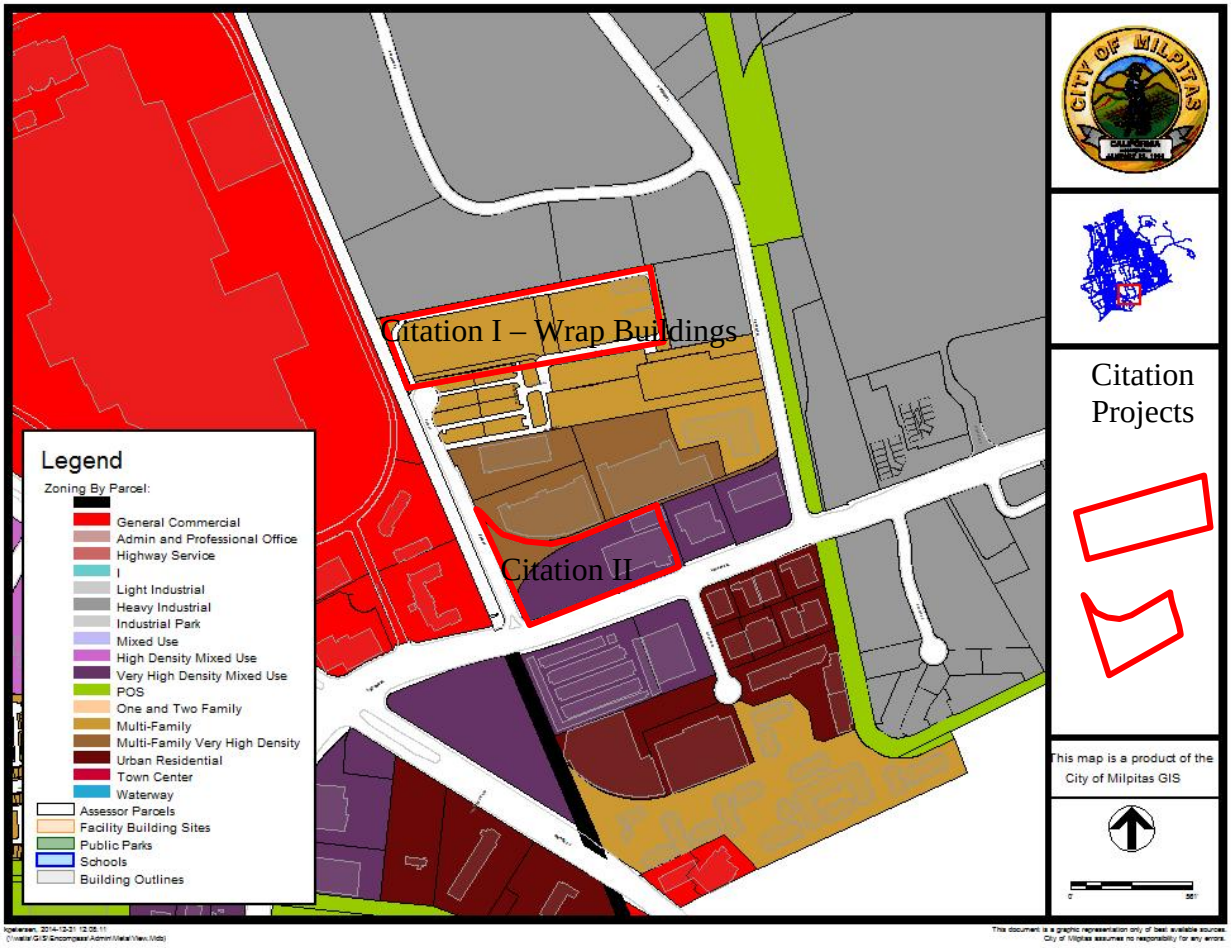
The following table summarizes the approved development projects. As of the date this staff report was prepared, Amalfi I is under construction. Construction has not commenced for Amalfi II and the Edge.

Table 1:
Summary Project Information

Use/Standards	**Citation I**	**Citation II**
	Amalfi I and Amalfi II	**The Edge**
Acres	7.0 acres	5.6 acres
Commercial / Retail s.f.	0	8,100 sq ft
Residential Units	638 apartments	381 apartments
Parking Required	1,207 spaces	634 spaces
Parking Provided	1,260	634 spaces
Residential Density	45 dwelling units per acre	68 dwelling units per acre
Commercial FAR	NA	0.03

Map 1
Project Location

Zoning Map



PROJECT DESCRIPTION AND ANALYSIS

The applicant is requesting a five year Development Agreement for the Amalfi I, Amalfi II and the Edge projects. The agreement may be extended another five years, if both parties mutually agree to the extension. The Development Agreement also proposes a reduction in Transit Area Specific Plan (TASP) fees for the subject development projects. Projects in the TASP are currently required to pay $32,781 per unit at the time of building permit issuance. The applicant is requesting that the development agreement lock in a TASP fee of $29,012 per unit due at the certificate of occupancy. This fee would adjust after five years.

The reduced TASP fees have certain benefits to the applicant, and the City will benefit from the Citation projects. The City has received an investment of approximately $250,000,000 from the project applicant for these projects including approximately $10,000,000 in up front public infrastructure cost that will benefit other developments. Further, the applicant has built these projects at a higher density than required with more commercial and retail square footage than what is required by the City's Zoning Code and TASP. As a result of the oversized commercial component, the City will benefit from increased economic development opportunities, employment and tax generating uses. The reduced TASP fees would allow for the appropriate planning for finance, construction and marketing of a complex and expensive project. These components would increase the likelihood of the project being constructed as approved. Therefore, the City and the applicant will benefit from the reduced TASP fees.

The project will however result in less TASP fees collected than under the current fee. Table 2 provides a summary of the TASP fees collected for the project.

Table 2:
TASP Fee Summary

	Amalfi I	Amalfi II	The Edge	**Total**
TASP Fee Current ($32,781 per unit)	$ 12,391,218	$ 8,523,060	$ 12,489,561	$33,403,839
TASP Fee Requested ($29,012 per unit)	$ 10,966,536	$ 7,543,120	$ 11,053,572	$29,563,228
Difference	$ 1,424,682	$ 979,940	$ 1,435,989	**-$ 3,840,611**

The result of the reduced TASP fees is that the City would not collect approximately $3.8 million, and the collection of those fees would be delayed from building permit issuance to certificate of occupancy. However, the applicant has provided the City with public benefits from the project. The applicant has constructed approximately $10 million in public infrastructure improvements for the project as well Milpitas Station and Barry Swenson. These improvements and funding was committed as a result of a three-party cost sharing agreement. The infrastructure constructed will serve this project and others in the future.

The Edge project is the first development in the TASP to include a commercial component. The reduced TASP fees are required to support the likelihood of a successful commercial aspect to

the project. Further, the development agreement conditions the applicant to construct the Edge project prior to the Amalfi II project. This will benefit the City of Milpitas because early construction of the 8,100 square feet of commercial development will generate revenue for the City up front rather than delaying it to a later date.

FINDINGS

California Government Code Section 65864 et seq. sets forth the general requirements for approval of development agreements. Further, the City Council adopted Resolution No. 6642 on May 6, 1997 establishing procedures and requirements for the consideration of development agreements under California Government Code Section 65864 et seq. Pursuant to Resolution No. 6642, certain findings are required by the City Council prior to approval of any development agreement.

1. *The Development Agreement is consistent with the General Plan.*

   The proposed development agreement is consistent with the Milpitas General Plan and other applicable plans, policies and regulations of the City currently in effect. The General Plan and Transit Area Specific Plan land use designation for the area that is subject to the agreement is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the proposed development of the subject project is consistent with the General Plan and Transit Area Specific Plan. As discussed in detail in the proposed agreement, the Project involves development of the "Amalfi I Building" consisting of up to three hundred and seventy-eight (378) multi-family residential units and "Amalfi II Building" consisting of up to two hundred sixty (260) multi-family residential units (collectively "Citation I Project"), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the "Edge Project" or "Citation II Project") (collectively, all the "Project").

   The Project is also consistent with the following General Plan Guiding Principles and Policies:

   - **Policy 2.a-G-7** – When considering development proposals, seek "community benefit", such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.

   - **Policy 2.d-G-1 –** Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.

   - **Policy 2.d-I-1 –** Coordinate capital improvement planning for all municipal service infrastructure with the location and timing of growth.

2. *The Development is consistent with the Transit Area Specific Plan.*

The proposed Development is consistent with the Transit Area Specific Plan because:

a. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City.

b. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;

c. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement and (ii) Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and

d. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

ENVIRONMENTAL REVIEW

The proposed development agreement is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The development agreement will not expand the range or intensity of uses permitted on the subject properties. The development agreement does not authorize any construction and will not result in any physical change in the environment. Therefore, it can be seen with certainty that the project will not have an effect on the environment.

The project is further exempt from environmental review pursuant to CEQA Section 15183(a). The development of Amalfi I, Amalfi II, and the Edge projects was previously analyzed in the Transit Area Specific Plan Environmental Impact Report (SCH 2006032091). The EIR analyzed all impacts associated with the development of these properties and anticipated the intensity of this development. The development agreement does not increase the intensity beyond that previously analyzed in the certified EIR. Further, the projects, as approved under Resolution No. 8132 and 8382 were found to be consistent with the Transit Area Specific Plan. Therefore, the proposed agreement is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment and the project is consistent with a specific plan for which an EIR was certified.

PUBLIC COMMENT/OUTREACH

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

CITY COUNCIL REVIEW

This project requires review by the City Council and is tentatively scheduled on the February 3, 2015 City Council agenda.

CONCLUSION

The development agreement as drafted includes substantial benefits to the developer and the City. The reduced TASP fees would allow for the appropriate planning for finance, construction and marketing of a complex and expensive project. Therefore, staff recommends that the Planning Commission adopt Resolution 15-003, recommending that the City Council authorize execution of the Citation I and Citation II Development Agreement, subject to the attached resolution and development agreement.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the public hearing to receive comments; and
2. Close the public hearing; and
3. Adopt Resolution No. 15-003 recommending the City Council adopt an ordinance to authorize the execution of the Citation I and Citation II Development Agreement, subject to the findings above.

ATTACHMENTS

A: Resolution No.15-003
- Exhibit A: Draft Ordinance
  - Exhibit to Draft Ordinance: Development Agreement
    - Exhibit to Development Agreement: Legal Descriptions and Plat Maps

MEETING MINUTES

1-G

MILPITAS PLANNING COMMISSION
Milpitas City Hall, Council Chambers
455 E. Calaveras Blvd., Milpitas, CA

Wednesday, January 14, 2015

I. PLEDGE OF ALLEGIANCE

Chair Mandal called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. OATH OF OFFICE TO NEWLY APPOINTED MEMBERS

City Clerk Mary Lavelle swore in new members Zeya Mohsin and Ray Maglalang.

III. ROLL CALL/ SEATING OF ALTERNATE

Commissioners
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Demetress Morris, Hon Lien, Ray Maglalang, Alternate Member Zeya Mohsin

Absent:

Staff: Steven McHarris, Johnny Phan, Adam Petersen

IV. PUBLIC FORUM

Chair Mandal invited members of the audience to address the Commission and there was one speaker.

Rob Means, a Milpitas resident who lives on Yellowstone, said he is circulating a petition rejecting US Supreme Court rulings regarding money interests and invited commissioners to join him for a protest march in San Francisco at 3:30 on January 21st.

V. APPROVAL OF MEETING MINUTES

Chair Mandal called for approval of the December 10, 2014 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes as submitted.

Motion/Second: Commissioner Madnawat/Commissioner Morris

AYES: 4

NOES: 0

ABSTAIN: 3 Ciardella, Sandhu, Maglalang

VI. ANNOUNCEMENTS

Planning Director Steven McHarris announced that the Holiday Inn Suites and Springhill Suites items were deferred to February 11.

Romero Rodriguez, a resident on Fairview Way, was present to speak about these projects. He said the land has been vacant for several years and as a home owner he believes the hotels will be a big boost to their property values and that they will create more pedestrian activity for the businesses located there.

Anna Capelias said her concern has to do with use and zoning of the development and what changes might occur if a hotel is allowed, and she wants to hear all of the information when the presentation is made.

Mr. McHarris said the zoning is not changing and that hotel use can occur with approval of the planning commission. The projects will be heard at the February 11 Planning Commission meeting.

VII. CONFLICT OF INTEREST

Assistant City Attorney Johnny Phan asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

VIII. APPROVAL OF AGENDA

Chair Mandal asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the January 14, 2015 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

IX. CONSENT CALENDAR

NO ITEMS

X. PUBLIC HEARING

X-1 **TOWN CENTER AMENDMENT – ALL TOWN CENTER DESIGNATED PARCELS – ZA14-0011:** Zoning Text Amendment to the Town Center zoning district that would add a description and prohibit ground level residential uses.

Project Planner Adam Petersen reviewed a PowerPoint presentation discussing the zoning amendment.

Commissioner Madnawat asked if a garage is considered residential, because if so there could be an easy way to get around the amendment by building garages on the ground floor. Mr. McHarris said that residential serving garages would be classified as residential and would not be permitted on the ground floor, and that there has to be commercial on the ground floor. Commissioner Madnawat said this would mean there would be no condominium development and Mr. McHarris said that was correct. Commissioner Madnawat said the language in the ordinance should be clearer about permitted uses and should state that the ground floor needs to be 100% commercial.

Assistant City Attorney Johnny Phan said the drafted language can be updated to clarify the types of uses allowed.

Chair Mandal asked about the process of attracting high quality businesses to Milpitas and the vision for the city to produce more walkable and lively areas and Mr. Petersen said the intent of this amendment is to encourage future uses that accommodate that type of use.

Chair Mandal opened the public hearing and Mr. Means spoke in favor of this amendment.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked that the language in the ordinance be clarified to include permitted uses around the word commercial and that staff look into potential conflicts with the ordinance that allow live-work units.

Motion to adopt Resolution No. 15-001 recommending the City Council adopt Zoning Amendment No. ZA14-0011 to add the words "mixed use" residential to the purpose and intent section of the Town Center Zoning description and to prohibit ground floor residential in the Town Center zone.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-2 **GENERAL PLAN CONVERSION - CLARIFICATION – CITY WIDE – GP14-0005:** Clarification to the adopted General Plan Land Use Conversion policy (City Council Resolution No. 8220), removal of the exemption for parcels on the west side of McCarthy Boulevard north of Highway 237 and properties on the east side of California Circle to Penitencia Creek.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Commissioner Sandhu asked how large the parcel is and Mr. Petersen said it is approximately 10 acres.

Commissioner Madnawat asked if there are pending applications and Mr. McHarris said there are not.

Chair Mandal opened the public hearing and Mr. Means said that this generally sounds like a good idea and was curious about the remnant parcel and who the owner is.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked if there is any interest on the parcel and Mr. McHarris said there are no pending applications. Mr. Petersen added that the owner is listed as BAPS San Jose LLC.

Motion to adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to conversion of employment/sales tax generation properties to residential, while considering to

continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-3 **CITATION PROJECTS DEVELOPMENT AGREEMENT – TASP PIPER/MONTAGUE DRIVE SUBAREA – DA14-0001:** Development Agreement proposal for reduced TASP Fees for all Citation Developments.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Three commissioners disclosed that they had met with the developer: Vice Chair Ciardella, Chair Mandal, and Commissioner Morris.

Commissioner Madnawat asked how the TASP fees are calculated and Mr. Petersen said that $32,781 is the cost per unit to install infrastructure including roads, sewer and water within the TASP area. Commissioner Madnawat asked if this is a reasonable amount the City will need to spend to provide infrastructure for these homes and Mr. McHarris said it is.

Commissioner Madnawat referenced a bullet point in the presentation stating the builder has provided $8 million worth of benefits and asked for two examples of those benefits provided that have nothing to do with their development. Mr. McHarris said the developer fronted that amount of money to enable development of the TASP area, not just for their development but to enable the development of the TASP area. He said infrastructure needed to go in and Citation stepped up to do that and also processed three projects consistent with the transit area.

Commissioner Madnawat asked what amount of the $8 million is the amount not adding value to their project and Mr. McHarris said it does add some value to their project but also adds value to all of the projects within this sub-area of the TASP.

Commissioner Madnawat said he feels this is for the developers own benefit and that it is a $3.8 million dollar gift to the builder. He said if $32,781 is the fair amount that the City will have to spend then that means the taxpayers will have to pay $3.8 million to provide those services and he has a problem with this.

Commissioner Lien asked if there was a recent fee increase and Mr. McHarris said there have been two fee adjustments in addition to the annual adjustment and that the fee is calculated at the time the project is developed not entitled.

Commissioner Maglalang said he was trying to understand the $8.3 million infrastructure improvement cost and if this is supposed to be a City expense or an obligation by the developer. Mr. Phan said there are three developers building in the Piper/Montague sub-district of the TASP, Citation being the largest developer in that area and building over 1,000 units. Potentially Barry Swenson will build 300-400 units and also Milpitas Station.

With these three developers over 1,500 units will be built and there is significant public improvement required, none of which are City obligations. These public improvements total about $10 million and have to be built by the developer. A few years ago the City Council approved a four-party cost sharing agreement between the City, Citation, Barry

Swenson and Milpitas Station. Citation is the first developer to come in and is going to front and build most of the improvements, going above and beyond their obligation. They will receive credit and when the other developers come in to build they will pay the City back.

Commissioner Morris asked if development fees can be grandfathered in and Mr. Phan said the city does not grandfather anyone's fees. Fees are based on inflation and updated studies and may be adjusted during the planning process and the fee was $29,000 when Citation submitted their application and $32,721 when the building permit was issued.

Commissioner Madnawat referenced the four-party contract and wondered why Citation doesn't request the money from the other developers, and what guarantee is there that they will reimburse the city. Mr. Phan said there is a mechanism for the City to collect from the developer, that a CFD can be created if they do not build within seven years and pay their fees.

Chair Mandal asked if there will be a park and Mr. Petersen said there will be one constructed by the Citation project and showed the location of the park. He asked about the five year freeze on the fees and Mr. Phan explained that the development agreement is drafted so that within the first five years the TASP fee stays at $29,012 per unit if they build and pay their full TASP fees but if they build after five years then the fee is adjusted for inflation and increased parkland value.

Commissioner Madnawat asked if fees are frozen when a permit is pulled and Mr. Phan said that the City's position is that fees are not vested and not frozen when a permit is pulled but this has been an ongoing dispute with developers. Commissioner Madnawat said the TASP fee is needed to provide infrastructure and should be non-negotiable. He said someone has to pay this and it should not be the taxpayers of Milpitas, and he sees this a $3.8 outright gift to the developer. He wants to see the cost sharing agreement and feels that some commissioners may not understand this topic.

Commissioner Maglalang is afraid that giving a fee reduction will create a bad precedence for other developers to ask for the same fees given to Citation.

Applicant Mark Tiernan, who is also a resident of Milpitas, wanted to clarify a few points about the rationale behind the development agreement: 1) they are building at the highest level of density allowed, 2) although the City asked them to provide 5,000 square feet of retail space they are providing 8,100 square feet of retail space, and 3) when Citation 1 was approved the fees were $23,700 which was the dollar amount the City and consultant said was needed to provide the infrastructure to support these projects. By the time they got plans approved and went through the process the fees were raised to now almost $32,800 and they have asked for a compromise in return for building what the City has described as a signature project which is the Edge.

Mr. Tiernan said the first project they are building is 381 units and will take two years to build and another 1-2 years to fully lease out. Normally a developer would wait to have a building fully leased before building another project because you don't want to compete with yourself, and their plan was to move from Amalfi 1 to Amalfi II to the Edge. When they came for approval of the Edge, the City Council felt this was an important project and that it was important to coincide with the BART station, and they entered into discussions with the City to move forward before Amalfi I is fully leased out, increasing their risk, and they asked for a compromise in the fees in return for building what the City would describe as a signature project.

He said that other developers could ask for the same deal and the City could ask them if

they are building at the highest density, providing more commercial space than required and are they willing to invest 250 million in the City to get their projects built. He said if the answer was yes to those questions, then the City would probably move forward with a development agreement because of the role the developer is playing.

Mr. Tiernan said the TASP is one of the most important transit housing opportunities in the Bay Area and Citation Homes has made this one of their signature projects. The City would like them to build this project to coincide with the BART station and with the increases in construction and material costs they would like to get some cost certainty in their fees to reduce some of their risk and start construction on a building before their other project is fully leased out.

Commissioner Madnawat said Mr. Tiernan's argument regarding requests from other developers does not hold water but that his argument for the fee increases does and said he was surprised by the huge increase in the fees and asked the reasons for such an increase. Mr. Phan said there is a formula and consultants conduct a Nexus study and look at a number of different factors to determine the fair share amount for each unit. He said the initial fee study done in 2008 was based on the plan that was adopted but has been updated based on new trends and information.

Commissioner Madnawat said that if the $32,781 reflects what the City is going to spend it is $3.8 million coming from the City which can be spent on hiring police officers, fire fighters, and others.

Chair Mandal opened the public hearing and there were two speakers. Rob Means said this is a great project and reviewed a list of benefits to the City that he believes offsets the $3.8 million, including a high density housing project, extra retail, and a pedestrian over crossing getting built early.

Jim Sullivan, a consultant for the developer, said he was the project proponent for the Edge. He said developers were building on the low density side but they transferred another developers units onto the Edge and built 94 more units than necessary. He said they are also working with staff to build a great public park in the area at a substantial discount than what it would cost the city to build.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked who is building the pedestrian bridge and Mr. McHarris said it is a City project and there is currently grant funding for the design work and VTA is preparing design work for the City.

Motion to adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

Motion/Second: Commissioner Morris/Commissioner Lien

AYES: 4

NOES: 3 Sandhu, Madnawat, Maglalang

XI. NEW BUSINESS

NO ITEMS

XII. ADJOURNMENT

The meeting was adjourned at 9:10 PM to the next meeting scheduled on Wednesday, January 28, 2015.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 7

NOES: 0

ABSENT: 0

Meeting Minutes submitted by
Planning Secretary Elia Escobar

RESOLUTION NO. 15-003

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING THE MILPITAS CITY COUNCIL ADOPT AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND DPD INVESTMENTS, LLC FOR THE CITATION I PROJECT (AMALFI I AND AMALFI II) AND CITATION II PROJECT (THE EDGE) LOCATED AT 1200 PIPER DRIVE AND 765 MONTAGUE EXPRESSWAY

WHEREAS, the Milpitas City Council adopted Resolution No. 7830 on February 17, 2009 approving Major Tentative Map No. MT08-0004, Site Development Permit No. SD08-0002, and Conditional Use Permit No. UP08-0049 for the development of up to Six Hundred and Thirty-Nine (639) residential units located near 1200 Piper Drive within the Piper-Montague Subdistrict of the Transit Area Specific Plan; and

WHEREAS, the Milpitas City Council adopted Resolution No. 8132 on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan, consisting of the "Amalfi I Building" with three hundred and seventy-eight (378) residential units and "Amalfi II Building" with up to two hundred sixty (260) residential units ("Citation I Project") and ninety-four (94) townhomes; and

WHEREAS, the Milpitas City Council adopted Resolution No. 8382 on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway (the "Edge Project" or "Citation II Project"); and

WHEREAS, on January 6, 2015, an application was submitted by SCS Development Co., Amalfi Milpitas, LLC and DPD Investments, LLC (collectively "Developer") for a development agreement to reduce, vest, and defer the Transit Area Specific Plan Development Impact Fees from $32,781 to $29,012 for each residential unit and defer the payment of these fees issuance of building permits to Certificate of Occupancy ("Project"); 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 determines this Project is exempt pursuant to Section 15183(a) of the CEQA Guidelines because the Project is consistent with the certified EIR for the Transit Area Specific Plan project (SCH 2006032091). The Project is further exempt pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Furthermore, the Project does not cause any substantial changes to the proposed development that would necessitate further environmental documentation under Section 15162 of the CEQA Guidelines; and

WHEREAS, on January 14, 2015, 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: The Planning Commission finds the Project is exempt pursuant to Section 15183(a) of the CEQA Guidelines because the Project is consistent with the certified EIR for the Transit Area Specific Plan project (SCH 2006032091). The Project is further exempt pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Furthermore, the Project does not cause any substantial changes to the proposed development that would necessitate further environmental documentation under Section 15162 of the CEQA Guidelines.

Section 3: California Government Code Section 65864 et seq. sets forth the general requirements for approval of development agreements. Further, the City Council adopted Resolution No. 6642 on May 6, 1997 establishing procedures and requirements for the consideration of development agreements under California Government Code Section 65864 et seq. Pursuant to Resolution No. 6642, certain findings are required by the City Council prior to approval of any development agreement.

1. *The Development Agreement is consistent with the General Plan.*

   The proposed development agreement is consistent with the Milpitas General Plan and other applicable plans, policies and regulations of the City currently in effect. The General Plan and Transit Area Specific Plan land use designation for the area that is subject to the agreement is Boulevard Very High Density Mixed Use, Multi-Family Very High Density, and Multi-Family High Density and the proposed development of the subject project is consistent with the General Plan and Transit Area Specific Plan. As discussed in detail in the proposed agreement, the Project involves development of the "Amalfi I Building" consisting of up to three hundred and seventy-eight (378) multi-family residential units and "Amalfi II Building" consisting of up to two hundred sixty (260) multi-family residential units (collectively "Citation I Project"), and up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements (the "Edge Project" or "Citation II Project") (collectively, all the "Project").

The Project is also consistent with the following General Plan Guiding Principles and Policies:

- **Policy 2.a-G-7** – When considering development proposals, seek "community benefit", such as upgrading infrastructure facilities, constructing new infrastructure facilities, and funding contributions to programs.

- **Policy 2.d-G-1** – Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.

- **Policy 2.d-I-1** – Coordinate capital improvement planning for all municipal service infrastructure with the location and timing of growth.

2. *The Development is consistent with the Transit Area Specific Plan.*

The proposed Development is consistent with the Transit Area Specific Plan because:

a. Development of the Project should be encouraged because it will help meet important economic, social, environmental and planning goals of the City, including but not limited to locating housing near jobs to reduce commutes for City residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit, providing for an extraordinary contribution towards housing and jobs in the City.

b. The Agreement will facilitate the development of the Project in the manner proposed in the Agreement for the further reasons set forth in the accompanying staff reports and Agreement;

c. Developer will incur unusually substantial costs in order to provide public improvements, facilities or services, in particular extraordinary funding for housing in the City, from which the public will benefit, as set forth in more detail in the accompanying staff report and Agreement and (ii) Developer has made commitments to a very high standard of quality for the Project and has agreed to development limitations beyond that required by the existing laws, as set forth in the Agreement and Development Approvals; and

d. Development of the Project will make a substantial contribution to the economic development of the City of Milpitas in that the Project will create additional, transit-oriented housing to support transit infrastructure investments, as well as provide extraordinary tax revenues to the City.

Section 4: The Planning Commission of the City of Milpitas hereby recommends the Milpitas City Council adopt an ordinance to approve a Development Agreement with SCS Development Co, Amalfi Milpitas, LLC and DPD Investments, LLC for the Citation I Project (Amalfi I and Amalfi II) and Citation II Project (the Edge), subject to the above Findings and development agreement attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on January 14, 2015.

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 January 14, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal	✓			
Larry Ciardella	✓			
Gurdev Sandhu		✓		
Rajeev Madnawat		✓		
Demetress Morris	✓			
Hon Lien	✓			
Ray Maglalang		✓		
Zeya Mohsin (alternate)				