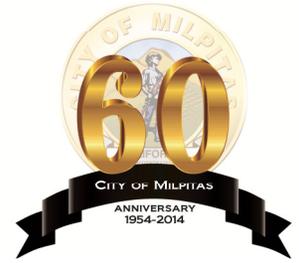




MILPITAS CITY COUNCIL AGENDA
TUESDAY, MARCH 17, 2015
455 EAST CALAVERAS BOULEVARD, MILPITAS, CA



6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
 - 1. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9

 - a) City of Milpitas appeal of City of San Jose's approval of Planned Development Permit PD 14-014 for Newby Island, before the City of San Jose Planning Commission
 - b) City of Milpitas Petition for Hearing on issuance of Solid Waste Facility Permit for Newby Island, before the City of San Jose Local Enforcement Agency
 - 2. CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**

Pursuant to California Government Code Section 54956.9

City of Milpitas as plaintiff
 - 3. CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**

Pursuant to California Government Code Section 54956.9

SCS Development Co., et al. v. City of Milpitas, et al.; Santa Clara County Superior Court Case No. 115CV277803
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – March 3, 2015**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – March and April 2015**
- VIII. PUBLIC FORUM**

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

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (Items with asterisks*)**

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

XIII. PUBLIC HEARING

- 1. Conduct a Public Hearing and Adopt a Resolution for a General Plan Amendment, Zoning Amendment, Environmental Impact Assessment and Introduce Ordinance No. 38.820 Prohibiting All New Residential Uses from Town Center Zoning District (Staff Contact: Adam Petersen, 408-586-3274)**

XIV. UNFINISHED BUSINESS

- 2. Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**
- 3. Receive Oral Report on Current Crime Data for the City of Milpitas (Staff Contact: Steve Pangelinan, 408-586-2426)**
- 4. Receive Update on the Objectives and Services of the Request for Proposals for Operation of the Community Access Television Channel 26 (Staff Contact: Mike Luu, 408-586-2706)**

XV. REPORTS OF MAYOR & COMMISSIONS

- * 5. Consider Mayor's Recommendations for Appointment and Re-Appointment to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- * 6. Approve Recommendation from the Parks, Recreation and Cultural Resources Commission to Install a Memorial Plaque Near Milpitas Sports Center Little League Farm Field for Christian Dalugdug (Staff Contact: Renee Lorentzen, 408-586-3409)**
- 7. Receive Presentation and Approve the 2015 Work Plan of the Veterans Commission (Staff Contact: Carmen Valdez, 408-586-3086)**

XVI. NEW BUSINESS

- 8. Receive Construction Progress Report from Santa Clara Valley Transportation Authority Staff on an Update of the Bay Area Rapid Transit Extension Project (Staff Contact: Steve Machida, 408-586-3355)**

XVII. RESOLUTIONS

- * 9. Adopt a Resolution Granting Final Acceptance of and Releasing Warranty Bond for South Main Street Median Improvements – Paragon, Project No. 3204 (Staff Contact: Ahmed Aly, 408-586-3325)**
- * 10. Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1, Approve a Subdivision Improvement Agreement (Lennar Homes), Final Map and Improvement Plans for 1494 California Circle (Waterstone Subdivision), Project No. 2830 (Staff Contact: Ahmed Aly, 408-586-3325)**

XVIII. AGREEMENTS

- * 11. Approve Environmental Assessment for Addendums to the Transit Area Specific Plan Final Environmental Impact Report and the Joint Use Agreement between City of Milpitas**

and Santa Clara Valley Water District for Trail Improvements and Pedestrian Overcrossing on the Lower and East Penitencia Creeks West of McCandless and between Montague Expressway and Canal Street (Staff Contact: Steve Machida, 408-586-3355)

- * 12. Approve a New Capital Improvement Program Project No. 2005 for Lower Penitencia Creek Pedestrian Trail Bridge, Approve a Budget Appropriation, and Approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. (Staff Contact: Steve Erickson, 408-586-3301)
- * 13. Consider Approval of Assignment and Assumption Agreement related to the McCarthy Development Agreement (Staff Contact: Michael Ogaz, 408-586-3040)
- * 14. Authorize City Manager to Execute Amendment No. 3 to the Agreement with CSG for Fire Department Plan Review & Inspection Services per Fiscal Year 2014-15 for an additional amount of \$75,000 (Staff Contact: Albert Zamora, 408-586-3371)

XIX. DEMAND

- * 15. Authorize Payment to Burton Fire for Invoices Totaling \$28,162.65 for the Ladder Truck TK86 repairs (Staff Contact: Steve Machida, 408-586-3355)

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 7, 2015**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: mogaz@ci.milpitas.ca.gov / Phone: 408-586-3040

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

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

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

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on:
Community Advisory Commission
Sister Cities Commission

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

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

AGENDA REPORTS

XIII. PUBLIC HEARING

- 1. Conduct a Public Hearing and Adopt a Resolution for a General Plan Amendment, Zoning Amendment, Environmental Impact Assessment and Introduce Ordinance No. 38.820 Prohibiting All New Residential Uses from Town Center Zoning District (Staff Contact: Adam Petersen, 408-586-3274)**

Background: The Town Center land use designation and zoning district applies to the central part of the City, generally located along Calaveras Boulevard between Interstate 680 and the Union Pacific railroad corridor. As described in the City’s General Plan and Zoning Code, the intent of the Town Center land use designation and zoning district is to support a wide range of administrative, business, entertainment, residential, dining and cultural activities in the geographic center of the City.

In 2010, the Town Center designation was amended and expanded to include parcels south of Calaveras Boulevard. The purpose of the amendment was to make the existing uses on these parcels (offices, cultural centers, religious institutions, medical offices, financial institutions, gasoline station, retail) conforming and allow for the flexibility of integrating other commercial and residential uses for future development. Since the rezoning of these parcels to Town Center, several land use conversions to residential development have occurred. A map of the Town Center zone area is included as part of the Planning Commission staff report (in agenda packet).

On May 21, 2013, the City Council approved an amendment to the Zoning Code to allow live/work units as a conditional use in the Town Center Zoning District.

On December 10, 2014, the City of Milpitas Planning and Neighborhood Services Department prepared an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a General Plan Amendment and Zoning Amendment. The following is a summary of the request:

- *General Plan Amendment:* To modify the Milpitas General Plan, removing references to residential density, discussions and references of residential land uses and references to mixed-use residential development.
- *Zoning Amendment:* To modify the Milpitas Zoning Code, adding the words “mixed use” residential to the description of the Town Center zone, and prohibiting ground floor residential in the Town Center zone.

On February 3, 2015, the City Council conducted a public hearing to amend the Zoning Code to eliminate new ground floor residential uses to encourage commercial, retail, entertainment and restaurant type uses in the first floor of new or redevelopment in the Town Center Zone. During the hearing, the City Council expressed a desire to make the Town Center a distinct commercial district and directed staff to bring forward a General Plan Amendment and Zoning Code Amendment to prohibit new residential development of any type in the Town Center.

The Council also raised questions concerning the amount of acreage in the Town Center Zone and the number of residential units. The Town Center consists of 132 acres, and the following table lists the residential projects and number of units.

Project	Units
Town Center	181 units
Orchid	80 single family homes

Cobblestone	28 single family homes 4 live/work units
Sundrop	83 single family homes
Senior Housing	148 units
75 S. Milpitas	20 units 5 live work units
Total Units	549

The Planning Commission conducted a public hearing on February 25, 2015 and adopted a resolution by a 6 to 1 vote recommending the City Council adopt the proposed General Plan Amendment and Zoning Amendment to prohibit new residential development in the Town Center District.

Alternatives:

The City Council may consider the following alternatives:

- a) Adopt the proposed amendments as they are proposed; or
- b) May reconsider vertical mixed-use with no ground floor residential as proposed to the City Council on February 3, 2015; or
- c) Deny the proposed amendments.

Conclusion: Based on the analysis described above and within the Planning Commission staff report and resolution, the Planning Commission recommended the City Council adopt a Resolution amending the General Plan and introduce an Ordinance amending the Town Center Zone to prohibit new residential uses in the Town Center.

California Environmental Quality Act (CEQA):

The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed project is a project under CEQA.

Staff reviewed the project to determine the required level of review under CEQA. An initial environmental assessment of the project was prepared in accordance with CEQA. A Negative Declaration was completed and circulated for public review and comment between February 5, 2015 and February 25, 2015. A Finding is proposed that the project will not have a significant effect on the environment because no significant impacts were identified in the Initial Study. The project will not expand the range of uses in the Town Center Zoning District and will not intensify the uses already prescribed by the Town Center Zone. Instead, it will minimize the amount of uses that can occur there and will therefore limit the range of environmental impacts.

Fiscal Impact: None.

Attachments (documents in agenda packet)

- A. Draft City Council Resolution
- B. Draft Ordinance No. 38.820 for first reading and introduction
- C. 02/25/2015 Planning Commission Agenda Report
- D. 02/25/2015 Planning Commission meeting minutes
- E. Adopted Planning Commission Resolution No. 15-009

Recommendations:

- 1. Open the public hearing to receive comments.

2. Move to close the public hearing following any comments.
3. Adopt a Resolution approving the General Plan Amendment to eliminate references to residential development, residential densities, and mixed-use development in the Town Center.
4. Following the City Attorney reading of the title of Ordinance No. 38.820, move to waive the first reading of the ordinance beyond the title.
5. Introduce Ordinance No. 38.820 amending the Town Center Zone prohibiting new residential uses while allowing existing and previously approved residential uses to continue.

XIV. UNFINISHED BUSINESS

2. **Receive Update of the Odor Control Report (Staff Contact: Steven Machida, 408-586-3355)**

Background: From January 12 through February 28, 2015, the Bay Area Air Quality Management District (BAAQMD) received 718 odor complaints originating in Milpitas.

BAAQMD has scheduled a public meeting at Milpitas City Hall Council Chambers on Thursday, April 23 from 6:00 to 8:00 PM regarding odors.

The City has been working with the City of San Jose, BAAQMD, Cal Recycle, and Republic Services to remediate the odor. Unfortunately to date, no progress has been made by these outside regulatory agencies sufficient to reduce or eliminate odor coming from Newby Island.

Fiscal Impact: The costs for staff, technical experts, and legal counsel are estimated at \$800,000.

Recommendation: Receive the odor report update from the City Engineer.

3. **Receive Oral Report on Current Crime Data for the City of Milpitas (Staff Contact: Steve Pangelinan, 408-586-2426)**

Background: Recently, Councilmember Giordano requested a report on crime from the Chief of Police, for the benefit of City Council and residents. She sought current crime statistics for 2014.

Recommendation: At the City Council meeting, receive a report on crime in Milpitas from the Chief of Police.

4. **Receive Update on the Objectives and Services of the Request for Proposals for Operation of the Community Access Television Channel 26 (Staff Contact: Mike Luu, 408-586-2706)**

Background: In April of 2009, Council approved an agreement with Milpitas Community Television (MCTV) for the operation of the Milpitas Public Access Channel and studio. The agreement was automatically renewed in April of 2012 for another three years. MCTV has been operating Channel 26 and the studio with funding from the City's franchise agreement with Comcast Inc. As part of the agreement, MCTV operates the studio and the City maintains and upgrades the equipment. The agreement will be up for renewal again in April of 2015. In November 18, 2014, staff presented to Council with the recommendation for staff to go through with an RFP process to obtain an operator for the management of the community access television channel and studio. The goals for the operator will be:

- Implement a community television solution that is financially and operationally stable.
- Provide techniques for assessing community needs and new opportunities.
- Provide opportunities for openness and transparency in the operation of the station.
- Increase community support.

- Provide innovations for advancing the station in the ever-changing technology of video and television production.
- Provide educational training programs, non-profit engagement and marketing that support community access television.
- Provide greater community station effectiveness to include independent art and cultural groups, entertainment groups, sports and recreation associations.

Fiscal Impact: The fiscal impact will depend upon which option Council directs staff to select. The fiscal impact ranges from \$15,000 to \$150,000. The fee schedule will also range from \$0 to \$100 per session cost to a resident wanting to use the studio.

Alternative: The alternative is to re-negotiate a new contract with MCTV by implementing the goals and scope of work requested by the City in the RFP. MCTV has been managing and running the channel and studio since its inception.

Recommendation: Receive the report on the Request for Proposals (RFP) objectives and direct staff to move forward with issuing of RFP or re-negotiate a new contract with Milpitas Community Television with the new goals and scope of work.

XV. REPORTS OF MAYOR & COMMISSIONS

* 5. Consider Mayor's Recommendations for Appointment and Re-Appointment to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)

Background: Mayor Esteves recommends the following:

Community Advisory Commission: newly appoint Adrian Morel as Alternate No. 2 to a term that will expire in January 2017. A copy of his Commission application is included in the agenda packet.

Senior Advisory Commission: re-appoint Melba Holliday as a regular member to a term that will expire in December 2016.

Recommendation: Receive Mayor's recommendations and approve the re-appointment of Melba Holliday to the Senior Advisory Commission and the new appointment of Adrian Morel to the Community Advisory Commission.

* 6. Approve Recommendation from the Parks, Recreation and Cultural Resources Commission to Install a Memorial Plaque Near Milpitas Sports Center Little League Farm Field for Christian Dalugdug (Staff Contact: Renee Lorentzen, 408-586-3409)

Background: Milpitas resident and Milpitas Little League player Christian Dalugdug passed away at the age of eight on December 27, 2014. A third grader at Weller Elementary, Christian loved playing baseball. He played on the Milpitas Sports Center's Farm fields for two years before his passing. Christian's family, friends and the President of Milpitas Little League, along with a recommendation from the Parks, Recreation and Cultural Resources Commission at its March 2, 2015 meeting, all request the installation of a memorial plaque in Christian's memory near the Milpitas Sports Center Little League Farm Field.

Fiscal Impact: None. There is sufficient funding in the Recreation Services budget to cover the cost of the plaque and installation.

Recommendation: Per recommendation of the PRCRC, approve a memorial plaque for installation near the Milpitas Sports Center Little League Farm Field in memory of 8-year-old Christian Dalugdug.

7. Receive Presentation and Approve the 2015 Work Plan of the Veterans Commission (Staff Contact: Carmen Valdez, 408-586-3086)

Background: The Milpitas City Council established the Veterans Commission on December 1, 2009 to work in an advisory capacity to the City Council on matters pertaining to Veterans in Milpitas. The Commission is comprised of seven voting members and two alternate members who are appointed by the Mayor. Since 2009, the Commission has been very active and has completed many tasks in honor of veterans in Milpitas. Some accomplishments include: selection of the Veteran of the Year, hosting an annual car show to raise funds for local veterans organizations, the installation of the Veterans Bench and the Henry Mattos plaque in the Veterans Plaza, a database with addresses of Milpitas veterans, a updated webpage for Milpitas veterans to get information on available services and participation in special events to promote awareness of services and events available for veterans.

Commissioners reviewed the proposed 2015 Work Plan at their February 4, 2015 meeting and now seek approval by the City Council. Included in the agenda packet is a copy of the proposed work plan for Council review and approval.

Recommendation: Hear an oral presentation at the City Council meeting, and approve the 2015 Veterans Commission Work Plan.

XVI. NEW BUSINESS

8. Receive Construction Progress Report from Santa Clara Valley Transportation Authority Staff on an Update of the Bay Area Rapid Transit Extension Project (Staff Contact: Steve Machida, 408-586-3355)

Background: The Program Manager from Santa Clara Valley Transportation Authority (VTA) will present a report on the progress of construction for Silicon Valley Bay Area Rapid Transit (BART) Extension project, the 10-mile extension from the Warm Springs station in Fremont, to the Milpitas station to be located near the Great Mall, and then on to the Berryessa station to be constructed in San Jose. The project is now into the third year of the four-year major construction phase. Construction activities include relocating municipal utilities, constructing street improvements, constructing the rail extension, and building the stations and campuses. This presentation will include a brief overall project overview as well as VTA's plan to temporarily close the Montague Light Rail Station on Capitol Avenue for approximately 4.5 months starting on March 23. Additionally, the VTA staff will discuss the revised aesthetic design of the new Parking Garage located on the Milpitas station campus.

Fiscal Impact: Staff time is reimbursed through the Master Agreement between Santa Clara Valley Transportation Authority and the City.

Recommendation: Receive a construction progress report from Santa Clara Valley Transportation Authority staff on an update of the Bay Area Rapid Transit Extension Project.

XVII. RESOLUTIONS

*** 9. Adopt a Resolution Granting Final Acceptance of and Releasing Warranty Bond for South Main Street Median Improvements – Paragon, Project No. 3204 (Staff Contact: Ahmed Aly, 408-586-3325)**

Background: The South Main Street Median Improvements were initially accepted by the City Council on November 19, 2013 and have passed the one-year warranty period. The project scope of work included construction of new median curbs, signing, striping, loop detectors, median street lighting, median landscaping and irrigation, and three banner poles on South Main Street between Montague Expressway and Cedar Way. A final inspection of the installed public

improvements was made and they were found to be satisfactory. The City Council is requested to adopt a resolution granting final acceptance of the project and release of the warranty bond.

Fiscal Impact: None.

Recommendation: Adopt a resolution granting final acceptance of and releasing the warranty bond for the South Main Street Improvements - Paragon Project No. 3204.

*** 10. Adopt a Resolution Annexing Certain Real Property into Community Facilities District No. 2005-1, Approve a Subdivision Improvement Agreement (Lennar Homes), Final Map and Improvement Plans for 1494 California Circle (Waterstone Subdivision), Project No. 2830 (Staff Contact: Ahmed Aly, 408-586-3325)**

Background: On November 19, 2013, the City Council approved General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-00002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001 to allow the conversion of industrial land to 84 detached single-family residential units along with ancillary lots for private streets and a park on 10.7 acres located at 1494 California Circle (hereafter referred to as "Waterstone").

Lennar Homes of California, Inc. submitted a final tract map in substantial compliance with the approved tentative map and with the required supporting documents for the creation of 84 lots for single family residential use. Lennar Homes will construct 84 single family detached residential units on 10.7 acres located at 1494 California Circle. The development has on-site private utilities (potable water, sanitary sewer, storm drain, recycled water, etc.). The public improvements consist of frontage improvements along California Circle (sidewalk, landscaping, electrical, utility connections, overlay, curb ramps, decorative pavement, intersection improvements, etc.).

In addition to the final map, the developer also submitted public improvement plans for California Circle (2-1193) and executed a subdivision improvement agreement for the project. Staff reviewed the documents and found those satisfying the City's requirements for this project. Public improvement plans and final map are available for review in the office of the City Engineer.

Lennar Homes is required to annex the subject property into the Community Facilities District 2005-1 (CFD 2005-1) as a condition of the tentative maps approved by the City Council on November 19, 2013. Resolution No. 7521, adopted by City Council on May 17, 2005 forming CFD 2005-1, authorizes the City to annex properties to CFD 2005-1, which will be assessed only for eligible public services, without further public hearing or formal election upon receipt of written consent from the owners. Lennar Homes has given written consent and approval that this property be annexed to CFD 2005-1. Lennar Homes also agreed that such consent and approval constitutes election to annex to CFD 2005-1 and approval of the authorization for the levy of the special tax on the subject properties.

Staff issued a notice of preparation and subsequently circulated a Draft Environmental Impact Report (EIR) between June 21, 2013 and August 5, 2013. A first amendment to the Draft EIR was completed and made public on September 27, 2013. The Draft EIR, the first amendment to the Draft EIR, and all the appendices to the Draft EIR were combined to comprise the Final EIR. On November 19, 2013, the City Council approved the Final EIR for this project (State Clearinghouse Number 2013032005).

Fiscal Impact: an annual increase into Community Facility District No. 2005-1 by approximately \$30,000 annually.

Attachments (documents in agenda packet):

- A. Subdivision Improvement Agreement for Waterstone project
- B. Title Sheet for Waterstone Tract Map
- C. Title Sheet for Public Street Improvements Plan
- D. Draft Resolution to annex property into Community Facilities District No. 2005-1

Recommendations:

- 1. Adopt a resolution annexing real properties located within Final Tract Map No. 10270 into Community Facilities District No. 2005-1.
- 2. Approve a Subdivision Improvement Agreement between the City of Milpitas and Lennar Homes of California, Inc. for public improvements associated with Final Tract Map No. 10270 (Waterstone).
- 3. Approve Final Tract Map No. 10270 (Waterstone) and Public Improvement Plans 2-1193, construction documents for the associated public improvements.

XVIII. AGREEMENTS

- * **11. Approve Environmental Assessment for Addendums to the Transit Area Specific Plan Final Environmental Impact Report and the Joint Use Agreement between City of Milpitas and Santa Clara Valley Water District for Trail Improvements and Pedestrian Overcrossing on the Lower and East Penitencia Creeks West of McCandless and between Montague Expressway and Canal Street (Staff Contact: Steve Machida, 408-586-3355)**

Background: The proposed trails are located within the Transit Area Specific Plan along Lower/ East Penitencia Creek Trail adjacent to the D.R. Horton and Taylor Morrison residential Developments that are each located along McCandless Drive. Trails will extend north from Montague Expressway along the DR Horton project (Harmony) north to Canal Street at the northern edge of the Taylor Morrison project (Avenue). The trail will also connect to the east along East Penitencia Creek to McCandless Drive. In addition to the trails, a new pedestrian bridge is proposed to extend across the East Penitencia Creek and at the confluence of Lower Penitencia Creek. Attachment A indicates the location of the proposed trails and bridge. The proposed bridge would provide a direct north/south connection between the Harmony and Avenue residential projects. A Joint Use Agreement (JUA) is required to allow the construction of trails and associated facilities on SCVWD property. The JUA will allow the construction of the trails and subsequent construction of the bridge. The proposed JUA is for a 10 year term and can be extended by the City for another 10 years. It establishes that the City will be solely responsible for the construction, repair, relocation, and maintenance of the trail and bridge, including repairs to the trail resulting from general public use and SCVWD maintenance vehicles.

Environmental The City Council adopted the Transit Area Specific Plan Final Environmental Impact Report on June 3, 2008 (TASP EIR). Addendums to the TASP EIR were prepared for the trail and the bridge and determined the existing TASP EIR remains sufficient to address the potential impacts resulting from the trail and bridge projects. Both Addendums found that there are no substantial changes proposed by the revised project or in the circumstances in which the project will be undertaken that require major revisions of the existing EIR, or preparation of a new subsequent or supplemental EIR, due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Both the trail and the bridge projects are consistent with the TASP EIR and would involve only minor changes to the previously approved project. A copy of the addendums and supporting documents are attached to the staff report.

Conclusion In summary, the proposed trail and bridge on the Lower and East Penitencia Creek are consistent with the Transit Area Specific Plan and Final Environmental Impact Report and the JUA is consistent with similar agreements between the City and the Santa Clara Valley Water District for similar trails in the community.

Alternatives: 1) Approve the two TASP EIR Addendums and Joint Use Agreement; or 2) deny the Proposed TASP EIR Addendums and Joint Use Agreement.

Fiscal Impact: The environmental assessments were funded by the applicants.

Attachments (documents in agenda packet):

- A. Trail and Bridge Location Map
- B. Lower/East Penitencia Creek Trails Project –Taylor Morrison plans
- C. Lower/East Penitencia Creek Trails Project –DR Horton plans
- D. Lower/East Penitencia Creek Pedestrian Bridge plan
- E. Joint Use Agreement between the City and Santa Clara Valley Water District
- F. Initial Study EIR Addendum - Lower/East Penitencia Creek Trails/Bridge
- G. Final Initial Study EIR Addendum - Lower/East Penitencia Creek Trails/Bridge

Recommendation: Approve the Environmental Assessment No. EA 14-0005 for two Addendums to the Transit Area Specific Plan Final Environmental Impact Report for the Lower/East Penitencia Creek trails and proposed bridge, and approve the Joint Use Agreement between the City of Milpitas and the Santa Clara Valley Water District.

- * 12. **Approve a New Capital Improvement Program Project No. 2005 for Lower Penitencia Creek Pedestrian Trail Bridge, Approve a Budget Appropriation, and Approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. (Staff Contact: Steve Erickson, 408-586-3301)**

Background: On September 14, 2014, the City entered into a consultant agreement with Biggs Cardosa Associates, Inc. in the amount of \$19,300 to provide 30% conceptual bridge design services for a new pedestrian bridge over Lower Penitencia Creek near McCandless Drive. The term of the agreement is from September 14, 2014 to September 4, 2015. Biggs Cardosa was selected through the City's standard operating procedure for professional consultants to provide these services. The scope of work included providing a 30% conceptual bridge design and construction estimate to determine the feasibility of installing a 10-foot wide steel bridge that will connect developer constructed levee trails. The 30% conceptual design is now complete, and staff recommends moving forward with a new project to complete the final construction plans and specifications.

City Council is requested to approve a new Capital Improvement Project (CIP) for the final design and construction of the new pedestrian bridge. The Harmony and Taylor-Morrison development projects will construct new levee trails, and have contributed a total of \$500,000 in funding for the construction of the bridge. An additional \$150,000 in funding is required for final bridge design services, project administration, City Building Department review and permitting, and for special construction inspection. Transit Area Specific Plan (TASP) impact fees are proposed for this additional funding.

City Council is also requested to approve Amendment No. 1 to the agreement with Biggs Cardosa Associates Inc. for the final bridge design, construction support, and construction inspection services to complete construction of the new bridge. Staff negotiated a scope and fee for these additional services not to exceed \$184,500. The agreement will also be extended to March 18, 2016.

Fiscal Impact: A budget appropriation is requested in the amount of \$150,000 from the Transit Area Specific Plan (TASP) impact fees fund and \$500,000 from the developers contributions for the Lower Penitencia Pedestrian Bridge, Project No. 2005. Annual maintenance costs are estimated at \$20,000.

Recommendations:

1. Approve a new Capital Improvement Program Project No. 2005 for the Lower Penitencia Creek Pedestrian Bridge Project.
2. Approve a budget appropriation of \$150,000 from Transit Area Specific Plan (TASP) impact fees and \$500,000 from developer contributions.
3. Approve Amendment No. 1 to the Agreement with Biggs Cardosa Associates, Inc. in the amount of \$184,500 and for a term until March 18, 2016 for the Lower Penitencia Creek Pedestrian Bridge.

*** 13. Consider Approval of Assignment and Assumption Agreement related to the McCarthy Development Agreement (Staff Contact: Michael Ogaz, 408-586-3040)**

Background: On March 21, 2000, the City entered into a Development Agreement with Muriel M. Harris and Joseph A. McCarthy, each as Trustee of the MGM Revocable Trust dated December 14, 1982, as amended, and of the RIM Revocable Trust dated February 12, 1982, as amended (“McCarthy”). The Development Agreement involved approximately 139 acres owned by McCarthy along North McCarthy Boulevard between Ranch Drive (“McCarthy Ranch”) behind the existing Best Buy and WalMart. The Development Agreement vested certain permitted uses, maximum height and size of buildings, location of public improvements, taxes, fees and exactions, and guidelines, rules, and ordinances in effect at that time.

Under the Development Agreement, McCarthy may sell McCarthy Ranch or any portions thereof and assign the rights and obligations under the Development Agreement to a successor-in-interest with written consent of the City. The City has approved three prior assignments. Shortly after executing the Development Agreement in March 2000, McCarthy sold 65 acres (“Veritas Parcel”) of McCarthy Ranch to Veritas Operating Corporation (“Veritas”) and with the City’s consent, assigned its rights and obligations relating to the Veritas Parcel under the Development Agreement to Veritas. Veritas in conjunction with its lender constructed the first phase of the development consisting of three office buildings of approximately 469,464 square feet, which is currently occupied by Cisco at the south end of North McCarthy Boulevard and Ranch Drive. The remaining part of the Veritas Parcel is vacant.

On September 19, 2006, Veritas sold the 65 acre Veritas Parcel to BRE/Milpitas LLC (“Blackstone”) and with the City’s consent, Veritas assigned its rights and obligations relating to the Veritas Parcel to Blackstone. Blackstone is currently in escrow to sell the 65 acre Veritas Parcel to Hudson Campus Center, LLC. (“Hudson”) and is seeking the City’s written consent to assign the rights and obligations under the Development Agreement to Hudson. Hudson is a full service, vertically integrated real estate investment company headquartered in Los Angeles, California. Hudson was founded in 2006 and had an initial public offering in 2009. It currently owns 27 commercial/retail/office properties in the west coast totaling more than 6.4 million square feet. Hudson is in the process of buying Blackstone’s real estate portfolio of properties totaling over six million square feet, including the Veritas Parcel.

Staff reviewed Hudson’s background and believes it is a growing and reputable company that will hopefully further develop the Veritas Parcel pursuant to the Development Agreement. The term of the Veritas Development Agreement relating to the 65-acre Veritas Parcel expires on April 21, 2025. The Development Agreement vested certain rights for the development of up to 1,415,814 square feet of industrial space of which approximately 469,464 square feet have been constructed to date. Hudson informed staff that the company has no plans in the near future to develop the vacant Veritas Parcel. However, Hudson is conducting market studies to determine viability of future development.

Fiscal Impact: None.

Recommendation: Approve the Assignment and Assumption Agreement between the City, BRE/Milpitas LLC and Hudson Campus Center LLC relating to the 65 acres along North McCarthy Boulevard between Ranch Drive.

- * 14. **Authorize City Manager to Execute Amendment No. 3 to the Agreement with CSG for Fire Department Plan Review & Inspection Services per Fiscal Year 2014-15 for an additional amount of \$75,000 (Staff Contact: Albert Zamora, 408-586-3371)**

Background: On May 20, 2014, the City Council approved the City's Final Budget for Fiscal Year 2014-15, which includes \$163,200 for plan review and inspection services within the Fire Prevention Division. The additional amount of \$75,000 is necessary due to the additional heavy workload in the Hazardous Materials Unit of the Fire Prevention Division.

Fiscal Impact: None. Sufficient funding is available in the Fire Prevention operating budget.

Recommendation: Authorize the City Manager to execute Amendment No. 3 to the agreement with CSG for fire inspection and plan review services for a total amount-not-to-exceed \$238,200 for Fiscal Year 2014-15.

XIX. DEMAND

- * 15. **Authorize Payment to Burton Fire for Invoices Totaling \$28,162.65 for the Ladder Truck TK86 repairs (Staff Contact: Steve Machida, 408-586-3355)**

Background: When responding to a service call, Fire Ladder Truck TK86 was involved in a traffic collision with an inattentive driver. As a result, TK86 sustained damage to the right side of the cab but fortunately, no one was hurt in the collision. The City received the following two quotes to repair the damage to front of the cab:

Burton Fire	\$12,520.73
Hi-Tech E.V.S. Inc.	\$21,484.42

A contract was awarded to Burton Fire based on this initial estimate. As Burton Fire was preparing TK86 for the repair or "tear down," that company discovered additional damages that were hidden behind the body panels and the chassis. The additional damages could not be determined during the initial assessment until the actual tear down occurred. Subsequently, Burton Fire submitted a quote of \$11,366.92 to repair the additional damages. Since TK86 was already partially disassembled at Burton Fire, Staff could not obtain another quote, thus, Burton Fire was authorized to proceed with the work. The cost of the repair to TK86 is \$28,162.65. The insurance company from the driver who caused the collision will pay for the repairs.

California Environmental Quality Act (CEQA): Exempt from CEQA as there will be no physical change to the environment.

Fiscal Impact: None. The insurance company from the driver who caused the collision will pay for the repairs.

Recommendation: Authorize payment of invoices to Burton Fire totaling \$28,162.65 for the Ladder Truck TK86 repairs.

XX. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 7, 2015**