List of Attachments for Item No. 2

91 Montague Project

Attachments:

2A	City Council Resolution
2B	Planning Commission Minutes – August 10, 2016
2C	Planning Commission Staff Report – August 10, 2016
2D	Planning Commission Resolution No. 16-028
2E	Project Plans
2F	California Environmental Quality Act (CEQA) Analysis and Supplemental Memorandum

RESOLUTION NO. _____ 2A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD13-0020, CONDITIONAL USE PERMIT NO. UP13-0021, TENTATIVE TRACT MAP NO. MT13-0008, AND ENVIRONMENTAL ASSESSMENT NO. EA16-0005 TO ALLOW CONSTRUCTION OF 72 RESIDENTIAL CONDOMINIUM UNITS ON 1.794 ACRES IN FIVE, DETACHED, FOUR-STORY STRUCTURES WITH SHARED, UNDERGROUND GARAGE AND ASSOCIATED SITE IMPROVEMENTS AT 91 MONTAGUE EXPRESSWAY

WHEREAS, on December 6, 2013, an application for a Site Development Permit (SD13-0020), Conditional Use Permit (UP13-0021), Tentative Tract Map (MT13-0008), and Environmental Assessment (EA16-0005) was filed by Manou Movassate to amend and replace the prior entitlements to allow the demolition of an existing, vacant structure and for the development of five, four-story detached structures, connected by a hallway, containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements located at 91 Montague Expressway (APN 086-34-023) (the "Project"); and

WHEREAS, the City of Milpitas determined that the project was subject to California Environmental Quality Act (CEQA) and the proposal is exempt under Section 15168(c) of the CEQA Guidelines as it was previously analyzed and mitigated as part of the Milpitas Midtown Specific Plan Environmental Impact Report (EIR). Mitigation Measures within the Milpitas Midtown Specific Plan EIR are applicable to this Project and per CEQA Guidelines Section 15168(c), projects are exempt from new environmental review if the lead agency can demonstrate the activity as being within the scope of the project covered by a program EIR, and no new environmental effects and no new mitigation measures are required; and

WHEREAS, on August 10, 2016, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal and the Planning Commission recommended approval of the Project to the City Council subject to Conditions of Approval; and

WHEREAS, on September 20, 2016, a duly-noticed public hearing was held by the City of Milpitas City Council on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal; and

WHEREAS, the City Council has considered all of the written and oral testimony presented at the public hearing in making its decision; and

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals.

The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CEQA Finding.

The City Council conducted an environmental assessment No. EA16-0005 of the Project in accordance with CEQA, as amended, and State and local guidelines implementing CEQA. This Project is included within the area evaluated as part of the Midtown Specific Plan EIR, SCH#2000092027, which was certified by the City Council on March 19, 2002. The Project is covered under the scope of activities approved with that EIR. A finding is made below that this Project is within the program of the EIR and no further environmental review is required. All applicable mitigation measures identified in the Final EIR will apply to the project and have been imposed as conditions of approval in **Exhibit 1** attached hereto and incorporated herein.

CEQA Finding

The proposed Project is covered under the scope of activities analyzed under the Midtown Specific Plan EIR, SCH#2000092027, which was certified by the Milpitas City Council on March 19, 2002. The EIR included a program of activities that include the construction of up to 2,328 new dwelling units and supporting retail development, new office developments at key locations, bicycle and pedestrian trails linking the areas together, and new parks to serve residential development within the Midtown Specific Plan area. The proposed 72 residential units fall within this scope of development activity since the specific plan area has not reached its full build out.

Further, the Project Permittee has submitted a Phase I Environmental Site Assessment, Soil Engineering Study and Liquefaction Analysis, Stage I Noise Report, and Stage I Vibration report to further show consistency with the Midtown Specific Plan EIR. Copies of these documents are on file with the Planning Division and fully incorporated herein by reference. These aforementioned studies do not indicate any Project environmental impacts other than those already analysed in the EIR.

An independent Environmental Assessment memorandum was prepared by LSA Associates under contract to the City of Milpitas concluding that the Project is exempt from further environmental analysis per Section 15168(c) of CEQA. Mitigation measures required of projects covered under the EIR are included as Conditions of Approval. Based on the foregoing, the City Council finds that the proposed Project will not have additional environmental impacts beyond those identified in the EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

SECTION 3. Tentative Tract Map Findings (Section XI-1-20.01).

The City Council makes the following findings based on the evidence in the administrative record in support of Tentative Tract Map No. MT13-0008:

1. The proposed subdivision, its design and improvement are consistent with the General Plan of the City of Milpitas.

The project has a General Plan land use designation of Multi-Family Residential, Very High Density, with allowable density range of 31-40 units per gross acre. The proposed project is consistent with the land use designation with its dense, multi-family residential use at a density of 40 units per gross acre. Furthermore, the project will encourage the economic pursuits of the City, providing housing opportunities and fostering community pride and growth through development, as illustrated below:

- ***2.a-I-119*** *Use zoning for new residential developments to encourage a variety and mix in housing types and costs.*

  By offering a mix of unit sizes (28 one-bedroom units, 26 two-bedroom units, and 18 three-bedroom units), the project creates a variety of new housing opportunities at a range of price points.

- ***2.a-I-17*** *Foster community pride and growth through beautification of existing and future development.*

  The project includes the demolition of an older, vacant structure on an underutilized site adjacent to railroad tracks, and the construction of a contemporary, multi-family development that will include extensive landscaping and frontage improvements. It includes a main entrance and façade that incorporates a large courtyard area for visitors and residents, varied roof heights and vertical planes to reduce the appearance of bulk, thoughtful articulation to create shadow lines and avoid large blank walls, and a color palette that will beautify the development and neighborhood generally.

2. None of the findings set forth in Government Code Section 66474 apply to the proposed project.

- *The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451.*

  The proposed map is consistent with the Milpitas General Plan, which establishes the relevant distribution, location, and extent of the uses of land, as documented in finding 1 of Section 3 above. The map is also consistent with the Midtown Specific Plan, in that the project implements the following Midtown Specific Plan policies:

  - *Policy 3.4: Establish a minimum density of 21 units per gross acre in the mixed-use district, 31 units per gross acre in the multi-family, very high density area, and a minimum of 41 units per gross acre around the transit stations.*

    The project is located within the Multi-Family, Very High Density zoning district and, at 40 units per gross acre, is within the allowable density range of 31-40 units per gross acre for that district.

  - *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*

    As documented in the staff report presented to the Planning Commission on August 10, 2016, the project Permittee is meeting this requirement through a combination of private recreation space and the payment of a parkland fee in accordance with City requirements.

  - *Policy 4.17: Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.*

    As documented in the staff report presented to the Planning Commission on August 10, 2016, the project is required to provide 130 residential parking spaces and 20 guest parking spaces. The project proposes to provide 130 vehicular parking spaces, 8 motorcycle parking spaces, and 20 guest parking spaces, thus exceeding the minimum requirement.

- *The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

  The design and improvement of the project is consistent with the Milpitas General Plan as set forth in finding 1 above, and the Midtown Specific Plan as set forth in finding 2 above.

- *The site is physically suitable for the type of development.*

  The site is physically suitable for the development of four-story condominium uses in terms of grade, proximity to transit (including the VTA and planned BART stations), underutilized condition, and development potential.

- *The site is physically suitable for the proposed density of development.*

  After conducting environmental impact reports pursuant to the California Environmental Quality Act, both the Milpitas General Plan and Midtown Specific Plan have determined that it is appropriate for this site to host a density range of 31-40 units per gross acre. At 40 units per gross acre, the proposed project falls within this density range.

- *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

  The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially or avoidably injure fish or wildlife or their habitat given that the site is currently an underutilized lot with a vacant building and does not provide fish or wildlife habitat which will be displaced by its development. Furthermore, the project is consistent with the Midtown Specific Plan FEIR, which includes appropriate mitigation measures, including but not limited to, coordination with appropriate agencies such as U.S. Army Corps of Engineers, California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB), if necessary. Staff has determined the project, as proposed is not located within wetlands or waterways (including Penitencia Creek) where substantial environmental damage or avoidable injure to fish or wildlife or their habitat can occur.

- *The design of the subdivision or type of improvements is not likely to cause serious public health problems.*

  The design of the subdivision and the type of improvements proposed are not likely to cause serious public health problems given that fire access is subject to review and approval by the City, as are pedestrian and vehicular egress and ingress. In addition, compliance with the conditions of approval set forth in Exhibit 1 hereto will ensure conformance with applicable sanitary sewer, water, and other utility regulations to protect the public and project residents.

- *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

  After reviewing the project plans, the City has determined that the design of the subdivision and the type of improvements proposed will not conflict with any easements acquired by the public at large for access through or use of, property within the proposed subdivision. As conditioned, the Permittee will dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

SECTION 4. Site Development Permit Findings (Section XI-10-57.03).

The City Council makes the following findings based on the evidence in the administrative record in support of Site Development Permit No. SD13-0020:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

   The layout of the site, which proposes five, detached, four-story structures with shared underground parking, and the design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the proposed residences will be of a similar height to the nearby multi-story residential uses, employ building colors and materials in earth tones that complement the color palette of surrounding residences, vary roof heights and vertical planes in the same manner as nearby uses, and offer rich landscaping (including some 555 new plants) that will continue the greenery along Montague Expressway offered by other developments. Any modifications to approved landscaping plan must be reviewed by the Planning Director to ensure compatibility with existing Montague Expressway area and long-term maintenance of the landscaping.

2. The project is consistent with the Milpitas Zoning Ordinance.

   The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district (40

units per gross acre proposed where 31-40 units per gross acre are permitted). The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to the development standards set out in the Specific Plan district in terms of height (4 stories proposed where 4 are allowed) and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted), as well as with the City's parking ordinance (158 vehicle and motorcycle spaces provided where 150 residential and guest spaces required) as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

3. The project is consistent with the Milpitas General Plan.

   See finding 1 made in support of the Tentative Tract Map in Section 3 above.

4. The project is consistent with the Midtown Specific Plan.

   The project is consistent with the Midtown Specific Plan, as illustrated in finding 2 made in support of the Tentative Tract Map in Section 3 above. Furthermore, the proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines, as set forth in finding 4 above. Specifically, the project meets the Specific Plan's Development Standards regarding density (40 units du/a proposed, where 31-40 du/a are allowed), height (4 stories proposed where 4 are allowed), and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted). It also meets the Design Guidelines requirements for vehicle access (providing primary vehicular access from access ways directly connecting to the street), making the off-street parking facility very low-visibility from the street, and articulating the buildings with varying roof heights and vertical planes, among other features.

SECTION 5. Site Development Permit for Signage Findings (Section XI-10-57.03(F)(2)).

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD13-0020 for signage:

1. All elements of signs, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.

   The project includes one monument sign to be installed at the main entrance, along Montague Expressway. All elements of the sign, which include individual raised, metal channel letters, a stucco and concrete base wall, and low-profile flood lighting add to the architectural character of the area, and are consistent with the General Plan via Policy 5.3 of the Milpitas Midtown Specific Plan of promoting high-quality private development that contributes to the visual identify and environmental quality of the Midtown Area through the application of development standards and design guidelines.

2. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.

   The project meets this finding because the sign, as proposed, will follow the same color and materials pallet as the development in which it is associated with. The metal channel letters, the scale associated with those letters, the stucco and concrete base, and low-profile flood lighting all lend in allowing the sign to harmonize with the proposed architecture of the building.

3. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.

The project meets this finding because, as proposed, the sign is located within the front setback and set to a size and scale that is both complimentary to the development it represents and the viewing range from pedestrians and automobile drivers along Montague Expressway.

4. The design and materials of the sign provide a contrast between the background and letters.

   The project meets this finding because the proposed monument sign is low-profile in design, uses individual raised channel letters in a muted grey color, which contrasts well with the light, violet background and decorative tilework within the columns that flank the monument sign.

SECTION 6. Conditional Use Permit Findings (Section XI-10-57.04(F)).

The City Council makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0021:

1. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

   The proposed project requires a Conditional Use Permit to authorize a condominium residential use. Such a use will not be detrimental or injurious to property or improvements in the vicinity of the project, nor to the public health, safety, and general welfare, given that it is a high density residential use of exactly the type and within the density range envisioned by the Midtown Specific Plan and the General Plan for this location. Development of the project will improve an underutilized site, which will inure to the benefit of surrounding properties.

2. The proposed use is consistent with the Milpitas General Plan.

   See finding 1 made in support of the Tentative Tract Map in Section 3 above.

3. The proposed use is consistent with the Milpitas Zoning Ordinance.

   The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district. The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to development standards set out in the Specific Plan district in terms of height and setbacks, as well as with the City's parking ordinance as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

4. The project is consistent with the Midtown Specific Plan.

   See finding 2 made in support of the Tentative Tract Map in Section 3 above.

SECTION 7. City Council Approval.

Based on the foregoing, the City Council hereby approves Site Development Permit (SD13-0020), Conditional Use Permit (UP13-0021), Tentative Tract Map (MT13-0008), and Environmental Assessment (EA16-0005) to allow the demolition of an existing, vacant structure and for the development of five, four-story, detached structures, containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements at 91 Montague Expressway, subject to the above findings, and the Conditions of Approval attached hereto as Exhibit 1.

SECTION 8. Notice.

Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).

PASSED AND ADOPTED this _____ day of_____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Christopher J. Diaz, City Attorney

EXHIBIT 1
CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD13-0020, CONDITIONAL USE PERMIT NO. UP13-0021, TENTATIVE TRACT MAP NO. MT13-0008, AND ENVIRONMENTAL ASSESSMENT NO. EA16-0005
91 MONTAGUE EXPRESSWAY (APN 086-34-023)

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Development Permit NO. SD13-0020; Conditional Use Permit NO. UP13-0021; Tentative Subdivision Map NO. MT13-0008; and Environmental Assessment NO. EA16 -0005 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. **(P)**

2. Plan Conformity. The Permittee shall develop the approved project in conformance with the approved plans (dated January of 2016), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. **(P)**

3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

6. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:

   a. Completes a foundation associated with the project; or
   b. Dedicates any land or easement as required from the zoning action; or
   c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

8. Project Job Account. If the Permittee's project job account is at any time delinquent or below the required deposit amount, the City will not continue to review or process the application until the Permittee's project job account is paid in full and the required deposit has been paid. At the time of application for building

permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(E)**.

9. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by any court of competent jurisdiction, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.

10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies.

11. Certificate of Insurance. Permittee shall provide certificate of insurance and name the City of Milpitas as an additional insured in its insurance policies.

12. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.

14. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution.

15. Indemnification. Permittee, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of SITE DEVELOPMENT PERMIT No. SD13-0020, CONDITIONAL USE PERMIT No. UP13-0021 AND TENTATIVE TRACT MAP No. MT13-0008, including any environmental determination (No. EA16-0005) made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by Permittee. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to TENTATIVE TRACT MAP (MT13-0008) and the balance of the Permit shall be unaffected by said Government Code section. **(CA)**

16. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**

17. Landscape. Prior to issuance of a Building Permit, the landscape plans shall be revised to incorporate jacaranda trees at the entry to the project site. The final number and location of jacaranda trees shall be established in consultation with City staff. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive, and effective appearance.

18. Parking. Prior to issuance of a building permit, the Permittee shall modify the parking plan to provide a minimum of ten (10) short-term bicycle parking spaces on the project site, and to incorporate electric vehicle charging station in the underground parking garage. The final number and location of charging stations shall be established in consultation with City staff. Required parking, including bicycle parking and electric vehicle charging stations shall be installed prior to occupancy of residences.

19. Fire Department access. Fire Department apparatus and staff access shall be provided to all buildings and site. CFC Section 503.

20. A minimum of two independent and approved (by the Fire Code Official) means of fire apparatus access shall be provided. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m2) shall be provided with at least two means of fire apparatus access for each structure. 2012 International Fire Code, Section D104.1, adopted and amended by Milpitas Municipal Code ("MMC") Section V-300-2.154.

21. Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (centre). California Fire Code Section 503.

22. Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code.

23. Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.

24. Adjacent Access. No source of access from lands adjoining a property to be developed shall be considered unless there is obtained the irrevocable and unobstructed right to use same. CFC Section 508.3, added by MMC Section V-300-2.48.

25. Fire access roads shall be paved (concrete and/or asphalt cement, no other material is accepted). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division for specifications. CFC Section 503.2.3.

26. Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4.

27. Building/structure set back, proximity to fire access roads. At least one of the required access routes meeting the Fire Dept. conditions shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the entire side of the building. 2012 International Fire Code, Section D105.3, adopted by MMC Section V-300-1.01.

28. Emergency Vehicle Access (EVA) roads, when required, shall meet the fire department site access requirements specified herein these conditions of approval CFC Section 503.

29. No parking in fire access roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3. Minimum marking shall be (1) pole signage and (2) red curb with “FIRE LANE” stencil.

30. Buildings with Courtyards. Fire access shall be provided to enclosed courts for fire fighting and rescue operations. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36’ long) into the courtyard. Permittee shall ensure that project design anticipates and accommodates personnel carrying ladders. CFC Section 102.9.

31. Fire Protection. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved). CFC Section 501.4.

32. Roof Guardrails at Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through. CFC 316.7, added by MMC V-300-2.45.

    Exception: Where the roof opening is greater than 600 square feet in area.

33. Stairs to Roof (applicable to all building perimeter stairwells and other stairwells as specified by the Fire Code Official). Buildings located four or more stories in height above grade plane, except those with a roof slope greater than four units vertical in 12 units horizontal, shall be provided with stairway to the roof. CFC Section 504.3.1, added by MMC Section V-300-2.49.

34. When there are roof planes with vertical difference of more than 24”, there shall be stairs for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9.

35. Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices that would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the Fire Code Official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.5, added by MMC Section V-300-2.51.

36. Fire Department emergency Key Box (Knox Box, Knox locks, Knox electric switches, etc). The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for life-saving or fire-fighting purposed. Quantify and location shall be as directed by the Fire Code Official. CFC Section 506.

37. Emergency responder radio coverage in buildings.

a. All buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communications system of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communications system. Emergency responder radio coverage systems shall be installed in accordance with the CFC Section 510.
b. Emergency responder radio coverage in buildings - obstruction by new building. When in the opinion of the Fire Code Official, a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other location, Permittee shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure. CFC Section 510.1.1, added by MMC V-300-2.56.
c. The emergency radio system shall be supervised per the CFC Section 510.64. CFC Section, added by MMC V-300-2.57.
d. Dedicated equipment room(s) with the appropriate supporting mechanical systems, shall be provided to meet the emergency communication system needs. California Fire Code Section 102.9.

38. Fire Protection Water Supply (hydrants, on-site and public).

a. An approved water supply (hydrants on-site and public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines. CFC 507, Appendix B and Appendix C. Fire flow reduction as noted in Appendix B of the Fire Code is not permitted.
b. Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineer Division water design requirements shall be provided as part of the construction permit process. CFC Section 507.
c. Automatic fire sprinkler design shall use a safety factor of 20% from water flow information provided by the City of Milpitas Utilities Engineering Division. CFC Section 903.3.5.6, added by MMC Section V-300-2.68.
d. The location and quantity of hydrants will be evaluated during the construction permit process. This applies to the on-site private streets, as well as to the public streets. CFC Section 507.5.
e. Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC Section V-300-2.54.
f. No parking is permitted in front of fire hydrants. Hydrants located on streets (public or private street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514. Provide striping per CA Vehicle Code 22500.1. CFC Section 507.5.4.
g. Permittee shall provide fire service water laterals for sprinkler systems.
h. Fire service water laterals for the automatic fire sprinkler system shall meet the California Fire Code requirements Chapter 9 and the NFPA applicable Standards. CFC 912.1.
i. The number and limitations for each sprinkler riser shall conform to the NFPA 13, Section 8.2.
j. The location of the post indicator valve (PIV) for the fire department connection (FDC) shall be at a readily accessible location and approved by the Fire Code Official. FDC's PIV shall not be located behind parking stalls nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.3.
k. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Section 903 and or 905 of the CA Fire Code shall have a fire hydrant within 50 feet of the fire department connections. CA Fire Code Section 507.5.1.1, added by MMC V-300-2.5.3.
l. <u>FDC/PIV Signage</u>. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be approved by the Fire Code Official. CFC Section 912.4.

m. Backflow Protection. Potable water supply to the automatic sprinkler and the standpipe systems shall be protected against backflow as required by Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.5.
n. Service water supply laterals for the sprinkler systems and the on-site fire hydrants shall be independent of each other. NFPA 13, Chapter 23.
o. Automatic fire sprinkler riser location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.67.
p. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge.

39. Premises Identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505. The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9.

40. All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52.

41. All elevators shall be sized to meet the gurney size requirements per the California Building Code Chapter 30. CFC Section 607.1.1, added by MMC Section V-300-2.59.

42. Building/Structure Requirements.

a. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. California Fire Code Section 903.3.
b. All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 904.3.
c. Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the standpipes shall be located at the bottom floor level, at the top floor level (roof) and at all intermediate landings. CFC Section 905.4.
d. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.
e. Group R-2. A fire alarm system and smoke alarms shall be installed in Group R-2 Occupancies as required in Sections 907.2.9.1 through 907.2.9.4. CFC Section 907.2.9, CFC Section 907.2.9.1 - Manual Fire Alarm System, CFC Section 907.2.9.2 - Smoke Alarm (in accordance with 907.2.11).
f. R-2 Occupancy, listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.1 through 907.2.11.4 and the NFPA 72. CFC Section 907.2.11.
g. In Group R-2 required by Section 907 to have a fire alarm system, all dwellings units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. CFC 907.5.2.3.4.
h. Fire alarm system(s) shall be zoned as per the requirements of CFC Sections 907.6.3 and 907.6.4.
i. Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the California Electrical Code. CFC Section 907.6.3.1.1.
j. Fire alarm monitoring (Approved supervising station - UL or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC 907.6.5.
k. Smoke control systems (when required) shall comply with the CFC Section 909.

43. Special Fire Department Requirements for Buildings over four stories. This requirement is applicable to all perimeter stairwells. CFC 914.12, as added by MMC Section V-300-2.76. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height.

44. Equipment cache rooms shall be located on the 1st floor above the ground floor, and every other floor thereafter, or as directed by the fire agency.

a. Cache rooms shall be located and accessible from within the rated stair enclosures.
b. Prior to the purchase of the fire department cache room equipment and/or materials, a complete list of the equipment and or materials with all necessary cut-sheets shall be submitted to the fire department for review and approval.
c. Due to operational needs, the fire code official reserves the right to make changes to the required equipment and or materials listed under Condition 46 below.

45. Each equipment storage room size should be a minimum of 4' deep, full height (8' to 9'), with a door the minimum width of 43". A roll-up door can be used provided it has a 43" minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a 'timer'), be sprinklered, and be locked with a 'break-away' type lock. Fixed shelving (shelving shall be every 16" after ladder placement is determined) shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:

a. 2 - Hotel Hose pack (double jacketed hose) with 100 feet of 2 ½" fire hose and a 1½" variable fog nozzle (Task Force Tip, 1 ¾") with a detachable bail, both having National Standard threads. Each pack to have 1-spanner wrench, 1- 2 ½" X 1 ½" gated wye, and 1-2 ½" X 1 ½" reducer coupling Red Head Brass 2 ½" X 1 ½" reducer
b. 2 - 50' banded hose rolls (North American Hose)
c. 2 - 2-1/2" 10' hose with one male end connector & female end connector both with National Standard threads ('Stynger')
d. 1-Hooligan tool (Paratech Hooligan, 11 pound)
e. 2 - pick head axe (Council Axe, Pick head)
f. 1-Little Giant Ladder, or 1- attic ladder; Fire agency to determine type.
g. 1- 3' Ames Tru Temper Wrecking bar,
h. 12 -Open Door Industries, door stops
i. 4 – salvage covers (blue tarps) measuring 18' X 24' with grommets every 16"
j. 3-Spare sprinkler heads, for each type used (these are in addition to those required in the riser room)
k. 1-each Sprinkler head wrench(es), one for each type of head used
l. 1-Push type cart for use to move air bottles (type subject to Fire agency approval)
m. 1-Rapid Intervention Pack (RIT) (location to be determined by Fire agency)
n. 1- Evacuation Chair Stryker Model 6253 (per side)
o. Air Bottles: Fixed SCBA bottle storage rack, number of bottles to be determined by the fire agency. A minimum capacity for 5 bottles per closet shall be provided. Individual rack slots should be positioned for horizontal storage, and be oversized to accommodate changes in bottle sizes. Product Brand and Model shall be approved by the Fire Department.

The Fire Code Official may require, an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A 'monument-type' fill station port should be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry must also be provided. The storage system should be designed to provide enough air at 4500 psig for up to fifty 45 minute bottles, prior to augmentation by an outside air source.

46. Equipment maintenance, inspection, replacement and or equipment update and required certification(s) shall be the responsibility of the building owner and/or owner's association.

47. Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety by "unidocs" organization (http//:www.unidocs.org). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33.

48. Stationary storage battery systems having an electrolyte capacity of more than 50 gallons for flooded lead-acid, nickel cadmium and valve-regulated lead-acid, or more than 1,000 pounds of lithium-ion and lithium metal polymer, used for facility standby power, emergency power or uninterrupted power supplies shall comply with the CA Fire Code Section 608.

49. Notes for the electrical generator.
    a. Fuel tank(s) located below grade shall be considered underground tanks in accordance with the California Code of Regulations, Title 23, Division 3, Chapter 16 (State Underground Tank Regulations).
    b. If the fuel tank system(s) is not to be considered an underground tank, as defined by the underground tank regulations, provide documentation demonstrating compliance with the specified State Water Resource Control Board's Guidance letter LG-165-2.
    c. Construction drawings, for the fuel tank, shall be submitted to the City for compliance with the California Fire Code Chapters 27 and 34.

50. Landscape sheets. The proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Department reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4.

51. Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2.

PUBLIC ART

52. Prior to the issuance of a building permit, Permittee shall submit proof of meeting the Public Art Fund requirement under MMC Section XI-10-14. Permittee shall submit proof that ½ of one percent of the Building Development costs for the acquisition and installation of Publicly Accessible Art has been met.

ARCHITECTURAL COMMENTS (as to all proposed structures, above and below ground)

53. Project architecture shall be as depicted on the Building Elevation sheets as approved by the City Council.

54. Applicable codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and 2014 Milpitas Municipal Code.

55. Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.

56. Permittee shall apply for new building addresses prior to submitting for building permit.

57. All proposed future building/construction and site upgrades shall be reviewed and approved by the Planning Department to ensure building elements, siting and site improvements complement approved style of architecture.

58. Buildings area and height shall not exceed allowable as per 2013 CBC 503.1.

59. Exterior walls rating shall comply with 2013 CBC Table 602. Exterior walls shall be provided with parapets as per 2013 CBC 705.11.

60. Protection of openings shall comply with 2013 CBC 705.8 and Table 705.8.

61. Roofing material shall be as per 2013 CBC, Table 1505.1.

62. Two required exit doors shall be placed a distance apart equal to one-half of the diagonal dimension of the area served or one-third of the diagonal dimension in fire sprinkled buildings as per 2013 CBC 1015.2.1.

63. Provide exit signs when two exits are required per 2013 CBC 1011.1 and 1011.3.

64. Required separation in buildings with separated mixed occupancies shall be per 2013 CBC 508.

SIGN PROGRAM

65. All proposed signs shall meet the standards of the City Code and shall be reviewed and approved by the Building and Planning Departments prior to installation.

ACCESSIBILITY

66. Permittee shall provide parking for people with disabilities as per 2013 CBC 11B-208.1

67. Accessible parking spaces shall be dispersed and located closest to the accessible entrances as per 2013 CBC 11B-208.3.1

68. One in every six accessible parking spaces, but not less than one parking space shall be van accessible as per 2013 CBC sec.11B-208.2.4.

69. Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that is accessible as per 2013CBC, section 11B-216.6.

70. At least one accessible route shall be provided within the site from public streets and sidewalks and public transportation stops to the accessible building entrance per CBC 11B-206.2.1. A site is defined as a parcel of land bounded by a lot line or a designated portion of a public right-of-way per CBC 202.

71. Curb ramps shall have detectable warnings extending 36 inches in the direction of travel as per 2013 CBC 11B-406.5.12 and 11B-705.1.2.2.

72. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC 11B-206.4.1.

73. Tactile exit signs shall be provided where exit signs as per 2013 CBC sec.1011.1 are provided as per 2013 CBC 1011.3.

74. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, 11B-213.1.

75. Provide manoeuvring clearances at doors as per 2013 CBC 11B-404.2.4.

76. Provide minimum aisle width per 2013 CBC 11B-403.5.1 exception 4. Every aisle shall be 36" wide if serving one side and 44" min. wide if serving both sides.

77. Double swinging doors shall be provided with a minimum of 10" smooth surface at the bottom of the door as per 2013 CBC 11B-404.2.10.

ENGINEERING

78. A soil report shall be provided when applying for grading, site improvement and building permit.

79. Paving of parking garage shall comply with 2014 MMC section II-13-18.

80. All non-structural concrete flat work shall be as per 2014 Milpitas Municipal Code, section II-13-17.05.

81. Erosion control plan shall be submitted when applying for grading permit as per 2014 Milpitas Municipal Code section II-13-10.

82. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. Permittee shall include interim erosion control provisions and schedules on the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season as per 2014 Milpitas Municipal Code section II-13-11.

ELECTRICAL

83. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02.

84. Grounding system shall comply with 2014 MMC section II-6-2.04.

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. **(E)**

85. Modifications. The Site Development Plan dated March 16, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.

86. Solid Waste and Recycling Handling Plan. Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.

87. Stormwater Control Plan. Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.

88. Photometric Analysis. Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Milpitas Expressway public park and public trail area that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting

standards and City standard design guidelines. Permittee shall provide street lighting along all street frontages consistent with City requirements, as well as pedestrian scale lights along all public and private street frontages.

89. Submittal Requirements. Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.

90. Project Job Account/Fee Deposit. Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer.

PRIOR TO FINAL MAP APPROVAL/RECORDATION

The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

92. Dedication on the Final Map. Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

93. Abandonment/Quitclaim Easements. Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.

94. Easements on the Final Map. Permittee shall depict all existing easements to remain based upon current (less than 3 months old) preliminary title report and depict new easements on the final map.

95. Concurrent Off-site Plan Reviews. Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.

96. Utility Company Approval. Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements.

97. Subdivision Improvement Agreement and Securities. Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).

98. Annexation to the Community Facilities District. Permittee shall submit an executed petition affirmatively consenting to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The CFD annexation process shall be completed prior to Final Map approval. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 9 notwithstanding. **(E)**

99. Homeowners Association (HOA). If a Homeowners Association will be created, Permittee shall submit a preliminary draft of the proposed conditions, covenants, and restrictions (CC&Rs) for City's review and approval. Membership of the HOA shall include all owners of the residential units. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets, and shall have assessment power. The HOA shall manage and maintain the onsite water, recycled water, irrigation, storm, water quality treatment, and sewer systems and implement the Solid Waste

Handling Plan. The information shall be clearly included in the CC&Rs to be recorded with the Santa Clara Recorder's Office.

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

100. Public Improvement Design Standards. All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/), standard drawings and specifications, (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/) and Americans with Disabilities Act (ADA) requirements where applicable.

101. Sanitary Sewer Calculations. Permittee shall submit a completed "Sewer Needs Questionnaire" form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral.

102. Storm Drain Design. Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.

103. Domestic Water and Fire Service Calculations. Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modelling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 2.

104. Utility Protection. All existing public utilities, to the extent any are present on the project site, shall be protected in place, or if necessary, relocated as approved by the City Engineer. No permanent structure is permitted within any City easement and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.

105. Specific Improvements. In addition to standard public improvements required under MMC Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.

    a. Installation of separate water service taps and separate meters for each of the following services: residential, irrigation, and fire.
    b. Installation of sanitary sewer manholes right behind the right-of-way and at the main for the new lateral.
    c. Installation of new curb, gutter and sidewalk along the project frontage with extension to match the existing sidewalk fronting the Harmony project (located at Building 13, also known as 1848-1884 Snell Place, Milpitas, CA).
    d. Installation of Type II slurry seal along the project frontage to the median islands.

106. Abandonment of Existing City Utilities. Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction.

107. Water Service Agreement. Permittee shall complete a water service agreement to obtain water service.

108. Encroachment Permit. Prior to any work in the public right-of-way and/or public easement, Permittee shall obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.

109. Other Agency Approvals. Permittee shall obtain permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Santa Clara Valley Water District, Santa Clara County Roads and Airport Department, and Southern Pacific Railroad Company. Copies of any approvals or permits shall be submitted to the Engineering Department.

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

110. Final Map Recordation. Permittee shall record the final map.

111. Bioretention Location. Permittee shall verify that proposed bioretention area along frontage, within public right-of-way easement, has been approved by the County of Santa Clara

112. Stormwater Facility Operation & Maintenance Plan. Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit a Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).

113. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.

114. Water Efficient Landscapes. Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.

115. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.

116. Solid Waste and Recycling Facility Design. Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc.
Guidelines can be found at: http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/

117. Recycling Report Prior to Demolition Permit Issuance. Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:

a. What materials will be salvaged
b. How materials will be processed during demolition
c. Intended locations or businesses for reuse or recycling
d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

118. Recycling Report Prior to Building Permit Issuance. Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.

119. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "e" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

    a. Storm water connection fee at $16,771/acre for residential
    b. Water connection fee at $1,164/unit for residential based upon increased water usage
    c. Sewer connection fee at $1,406/unit for residential based upon increased water usage
    d. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
    e. Calaveras Boulevard Widening Traffic Impact Fee at $275/unit for residential subject to adjustment by ENR CCI at the time of payment.

120. Based on the proposal of 72 units at the site, the project is required to dedicate 0.63 acres of parkland, equivalent to $1,749,314. Permittee shall satisfy this obligation through the construction of 0.30 acres of private recreational space and the payment of $912,962 in lieu of dedicating any further real property.

DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

121. Prohibition of Potable Water Usage. Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.

122. Construction Staging and Employee Parking. Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

123. Completion of Public Improvements. Permittee shall complete all public improvements, including but not limited to, those located along Montague Expressway as shown on City approved plans.

124. Stormwater Management Facilities O&M Agreement. Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.

125. Landscape Certificate. Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.

126. Record Drawings. Permittee shall submit record drawings in pdf format for City records.

127. Maintenance Agreement Along Public Right-of-Way. Permittee shall provide the City with a copy of a fully executed Maintenance Agreement with the County of Santa Clara (Roads and Airports Department) regarding sidewalk and other improvements within that portion of Montague Expressway right-of-way along the project frontage.

128. Private Job (PJ) Balance. Permittee shall pay for any remaining balance from the Private Job deposit.

ENVIRONMENTAL IMPACT REPORT (EIR) MITIGATION MEASURES

The following are the mitigation measures from the certified Midtown Specific Plan EIR that apply to this Project with each mitigation measure being imposed as a condition of approval as follows:

HAZARDOUS MATERIALS

129. ***Mitigation Measure HazMat-1*:** A Phase I Environmental Site Assessment (ESA) shall be conducted in accordance with American Society for Testing and Materials (ASTM) guidelines prior to the approval of development that would involve soil disturbance within 100 feet of any parcel that has been identified on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, or which has had previous land uses associated with hazardous materials (e.g., industrial sites, gas stations, etc.). Additional investigation may not be necessary for sites have no record of hazardous materials, past history of land uses associated with hazardous materials, adjacency to such sites, nor surface indications of possible hazardous materials conditions. Figure 3.3-1 located in the Midtown Milpitas Specific Plan EIR, dated October 2001, provides the general location of reported hazardous materials sites as of August 2000. For more detail, refer to the Environmental Records Search, on file with the Planning Division (EDR 2000).

    The Phase I ESA will include the findings of a site reconnaissance and investigation of prior uses of the property that could have resulted in contamination. If a significant likelihood of contamination is revealed by the Phase I ESA, a Phase II and/or III assessment may be required, which would involve soil and/or water quality sampling and could result in remediation requirements in accordance with State and Federal regulations. Implementation of this measure will ensure that the impact is reduced to a less-than-significant level.

UTILITIES

130. ***Mitigation Measure Util-1:*** The following mitigation measures shall be implemented to ensure that wastewater discharge and treatment capacities are available for planned development:

    a. The City of Milpitas shall continue to participate in WPCP Action Plan projects to reduce existing wastewater flows, such as low flow toilet installation programs and water conservation programs. The City of Milpitas shall continue to participate in the South Bay Water Recycling Program, and pursue additional recycled water opportunities whenever available.
    b. The City shall continue to monitor for adequate discharge capacity to serve existing and approved development in the city for all development projects, including remodels. The Planning Division shall continue to coordinate with the Utilities Division and require a sewer need assessment to be completed by the developer prior to any development approvals. The Utilities Division shall continue to keep a running estimate of how much capacity remains citywide to aid in this analysis.
    c. The City of Milpitas shall complete the Sewer-Water Master Plan Update (Winter 2002) and implement the feasible recommended infrastructure improvements, including infiltration and inflow reduction

measures. Upon completion of the Sewer Master Plan, the City of Milpitas shall review the treatment capacity needs and seek additional capacity if warranted. If the available treatment capacity has been reached, the City of Milpitas shall not issue the building permit until additional capacity is acquired.

With the implementation of these mitigation measure, adequate wastewater treatment capacity would be ensured, and this impact would be considered less-than-significant.

BIOLOGICAL RESOURCES

131. ***Mitigation Measure Bio-1:*** Undeveloped areas proposed for development during the nesting season (April 15 to July 15) shall be surveyed for burrowing owls. The survey must follow the California Department of Fish and Game (now Department of Fish and Wildlife) protocol. The survey report shall be submitted to Milpitas Planning Division for review and approval. If owls are observed during the surveys, or if a burrowing owl nest has been documented on the site within the last three years, a burrowing owl habitat map and mitigation plan must be prepared by a qualified ornithologist and submitted to the City for approval. Implementing this mitigation measure would reduce potential impacts to burrowing owls to a less-than-significant level.

132. ***Mitigation Measure Bio-2:*** Most hawks build bulky nests of twigs, bark, and leaves high in trees. Red-shouldered hawks (the species observed in the project area) nest in deciduous or coniferous trees, usually 20-60 feet above the ground. The birds construct well-made cupped nests of sticks and twigs, lined with bark, mosses, leaves, feathers and down. A red-shouldered hawk nest is approximately 2 feet wide and 1 foot deep. For proposed projects that would remove any large tree with a potential raptor nest during the raptor-nesting season (February 1 to August 31), the following mitigation measures shall be implemented.

a. If construction or large tree (i.e., 20 feet or more in height) removal is proposed during the raptor-nesting season (February 1 to August 31), Planning Division staff shall conduct a site visit to determine whether any nest structure is visible in the trees to be removed.
b. If a nest is observed, a focused survey shall be conducted by a qualified biologist during the nesting season to identify if they are active. The survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of construction or tree removal.
c. If nesting raptors are found during the focused survey, no construction or tree removal will occur within 500 feet of an active nest (or an alternative distance deemed appropriate by the California Department of Fish and Game (now California Department of Fish and Wildlife), depending on the existing degree of disturbance in the vicinity of the nest) until the young have fledged (as determined by a qualified biologist). If next trees are unavoidable, they shall be removed during the non-breeding season.

Implementing these mitigation measures would reduce potential impacts to raptors to a less-than-significant level.

133. ***Mitigation Measure Bio-3:*** If a project in the planning area has the potential to result in discharge of dredged or fill material into Waters of the United States, including wetlands, the following measures shall be implemented. Waterways in the planning area that could be Waters of the United States are Berryessa Creek, Lower Wrigley Ford Creek, and East Penitencia Creek.

a. Prior to implementation of a project in the vicinity of known waterways in the planning area, qualified biologists shall make a determination as to whether Waters of the United States, including jurisdictional wetlands, are present in the development area. If no Waters of the United States, including jurisdictional wetlands, would be filled or degraded as a result of the proposed project, no further mitigation will be required.

b. If Waters of the United States would be filled or degraded as a result of the proposed project, authorization for the fills shall be secured from USACE via the Section 404 permitting process.
c. The acreage of Waters of the United States would be filled or degraded as result or rehabilitated on a "no-net-loss" basis in accordance with USACE regulations. Habitat restoration, rehabilitation and/or replacement shall be at a location and by methods agreeable to USACE.
d. Measures to minimize erosion and runoff into drainage channels shall be included in all drainage plans and implemented during construction adjacent to creeks.

Implementing these mitigation measures would reduce potential impacts to Waters of the United States, including wetlands, to a less-than-significant level.

CULTURAL RESOURCES

134. ***Mitigation Measure Cult-1:*** The following mitigation measures shall be implemented to ensure that substantial adverse changes do not occur to historical resources within the planning area. These measures shall be implemented when modification or demolition is proposed for any of the sites identified on Figure 3.8-1 of the Midtown Milpitas Specific Plan EIR, dated October 2001

a. Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of the historic resource would be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstruction Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historic resource shall be considered mitigated to a less-than-significant level. This is the preferred mitigation approach.
b. If removal or modification of any potentially significant resource is proposed and is not consistent with the Standards described in (a), the resource shall be evaluated for its integrity and structural values pursuant to the California Register criteria by a licensed architect specialized in historic buildings. This shall occur prior to the approval of any proposed modification or demolition.
c. If these resources are determined ineligible for the California Register of Historic Resources, no further mitigation is required. However, if a resource is listed or determined eligible for the California Register of Historic Resources, documentation of the structure's architectural values by a licensed architect specialized in historic buildings shall be completed prior to demolition or alteration. At least one additional mitigation measure also will be implemented at the recommendation of the architect in consultation with the City of Milpitas; this might include on-site interpretation of the lost resource or documentation of the resource to Historic American Buildings Survey/Historic American Engineering Recordation (HABS/HAER) standards.

Implementation of these mitigation measures would reduce the potential impacts to historic resources to a less-than-significant level.

135. ***Mitigation Measure Cult-2:*** When proposed for development, the planned bicycle and pedestrian improvements in the vicinity of the Penitencia Creek and development of vacant lands in the vicinity of Penitencia Creek (Within 100 feet of the creek bank) shall be reviewed for their potential to adversely affect archaeological site CA-SCL-38. Mitigation, including site avoidance, data recovery and/or construction monitoring may be necessary, depending on the nature of the site, and the project's potential impact to it. A qualified archaeologist shall make project-specific recommendations, which shall be implemented prior to the development of the path or construction on these vacant lands.

Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

136. ***Mitigation Measure Cult-3:*** Project developers shall be required to implement provisions for historical or unique archaeological resources accidentally discovered during construction in accordance with CEQA Guidelines Section 15064.5 (e)(f). This requirement shall be specified in all building and grading permits. These provisions require the immediate evaluation of the find by a qualified archaeologist or historic archaeologist meeting the Secretary of the Interior's Professional Qualification Standards. If the find is determined to be a historical or unique archaeological resource, funding will be made available by the project developer and a schedule identified for implementing avoidance measures or appropriate mitigation. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place. Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

137. ***Mitigation Measure Cult-4:*** In the event that human remains are encountered, City planning staff will be contacted and excavation or disturbance activities at the site or at any nearby area reasonably suspected to overlie adjacent human will be halted. This requirement shall be specified in all building and grading permits. The Santa Clara County coroner will be contacted and appropriate measures implemented. These actions would be consistent with the State Health and Safety Code Section 7050.5, which prohibits disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery. If the County coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be most likely deceased from the deceased Native American.

TRAFFIC AND CIRCULATION

138. ***Mitigation Measure Traffic-1:*** With implementation of the Specific Plan the City shall implement the improvements summarized in Table 3.9-13 of the Midtown Milpitas Specific Plan EIR, dated October 2001. Consistent with Policy 4.8 of the Draft midtown Milpitas Specific Plan. Historically the City has required development to pay its pro-rata share of improvement costs on a project by project basis. The City shall continue to use this approach or identify alternative funding mechanisms such as RDA funds or General Funds prior to development in midtown. Improvements may be phased, according to actual development and demonstrated need for the improvements. With the implementation of the traffic improvements specified in Section 3.9-13 of the Midtown Specific Plan EIR, six of the intersection impacts would be mitigated to a less than significant level. However, impacts at eight of the intersections would still be considered significant. Feasible mitigation measures are not available. Thus these remaining are considered significant and unavoidable.

139. ***Mitigation Measure Traffic-2:*** According to VTA policy direction, mitigation measure for regional freeway impacts is participation in the Countywide Deficiency Plan (CDP) prepared by the VTA, which would require additional impact fees to provide the regional roadway improvements, including freeways. However, the CDP has not received final approval. Thus, the mitigation of regional of impacts to freeways operations cannot be guaranteed, as the City of Milpitas does not have legal authority to mitigate freeway impacts. For this reason, the contribution of development under the Milpitas Specific Plan to unacceptable freeway operations is considered a significant and unavoidable impact.

140. ***Mitigation Measure Traffic-3:*** The City of Milpitas has taken on the administration and construction of widening Montague Expressway between Great Mall Parkway-Capitol Avenue and I-680. This widening includes the addition of a fourth through lane in each direction, one of which will be a dedicated HOV lane during the AM and PM peak commute periods. Although this improvement will not reduce the projected

impacts to a less-than-significant level, it will reduce overall congestion and improve traffic flow in the Midtown Area.

AIR QUALITY

141. ***Mitigation Measure Air-1:*** The following basic control measures are required to be implemented at all construction sites in the Midtown area. These measures shall be incorporated into construction contracts for projects in the Midtown area.
   a. Water all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with no toxic stabilizers or dust palliatives.
   b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
   c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
   d. Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
   e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried on to adjacent public streets.
   f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
   g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
   h. Limit traffic speeds on unpaved roads to 15 miles per hour.
   i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
   j. Replant vegetation in disturbed areas as quickly as possible.
   k. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

   After implementation of the listed mitigation measures, construction-related air emissions would be less-than-significant

142. ***Mitigation Measure Air-2:*** The Specific Plan contains Policies directed at reducing vehicle miles traveled. The Specific Plan encourages a compatible mixture of land uses, provides for a land-use mix that supports major transit facilities, locates higher density development around hubs and commercial centers, provides for the continuation of pedestrian-oriented retail development, and provides pedestrian connections between the transit stations and important destinations.

   Though these policies would help to reduce emissions, they would not reduce them to a level of insignificance. Due to the intensity of the development proposed, the proposed Specific Plan could not be feasibly developed without an increase in air emissions above the significance thresholds of 15 tons per year for RO, NOx, and PM10. This impact is considered significant and unavoidable.

143. ***Mitigation Measure Air-3:*** Due to the intensity of the development proposed, the Specific Plan could not be feasibly developed without causing an increase in regional emissions, and all feasible mitigation measures have been incorporated into the Specific Plan as policies (e.g., policies directed at encouraging non-automotive transportation). This impact is considered significant and unavoidable.

Notes:
(P) = Planning
(B) = Building

(E) = Engineering
(F) = Fire Prevention
(PD) = Police

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT
Permittee/Property Owner
The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____ _____
Signature

Printed Name of Permittee/Property Owner: _____

MEETING MINUTES

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

Wednesday, August 10, 2016

I. PLEDGE OF ALLEGIANCE

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

II. ROLL CALL/ SEATING OF ALTERNATE

Commissioners
Present: Chair Mandal, Vice Chair Madnawat, Commissioners Sandhu, Ciardella, Morris, Lien, Maglalang

Absent: Mohsin

Staff: Bradley Misner, Katy Wisinski, Michael Fossati, Neal Martin, Cecilia Jaroslawsky

III. PUBLIC FORUM

Chair Mandal invited members of the audience to address the Commission and there were no speakers.

IV. APPROVAL OF MEETING MINUTES

Chair Mandal called for approval of the July 27, 2016 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes.

Motion/Second: Commissioner Sandhu/Commissioner Maglalang

AYES: 7

NOES: 0

ABSTAIN: 0

V. ANNOUNCEMENTS

Planning Director Brad Misner said the resolution for Item VIII-1 was revised and a new copy was on the dais for each commissioner.

Chair Mandal announced that he will not be present at the August 24th meeting.

VI. CONFLICT OF INTEREST

Deputy City Attorney Katy Wisinski 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.

VII. APPROVAL OF AGENDA

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

Motion to approve the August 10, 2016 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Maglalang

AYES: 7

NOES: 0

VIII. CONSENT CALENDAR

VIII-1 **PARCEL MAP – 1830 McCandless Drive – P-MT16-0002:** A request for a parcel map entitlement that includes, but is not limited to, an adjustment of an existing property line, vacating a portion of public cul-de-sac, and the offering of a street dedication for public use for a 10.9 acre site located at 1830 McCandless Drive.

Motion to Adopt Resolution No. 16-030 approving Parcel Map MT16-0002.

Motion/Second: Vice Chair Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

IX. PUBLIC HEARING

IX-1 **1980 TAROB COURT – P-SD15-0015; P-MT15-0013; P-UP15-0020; P-EA16-0003:** A request for recommendation to City Council for approval of a Site Development Permit, Vesting Tentative Map, Conditional Use Permit and Environmental Assessment for 59 for-sale residential units on a 2.6 acre site within TASP.

Project Planner Neal Martin showed a presentation describing the project.

Commissioner Ciardella is concerned with having industrial buildings adjacent to the project and Mr. Martin said the plan is for them to be converted to residential in the fairly near future.

Vice Chair Madnawat questioned the request for a Conditional Use Permit (CUP) when there seems to be sufficient parking. Mr. Martin said there are three deviations: a CUP is required any time tandem parking is proposed, there are three compact spaces in the guest parking area, and there is a reduction in the amount of guest parking spaces. He said the developer wishes to provide two parking spaces within each unit and the project meets the parking standards.

Commissioner Maglalang had questions regarding the property behind the project and along Lundy Street. Mr. Misner said the four purple shaded lots in the presentation are all within the TASP; however, when the plan was developed they were left with an industrial classification.

Commissioner Maglalang is worried about homeowners having concerns with the noise and asked about the boundary between the residential project and the industrial lots behind it. Mr. Martin said there will be a four foot high retaining wall and a fence along the boundary between them.

Chair Mandal noted that the project site will be approximately four feet above its present elevation to remove it from the special flood hazard area and asked if

adjacent property owners have objections. Mr. Martin said that as the residential properties are developed they will all be raised in a similar manner and eventually be at the same elevation.

Chair Mandal asked if low income housing will be provided and Mr. Martin said there is a condition that requires the applicant to either provide low income housing in accordance with the city ordinance or pay an in-lieu fee.

Commissioner Ciardella expressed concern with transients accessing the homes from Penitencia Creek.

Leah Dreger, Director of Entitlements for The True Life Companies, showed a PowerPoint presentation.

Ms. Dreger said this is the first project to move forward in this particular area and there will be some retaining walls until other developments raise their grades out of the flood zone as well. The property boundary along Penitencia Creek will have a four foot retaining wall with a six foot open view fence, and on the east side there will be a four foot retaining wall with a six foot masonry wall on top of it and no view toward Lundy at this time.

Vice Chair Madnawat asked if the art and affordable housing fees will go into a separate account or in to the general fund. Mr. Misner said he believes that as it relates to afford housing there will be a separate fund for the creation of affordable housing down the road. For public art, the developer can provide an on-site art installation that is equivalent to the percentage and/or contribute a fee. The city would establish a separate account and identify areas throughout the city where public art installations could occur and the fees would help fund those installations.

Vice Chair Madnawat would like the developer to offer buyers the option for an electric vehicle charging station in each garage.

Commissioner Maglalang said the official City tree is Jacaranda and he would like to see more than two of them placed in a prominent location. Roman Desoto of R3 Studios said the options they have for the Jacaranda trees are limited due to a number of water treatment features that are required for projects and these trees do not grow well in water treatment facilities. They are trying to find the best locations based on the eventual size and maturity, and separation from utilities and buildings. Right now there are two locations that may work and he can possibly find three or four locations.

Chair Mandal opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Maglalang/Commissioner Morris

AYES: 7

NOES: 0

Vice Chair Madnawat wants to add a condition that the developer offer buyers the option for one electric vehicle charging station in each garage and asked that staff work with the applicant on the feasibility of adding a charging station to the guest parking area.

Motion to Adopt Resolution No. 16-031 recommending approval of Site Development Permit No. SD15-0015, Conditional Use Permit No. UP15-0020, Vesting Major Tentative Map No. MT15-0013 and Environmental Assessment EA16-0003 to the City Council, subject to the attached Conditions of Approval, with an added condition that the developer offer buyers the option for one electric vehicle charging station in each garage.

Motion/Second: Vice Chair Madnawat/Commissioner Morris

AYES: 7

NOES: 0

IX-2 **91 MONTAGUE EXPRESSWAY – P-SD13-0020; P-UP13-0021; P-MT13-0008; P-EA16-0005:** A request for recommendation to City Council for approval for a Site Development Permit, Conditional Use Permit, and a Tentative Tract Map to allow construction of 72 residential condominium units on approximately 1.794 acres in five, detached, four-story structures, all connected by a common hallway and a shared, below-grade garage with associated site improvements.

Project Planner Cecilia Jaroslawsky said there was an attachment to the Resolution which was not included in the commissioner binders and one was provided for each commissioner.

Ms. Jaroslawsky showed a presentation describing the project.

Commissioner Maglalang referenced a slide in the presentation regarding the trees in the landscape plan. Although the applicant is amenable to including Jacaranda trees, the landscape architect indicated they are not cold tolerant and proposed other trees for the project, including the Crepe Myrtle. Commissioner Maglalang said temperatures in the city rarely drop to freezing, the City Council agreed to designate the Jacaranda tree as the official city tree, and he would like one planted at the entryway or another prominent location.

Applicant Manou Movassate was present to address questions.

Vice Chair Madnawat asked the applicant about public art on the site and Mr. Movassate said he said he was not aware of the public art requirement. Vice Chair Madnawat also asked him about electric vehicle charging stations and he said he will provide them. Vice Chair Madnawat noted that parking is all located underground and requested that staff work with the applicant to determine the appropriate number of electric vehicle charging stations in the parking garage.

Commissioner Ciardella asked if public art is a requirement for this project and Mr. Misner noted condition of approval number 53 which requires a public art contribution.

Commissioner Maglalang wants the word Milpitas included on the entryway sign.

Chair Mandal opened the public hearing and there was one speaker. A resident that lives behind the project location said she strongly opposes this project because of the traffic on Montague Expwy. She said this is an overly congested area and this project will create more traffic, she will lose quality sleep hours due to the early morning

construction, and she is concerned with the construction noise because she works from home.

Motion to close the public hearing.

Motion/Second: Commissioner Ciardella/Commissioner Sandhu

AYES: 7

NOES: 0

Chair Mandal asked if a traffic analysis was completed for this project. Scott Davidson with MIG said there was an EIR prepared for the Midtown Specific Plan which included extensive traffic analysis and this project was reviewed by the City's traffic division to confirm the local circulation function was adequate. Additionally, a supplemental analysis was prepared of potential environmental effects to the project, which included an analysis of traffic, and all of those considerations were factored into the recommendation.

Commissioner Ciardella asked what time construction can occur and Mr. Misner said the construction hours permissible by city code are 7:00 AM to 7:00 PM within the Midtown Specific Plan.

Mr. Misner said this project is within the Midtown Specific Plan and under the master environmental impact report that was prepared when the plan was done it was envisioned that there would be a certain amount of improvements that will help with traffic flow and circulation throughout the area as development occurs.

There was discussion regarding access on Ede Lane. Mr. Movassate said the Fire Department changed the project plans and they will demolish a portion of the wall and create a gate for emergency vehicle access. Civil Engineer David Voorhies said Ede Lane is a private road and there are no rights to use it although fire access was provided.

Commissioner Maglalang requested adding conditions of approval for a Jacaranda tree at the entryway and the word Milpitas on the project sign. Ms. Wisinski noted that the sign, which includes Milpitas, is included in the project approval and it was agreed that it was unnecessary to add it as a condition.

Motion to Adopt Resolution No. 16-028 recommending approval of Site Development Permit SD13-0020, Conditional Use Permit UP13-0021, Tentative Tract Map MT13-0008 and Environmental Assessment EA16-0005 to the City Council, subject to the attached Conditions of Approval, with added conditions to plant a Jacaranda tree at the entryway and that staff work with the applicant to determine the appropriate number of electric vehicle charging stations in the parking garage.

Motion/Second: Commissioner Morris/Commissioner Ciardella

AYES: 6

NOES: 1 Sandhu

Commissioner Sandhu said he is opposed to the project due to safety concerns of residents entering and exiting the complex.

X. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT

The meeting was adjourned at 8:55 PM.

Motion to adjourn to the next meeting.

Motion/Second: Vice Chair Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

Meeting Minutes submitted by
Planning Secretary Elia Escobar

2C

MILPITAS PLANNING COMMISSION
STAFF REPORT

August 10, 2016

APPLICATION: **91 Montague Expressway – Site Development Permit (P-SD13-0020), Conditional Use Permit (P-UP13-0021) Tentative Tract Map (P-MT13-0008), and Environmental Assessment (P-EA16-0005).** A request for recommendation to City Council for approval for a Site Development Permit, Conditional Use Permit, Tentative Tract Map, and Environmental Assessment to allow construction of 72 residential condominium units on approximately 1.794 acres in five, detached, four-story structures, all connected by a common hallway and a shared, below-grade garage with associated site improvements.

RECOMMENDATION: **Staff recommends that the Planning Commission adopt Resolution No. 16-028 recommending approval of Site Development Permit SD13-0020, Conditional Use Permit UP13-0021, Tentative Tract Map MT13-0008 and Environmental Assessment EA16-0005 to the City Council, subject to the attached Conditions of Approval.**

LOCATION:

Address/APN:	91 Montague Expressway (APN 086-34-023)
Area of City:	Northeast Corner of the Montague Expressway and South Main Street Intersection

PEOPLE:

Project Applicant:	Manou Movassate
Consultant(s):	LPMD Architects, Underwood & Rosenblum Inc., Reed Associate
Property/Business Owner:	Movassate Family Trust
Project Planner:	Cecilia Jaroslawsky, Contract Planner

LAND USE:

General Plan Designation:	Multi-Family Residential, Very High Density (VHD)
Zoning District:	Multi-Family Residential, Very High Density (R4)
Specific Plan:	Milpitas Midtown Specific Plan
Site Area:	1.8 acres (approximate)

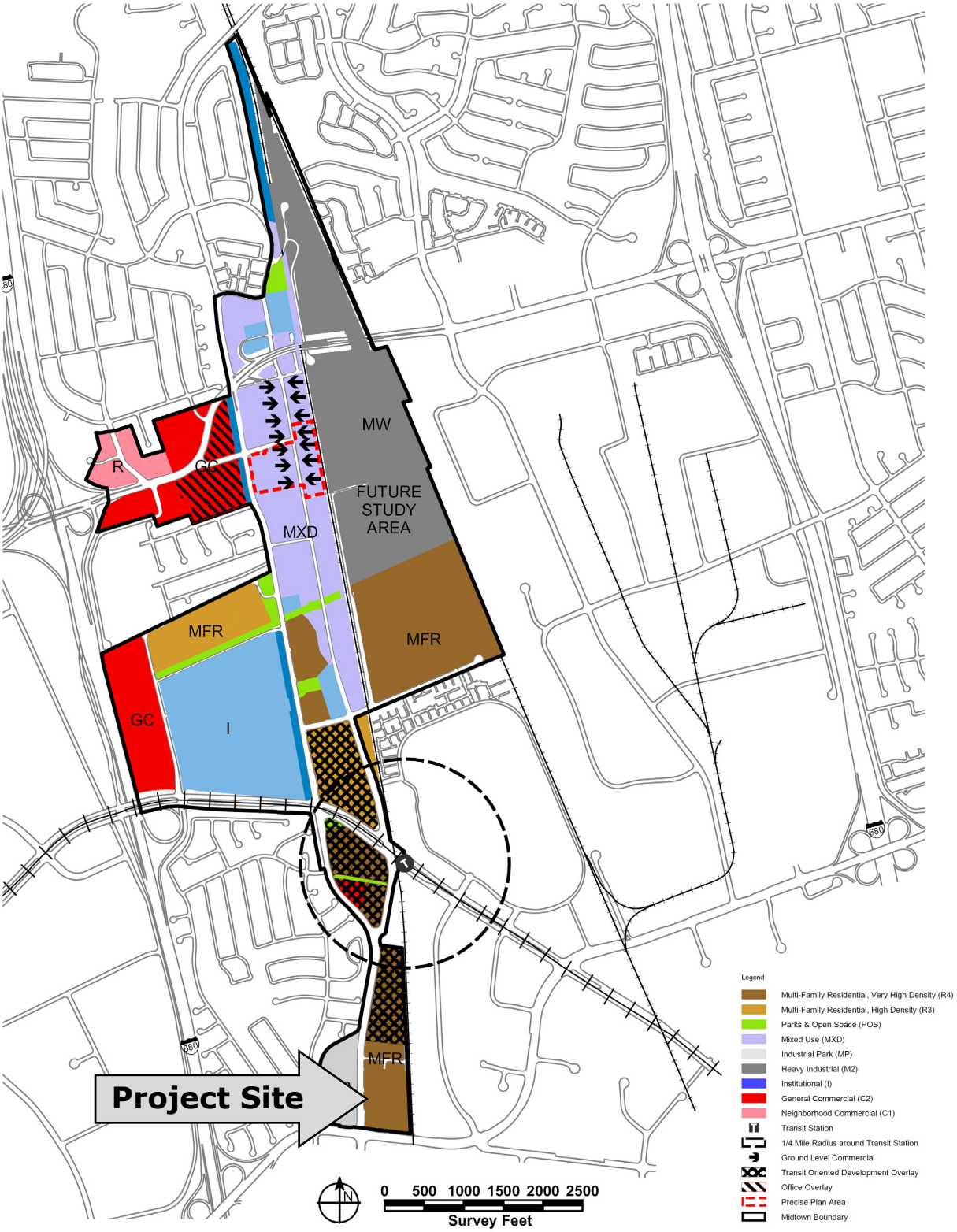
ENVIRONMENTAL: Exempt pursuant to Section 15168 of the California Environmental Quality Act (CEQA).

EXECUTIVE SUMMARY

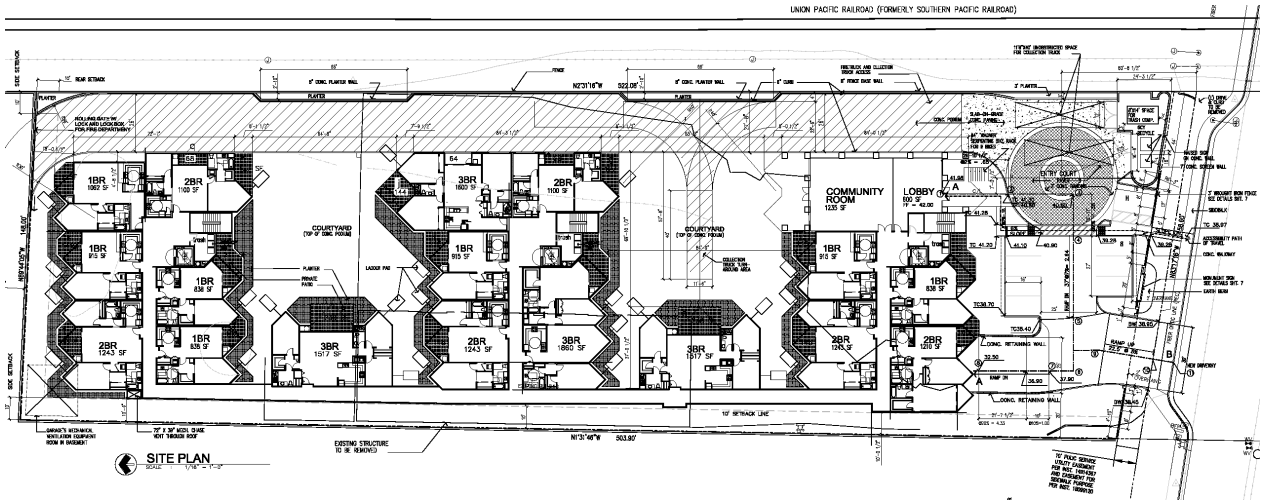
The applicant is requesting a Site Development Permit, Conditional Use Permit, a Tentative Tract Map and Environmental Assessment to allow the construction of 72 residential condominiums in five, detached structures, connected by a common hallway, totaling approximately 154,00 square feet and a one-level, below ground shared parking garage. The project would also include private and shared open spaces consisting of an entry courtyard and two additional courtyards and private patios/balconies, on-site parking, landscaping and other associated landscape improvements.

Map 1
Project Vicinity Map

Map 2
General Plan Map/Specific Plan Map



Map 3
Site Plan



BLDG A | BLDG B | BLDG C | BLDG D | BLDG E

BACKGROUND

History

On December 6, 2013, an application was submitted by the project applicant, Manou Movassate, to amend and replace the prior entitlements to allow the demolition of an existing, vacant structure and for the development of five, four-story, detached structures containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements.

The Application

The project proposed by the applicant requires Planning Commission and City Council approval pursuant to Section 57 of the Milpitas Zoning Code for the following planning applications:

- *Site Development Permit*: to allow for new construction
- *Conditional Use Permit*: to allow the condominium use
- *Tentative Tract Map*: to allow the subdivision of the lot into condominium space

PROJECT DESCRIPTION

Overview

The proposed project is located on one parcel totaling approximately 1.8 acres and is bounded by a private street, Ede Lane to the north, Union Pacific Railroad tracks to the east (with a high density residential development beyond the tracks), Montague Expressway to the south, and a high density residential development to the west. The subject property is zoned Multi-Family Residential, Very High Density (R4), and is located within the Milpitas Midtown Specific Plan area.

Table 1
Property Status

Factor	Status
General Plan Designation	Multi-Family Residential, Very High Density (31 – 40 units/acre)
Zoning District	Multi-Family Residential, Very High Density (R4)
Site Size	1. 79 acres
Present Use	Unused with vacant building to be demolished
Surrounding Zoning and Uses	
North:	Multi-Family Residential, Very High Density
South:	Industrial, City of San Jose
East:	Multi-Family Residential, Very High Density
West:	Multi-Family Residential, Very High Density
Access	Site access is from Montague Expressway

The proposed project includes a 72-residential unit, development located over a one-level shared, underground parking garage. The site design includes two common open space courtyard areas that would contain landscaping, outdoor seating areas and barbeques. The proposed buildings would have a maximum height of 50 feet. The residential units would contain one to three bedrooms; each residential unit would be between approximately 838 and 1,860 square feet. See Table 1 for residential unit specifications.

Table 2
Residential Unit Description

Number of Bedrooms	Approximate Square Footage (sq. ft.)	Total Number of Unit Type	Percent of Total (%)
3	1,517 to 1,860	18	25
2	1,100 to 1,243	26	36
1	838 to 1,063	28	39
TOTAL	--	**72**	**100**

The proposed project also includes a request for a Conditional Use Permit to allow the condominium use within this District pursuant to Title XI, Chapter 10, Section 7.14 of the Milpitas Municipal Code.

Location and Context
The site is currently occupied by a vacant industrial building. All existing structures and vegetation would be cleared. The project site is zoned Multi-Family Residential, Very High Density (R4).

Adjacent land uses include the following:

- *North:* An existing three-story multi-family residential development and Saf Keep Storage facility.

- *East:* Union Pacific Railroad right of way and Penitencia Creek, with existing three-story multi-family residential development beyond.

- *South:* Montague Expressway, with one-story office buildings beyond.

- *West:* A high density residential development, Jack in the Box restaurant, Shell Gas Station, with South Main Street beyond.

PROJECT ANALYSIS

General Plan and Zoning Conformance

General Plan Conformance

The General Plan designation for the project site is Multi-Family, Very High Density (VHD), which is implemented with a zoning designation of Multi-Family, Very High Density ("R4"). The proposed use of the project site is in conformance with City's General Plan and Zoning in terms of land use and development standards. The Multi-Family, Very High Density land use designation promotes a compact urban form and a variety of housing opportunities. This Land Use designation establishes a minimum density of 31 dwelling units per acre and a maximum density of 40 units per acre. The proposed project is consistent with the General Plan land use designation as shown in **Table 3**.

Table 3
General Plan Consistency

Policy		Conformance
2.a-G-2	Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.	**Consistent:** The project is utilizing the maximum allowable density for this designation and is in close proximity to retail and commercial uses, as well as transit corridors.
2.a-G-3	Provide for a variety of housing types and densities that meet the needs of individuals and families.	**Consistent:** The project includes a variety of housing types by incorporating one, two and three bedroom units into the project.
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.	**Consistent:** The project would install and upgrade existing infrastructure, public streets and contribute to local programs.

Milpitas Midtown Specific Plan

The project site is located at the southeast border of the Milpitas Midtown Specific Plan. The purpose of the Specific Plan is to vitalize the Midtown Area by encouraging a compatible mixture of land uses, including residential, retail, office, service-oriented commercial and industrial. Additional goals of the Specific Plan include promoting an intensity of development that is appropriate to its central location and supporting major transit facilities in the area. The proposed project meets the goals and intent of the Specific Plan as discussed in **Table 4**.

Table 4
Milpitas Midtown Specific Plan Consistency

Goal or Policy		Consistency Finding
Policy 3.4	Establish a minimum density of 31 units/gross acre in the multifamily, very high-density area and a maximum of 40 units/gross acre.	**Consistent:** The proposed project would construct the maximum allowable residential units within this district, 40 units per acre, meeting the density goal of the Plan.
Policy 3.5	Provide housing for all income levels throughout the Midtown area.	**Consistent:** The project includes a variety of housing sizes, including 1, 2 and 3 bedroom residential units, from 838 square feet to 1,800 square feet.
Policy 3.24	Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common space.	**Consistent:** The applicant has met the requirement of this policy by providing a mixture of private open space on-site and a park in-lieu amount of $912,962, in order to meet the parkland requirement.
Goal 1	**Circulation Goal:** Improve the viability of the pedestrian, bicycle and transit systems.	**Consistent:** The project includes the upgrade and improvement in the public right-of-way by installing required sidewalk and curb cut areas, as required by City codes.
Policy 5.2	Design buildings to create an attractive streeetwall which defines and activates the street space.	**Consistent:** The project would improve the streetscape by installing required sidewalks, curb cuts and landscaping.

The project meets several of the Specific Plans goals and policies, mentioned above, by developing a vacant and underutilized lot along a major thoroughfare, Montague Expressway.

Zoning Conformance

The approximately 1.8-acre project site is zoned Multi-Family Residential, Very High Density. This zoning allows for a minimum of 31 residential units per acre and a maximum of 40 residential units per acre. The Midtown Specific Plan also establishes development standards,

design requirements, and provisions that address park, housing, school and public art objectives as discussed below.

Development Standards

The project site is a level, rectangular, vacant lot, with 158 feet of frontage along Montague Expressway to the south. The site is approximately 512 feet deep with a vacant industrial building and limited vegetation. The Union Pacific Railroad, formerly Southern Pacific Railroad, tracks are to the east of the site. As shown in Table 5, the proposed project is consistent with the development standards of the Multi-Family Residential, Very High Density (VHD and R4) zoning districts. The approval of a Conditional Use Permit (CUP) is required to subdivide the units into condominiums.

Table 5
Multi-Family Residential, Very High Density ("R4") Development Standards

Development Standards	Required	Proposed
Lot area minimum	None	1.8 existing acres
Lot width minimum	None	≤158 feet
Front yard setback minimum	8 min/15 max from back of sidewalk	10 feet
Side yard setback (Interior) Minimum	10 feet	10 feet
Rear yard setback minimum	10 feet	18 feet
Street Side Yard Setback, minimum	Same as front yard setback	
Building height maximum	60 feet, including architectural elements	50 Feet
Density	31 (minimum) to 40 (maximum) units per gross acre	40 units per gross acre
Maximum number of stories	4 Stories	4 Stories

Site &Architectural Design

Building Design, Architecture & Massing

The building architecture and design is consistent with the Midtown Specific Plan (refer to Section B-Building Design) because it:

- Results in multi-family development that has the primary building entrance oriented toward the street to ensure a strong relationship to the community;
- Would provide exterior walls that contain a consistent style and employs materials and articulation to create shadow lines and avoid large blank walls;
- Proposes variations in roof heights and vertical planes to reduce the appearance of bulk and create a well-defined base by utilizing thicker walls and richly textured materials;
- Includes a main entrance and façade that incorporates a large courtyard area for visitors and residents;
- Includes extensive hardscaping and landscaping, to soften building exteriors and to provide useable outdoor space (See ***Landscaping and Open Space Design*** within this report);
- Proposes approximately 100 square feet of balcony and/or patio space per residential unit;

- Would use building colors and materials that include an earth tones (e.g. dark ceramic gray tile at the base and painted plaster on the majority of the exterior walls above the tile base) with a color accent of vertical ribbed blue metal siding to create visual interest; and
- Proposes streetscape and pedestrian amenities that provide a walkable frontage with street trees and landscaping between the sidewalk and building frontage.

Landscaping

The applicant is proposing to install trees, a variety of shrubs and extensive ground cover, totaling 555 plants. All landscaping material will be water-wise plants and some will also assist with the required bio-filtration Best Management Practices for storm water runoff on the property. The applicant is proposing to install three large Plantantus A. 'Columbia' trees and one Lagerstroemia I. 'Tuscarora' along the project frontage on Montague Expressway along with a variety of shrubs and ground cover including, Lavender, and Rosa 'White Carpet' consistent with ***Policy 5.5*** of the Milpitas Specific Plan that promotes street tree landscaping along wide boulevards.

Plantantus A.'Columbia'

Lagerstroemia I. 'Tuscarora'

The project also includes the installation of approximately 22 Agons F. 'After Dark' trees along the property line abutting the Union Pacific Railroad, mitigating negative noise and visual impacts to residents. These trees will grow to approximately 15 wide and up to 25 feet tall.

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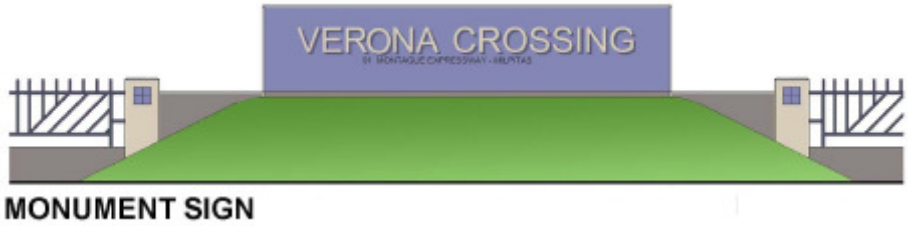
Lighting

The project complies with the City's lighting standards, which require that exterior lighting be shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public right-of-way. Proposed lighting includes eighteen exterior wall-mounted LED lights that illuminate downward. The lighting plan includes the installation of two Outdoor LED light posts, to be located within the entry area of the project.

Signs

The applicant is proposing to install one, 12-foot wide by 2 and one-half feet tall, single, monument sign, to be located along the front of the site. The sign would be constructed above a one and one-half foot earth berm and include flood lights.



Entry to the below ground garage level is located on the westerly portion of the site and includes 150 vehicle parking spaces, as well as eight motorcycle spaces (see *Parking* section below). The garage level also contains three enclosed trash areas and includes a recycling area. One storage area abutting a secure area for 10 bicycle spaces and two enclosed areas for utilities are also on this level. All five structures would be connected by a common hallway along the western portion of the development.

Affordable Housing

The applicant is not proposing to construct any below market rate units within this project. ***Policy 3.6*** of the Specific Plan recommends up to 20% of new residential construction be affordable units, but pursuant to City Resolution No. 8491, this standard does not apply to new residential development applications submitted prior to June 16, 2015. The application to

develop 91 Montague Expressway was submitted in 2013 and the affordable housing requirement therefore does not apply. Further, the project meets the intent of ***Policy 3.1*** and the Residential Policies of the Specific Plan by constructing much needed and desirable residential units located in a high density district within the City.

Tree Removal and Replacement:
The existing project site does not contain any significant trees or landscape material to be removed. The project includes grading and the installation of extensive hardscape and landscape material. See below.

Parkland Dedication
Residential development within the Midtown Specific Plan are obligated to either provide parkland and recreation facilities, or to pay a Parkland Fee in-lieu of parkland dedication. The Specific Plan requires dedication equivalent to 3.5 acres for every 1,000 residents. The Parkland Fee is based upon the estimated number of persons expected to inhabit the development (per U.S. Census definitions), and the estimated value of parkland in the City of Milpitas (currently $64 per square foot/$2,787,840 per acre).

Applicants may receive credit against their parkland obligations through the provision raw land, payment of fees-in-lieu, credit for turnkey park projects, or a combination thereof. Projects may also receive credit for private recreation elements that are accessible only to project residents, at the sole discretion of the City. If approved, private recreation credit may be used to satisfy up to 43% of the overall parkland requirement (1.5 acres out of the 3.5 acres per 1,000 residents required).

The project proposes to address this requirement through a combination of private recreation space and payment of a parkland fee in the amount of approximately $913,000 as summarized in Table 6.

Table 6
Parkland Requirement Calculations

Parkland Dedication/In-lieu Fee Analysis	Fee Equivalent	Acre Equivalent
Required Acres or Fees		
Parkland Required (acres)	$1,749,314	0.63
Parkland Credits		
Private Recreation Credit ($2,787,840/ acre)	$836,352	0.30
Remaining Obligation		
Remaining Obligation	$912,962	0.33

Recreational areas within the courtyard include outdoor amenities such as outdoor seating areas, arbors and decorative raised planters. Each courtyard will allow residents to access permanent barbeques to enjoy the outdoor area.

Parking

The Midtown Specific Plan requires off-street parking for the proposed residential project, with required parking ratios set out in Table 8.1 ("Development Standards Matrix") of the Plan. Table 7 below demonstrates the projects' compliance with the parking standards.

Table 7
Parking Spaces

Unit Type	Number of Units	Minimum Parking Required	Minimum Spaces Required	Spaces Provided	Conforms (Y/N)
1 BR	28	1.5 per unit	42	42	Y
2 BR	26	2 per unit	52	52	Y
3 BR	18	2 per unit	36	36	Y
SUB-TOTAL:			**130**	**130**	**Y**
Guest		15% of required residential spaces	20	20	Y
Bicycle		5% of required residential spaces	7	10	Y
Motorcycle		0	0	8	Y
TOTAL PARKING				**158**	**Y**

Bicycle Parking
The project is required to install bicycle parking stalls equivalent to 5% of the total parking required for the proposal. The applicant is installing 10 bicycle spaces, 3 more than the minimum required.

Climate Action Plan

The Climate Action Plan (CAP), adopted on May 13, 2013, addresses GHG issues for small infill projects so that no further greenhouse gas emissions analysis is necessary. This project supports Goal 5 of the Climate Action Plan:

> *PROVIDE AN ECONOMICALLY SUSTAINABLE MIXED-USE COMMUNITY FOCUSED ON HIGH-DENSITY DEVELOPMENT AROUND CENTRAL URBAN PLAZAS AND GATHERING PLACES.*

The project will comply with the Cal Green Building Standards, which provides for greater energy efficiency and reductions in greenhouse gas emissions.

Public Art Requirements
The Midtown Specific Plan requires that projects "[i]ntegrate public art, including sculpture, mosaics, murals, and decorative water features into new office, civic, public institutional, and public spaces in the Midtown Area." (Policy 5.10) Additionally, pursuant to Section **XI-10-14.03** of the Planning Code, residential development projects of 20 or more new dwelling units shall devote an amount not less than one-half of one percent of the building development costs to acquire and install publicly accessible art on the development site. Staff is recommending a condition of approval requiring the applicant to demonstrate compliance with the Public Art Fund requirement under Section XI-10-14.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff has found that the proposed project is consistent with the General Plan, Milpitas Midtown Specific Plan, Zoning Ordinance, Subdivision Ordinance, and all other required Findings as identified in Attachment 1 (Resolution 16-028).

ENVIRONMENTAL REVIEW

The City evaluated environmental issues based on the environmental checklist contained in Appendix G of the CEQA Guidelines. The responses to the checklist questions confirm that potential project impacts were considered and mitigated in the Milpitas Midtown Specific Plan and Final Environmental Impact Report ("FEIR") certified by the Milpitas City Council on March 2002 that no new impacts were identified, and that no new mitigation measures are required for the project. Consequently, no additional CEQA review is required pursuant to §15168(c)(4) of the CEQA Guidelines.

Further, in a report completed on July 2013 by Mei Wu Acoustics, experts in acoustics, noise and vibration, regarding the effects of the railroad activity to the proposed development, the following was determined:

"Vibration levels were monitored for 26 hours on the project site at the nearest receiver. Two trains were measured over that period of time. The measured Lmax (maximum RMS over one second) was 6234 mips (or 75.9 VdB), as shown at the end of Section 1.b of this report.

The maximum vibration level established by the city for residential projects with fewer than 30 events per day is 10000 mips (or 80 VdB).

The present project complies with the established criteria and no vibration mitigation measures are needed as established by the city code."

The City can approve the 91 Montague Expressway Project as being within the scope of the Midtown Specific Plan covered by its FEIR and no new environmental document for the purposes of CEQA clearance is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 91 Montague Expressway Project is exempt from further review under CEQA.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have not been public comments received. A notice was published in the Milpitas Post on July 15, 2016. In addition, 1,058 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also posted on the project site, on the City's Website, www.ci.milpitas.ca.gov, and at City Hall.

CITY COUNCIL REVIEW

This project requires review and approval by the City Council and is tentatively scheduled on its September 20, 2016 agenda, and contingent upon the results of the Planning Commission's public hearing.

CONCLUSION

The proposed project is consistent with the policies and guiding principles identified in the General Plan, the Milpitas Midtown Specific Plan, and the Milpitas Municipal Code, with the conditions of approval recommended to the Planning Commission. The proposed project will contribute towards the City's housing stock, improve an underutilized lot, as well as improve and upgrade a portion of Montague Expressway.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close the Public Hearing
2. Adopt Resolution 16-028 recommending approval of the Site Development Permit No. SD13-0020, Conditional Use Permit No. UP13-0021, Tentative Tract Map No. MT13-0008, and Environmental Assessment EA16-0005 to the City Council, subject to the attached Conditions of Approval

ATTACHMENTS

A: Resolution 16-028
B: Project Plans
C: CEQA Exemption Memo for 91 Montague Expressway

2C

MILPITAS PLANNING COMMISSION
STAFF REPORT

August 10, 2016

APPLICATION: **91 Montague Expressway – Site Development Permit (P-SD13-0020), Conditional Use Permit (P-UP13-0021) Tentative Tract Map (P-MT13-0008), and Environmental Assessment (P-EA16-0005).** A request for recommendation to City Council for approval for a Site Development Permit, Conditional Use Permit, Tentative Tract Map, and Environmental Assessment to allow construction of 72 residential condominium units on approximately 1.794 acres in five, detached, four-story structures, all connected by a common hallway and a shared, below-grade garage with associated site improvements.

RECOMMENDATION: **Staff recommends that the Planning Commission adopt Resolution No. 16-028 recommending approval of Site Development Permit SD13-0020, Conditional Use Permit UP13-0021, Tentative Tract Map MT13-0008 and Environmental Assessment EA16-0005 to the City Council, subject to the attached Conditions of Approval.**

LOCATION:

Address/APN:	91 Montague Expressway (APN 086-34-023)
Area of City:	Northeast Corner of the Montague Expressway and South Main Street Intersection

PEOPLE:

Project Applicant:	Manou Movassate
Consultant(s):	LPMD Architects, Underwood & Rosenblum Inc., Reed Associate
Property/Business Owner:	Movassate Family Trust
Project Planner:	Cecilia Jaroslawsky, Contract Planner

LAND USE:

General Plan Designation:	Multi-Family Residential, Very High Density (VHD)
Zoning District:	Multi-Family Residential, Very High Density (R4)
Specific Plan:	Milpitas Midtown Specific Plan
Site Area:	1.8 acres (approximate)

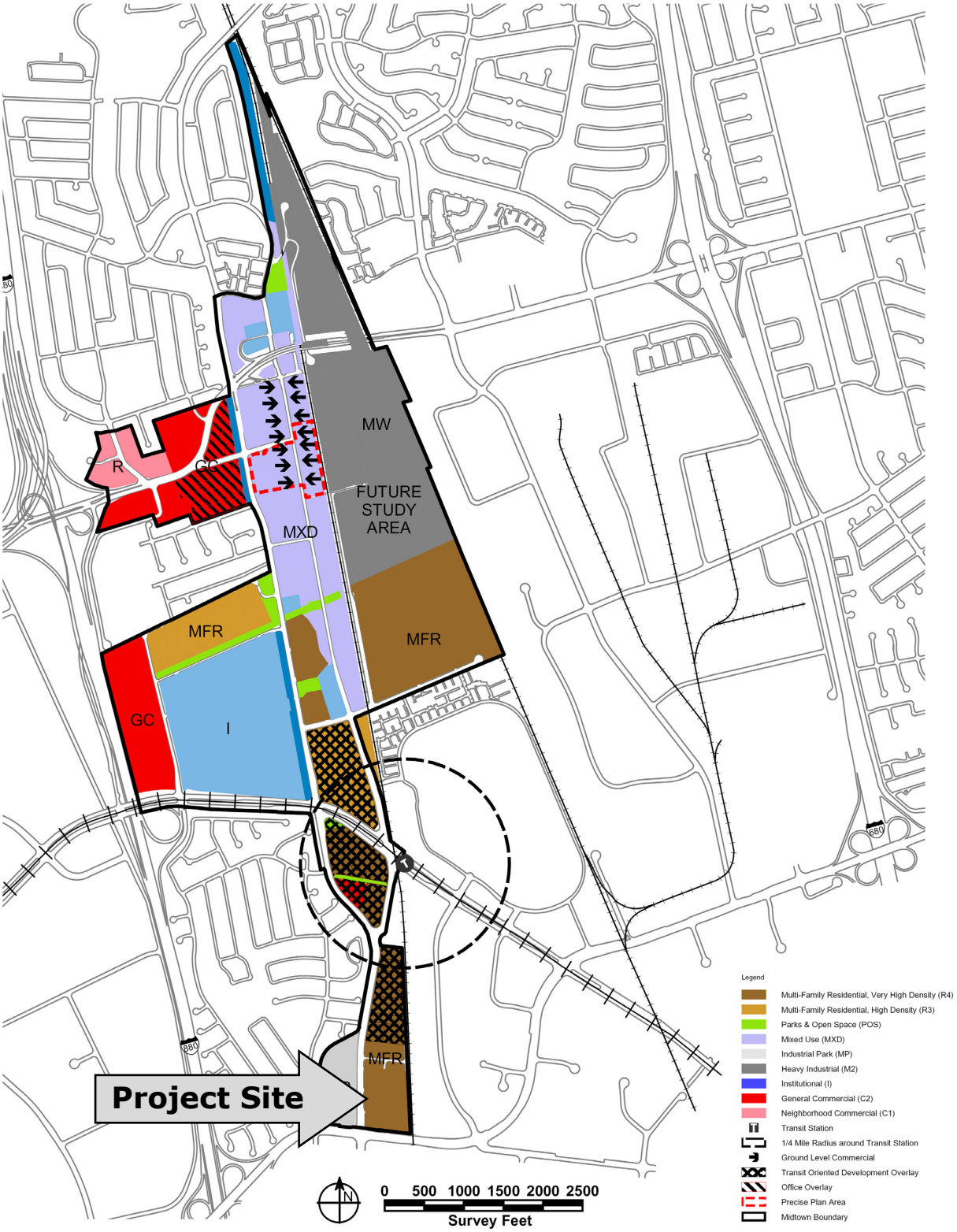
ENVIRONMENTAL: Exempt pursuant to Section 15168 of the California Environmental Quality Act (CEQA).

EXECUTIVE SUMMARY

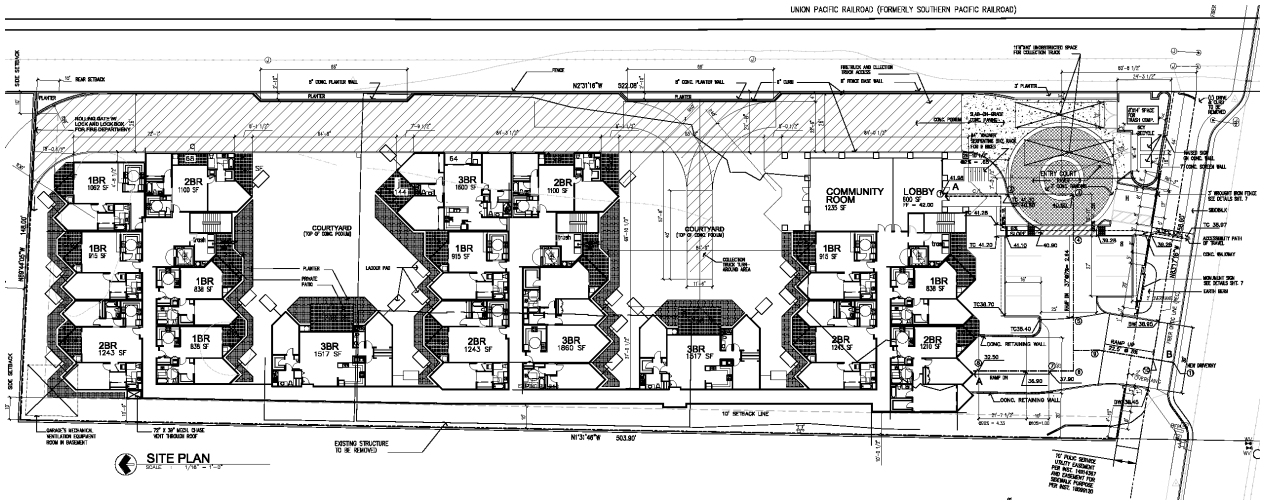
The applicant is requesting a Site Development Permit, Conditional Use Permit, a Tentative Tract Map and Environmental Assessment to allow the construction of 72 residential condominiums in five, detached structures, connected by a common hallway, totaling approximately 154,00 square feet and a one-level, below ground shared parking garage. The project would also include private and shared open spaces consisting of an entry courtyard and two additional courtyards and private patios/balconies, on-site parking, landscaping and other associated landscape improvements.

Map 1
Project Vicinity Map

Map 2
General Plan Map/Specific Plan Map



Map 3
Site Plan



BLDG A | BLDG B | BLDG C | BLDG D | BLDG E

BACKGROUND

History

On December 6, 2013, an application was submitted by the project applicant, Manou Movassate, to amend and replace the prior entitlements to allow the demolition of an existing, vacant structure and for the development of five, four-story, detached structures containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements.

The Application

The project proposed by the applicant requires Planning Commission and City Council approval pursuant to Section 57 of the Milpitas Zoning Code for the following planning applications:

- *Site Development Permit*: to allow for new construction
- *Conditional Use Permit*: to allow the condominium use
- *Tentative Tract Map*: to allow the subdivision of the lot into condominium space

PROJECT DESCRIPTION

Overview

The proposed project is located on one parcel totaling approximately 1.8 acres and is bounded by a private street, Ede Lane to the north, Union Pacific Railroad tracks to the east (with a high density residential development beyond the tracks), Montague Expressway to the south, and a high density residential development to the west. The subject property is zoned Multi-Family Residential, Very High Density (R4), and is located within the Milpitas Midtown Specific Plan area.

Table 1
Property Status

Factor	Status
General Plan Designation	Multi-Family Residential, Very High Density (31 – 40 units/acre)
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West:	Multi-Family Residential, Very High Density
Access	Site access is from Montague Expressway

The proposed project includes a 72-residential unit, development located over a one-level shared, underground parking garage. The site design includes two common open space courtyard areas that would contain landscaping, outdoor seating areas and barbeques. The proposed buildings would have a maximum height of 50 feet. The residential units would contain one to three bedrooms; each residential unit would be between approximately 838 and 1,860 square feet. See Table 1 for residential unit specifications.

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Number of Bedrooms	Approximate Square Footage (sq. ft.)	Total Number of Unit Type	Percent of Total (%)
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1	838 to 1,063	28	39
TOTAL	--	**72**	**100**

The proposed project also includes a request for a Conditional Use Permit to allow the condominium use within this District pursuant to Title XI, Chapter 10, Section 7.14 of the Milpitas Municipal Code.

Location and Context
The site is currently occupied by a vacant industrial building. All existing structures and vegetation would be cleared. The project site is zoned Multi-Family Residential, Very High Density (R4).

Adjacent land uses include the following:

- *North:* An existing three-story multi-family residential development and Saf Keep Storage facility.

- *East:* Union Pacific Railroad right of way and Penitencia Creek, with existing three-story multi-family residential development beyond.

- *South:* Montague Expressway, with one-story office buildings beyond.

- *West:* A high density residential development, Jack in the Box restaurant, Shell Gas Station, with South Main Street beyond.

PROJECT ANALYSIS

General Plan and Zoning Conformance

General Plan Conformance

The General Plan designation for the project site is Multi-Family, Very High Density (VHD), which is implemented with a zoning designation of Multi-Family, Very High Density ("R4"). The proposed use of the project site is in conformance with City's General Plan and Zoning in terms of land use and development standards. The Multi-Family, Very High Density land use designation promotes a compact urban form and a variety of housing opportunities. This Land Use designation establishes a minimum density of 31 dwelling units per acre and a maximum density of 40 units per acre. The proposed project is consistent with the General Plan land use designation as shown in **Table 3**.

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General Plan Consistency

Policy		Conformance
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2.a-G-3	Provide for a variety of housing types and densities that meet the needs of individuals and families.	**Consistent:** The project includes a variety of housing types by incorporating one, two and three bedroom units into the project.
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.	**Consistent:** The project would install and upgrade existing infrastructure, public streets and contribute to local programs.

Milpitas Midtown Specific Plan

The project site is located at the southeast border of the Milpitas Midtown Specific Plan. The purpose of the Specific Plan is to vitalize the Midtown Area by encouraging a compatible mixture of land uses, including residential, retail, office, service-oriented commercial and industrial. Additional goals of the Specific Plan include promoting an intensity of development that is appropriate to its central location and supporting major transit facilities in the area. The proposed project meets the goals and intent of the Specific Plan as discussed in **Table 4**.

Table 4
Milpitas Midtown Specific Plan Consistency

Goal or Policy		Consistency Finding
Policy 3.4	Establish a minimum density of 31 units/gross acre in the multifamily, very high-density area and a maximum of 40 units/gross acre.	**Consistent:** The proposed project would construct the maximum allowable residential units within this district, 40 units per acre, meeting the density goal of the Plan.
Policy 3.5	Provide housing for all income levels throughout the Midtown area.	**Consistent:** The project includes a variety of housing sizes, including 1, 2 and 3 bedroom residential units, from 838 square feet to 1,800 square feet.
Policy 3.24	Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common space.	**Consistent:** The applicant has met the requirement of this policy by providing a mixture of private open space on-site and a park in-lieu amount of $912,962, in order to meet the parkland requirement.
Goal 1	**Circulation Goal:** Improve the viability of the pedestrian, bicycle and transit systems.	**Consistent:** The project includes the upgrade and improvement in the public right-of-way by installing required sidewalk and curb cut areas, as required by City codes.
Policy 5.2	Design buildings to create an attractive streeetwall which defines and activates the street space.	**Consistent:** The project would improve the streetscape by installing required sidewalks, curb cuts and landscaping.

The project meets several of the Specific Plans goals and policies, mentioned above, by developing a vacant and underutilized lot along a major thoroughfare, Montague Expressway.

Zoning Conformance

The approximately 1.8-acre project site is zoned Multi-Family Residential, Very High Density. This zoning allows for a minimum of 31 residential units per acre and a maximum of 40 residential units per acre. The Midtown Specific Plan also establishes development standards,

design requirements, and provisions that address park, housing, school and public art objectives as discussed below.

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The project site is a level, rectangular, vacant lot, with 158 feet of frontage along Montague Expressway to the south. The site is approximately 512 feet deep with a vacant industrial building and limited vegetation. The Union Pacific Railroad, formerly Southern Pacific Railroad, tracks are to the east of the site. As shown in Table 5, the proposed project is consistent with the development standards of the Multi-Family Residential, Very High Density (VHD and R4) zoning districts. The approval of a Conditional Use Permit (CUP) is required to subdivide the units into condominiums.

Table 5
Multi-Family Residential, Very High Density ("R4") Development Standards

Development Standards	Required	Proposed
Lot area minimum	None	1.8 existing acres
Lot width minimum	None	≤158 feet
Front yard setback minimum	8 min/15 max from back of sidewalk	10 feet
Side yard setback (Interior) Minimum	10 feet	10 feet
Rear yard setback minimum	10 feet	18 feet
Street Side Yard Setback, minimum	Same as front yard setback	
Building height maximum	60 feet, including architectural elements	50 Feet
Density	31 (minimum) to 40 (maximum) units per gross acre	40 units per gross acre
Maximum number of stories	4 Stories	4 Stories

Site &Architectural Design

Building Design, Architecture & Massing

The building architecture and design is consistent with the Midtown Specific Plan (refer to Section B-Building Design) because it:

- Results in multi-family development that has the primary building entrance oriented toward the street to ensure a strong relationship to the community;
- Would provide exterior walls that contain a consistent style and employs materials and articulation to create shadow lines and avoid large blank walls;
- Proposes variations in roof heights and vertical planes to reduce the appearance of bulk and create a well-defined base by utilizing thicker walls and richly textured materials;
- Includes a main entrance and façade that incorporates a large courtyard area for visitors and residents;
- Includes extensive hardscaping and landscaping, to soften building exteriors and to provide useable outdoor space (See ***Landscaping and Open Space Design*** within this report);
- Proposes approximately 100 square feet of balcony and/or patio space per residential unit;

- Would use building colors and materials that include an earth tones (e.g. dark ceramic gray tile at the base and painted plaster on the majority of the exterior walls above the tile base) with a color accent of vertical ribbed blue metal siding to create visual interest; and
- Proposes streetscape and pedestrian amenities that provide a walkable frontage with street trees and landscaping between the sidewalk and building frontage.

Landscaping

The applicant is proposing to install trees, a variety of shrubs and extensive ground cover, totaling 555 plants. All landscaping material will be water-wise plants and some will also assist with the required bio-filtration Best Management Practices for storm water runoff on the property. The applicant is proposing to install three large Plantantus A. 'Columbia' trees and one Lagerstroemia I. 'Tuscarora' along the project frontage on Montague Expressway along with a variety of shrubs and ground cover including, Lavender, and Rosa 'White Carpet' consistent with ***Policy 5.5*** of the Milpitas Specific Plan that promotes street tree landscaping along wide boulevards.

Plantantus A.'Columbia'

Lagerstroemia I. 'Tuscarora'

The project also includes the installation of approximately 22 Agons F. 'After Dark' trees along the property line abutting the Union Pacific Railroad, mitigating negative noise and visual impacts to residents. These trees will grow to approximately 15 wide and up to 25 feet tall.

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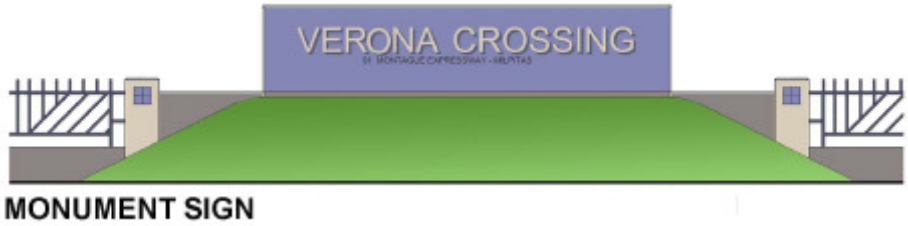
Lighting

The project complies with the City's lighting standards, which require that exterior lighting be shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public right-of-way. Proposed lighting includes eighteen exterior wall-mounted LED lights that illuminate downward. The lighting plan includes the installation of two Outdoor LED light posts, to be located within the entry area of the project.

Signs

The applicant is proposing to install one, 12-foot wide by 2 and one-half feet tall, single, monument sign, to be located along the front of the site. The sign would be constructed above a one and one-half foot earth berm and include flood lights.



Entry to the below ground garage level is located on the westerly portion of the site and includes 150 vehicle parking spaces, as well as eight motorcycle spaces (see *Parking* section below). The garage level also contains three enclosed trash areas and includes a recycling area. One storage area abutting a secure area for 10 bicycle spaces and two enclosed areas for utilities are also on this level. All five structures would be connected by a common hallway along the western portion of the development.

Affordable Housing

The applicant is not proposing to construct any below market rate units within this project. ***Policy 3.6*** of the Specific Plan recommends up to 20% of new residential construction be affordable units, but pursuant to City Resolution No. 8491, this standard does not apply to new residential development applications submitted prior to June 16, 2015. The application to

develop 91 Montague Expressway was submitted in 2013 and the affordable housing requirement therefore does not apply. Further, the project meets the intent of ***Policy 3.1*** and the Residential Policies of the Specific Plan by constructing much needed and desirable residential units located in a high density district within the City.

Tree Removal and Replacement:
The existing project site does not contain any significant trees or landscape material to be removed. The project includes grading and the installation of extensive hardscape and landscape material. See below.

Parkland Dedication
Residential development within the Midtown Specific Plan are obligated to either provide parkland and recreation facilities, or to pay a Parkland Fee in-lieu of parkland dedication. The Specific Plan requires dedication equivalent to 3.5 acres for every 1,000 residents. The Parkland Fee is based upon the estimated number of persons expected to inhabit the development (per U.S. Census definitions), and the estimated value of parkland in the City of Milpitas (currently $64 per square foot/$2,787,840 per acre).

Applicants may receive credit against their parkland obligations through the provision raw land, payment of fees-in-lieu, credit for turnkey park projects, or a combination thereof. Projects may also receive credit for private recreation elements that are accessible only to project residents, at the sole discretion of the City. If approved, private recreation credit may be used to satisfy up to 43% of the overall parkland requirement (1.5 acres out of the 3.5 acres per 1,000 residents required).

The project proposes to address this requirement through a combination of private recreation space and payment of a parkland fee in the amount of approximately $913,000 as summarized in Table 6.

Table 6
Parkland Requirement Calculations

Parkland Dedication/In-lieu Fee Analysis	Fee Equivalent	Acre Equivalent
Required Acres or Fees		
Parkland Required (acres)	$1,749,314	0.63
Parkland Credits		
Private Recreation Credit ($2,787,840/ acre)	$836,352	0.30
Remaining Obligation		
Remaining Obligation	$912,962	0.33

Recreational areas within the courtyard include outdoor amenities such as outdoor seating areas, arbors and decorative raised planters. Each courtyard will allow residents to access permanent barbeques to enjoy the outdoor area.

Parking

The Midtown Specific Plan requires off-street parking for the proposed residential project, with required parking ratios set out in Table 8.1 ("Development Standards Matrix") of the Plan. Table 7 below demonstrates the projects' compliance with the parking standards.

Table 7
Parking Spaces

Unit Type	Number of Units	Minimum Parking Required	Minimum Spaces Required	Spaces Provided	Conforms (Y/N)
1 BR	28	1.5 per unit	42	42	Y
2 BR	26	2 per unit	52	52	Y
3 BR	18	2 per unit	36	36	Y
SUB-TOTAL:			**130**	**130**	**Y**
Guest		15% of required residential spaces	20	20	Y
Bicycle		5% of required residential spaces	7	10	Y
Motorcycle		0	0	8	Y
TOTAL PARKING				**158**	**Y**

Bicycle Parking
The project is required to install bicycle parking stalls equivalent to 5% of the total parking required for the proposal. The applicant is installing 10 bicycle spaces, 3 more than the minimum required.

Climate Action Plan

The Climate Action Plan (CAP), adopted on May 13, 2013, addresses GHG issues for small infill projects so that no further greenhouse gas emissions analysis is necessary. This project supports Goal 5 of the Climate Action Plan:

> *PROVIDE AN ECONOMICALLY SUSTAINABLE MIXED-USE COMMUNITY FOCUSED ON HIGH-DENSITY DEVELOPMENT AROUND CENTRAL URBAN PLAZAS AND GATHERING PLACES.*

The project will comply with the Cal Green Building Standards, which provides for greater energy efficiency and reductions in greenhouse gas emissions.

Public Art Requirements
The Midtown Specific Plan requires that projects "[i]ntegrate public art, including sculpture, mosaics, murals, and decorative water features into new office, civic, public institutional, and public spaces in the Midtown Area." (Policy 5.10) Additionally, pursuant to Section **XI-10-14.03** of the Planning Code, residential development projects of 20 or more new dwelling units shall devote an amount not less than one-half of one percent of the building development costs to acquire and install publicly accessible art on the development site. Staff is recommending a condition of approval requiring the applicant to demonstrate compliance with the Public Art Fund requirement under Section XI-10-14.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff has found that the proposed project is consistent with the General Plan, Milpitas Midtown Specific Plan, Zoning Ordinance, Subdivision Ordinance, and all other required Findings as identified in Attachment 1 (Resolution 16-028).

ENVIRONMENTAL REVIEW

The City evaluated environmental issues based on the environmental checklist contained in Appendix G of the CEQA Guidelines. The responses to the checklist questions confirm that potential project impacts were considered and mitigated in the Milpitas Midtown Specific Plan and Final Environmental Impact Report ("FEIR") certified by the Milpitas City Council on March 2002 that no new impacts were identified, and that no new mitigation measures are required for the project. Consequently, no additional CEQA review is required pursuant to §15168(c)(4) of the CEQA Guidelines.

Further, in a report completed on July 2013 by Mei Wu Acoustics, experts in acoustics, noise and vibration, regarding the effects of the railroad activity to the proposed development, the following was determined:

"Vibration levels were monitored for 26 hours on the project site at the nearest receiver. Two trains were measured over that period of time. The measured Lmax (maximum RMS over one second) was 6234 mips (or 75.9 VdB), as shown at the end of Section 1.b of this report.

The maximum vibration level established by the city for residential projects with fewer than 30 events per day is 10000 mips (or 80 VdB).

The present project complies with the established criteria and no vibration mitigation measures are needed as established by the city code."

The City can approve the 91 Montague Expressway Project as being within the scope of the Midtown Specific Plan covered by its FEIR and no new environmental document for the purposes of CEQA clearance is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 91 Montague Expressway Project is exempt from further review under CEQA.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have not been public comments received. A notice was published in the Milpitas Post on July 15, 2016. In addition, 1,058 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also posted on the project site, on the City's Website, www.ci.milpitas.ca.gov, and at City Hall.

CITY COUNCIL REVIEW

This project requires review and approval by the City Council and is tentatively scheduled on its September 20, 2016 agenda, and contingent upon the results of the Planning Commission's public hearing.

CONCLUSION

The proposed project is consistent with the policies and guiding principles identified in the General Plan, the Milpitas Midtown Specific Plan, and the Milpitas Municipal Code, with the conditions of approval recommended to the Planning Commission. The proposed project will contribute towards the City's housing stock, improve an underutilized lot, as well as improve and upgrade a portion of Montague Expressway.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close the Public Hearing
2. Adopt Resolution 16-028 recommending approval of the Site Development Permit No. SD13-0020, Conditional Use Permit No. UP13-0021, Tentative Tract Map No. MT13-0008, and Environmental Assessment EA16-0005 to the City Council, subject to the attached Conditions of Approval

ATTACHMENTS

A: Resolution 16-028
B: Project Plans
C: CEQA Exemption Memo for 91 Montague Expressway

PC RESOLUTION NO. 16-028

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING APPROVAL OF A SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021) TENTATIVE TRACT MAP (P-MT13-0008) AND ENVIRONMENTAL ASSESSMENT (P-EA16-0005) TO ALLOW CONSTRUCTION OF 72 RESIDENTIAL CONDOMINIUM UNITS ON 1.794 ACRES IN FIVE, DETACHED, FOUR-STORY STRUCTURES WITH SHARED, UNDERGROUND GARAGE AND ASSOCIATED SITE IMPROVEMENTS AT 91 MONTAGUE EXPRESSWAY(APN 086-34-023)

WHEREAS, an application for a Site Development Permit (P-SD13-0020), Conditional Use Permit (P-UP13-0021), Tentative Tract Map (P-MT13-0008), and Environmental Assessment (P-EA16-0005) was filed by Manou Movassate on December 6, 2013, to amend and replace the prior entitlements to allow the demolition of an existing, vacant structure and for the development of five, four-story, detached structures, connected by a hallway, containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements. Maximum building height would be 48 feet and four stories. Site improvements include access from Montague Expressway, pedestrian walkways and landscaping at 91 Montague Expressway, APN 086-34-023.

WHEREAS, the City of Milpitas determined that the project was subject to California Environmental Quality Act (CEQA) and the proposal is exempt under Section 15168(c) of the CEQA Guidelines as it was previously analyzed and mitigated as part of the Milpitas Midtown Specific Plan EIR. See Attachment A to the Conditions of Approval for Mitigation and Monitoring Plan. Per CEQA Guidelines Section 15168(c), projects are exempt from new environmental review if the lead agency can demonstrate the activity as being within the scope of the project covered by a program EIR, and no new environmental effects and no new mitigation measures are required; and

WHEREAS, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on August 10, 2016, on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

NOW, THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Division conducted an environmental assessment No. EA16-0005 of the Project in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended, and state and local guidelines implementing CEQA. This Project is included within the area evaluated as part of the Midtown Specific Plan Environmental Impact Report (EIR), SCH#2000092027, which was certified by the City Council on March 19, 2002. The Project is covered under the scope of activities approved with that EIR. A finding is made below that this Project is within the program of the EIR and no further environmental review is required. All applicable mitigation measures identified in the Final EIR will apply to the project and have been integrated to the extent applicable in the conditions of approval in Exhibit 1 attached hereto and incorporated herein.

CEQA Finding

The proposed Project is covered under the scope of activities analysed under the Midtown Specific Plan (EIR), SCH#2000092027, which was certified by the Milpitas City Council on March 19, 2002. The EIR included a program of activities that include the construction of up to 2,328 new dwelling units and supporting retail development, new office developments at key locations, bicycle and pedestrian trails linking the areas together, and new parks to serve residential development within the Midtown Specific Plan area. The proposed 72 residential units fall within this scope of development activity since the specific plan area has not reached its full build out.

Further, the Project applicant has submitted a Phase I Environmental Site Assessment, Soil Engineering Study and Liquefaction Analysis, Stage I Noise Report, and Stage I Vibration report to further show consistency with the Midtown Specific Plan EIR. Copies of these documents are on file with the Planning Division and fully incorporated herein by reference. These aforementioned studies do not indicate any Project environmental impacts other than those already analysed in the EIR.

An independent Environmental Assessment memorandum was prepared by LSA Associates under contract to the City of Milpitas concluding that the Project is exempt from further environmental analysis per Section 15168(c) of the California Environmental Quality Act (CEQA). Mitigation measures required of projects covered under the EIR are included as Conditions of Approval. Based on the foregoing, the Planning Commission recommends the City Council finds that the proposed Project will not have additional environmental impacts beyond those identified in the EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

Section 3: **Tentative Tract Map (Section XI-1-20.01)** - ***The Planning Commission makes the following findings based on the evidence in the administrative record in support of Tentative Tract Map No. MT13-0008:***

1. *The proposed subdivision, its design and improvement are consistent with the General Plan of the City of Milpitas.*

The project has a General Plan land use designation of Multi-Family Residential, Very High Density, with allowable density range of 31-40 units per gross acre. The proposed project is consistent with the land use designation with its dense, multi-family residential use at a density of 40 units per gross acre. Furthermore, the project will encourage the economic pursuits of the City, providing housing opportunities and fostering community pride and growth through development, as illustrated below:

- ***2.a-I-119*** *Use zoning for new residential developments to encourage a variety and mix in housing types and costs.*

  By offering a mix of unit sizes (28 one-bedroom units, 26 two-bedroom units, and 18 three-bedroom units), the project creates a variety of new housing opportunities at a range of price points.

- ***2.a-I-17*** *Foster community pride and growth through beautification of existing and future development.*

  The project includes the demolition of an older, vacant structure on an underutilized site adjacent to railroad tracks, and the construction of a contemporary, multi-family development that will include extensive landscaping and frontage improvements. It includes a main entrance and façade that incorporates a large courtyard area for visitors and residents, varied roof heights and vertical planes to reduce the appearance of bulk, thoughtful articulation to create shadow lines and avoid large blank walls, and a color palette that will beautify the development and neighborhood generally.

2. *None of the findings set forth in Government Code Section 66474 apply to the proposed project.*

   - *The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451.*

     The proposed map is consistent with the Milpitas General Plan, which establishes the relevant distribution, location, and extent of the uses of land, as documented in finding 1 of Section 3 above. The map is also consistent with the Midtown Specific Plan, in that the project implements the following Midtown Specific Plan policies:

     - *Policy 3.4: Establish a minimum density of 21 units per gross acre in the mixed-use district, 31 units per gross acre in the multi-family, very high density area, and a minimum of 41 units per gross acre around the transit stations.*

       The project is located within the Multi-Family, Very High Density zoning district and, at 40 units per gross acre, is within the allowable density range of 31-40 units per gross acre for that district.

- *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*

  As documented in the staff report presented to the Planning Commission on August 10, 2016, the project applicant is meeting this requirement through a combination of private recreation space and the payment of a parkland fee in accordance with City requirements.

- *Policy 4.17: Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.*

  As documented in the staff report presented to the Planning Commission on August 10, 2016, the project is required to provide 130 residential parking spaces and 20 guest parking spaces. The project proposes to provide 130 vehicular parking spaces, 8 motorcycle parking spaces, and 20 guest parking spaces, thus exceeding the minimum requirement.

- *The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

  The design and improvement of the project is consistent with the Milpitas General Plan as set forth in finding 1 above, and the Midtown Specific Plan as set forth in finding 2 above.

- *The site is physically suitable for the type of development.*

  The site is physically suitable for the development of four-story condominium uses in terms of grade, proximity to transit (including the VTA and planned BART stations), underutilized condition, and development potential.

- *The site is physically suitable for the proposed density of development.*

  After conducting environmental impact reports pursuant to the California Environmental Quality Act, both the Milpitas General Plan and Midtown Specific Plan have determined that it is appropriate for this site to host a density range of 31-40 units per gross acre. At 40 units per gross acre, the proposed project falls within this density range.

- *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

  The design of the subdivision and the proposed improvements are not likely to cause

substantial environmental damage or substantially or avoidably injure fish or wildlife or their habitat given that the site is currently an underutilized lot with a vacant building and does not provide fish or wildlife habitat which will be displaced by its development. Furthermore, the project is consistent with the Midtown Specific Plan FEIR, which includes appropriate mitigation measures, which includes, but not limited to, coordination with appropriate agencies such as U.S. Army Corps of Engineers, California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB), if necessary. Staff has determined the project, as proposed is not located within wetlands or waterways (including Penitencia Creek) where substantial environmental damage or avoidable injure to fish or wildlife or their habitat can occur.

- *The design of the subdivision or type of improvements is not likely to cause serious public health problems.*

  The design of the subdivision and the type of improvements proposed are not likely to cause serious public health problems given that fire access is subject to review and approval by the City, as are pedestrian and vehicular egress and ingress. In addition, compliance with the conditions of approval set forth in Exhibit 1 hereto will ensure conformance with applicable sanitary sewer, water, and other utility regulations to protect the public and project residents.

- *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

  After reviewing the project plans, the City has determined that the design of the subdivision and the type of improvements proposed will not conflict with any easements acquired by the public at large for access through or use of, property within the proposed subdivision. As conditioned, the applicant will dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

<u>Section 4:</u> Site Development Permit (Section XI-10-57.03) – *The Planning Commission makes the following findings based on the evidence in the administrative record in support of Site Development Permit No. SD13-0020:*

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

   The layout of the site, which proposes five, detached, four-story structures with shared underground parking, and the design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the proposed residences will be of a similar height to the nearby multi-story residential uses, employ building colors and materials in earth tones that complement the color palette of

surrounding residences, vary roof heights and vertical planes in the same manner as nearby uses, and offer rich landscaping (including some 555 new plants) that will continue the greenery along Montague Expressway offered by other developments. Any modifications to approved landscaping plan must be reviewed by the Planning Director to ensure compatibility with existing Montague Expressway area and long-term maintenance of the landscaping.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district (40 units per gross acre proposed where 31-40 units per gross acre are permitted). The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to the development standards set out in the Specific Plan district in terms of height (4 stories proposed where 4 are allowed) and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted), as well as with the City's parking ordinance (158 vehicle and motorcycle spaces provided where 150 residential and guest spaces required) as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

3. *The project is consistent with the Milpitas General Plan.*

See finding 1 made in support of the Tentative Tract Map in Section 3 above.

4. *The project is consistent with the Midtown Specific Plan.*

The project is consistent with the Midtown Specific Plan, as illustrated in finding 2 made in support of the Tentative Tract Map in Section 3 above. Furthermore, the proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines, as set forth in finding 4 above. Specifically, the project meets the Specific Plan's Development Standards regarding density (40 units du/a proposed, where 31-40 du/a are allowed), height (4 stories proposed where 4 are allowed), and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted). It also meets the Design Guidelines requirements for vehicle access (providing primary vehicular access from access ways directly connecting to the street), making the off-street parking facility very low-visibility from the street, and articulating the buildings with varying roof heights and vertical planes, among other features.

<u>Section 5:</u> Site Development Permit for Signage (Section XI-10-57.03(F)(2)) – ***The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD13-0020 for signage:***

1. *All elements of signs, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.*

   The project includes one monument sign to be installed at the main entrance, along Montague Expressway. All elements of the sign, including its design, lighting, scale, length and materials, are in conformance with the intent of the General Plan, the design guidelines of the Sign Ordinance, and the Midtown Specific Plan, in that the sign is designed to complement the architectural style and setting of the residences, will be made of high-quality materials, and will be professionally fabricated.

2. *The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.*

   The proposed sign as shown on the project plans provide compatibility of size, location and continuity with the proposed development in the choice of materials, close affiliation between building and sign design, and relative size of the sign relative to the site.

3. *The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.*

   The proposed sign, as shown on the project plans, provides visibility and legibility and provides the appropriate relationship of scale and height to the development when viewed from the distance from which the sign will normally be viewed, which is from Montague Expressway.

4. *The design and materials of the sign provide a contrast between the background and letters.*

   The proposed design and materials of the sign, as depicted in the project plans, provide contrast between the background and letters by the selection of colors and material use.

<u>Section 6:</u> Conditional Use Permit (Section XI-10-57.04(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0021:*

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

   The proposed project requires a Conditional Use Permit to authorize a condominium residential use. Such a use will not be detrimental or injurious to property or improvements in the vicinity of the project, nor to the public health, safety, and general welfare, given that it is a high density residential use of exactly the type and within the density range envisioned by the Midtown Specific Plan and the General Plan for this location. Development of the project will improve an underutilized site, which will inure to the benefit of surrounding properties.

2. *The proposed use is consistent with the Milpitas General Plan.*

   See finding 1 made in support of the Tentative Tract Map in Section 3 above.

3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

   The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district. The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to development standards set out in the Specific Plan district in terms of height and setbacks, as well as with the City's parking ordinance as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

4. *The project is consistent with the Midtown Specific Plan.*

   See finding 2 made in support of the Tentative Tract Map in Section 3 above.

Section 8: The Planning Commission of the City of Milpitas hereby recommends the City Council approve Site Development Permit, Conditional Use Permit, Tentative Map and Environmental Assessment, subject to the above Findings, and Conditions of Approval attached hereto and incorporated herein as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 10, 2016.

_____

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 August 10, 2016, and carried by the following roll call vote:

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

EXHIBIT 1
CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021), TENTATIVE TRACT MAP (P-MT13-0008), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0005): 91 MONTAGUE EXPRESSWAY, (APN 086-34-023)

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Development Permit NO. P-SD13-0020; Conditional Use Permit NO. P-UP13-0021; Tentative Subdivision Map NO. P-MT13-0008; and Environmental Assessment NO. P-EA16 -0005 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)

2. The Permittee shall develop the approved project in conformance with the approved plans (dated January of 2016), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. (P)

3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

6. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-

64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:

a. Completes a foundation associated with the project; or
b. Dedicates any land or easement as required from the zoning action; or
c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**

8. Project Job Account. If the Permittee's project job account is at any time delinquent or below the required deposit amount, the City will not continue to review or process the application until the Permittee's project job account is paid in full and the required deposit has been paid. At the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(E)**.

9. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by any court of competent jurisdiction, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.

10. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).

11. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies.

12. Certificate of Insurance. Permittee shall provide certificate of insurance and name the City of Milpitas as an additional insured in its insurance policies.

13. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

14. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.

15. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution.

16. Indemnification. Permittee, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021) AND TENTATIVE TRACT MAP (P-MT13-0008), including any environmental determination (P-EA16-0005) made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by Permittee. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021), TENTATIVE TRACT MAP (P-MT13-0008), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0005) and the balance of the Permit shall be unaffected by said Government Code section. **(CA)**

17. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**

18. Landscape. Prior to issuance of a Building Permit, the landscape plans shall be revised to incorporate jacaranda trees at the entry to the project site. The final number and location of jacaranda trees shall be established in consultation with City staff. All

approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive, and effective appearance.

19. Parking. Prior to issuance of a building permit, the applicant shall modify the parking plan to provide a minimum of ten (10) short-term bicycle parking spaces on the project site, and to incorporate electric vehicle charging stations in the underground parking garage. The final number and location of charging stations shall be established in consultation with City staff. Required parking, including bicycle parking and electric vehicle charging stations shall be installed prior to occupancy of residences.

20. Fire Department access. Fire Department apparatus and staff access shall be provided to all buildings and site. CFC Section 503.

21. A minimum of two independent and approved (by the Fire Code Official) means of fire apparatus access shall be provided. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m2) shall be provided with at least two means of fire apparatus access for each structure. 2012 International Fire Code, Section D104.1, adopted and amended by Milpitas Municipal Code ("MMC") Section V-300-2.154.

22. Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (centre). California Fire Code Section 503.

23. Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code.

24. Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.

25. Adjacent Access. No source of access from lands adjoining a property to be developed shall be considered unless there is obtained the irrevocable and unobstructed right to use same. CFC Section 508.3, added by MMC Section V-300-2.48.

26. Fire access roads shall be paved (concrete and/or asphalt cement, no other material is accepted). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division for specifications. CFC Section 503.2.3.

27. Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4.

28. Building/structure set back, proximity to fire access roads. At least one of the required access routes meeting the Fire Dept. conditions shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the entire side of the building. 2012 International Fire Code, Section D105.3, adopted by MMC Section V-300-1.01.

29. Emergency Vehicle Access (EVA) roads, when required, shall meet the fire department site access requirements specified herein these conditions of approval CFC Section 503.

30. No parking in fire access roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3.

    Minimum marking shall be (1) pole signage and (2) red curb with "FIRE LANE" stencil.

31. Buildings with Courtyards. Fire access shall be provided to enclosed courts for fire fighting and rescue operations. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36' long) into the courtyard. Permittee shall ensure that project design anticipates and accommodates personnel carrying ladders. CFC Section 102.9.

32. Fire Protection. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved). CFC Section 501.4.

33. Roof Guardrails at Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through. CFC 316.7, added by MMC V-300-2.45.

    Exception: Where the roof opening is greater than 600 square feet in area.

34. Stairs to Roof (applicable to all building perimeter stairwells and other stairwells as specified by the Fire Code Official). Buildings located four or more stories in height above grade plane, except those with a roof slope greater than four units vertical in 12 units horizontal, shall be provided with stairway to the roof. CFC Section 504.3.1, added by MMC Section V-300-2.49.

35. When there are roof planes with vertical difference of more than 24", there shall be stairs for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9.

36. Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices that would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the Fire Code Official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.5, added by MMC Section V-300-2.51.

37. Fire Department emergency Key Box (Knox Box, Knox locks, Knox electric switches, etc). The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for life-saving or fire-fighting purposed. Quantify and location shall be as directed by the Fire Code Official. CFC Section 506.

38. Emergency responder radio coverage in buildings.

    a. All buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communications system of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communications system. Emergency responder radio coverage systems shall be installed in accordance with the CFC Section 510.

    b. Emergency responder radio coverage in buildings - obstruction by new building. When in the opinion of the Fire Code Official, a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other location, Permittee shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure. CFC Section 510.1.1, added

by MMC V-300-2.56.

c. The emergency radio system shall be supervised per the CFC Section 510.64. CFC Section, added by MMC V-300-2.57.

d. Dedicated equipment room(s) with the appropriate supporting mechanical systems, shall be provided to meet the emergency communication system needs. California Fire Code Section 102.9.

39. Fire Protection Water Supply (hydrants, on-site and public).

a. An approved water supply (hydrants on-site and public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines. CFC 507, Appendix B and Appendix C.

Fire flow reduction as noted in Appendix B of the Fire Code is not permitted.

b. Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineer Division water design requirements shall be provided as part of the construction permit process. CFC Section 507.

c. Automatic fire sprinkler design shall use a safety factor of 20% from water flow information provided by the City of Milpitas Utilities Engineering Division. CFC Section 903.3.5.6, added by MMC Section V-300-2.68.

d. The location and quantity of hydrants will be evaluated during the construction permit process. This applies to the on-site private streets, as well as to the public streets. CFC Section 507.5.

e. Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC Section V-300-2.54.

f. No parking is permitted in front of fire hydrants. Hydrants located on streets (public or private street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514. Provide striping per CA Vehicle Code 22500.1. CFC Section 507.5.4.

g. Permittee shall provide fire service water laterals for sprinkler systems.

h. Fire service water laterals for the automatic fire sprinkler system shall meet the California Fire Code requirements Chapter 9 and the NFPA applicable Standards. CFC 912.1.

i. The number and limitations for each sprinkler riser shall conform to the NFPA 13, Section 8.2.

j. The location of the post indicator valve (PIV) for the fire department connection (FDC) shall be at a readily accessible location and approved by the Fire Code Official. FDC's PIV shall not be located behind parking stalls nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.3.

k. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Section 903 and or 905 of the CA Fire Code shall have a fire hydrant within 50 feet of the fire department connections. CA Fire Code Section 507.5.1.1, added by MMC V-300-2.5.3.

l. FDC/PIV Signage. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be approved by the Fire Code Official. CFC Section 912.4.

m. Backflow Protection. Potable water supply to the automatic sprinkler and the standpipe systems shall be protected against backflow as required by Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.5.

n. Service water supply laterals for the sprinkler systems and the on-site fire hydrants shall be independent of each other. NFPA 13, Chapter 23.

o. Automatic fire sprinkler riser location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.67.

p. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge.

40. Premises Identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505.

    The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9.

41. All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52.

42. All elevators shall be sized to meet the gurney size requirements per the California Building Code Chapter 30. CFC Section 607.1.1, added by MMC Section V-300-2.59.

43. Building/Structure Requirements.

    a. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. California Fire Code Section 903.3.

    b. All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 904.3.

    c. Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the standpipes shall be located at the bottom floor level, at the top floor level (roof) and at all intermediate landings. CFC Section 905.4.

    d. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.

    e. Group R-2. A fire alarm system and smoke alarms shall be installed in Group R-2 Occupancies as required in Sections 907.2.9.1 through 907.2.9.4. CFC Section 907.2.9, CFC Section 907.2.9.1 - Manual Fire Alarm System, CFC Section 907.2.9.2 - Smoke Alarm (in accordance with 907.2.11).

    f. R-2 Occupancy, listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.1 through 907.2.11.4 and the NFPA 72. CFC Section 907.2.11.

    g. In Group R-2 required by Section 907 to have a fire alarm system, all dwellings units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. CFC 907.5.2.3.4.

h. Fire alarm system(s) shall be zoned as per the requirements of CFC Sections 907.6.3 and 907.6.4.

i. Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the California Electrical Code. CFC Section 907.6.3.1.1.

j. Fire alarm monitoring (Approved supervising station - UL or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC 907.6.5.

k. Smoke control systems (when required) shall comply with the CFC Section 909.

44. Special Fire Department Requirements for Buildings over four stories. This requirement is applicable to all perimeter stairwells. CFC 914.12, as added by MMC Section V-300-2.76. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height.

45. Equipment cache rooms shall be located on the 1st floor above the ground floor, and every other floor thereafter, or as directed by the fire agency.

a. Cache rooms shall be located and accessible from within the rated stair enclosures.

b. Prior to the purchase of the fire department cache room equipment and/or materials, a complete list of the equipment and or materials with all necessary cut-sheets shall be submitted to the fire department for review and approval.

c. Due to operational needs, the fire code official reserves the right to make changes to the required equipment and or materials listed under Condition 46 below.

46. Each equipment storage room size should be a minimum of 4' deep, full height (8' to 9'), with a door the minimum width of 43". A roll-up door can be used provided it has a 43" minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a 'timer'), be sprinklered, and be locked with a 'break-away' type lock. Fixed shelving (shelving shall be every 16" after ladder placement is determined) shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:

a. 2 - Hotel Hose pack (double jacketed hose) with 100 feet of 2 ½" fire hose and a 1½" variable fog nozzle (Task Force Tip, 1 ¾") with a detachable bail, both having National Standard threads. Each pack to have 1-spanner wrench, 1- 2 ½" X 1 ½" gated wye, and 1-2 ½" X 1 ½" reducer coupling Red Head Brass 2 ½" X 1 ½" reducer

b. 2 - 50' banded hose rolls (North American Hose)
c. 2 - 2-1/2" 10' hose with one male end connector & female end connector both with National Standard threads ('Stynger')
d. 1-Hooligan tool (Paratech Hooligan, 11 pound)
e. 2 - pick head axe (Council Axe, Pick head)
f. 1-Little Giant Ladder, or 1- attic ladder; Fire agency to determine type.
g. 1- 3' Ames Tru Temper Wrecking bar,
h. 12 -Open Door Industries, door stops
i. 4 – salvage covers (blue tarps) measuring 18' X 24' with grommets every 16"
j. 3-Spare sprinkler heads, for each type used (these are in addition to those required in the riser room)
k. 1-each Sprinkler head wrench(es), one for each type of head used
l. 1-Push type cart for use to move air bottles (type subject to Fire agency approval)
m. 1-Rapid Intervention Pack (RIT) (location to be determined by Fire agency)
n. 1- Evacuation Chair Stryker Model 6253 (per side)
o. Air Bottles: Fixed SCBA bottle storage rack, number of bottles to be determined by the fire agency. A minimum capacity for 5 bottles per closet shall be provided. Individual rack slots should be positioned for horizontal storage, and be oversized to accommodate changes in bottle sizes. Product Brand and Model shall be approved by the Fire Department.

The Fire Code Official may require, an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A 'monument-type' fill station port should be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry must also be provided. The storage system should be designed to provide enough air at 4500 psig for up to fifty 45 minute bottles, prior to augmentation by an outside air source.

47. Equipment maintenance, inspection, replacement and or equipment update and required certification(s) shall be the responsibility of the building owner and/or owner's association.

48. Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety by "unidocs" organization (http//:www.unidocs.org). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33.

49. Stationary storage battery systems having an electrolyte capacity of more than 50 gallons for flooded lead-acid, nickel cadmium and valve-regulated lead-acid, or more than 1,000 pounds of lithium-ion and lithium metal polymer, used for facility standby

power, emergency power or uninterrupted power supplies shall comply with the CA Fire Code Section 608.

50. Notes for the electrical generator.
    a. Fuel tank(s) located below grade shall be considered underground tanks in accordance with the California Code of Regulations, Title 23, Division 3, Chapter 16 (State Underground Tank Regulations).
    b. If the fuel tank system(s) is not to be considered an underground tank, as defined by the underground tank regulations, provide documentation demonstrating compliance with the specified State Water Resource Control Board's Guidance letter LG-165-2.
    c. Construction drawings, for the fuel tank, shall be submitted to the City for compliance with the California Fire Code Chapters 27 and 34.

51. Landscape sheets. The proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Department reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4.

52. Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2.

PUBLIC ART

53. Prior to the issuance of a building permit, Permittee shall submit proof of meeting the Public Art Fund requirement under MMC Section XI-10-14. Permittee shall submit proof that ½ of one percent of the Building Development costs for the acquisition and installation of Publically Accessible Art has been met.

ARCHITECTURAL COMMENTS (as to all proposed structures, above and below ground)

54. Project architecture shall be as depicted on the Building Elevation sheets as approved by the City Council.

55. Applicable codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and 2014 Milpitas Municipal Code.

56. Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.

57. Permittee shall apply for new building addresses prior to submitting for building permit.

58. All proposed future building/construction and site upgrades shall be reviewed and approved by the Planning Department to ensure building elements, siting and site improvements complement approved style of architecture.

59. Buildings area and height shall not exceed allowable as per 2013 CBC 503.1.

60. Exterior walls rating shall comply with 2013 CBC Table 602. Exterior walls shall be provided with parapets as per 2013 CBC 705.11.

61. Protection of openings shall comply with 2013 CBC 705.8 and Table 705.8.

62. Roofing material shall be as per 2013 CBC, Table 1505.1.

63. Two required exit doors shall be placed a distance apart equal to one-half of the diagonal dimension of the area served or one-third of the diagonal dimension in fire sprinkled buildings as per 2013 CBC 1015.2.1.

64. Provide exit signs when two exits are required per 2013 CBC 1011.1 and 1011.3.

65. Required separation in buildings with separated mixed occupancies shall be per 2013 CBC 508.

SIGN PROGRAM

66. All proposed signs shall meet the standards of the City Code and shall be reviewed and approved by the Building and Planning Departments prior to installation.

ACCESSIBILITY

67. Permittee shall provide parking for people with disabilities as per 2013 CBC 11B-208.1

68. Accessible parking spaces shall be dispersed and located closest to the accessible entrances as per 2013 CBC 11B-208.3.1

69. One in every six accessible parking spaces, but not less than one parking space shall be van accessible as per 2013 CBC sec.11B-208.2.4.

70. Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that is accessible as per 2013CBC, section 11B-216.6.

71. At least one accessible route shall be provided within the site from public streets and sidewalks and public transportation stops to the accessible building entrance per CBC 11B-206.2.1. A site is defined as a parcel of land bounded by a lot line or a designated portion of a public right-of-way per CBC 202.

72. Curb ramps shall have detectable warnings extending 36 inches in the direction of travel as per 2013 CBC 11B-406.5.12 and 11B-705.1.2.2.

73. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC 11B-206.4.1.

74. Tactile exit signs shall be provided where exit signs as per 2013 CBC sec.1011.1 are provided as per 2013 CBC 1011.3.

75. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, 11B-213.1.

76. Provide manoeuvring clearances at doors as per 2013 CBC 11B-404.2.4.

77. Provide minimum aisle width per 2013 CBC 11B-403.5.1 exception 4. Every aisle shall be 36" wide if serving one side and 44" min. wide if serving both sides.

78. Double swinging doors shall be provided with a minimum of 10" smooth surface at the bottom of the door as per 2013 CBC 11B-404.2.10.

ENGINEERING

79. A soil report shall be provided when applying for grading, site improvement and building permit.

80. Paving of parking garage shall comply with 2014 MMC section II-13-18.

81. All non-structural concrete flat work shall be as per 2014 Milpitas Municipal Code, section II-13-17.05.

82. Erosion control plan shall be submitted when applying for grading permit as per 2014 Milpitas Municipal Code section II-13-10.

83. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. Permittee shall include interim erosion control provisions and schedules on the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season as per 2014 Milpitas Municipal Code section II-13-11.

ELECTRICAL

84. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02.

85. Grounding system shall comply with 2014 MMC section II-6-2.04.

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. **(E)**

86. Modifications. The Site Development Plan dated March 16, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.

87. Solid Waste and Recycling Handling Plan. Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.

88. Stormwater Control Plan. Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.

89. Photometric Analysis. Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Milpitas Expressway public park and public trail area that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines. Permittee shall provide street lighting along all street frontages consistent with City requirements, as well as pedestrian scale lights along all public and private street frontages.

90. Submittal Requirements. Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.

91. Project Job Account/Fee Deposit. Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer.

PRIOR TO FINAL MAP APPROVAL/RECORDATION

The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

92. Dedication on the Final Map. Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

93. Abandonment/Quitclaim Easements. Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.

94. Easements on the Final Map. Permittee shall depict all existing easements to remain based upon current (less than 3 months old) preliminary title report and depict new easements on the final map.

95. Concurrent Off-site Plan Reviews. Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.

96. Utility Company Approval. Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements.

97. Subdivision Improvement Agreement and Securities. Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).

98. Annexation to the Community Facilities District. Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 9 notwithstanding. **(E)**

99. Homeowners Association (HOA). If a Homeowners Association will be created, Permittee shall submit a preliminary draft of the proposed conditions, covenants, and restrictions (CC&Rs) for City's review and approval. Membership of the HOA shall include all owners of the residential units. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets, and shall have assessment power. The HOA shall manage

and maintain the onsite water, recycled water, irrigation, storm, water quality treatment, and sewer systems and implement the Solid Waste Handling Plan. The information shall be clearly included in the CC&Rs to be recorded with the Santa Clara Recorder's Office.

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

100. Public Improvement Design Standards. All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/), standard drawings and specifications, (http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/) and Americans with Disabilities Act (ADA) requirements where applicable.

101. Sanitary Sewer Calculations. Permittee shall submit a completed "Sewer Needs Questionnaire" form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral.

102. Storm Drain Design. Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.

103. Domestic Water and Fire Service Calculations. Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 2.

104. Utility Protection. All existing public utilities, to the extent any are present on the project site, shall be protected in place, or if necessary, relocated as approved by the City Engineer. No permanent structure is permitted within any City easement and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.

105. Specific Improvements. In addition to standard public improvements required under MMC Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.

a. Installation of separate water service taps and separate meters for each of the following services: residential, irrigation, and fire.
b. Installation of sanitary sewer manholes right behind the right-of-way and at the main for the new lateral.
c. Installation of new curb, gutter and sidewalk along the project frontage with extension to match the existing sidewalk fronting the Harmony project (located at Building 13, also known as 1848-1884 Snell Place, Milpitas, CA).
d. Installation of Type II slurry seal along the project frontage to the median islands.

106. Abandonment of Existing City Utilities. Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction.

107. Water Service Agreement. Permittee shall complete a water service agreement to obtain water service.

108. Encroachment Permit. Prior to any work in the public right-of-way and/or public easement, Permittee shall obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.

109. Other Agency Approvals. Permittee shall obtain permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Santa Clara Valley Water District, Santa Clara County Roads and Airport Department, and Southern Pacific Railroad Company. Copies of any approvals or permits shall be submitted to the Engineering Department.

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

110. Final Map Recordation. Permittee shall record the final map.

111. Bioretention Location. Permittee shall verify that proposed bioretention area along frontage, within public right-of-way easement, has been approved by the County of Santa Clara

112. Stormwater Facility Operation & Maintenance Plan. Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit a Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and

other storm water control measures continue to work as intended and do not create a nuisance (including vector control).

113. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.

114. Water Efficient Landscapes. Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.

115. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.

116. Solid Waste and Recycling Facility Design. Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc. Guidelines can be found at:
http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/

117. Recycling Report Prior to Demolition Permit Issuance. Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:

a. What materials will be salvaged
b. How materials will be processed during demolition
c. Intended locations or businesses for reuse or recycling
d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

118. Recycling Report Prior to Building Permit Issuance. Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building

Department for approval by the Engineering Department prior to inspection by the Building Department.

119. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "e" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

a. Storm water connection fee at $16,771/acre for residential
b. Water connection fee at $1,164/unit for residential based upon increased water usage
c. Sewer connection fee at $1,406/unit for residential based upon increased water usage
d. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
e. Calaveras Boulevard Widening Traffic Impact Fee at $275/unit for residential subject to adjustment by ENR CCI at the time of payment.

120. Based on the proposal of 72 units at the site, the project is required to dedicate 0.63 acres of parkland, equivalent to $1,749,314. Permittee shall satisfy this obligation through the construction of 0.30 acres of private recreational space and the payment of $912,962 in lieu of dedicating any further real property.

DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

121. Prohibition of Potable Water Usage. Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.

122. Construction Staging and Employee Parking. Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

123. Completion of Public Improvements. Permittee shall complete all public improvements, including but not limited to, those located along Montague Expressway as shown on City approved plans.

124. Stormwater Management Facilities O&M Agreement. Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.

125. Landscape Certificate. Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.

126. Record Drawings. Permittee shall submit record drawings in pdf format for City records.

127. Maintenance Agreement Along Public Right-of-Way. Permittee shall provide the City with a copy of a fully executed Maintenance Agreement with the County of Santa Clara (Roads and Airports Department) regarding sidewalk and other improvements within that portion of Montague Expressway right-of-way along the project frontage.

128. Private Job (PJ) Balance. Permittee shall pay for any remaining balance from the Private Job deposit.

ENVIRONMENTAL IMPACT REPORT (EIR) MITIGATION MEASURES

The following are the applicable mitigation measures from the certified Midtown Specific Plan EIR. The following mitigation measures shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-028 and attached hereto and incorporated herein as Attachment A to these the Conditions of Approval.

HAZARDOUS MATERIALS

129. ***Mitigation Measure HazMat-1***: A Phase I Environmental Site Assessment (ESA) shall be conducted in accordance with American Society for Testing and Materials (ASTM) guidelines prior to the approval of development that would involve soil disturbance within 100 feet of any parcel that has been identified on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, or which has had previous land uses associated with hazardous materials (e.g., industrial sites, gas stations, etc.). Additional investigation may not be necessary for sites have no record of hazardous materials, past history of land uses associated with hazardous materials, adjacency to such sites, nor surface indications of possible hazardous materials conditions. Figure 3.3-1 located in the Midtown Milpitas Specific Plan EIR, dated October 2001, provides the general location of reported hazardous materials sites as of August 2000. For more detail, refer to the Environmental Records Search, on file with the Planning Division (EDR 2000).

The Phase I ESA will include the findings of a site reconnaissance and investigation of prior uses of the property that could have resulted in contamination. If a significant likelihood of contamination is revealed by the Phase I ESA, a Phase II and/or III assessment may be required, which would involve soil and/or water quality sampling and could result in remediation requirements in accordance with State and Federal regulations. Implementation of this measure will ensure that the impact is reduced to a less-than-significant level.

UTILITIES

130. ***Mitigation Measure Util-1:*** The following mitigation measures shall be implemented to ensure that wastewater discharge and treatment capacities are available for planned development:

a. The City of Milpitas shall continue to participate in WPCP Action Plan projects to reduce existing wastewater flows, such as low flow toilet installation programs and water conservation programs. The City of Milpitas shall continue to participate in the South Bay Water Recycling Program, and pursue additional recycled water opportunities whenever available.
b. The City shall continue to monitor for adequate discharge capacity to serve existing and approved development in the city for all development projects, including remodels. The Planning Division shall continue to coordinate with the Utilities Division and require a sewer need assessment to be completed by the developer prior to any development approvals. The Utilities Division shall continue to keep a running estimate of how much capacity remains citywide to aid in this analysis.
c. The City of Milpitas shall complete the Sewer-Water Master Plan Update (Winter 2002) and implement the feasible recommended infrastructure improvements, including infiltration and inflow reduction measures. Upon completion of the Sewer Master Plan, the City of Milpitas shall review the treatment capacity needs and seek additional capacity if warranted. If the available treatment capacity has been reached, the City of Milpitas shall not issue the building permit until additional capacity is acquired.

With the implementation of these mitigation measure, adequate wastewater treatment capacity would be ensured, and this impact would be considered less-than-significant.

BIOLOGICAL RESOURCES

131. ***Mitigation Measure Bio-1:*** Undeveloped areas proposed for development during the nesting season (April 15 to July 15) shall be surveyed for burrowing owls. The

survey must follow the California Department of Fish and Game (now Department of Fish and Wildlife) protocol. The survey report shall be submitted to Milpitas Planning Division for review and approval. If owls are observed during the surveys, or if a burrowing owl nest has been documented on the site within the last three years, a burrowing owl habitat map and mitigation plan must be prepared by a qualified ornithologist and submitted to the City for approval. Implementing this mitigation measure would reduce potential impacts to burrowing owls to a less-than-significant level.

132. ***Mitigation Measure Bio-2:*** Most hawks build bulky nests of twigs, bark, and leaves high in trees. Red-shouldered hawks (the species observed in the project area) nest in deciduous or coniferous trees, usually 20-60 feet above the ground. The birds construct well-made cupped nests of sticks and twigs, lined with bark, mosses, leaves, feathers and down. A red-shouldered hawk nest is approximately 2 feet wide and 1 foot deep. For proposed projects that would remove any large tree with a potential raptor nest during the raptor-nesting season (February 1 to August 31), the following mitigation measures shall be implemented.

a. If construction or large tree (i.e., 20 feet or more in height) removal is proposed during the raptor-nesting season (February 1 to August 31), Planning Division staff shall conduct a site visit to determine whether any nest structure is visible in the trees to be removed.
b. If a nest is observed, a focused survey shall be conducted by a qualified biologist during the nesting season to identify if they are active. The survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of construction or tree removal.
c. If nesting raptors are found during the focused survey, no construction or tree removal will occur within 500 feet of an active nest (or an alternative distance deemed appropriate by the California Department of Fish and Game (now California Department of Fish and Wildlife), depending on the existing degree of disturbance in the vicinity of the nest) until the young have fledged (as determined by a qualified biologist). If next trees are unavoidable, they shall be removed during the non-breeding season.

Implementing these mitigation measures would reduce potential impacts to raptors to a less-than-significant level.

133. ***Mitigation Measure Bio-3:*** If a project in the planning area has the potential to result in discharge of dredged or fill material into Waters of the United States, including wetlands, the following measures shall be implemented. Waterways in the planning area that could be Waters of the United States are Berryessa Creek, Lower Wrigley Ford Creek, and East Penitencia Creek.

a. Prior to implementation of a project in the vicinity of known waterways in the planning area, qualified biologists shall make a determination as to whether Waters of the United States, including jurisdictional wetlands, are present in the development area. If no Waters of the United States, including jurisdictional wetlands, would be filled or degraded as a result of the proposed project, no further mitigation will be required.
b. If Waters of the United States would be filled or degraded as a result of the proposed project, authorization for the fills shall be secured from USACE via the Section 404 permitting process.
c. The acreage of Waters of the United States would be filled or degraded as result or rehabilitated on a "no-net-loss" basis in accordance with USACE regulations. Habitat restoration, rehabilitation and/or replacement shall be at a location and by methods agreeable to USACE.
d. Measures to minimize erosion and runoff into drainage channels shall be included in all drainage plans and implemented during construction adjacent to creeks.

Implementing these mitigation measures would reduce potential impacts to Waters of the United States, including wetlands, to a less-than-significant level.

CULTURAL RESOURCES

134. ***Mitigation Measure Cult-1:*** The following mitigation measures shall be implemented to ensure that substantial adverse changes do not occur to historical resources within the planning area. These measures shall be implemented when modification or demolition is proposed for any of the sites identified on Figure 3.8-1 of the Midtown Milpitas Specific Plan EIR, dated October 2001

a. Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of the historic resource would be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstruction Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historic resource shall be considered mitigated to a less-than-significant level. This is the preferred mitigation approach.
b. If removal or modification of any potentially significant resource is proposed and is not consistent with the Standards described in (a), the resource shall be evaluated for its integrity and structural values pursuant to the California Register criteria by a licensed architect specialized in historic buildings. This shall occur prior to the approval of any proposed modification or demolition.
c. If these resources are determined ineligible for the California Register of Historic Resources, no further mitigation is required. However, if a resource is

listed or determined eligible for the California Register of Historic Resources, documentation of the structure's architectural values by a licensed architect specialized in historic buildings shall be completed prior to demolition or alteration. At least one additional mitigation measure also will be implemented at the recommendation of the architect in consultation with the City of Milpitas; this might include on-site interpretation of the lost resource or documentation of the resource to Historic American Buildings Survey/Historic American Engineering Recordation (HABS/HAER) standards.

Implementation of these mitigation measures would reduce the potential impacts to historic resources to a less-than-significant level.

135. ***Mitigation Measure Cult-2:*** When proposed for development, the planned bicycle and pedestrian improvements in the vicinity of the Penitencia Creek and development of vacant lands in the vicinity of Penitencia Creek (Within 100 feet of the creek bank) shall be reviewed for their potential to adversely affect archaeological site CA-SCL-38. Mitigation, including site avoidance, data recovery and/or construction monitoring may be necessary, depending on the nature of the site, and the project's potential impact to it. A qualified archaeologist shall make project-specific recommendations, which shall be implemented prior to the development of the path or construction on these vacant lands.

Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

136. ***Mitigation Measure Cult-3:*** Project developers shall be required to implement provisions for historical or unique archaeological resources accidentally discovered during construction in accordance with CEQA Guidelines Section 15064.5 (e)(f). This requirement shall be specified in all building and grading permits. These provisions require the immediate evaluation of the find by a qualified archaeologist or historic archaeologist meeting the Secretary of the Interior's Professional Qualification Standards. If the find is determined to be a historical or unique archaeological resource, funding will be made available by the project developer and a schedule identified for implementing avoidance measures or appropriate mitigation. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place. Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

137. ***Mitigation Measure Cult-4:*** In the event that human remains are encountered, City planning staff will be contacted and excavation or disturbance activities at the site or at any nearby area reasonably suspected to overlie adjacent human will be halted. This requirement shall be specified in all building and grading permits. The

Santa Clara County coroner will be contacted and appropriate measures implemented. These actions would be consistent with the State Health and Safety Code Section 7050.5, which prohibits disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery. If the County coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be most likely deceased from the deceased Native American.

TRAFFIC AND CIRCULATION

138. ***Mitigation Measure Traffic-1:*** With implementation of the Specific Plan the City shall implement the improvements summarized in Table 3.9-13 of the Midtown Milpitas Specific Plan EIR, dated October 2001. Consistent with Policy 4.8 of the Draft midtown Milpitas Specific Plan. Historically the City has required development to pay its pro-rata share of improvement costs on a project by project basis. The City shall continue to use this approach or identify alternative funding mechanisms such as RDA funds or General Funds prior to development in midtown. Improvements may be phased, according to actual development and demonstrated need for the improvements. With the implementation of the traffic improvements specified in Section 3.9-13 of the Midtown Specific Plan EIR, six of the intersection impacts would be mitigated to a less than significant level. However, impacts at eight of the intersections would still be considered significant. Feasible mitigation measures are not available. Thus these remaining are considered significant and unavoidable.

139. ***Mitigation Measure Traffic-2:*** According to VTA policy direction, mitigation measure for regional freeway impacts is participation in the Countywide Deficiency Plan (CDP) prepared by the VTA, which would require additional impact fees to provide the regional roadway improvements, including freeways. However, the CDP has not received final approval. Thus, the mitigation of regional of impacts to freeways operations cannot be guaranteed, as the City of Milpitas does not have legal authority to mitigate freeway impacts. For this reason, the contribution of development under the Milpitas Specific Plan to unacceptable freeway operations is considered a significant and unavoidable impact.

140. ***Mitigation Measure Traffic-3:*** The City of Milpitas has taken on the administration and construction of widening Montague Expressway between Great Mall Parkway-Capitol Avenue and I-680. This widening includes the addition of a fourth through lane in each direction, one of which will be a dedicated HOV lane during the AM and PM peak commute periods. Although this improvement will not reduce the projected impacts to a less-than-significant level, it will reduce overall congestion and improve traffic flow in the Midtown Area.

AIR QUALITY

141. ***Mitigation Measure Air-1:*** The following basic control measures are required to be implemented at all construction sites in the Midtown area. These measures shall be incorporated into construction contracts for projects in the Midtown area.

a. Water all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with no toxic stabilizers or dust palliatives.
b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
d. Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried on to adjacent public streets.
f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
h. Limit traffic speeds on unpaved roads to 15 miles per hour.
i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
j. Replant vegetation in disturbed areas as quickly as possible.
k. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

After implementation of the listed mitigation measures, construction-related air emissions would be less-than-significant

142. ***Mitigation Measure Air-2:*** The Specific Plan contains Policies directed at reducing vehicle miles traveled. The Specific Plan encourages a compatible mixture of land uses, provides for a land-use mix that supports major transit facilities, locates higher density development around hubs and commercial centers, provides for the continuation of pedestrian-oriented retail development, and provides pedestrian connections between the transit stations and important destinations.

Though these policies would help to reduce emissions, they would not reduce them to a level of insignificance. Due to the intensity of the development proposed, the proposed Specific Plan could not be feasibly developed without an increase in air emissions above the significance thresholds of 15 tons per year for RO, NOx, and PM10. This impact is considered significant and unavoidable.

143. ***Mitigation Measure Air-3:*** Due to the intensity of the development proposed, the Specific Plan could not be feasibly developed without causing an increase in regional emissions, and all feasible mitigation measures have been incorporated into the Specific Plan as policies (e.g., policies directed at encouraging non-automotive transportation). This impact is considered significant and unavoidable.

Notes:
(P) = Planning
(B) = Building
(E) = Engineering
(F) = Fire Prevention
(PD) = Police

ATTACHMENT

Attachment A: Mitigation and Monitoring Plan prepared for the Midtown Specific Plan EIR

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____ _____

Signature

Printed Name of Permittee/Property Owner:_____

MONTAGUE

EXPRESSWAY

MULTI-FAMILY RESIDENTIAL DEVELOPMENT

Montague Expressway - Milpitas - CA

PROJECT INFORMATION

ADDRESS :
APN : 86-34-23
CURRENT ZONING : MULTI-FAMILY RESIDENTIAL, VERY HIGH DENSITY (R4)
TOTAL SITE AREA : 78,134 SF (1.8 ACRES)

PROPOSED USE : MULTI-FAMILY
NUMBER OF UNITS : 72
DENSITY : 40 UNITS/ACRE
UNIT MIX
1BR : 28 (39%)
2BR : 26 (36%)
3BR : 18 (25%)
TOTAL : 72 UNITS

PARKING REQUIRED :
1BR : 28 X 1.5 = 42
2BR : 26 X 2 = 52
3BR : 18 X 2 = 36
130 SPACES
GUEST PARKING;
15% x 130 = 20
TOTAL REQUIRED = 150 SPACES
BICYCLES: 5% X 130 = 7 SPACES
PARKING PROVIDED :
ON-GRADE = 8
IN- GARAGE = 150
TOTAL = 158 SPACES
BICYCLES = 24 VERTICAL LOCKERS IN GARAGE + RACKS FOR 9 BIKES ON GRADE 4
MOTOCYCLES = 8 SPACES
BUILDING FOOTPRINT : 30,370 SF
BUILDING SITE COVERAGE : 39% OF TOTAL SITE
OPEN AREA : 47,764SF (61%)
USABLE OPEN SPACE : 23,051 SF (29.5% > 25% REQUIRED)
PRIVATE OPEN SPACE :
TOTAL : 7096 SF
RATIO : 98.5 SF/UNIT
FLOOR AREA
1ST FLOOR : 27,970 SF
2ND FLOOR : 26,097
3RD FLOOR : 28,894
4TH FLOOR : 28,894
TOTAL : 111,855 SF
GARAGE : 60,990

PROJECT DIRECTORY

OWNER:
MANOU MOVASSATE
83 SANTIAGO AVENUE
ATHERTON, CA 94027-5412

ARCHITECT
LPMD ARCHITECTS
1288 KIFER ROAD
SANNUVALE, CA 94086
TEL: 408-992-0280

CIVIL ENGINEER
UNDERWOOD & ROSENBLUM INC.
1630 OAKLAND ROAD-SUITE A114
SAN JOSE, CA 95131
408-453-1222

LANDSCAPE ARCHITECT
REED ASSOCIATES
477 S. TAAFFE STREET
SUNNYVALE, CA 94086
408-481-9020

DRAWING INDEX

0 TITLE SHEET
1 SITE PLAN
2 AREA CALCULATIONS
3 FLOOR PLANS
4 GARAGE PLAN
5 SOUTH ELEVATION
6 EAST ELEVATION
6A WEST ELEVATION
7 SIGN-FENCE-WINDOW DETAILS
8 TRASH ENCLOSURE
9 COLOR SAMPLES
10 PERSPECTIVE RENDERING
SE1 PHOTOMETRIC STUDY
TM0 TETATIVE MAP TITLE SHEET
TM1 DEMOLITION PLAN
TM2 TOPO SURVEY
TM3 ON SITE IMPROVEMENT PLAN
TM4 GRADING DRAINAGE PLAN
TM5 UTILITY PLAN
TM6 STORMWATER TREATMENT PLAN
TM6A STORMWATER TREATMENT CALCULATION
TM7 SOLID WASTE HANDLING PLAN
TM8 EMERGENCY VEHICLE ACCESS PLAN
TM9 OFF SITE IMPROVEMENT PLAN
TM10 OFF SITE SECTIONS

OWNER:
NAME : Manou Movassate
ADDRESS : 83 Santiago Ave.,
Atherton, CA 94027-5412
TELEPHONE:
EMAIL :

VERONA CROSSING
RESIDENTIAL DEVELOPMENT
MONTAGUE EXPRESSWAY
Milpitas - California

Date: 5-3-2014
Scale:
Revisions:
1 3-4-2014
2 11-27-2014
3 02-04-2015
4 01-08-2016

Drawing Title:
TITLE SHEET
Sheet No:
0

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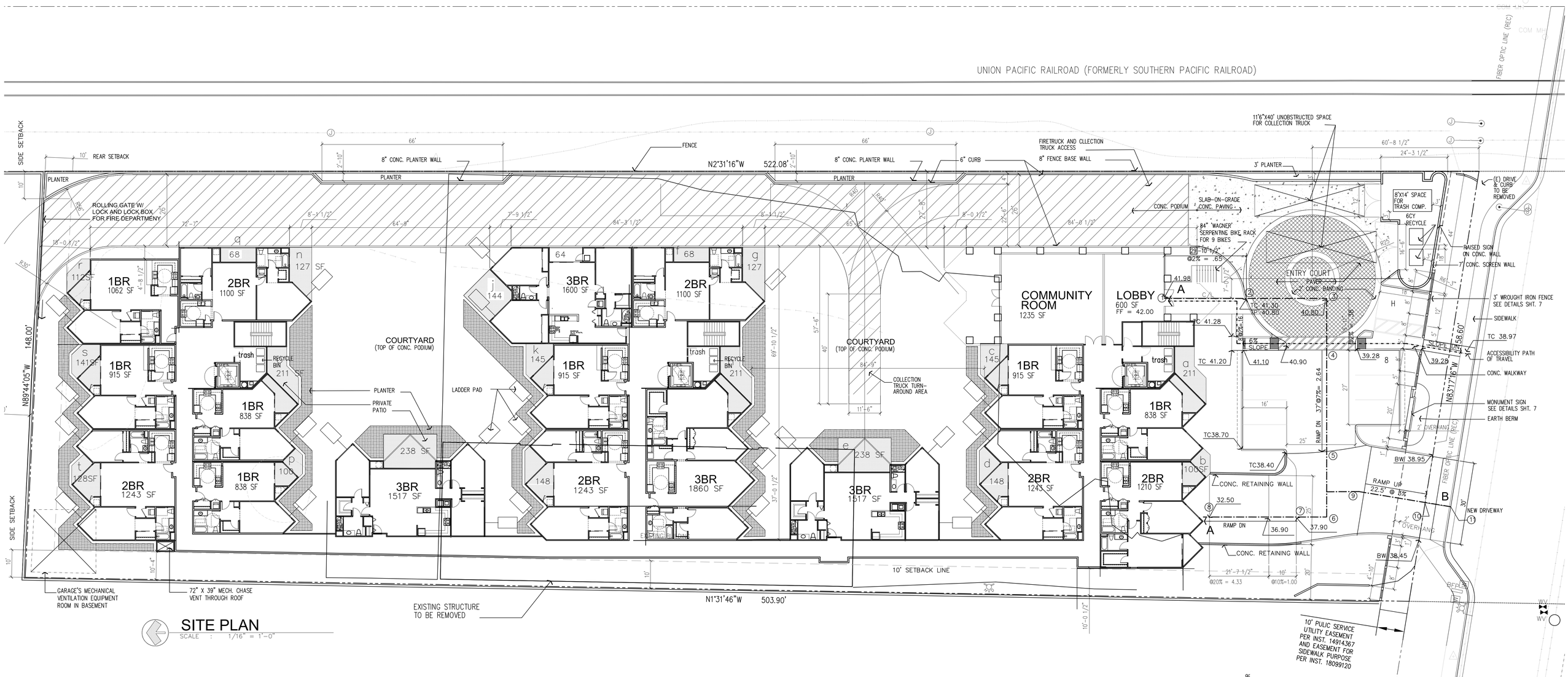
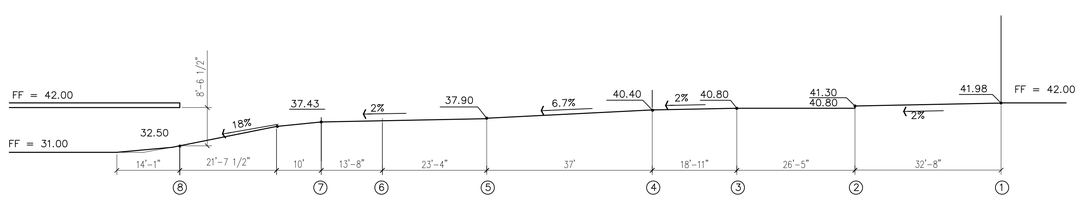
Telephone : 408-992-0280
Fax : 408-992-0281



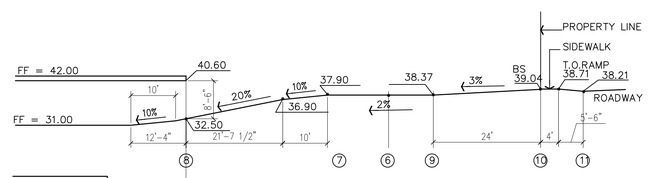
SITE PLAN

SCALE : 1/16" = 1'-0"



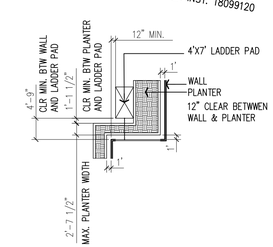
SITE SECTION A-A

SCALE : 1/16" = 1'-0"



SITE SECTION A-B

SCALE : 1/16" = 1'-0"



PLANTER @ LADDER PAD

SCALE : 1/16" = 1'-0"

OWNER:

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Atherton, CA 94027-5412
TELEPHONE:
EMAIL :

VERONA CROSSING
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Date:
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Revisions:
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Drawing Title: SITE PLAN

Sheet No: 1

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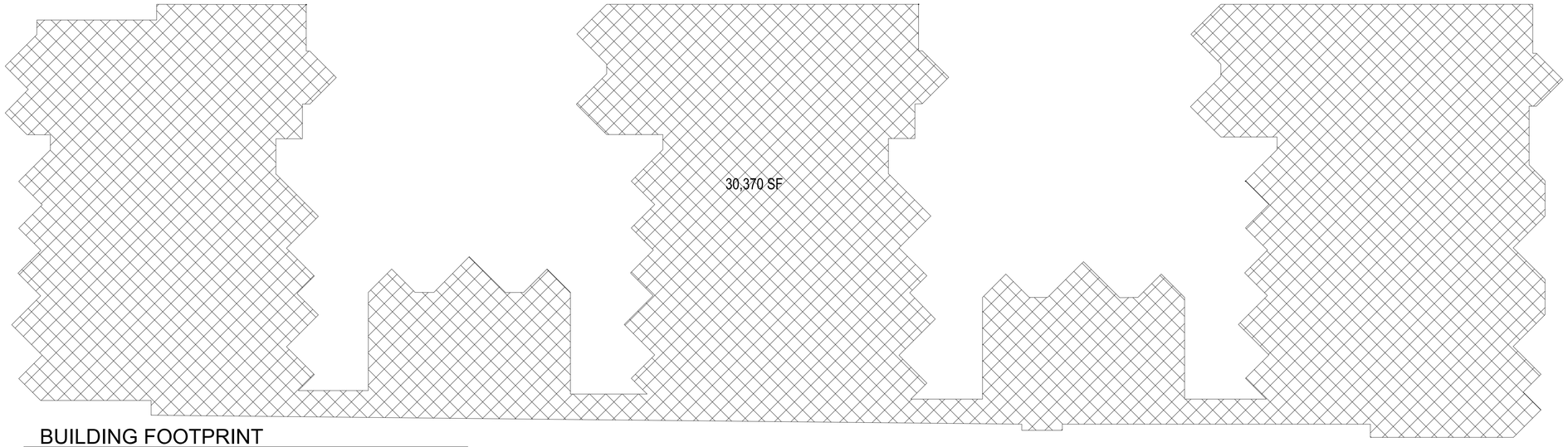
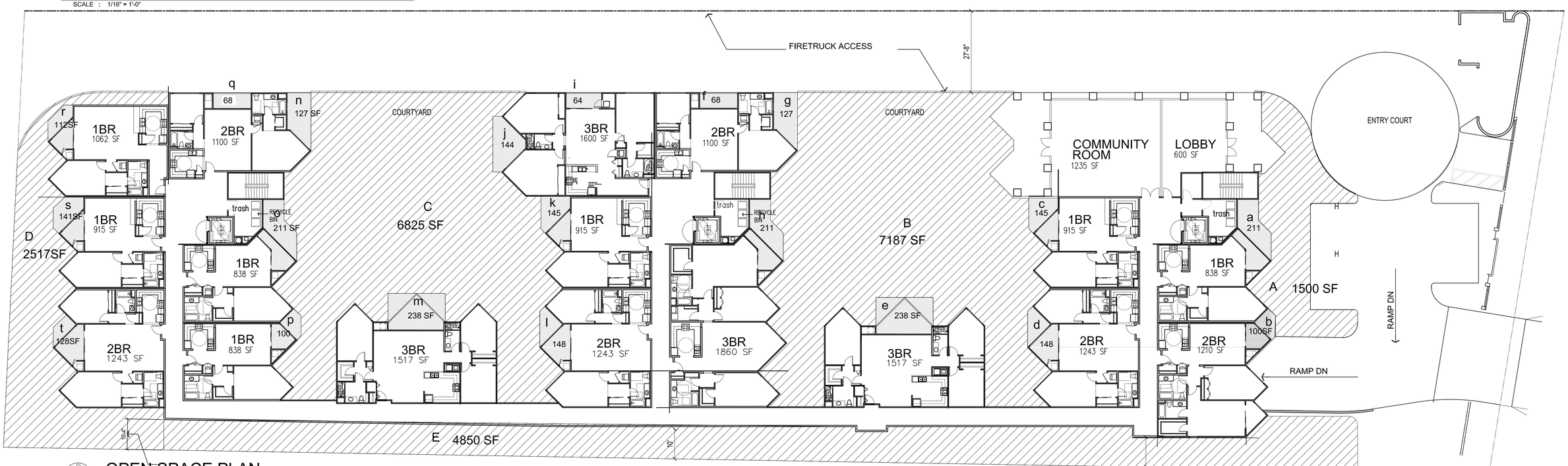


BUILDING FOOTPRINT

SCALE : 1/16" = 1'-0"



OPEN SPACE PLAN

SCALE : 1/16" = 1'-0"

NOTE:
MINIMUM WIDTH OF USABLE OPEN SPACE IS 4.5 FEET.

TOTAL SITE AREA = 78,134 SF
BUILDING FOOTPRINT = 30,370 SF
= 39% OF TOTAL SITE

USABLE OPEN SPACE:

A=	1500 SF
B=	7187
C=	6825
D=	2517
E=	4850

TOTAL= 22,782 SF
= 29% OF SITE (>25%)

PRIVATE PATIOS:

a=	211	k=	145
b=	84	l=	148
c=	145	m=	238
d=	148	n=	127
e=	238	o=	211
f=	68	p=	84
g=	127	q=	68
h=	211	r=	112
i=	64	s=	141
j=	144	t=	128

TOTAL= 2842 SF

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Scale: 1/16" = 1'-0"
Revisions:
4-30-2014
11-27-2014
02-04-2015

Drawing Title:
AREA CALCULATIONS
Sheet No:
2

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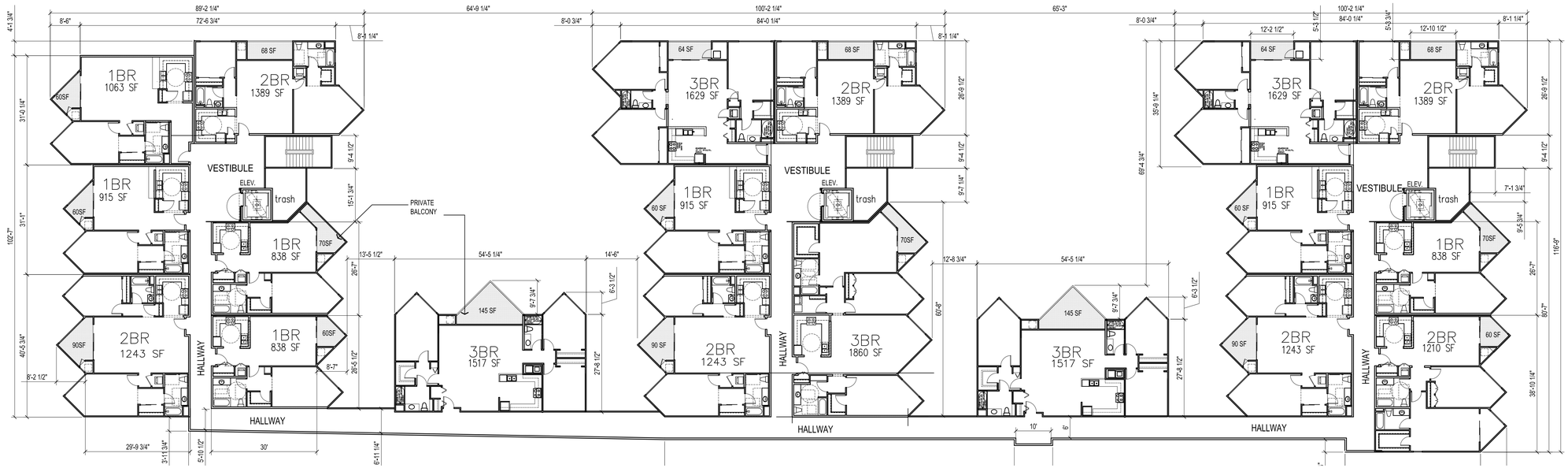
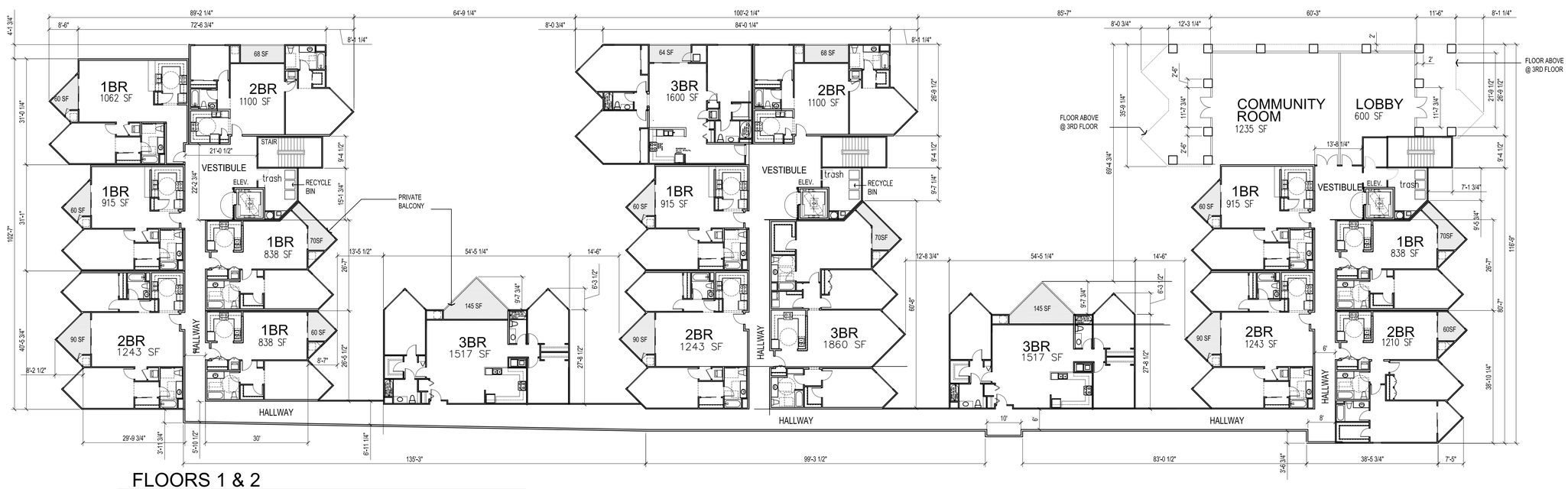


FLOORS 3 & 4

SCALE : 1/16" = 1'-0"



FLOORS 1 & 2

SCALE : 1/16" = 1'-0"

FLOORS AND BALCONIES

FLOORS	AREA IN SF	PRIVATE BALCONIES
4TH	28,894	1462
3RD	28,894	1462
2ND	26,097	1330
1ST	27,970	2842
TOTAL	111,855	7096 (98.5 SF/UNIT)
GARAGE	60,990	

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11-27-2014
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Drawing Title:
FLOOR PLANS

Sheet No:
3

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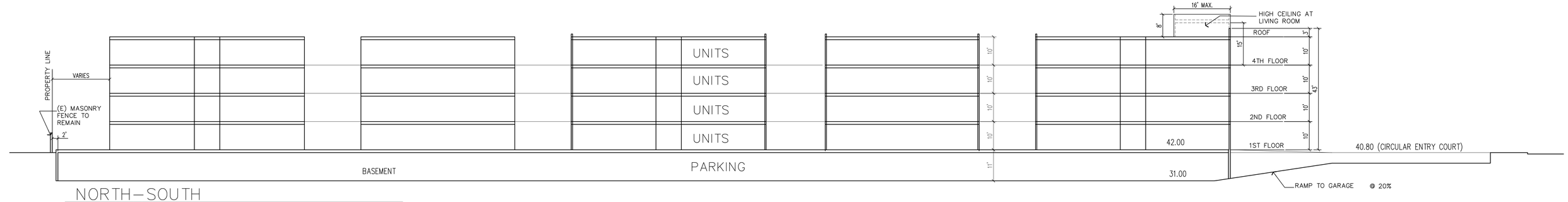
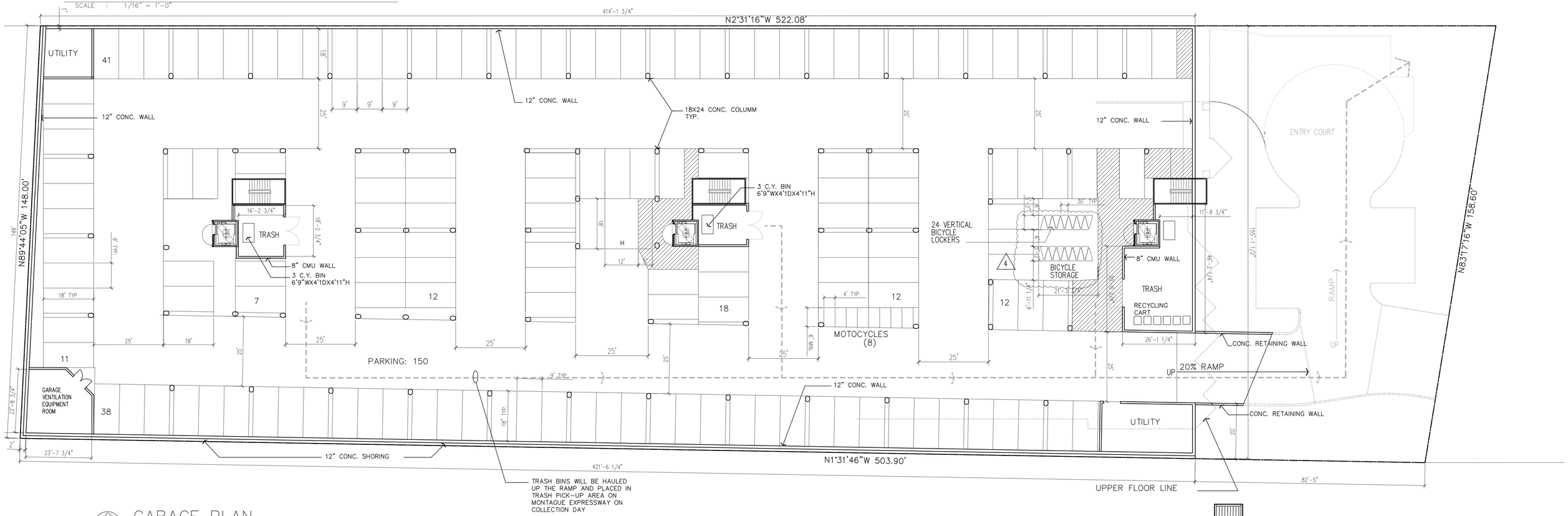


NORTH–SOUTH

SCALE : 1/16" = 1'-0"



GARAGE PLAN

SCALE : 1/16" = 1'-0"

UNIT SCHEDULE:

FLOORS	1BR	2BR	3BR	TOTAL
1ST	7	6	4	17
2ND	7	6	4	17
3RD	7	7	5	19
4TH	7	7	5	19
TOTAL	28	26	18	72
RATIO	39%	36%	25%	

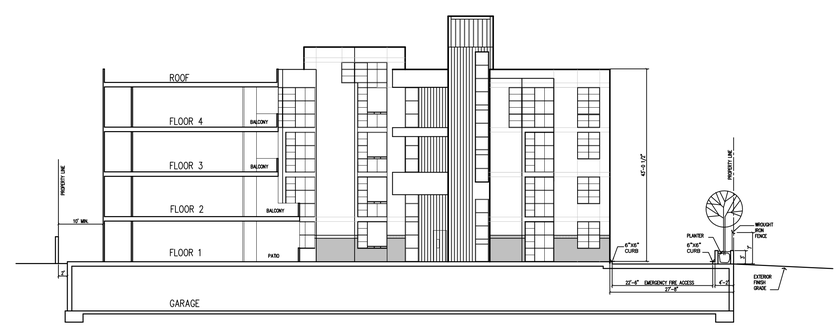
NUMBER OF UNITS:
1BR = 28 (39%)
2BR = 26 (36%)
3BR = 18 (25%)
TOTAL = 72 UNITS

PARKING SCHEDULE:
PARKING REQUIRED:
X 1.5 = 42
X 2 = 52
X 2 = 36
TOTAL = 130 SPACES

GUEST PARKING:
15% X 130 = 20 SPACES
GRAND TOTAL = 150 SPACES

BICYCLE PARKING : 5% X 130 = 7 SPACES

PARKING PROVIDED: 150 IN GARAGE + 8 ON GRADE = 158 SPACES



EAST–WEST SECTION

SCALE : 1/16" = 1'-0"

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3	02-04-2015
4	01-08-2016

Drawing Title: GARAGE

Sheet No: 4

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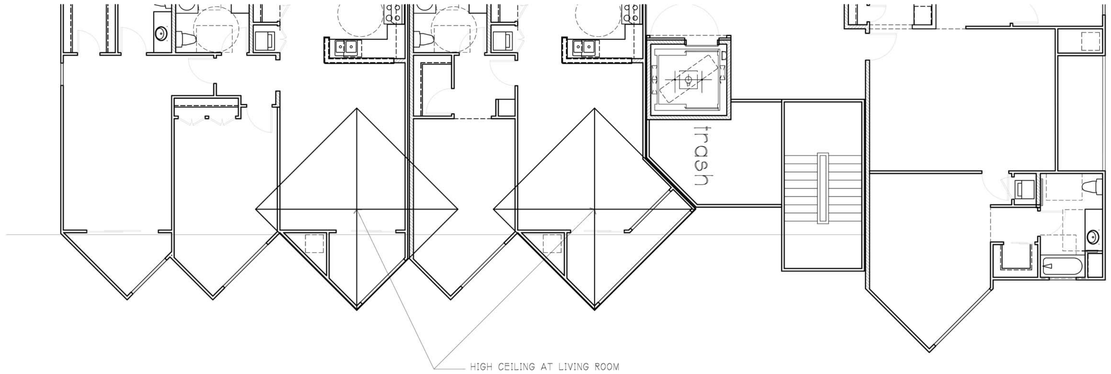
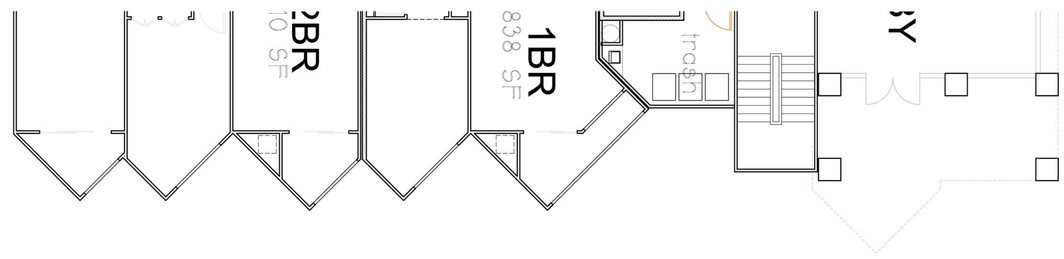


FLOORS 3-4 Partial

SCALE : 1/8" = 1'-0"

SOUTH ELEVATION - Montague Expressway

SCALE : 1/8" = 1'-0"



FLOOR 1-Partial

SCALE : 1/8" = 1'-0"

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EMAIL :

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Milpitas - California

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Scale: 1/8" = 1'-0"
Revisions:
11-27-2014
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Drawing Title:
SOUTH ELEVATION

Sheet No:
5

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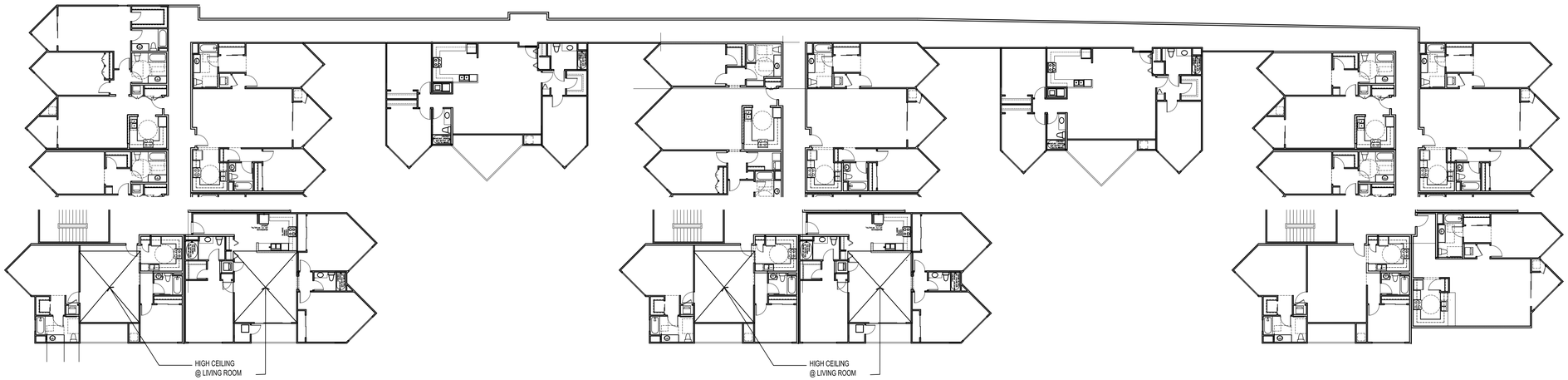
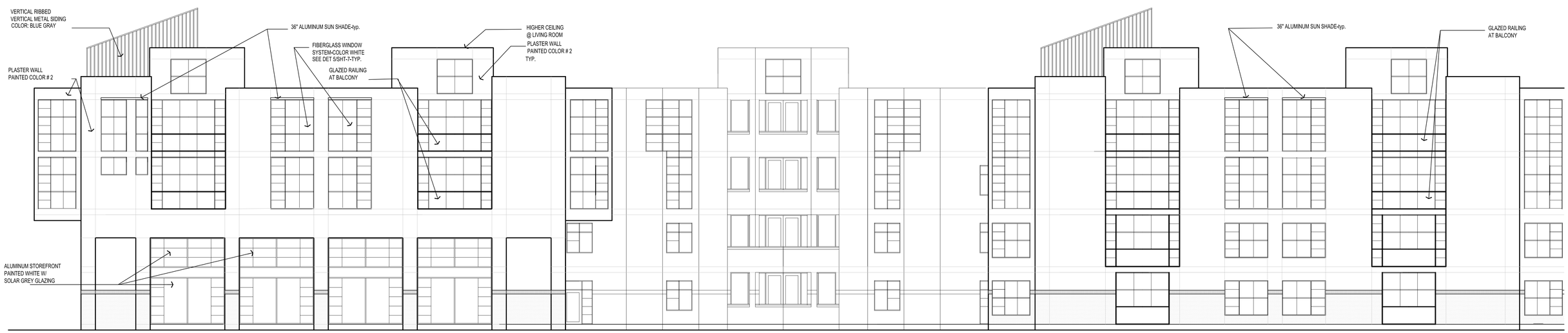


FOORS 3-4 Partial

SCALE : 1/16" = 1'-0"

EAST ELEVATION - Railroad side

SCALE : 1/16" = 1'-0"



EAST ELEVATION - Railroad side - Partial

SCALE : 1/8" = 1'-0"

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EMAIL :

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Date:
Scale: 1/8" = 1'-0"
Revisions:
11-27-2014

Drawing Title:
EAST ELEVATION

Sheet No:
6

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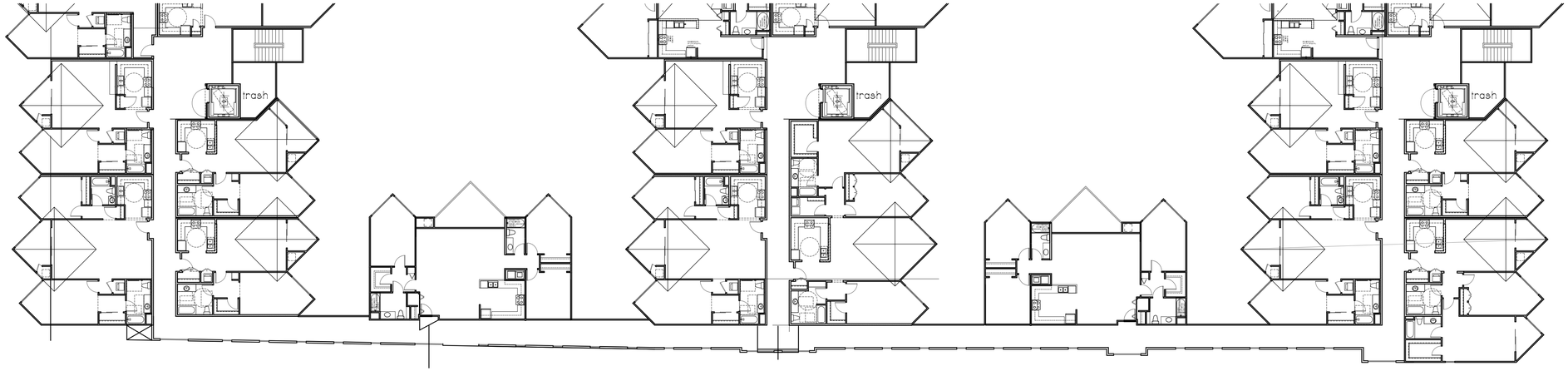

FOORS 3-4 Partial

SCALE : 1/16" = 1'-0"

WEST ELEVATION

SCALE : 1/16" = 1'-0"

WEST ELEVATION - Partial

SCALE : 1/8" = 1'-0"

OWNER:

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EMAIL :

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Scale: 1/8" = 1'-0"
Revisions:
11-27-2014
5-10-2016

Drawing Title:
WEST ELEVATION

Sheet No:
6A

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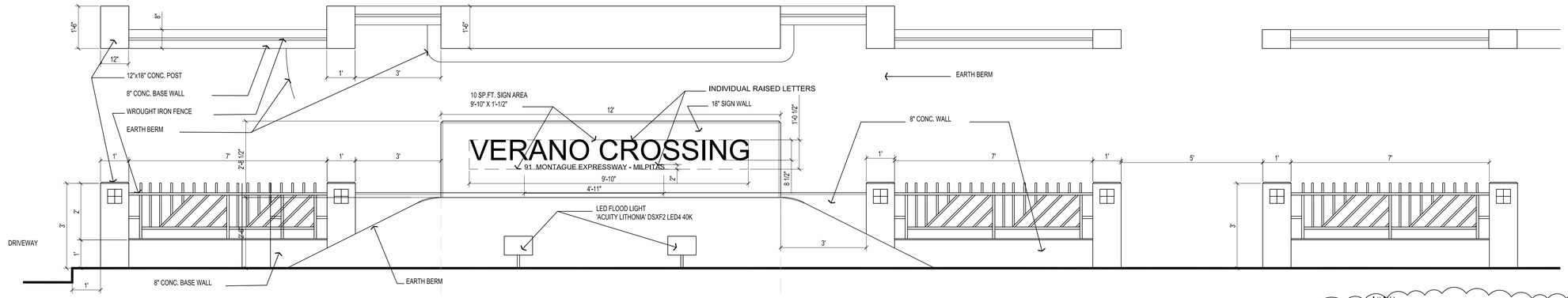
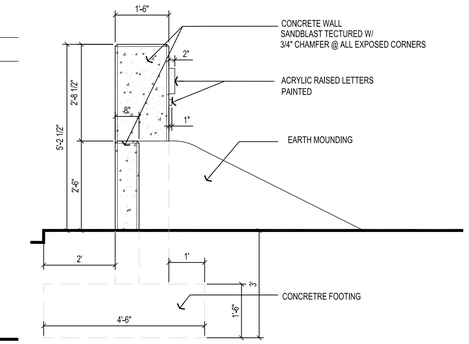


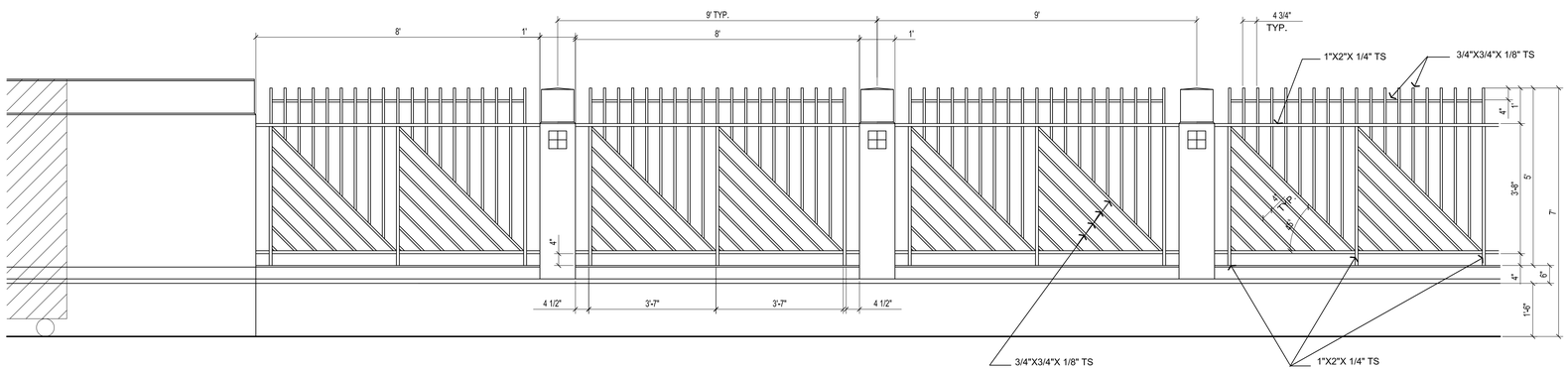
MONUMENT SIGN

SCALE : 1/2" = 1-0"



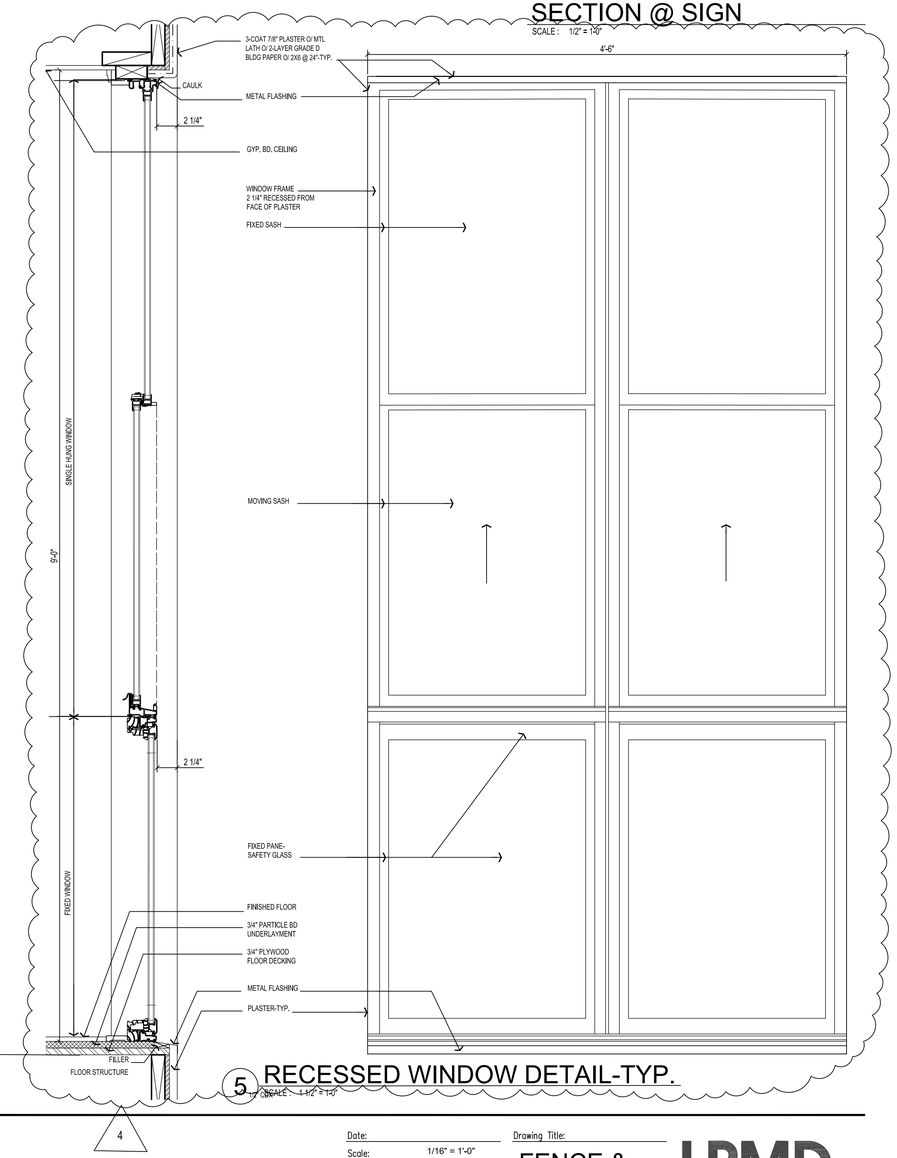
SECTION @ SIGN

SCALE : 1/2" = 1-0"



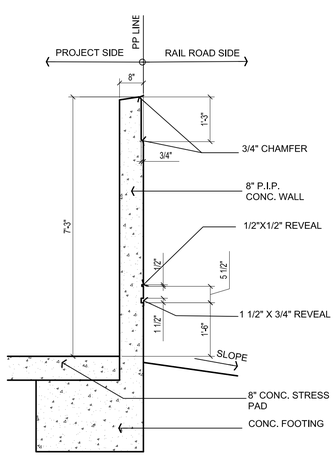
FENCE ELEVATION

SCALE : 1/2" = 1-0"



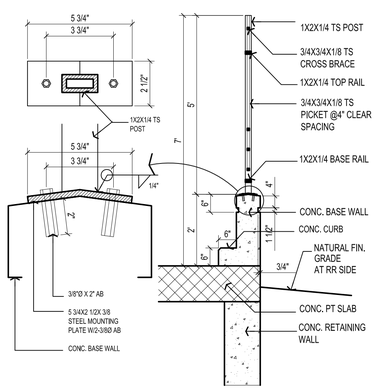
5 RECESSED WINDOW DETAIL-TYP.

SCALE : 1-1/2" = 1-0"



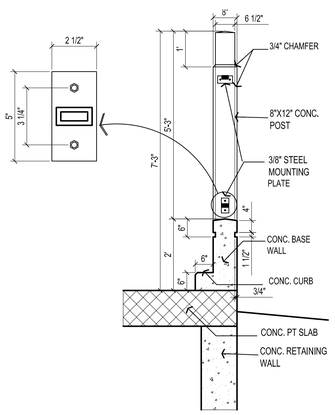
1 FENCE DETAIL 1

SCALE : 1/2" = 1-0"



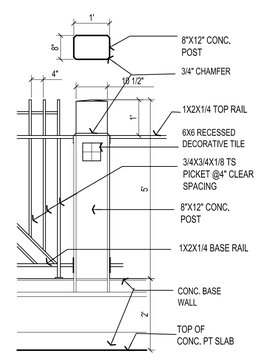
2 FENCE DETAIL 2

SCALE : 1/2" = 1-0"



3 FENCE DETAIL 3

SCALE : 1/2" = 1-0"



4 FENCE DETAIL 4

SCALE : 1/2" = 1-0"

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Scale:	1/16" = 1'-0"
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Drawing Title: FENCE & SIGN

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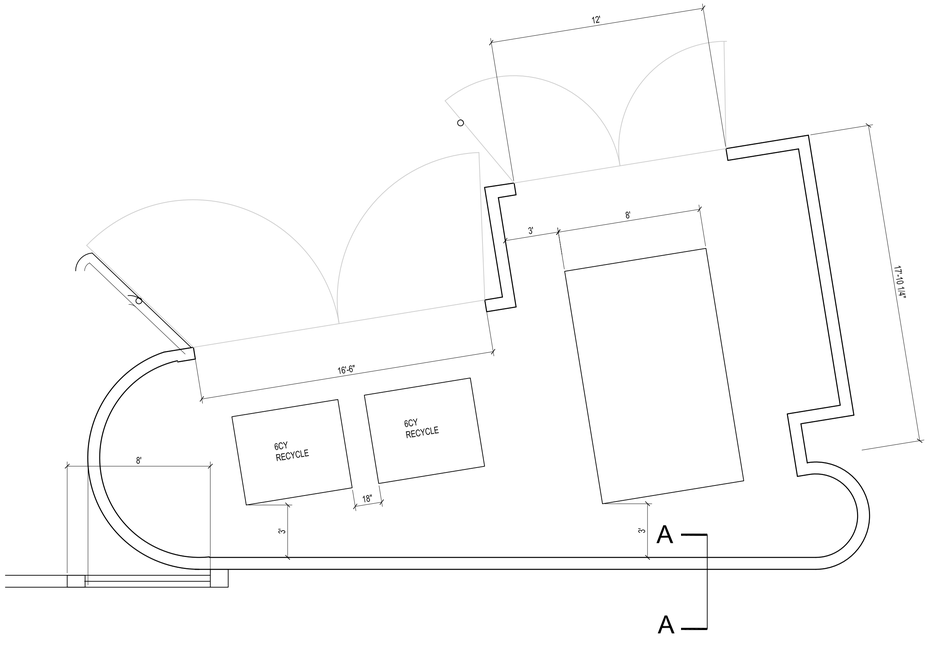
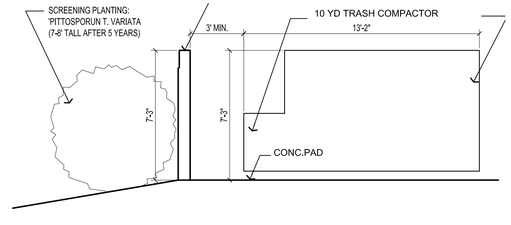


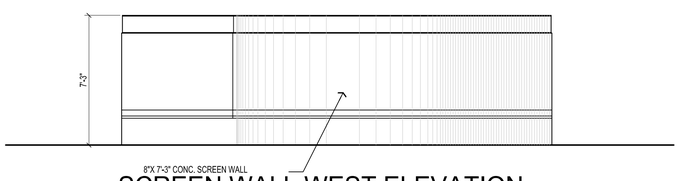
TRASH ENCLOSURE PLAN VIEW

SCALE : 1/4" = 1-0"



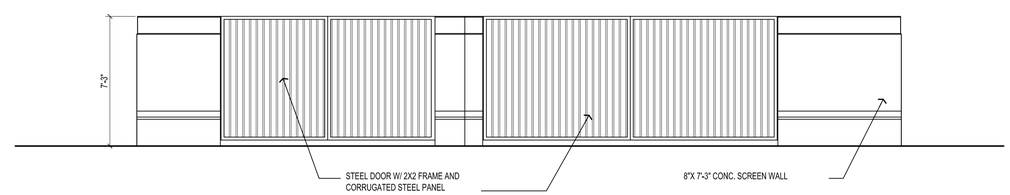
SCREEN WALL SECTION A-A

SCALE : 1/4" = 1-0"



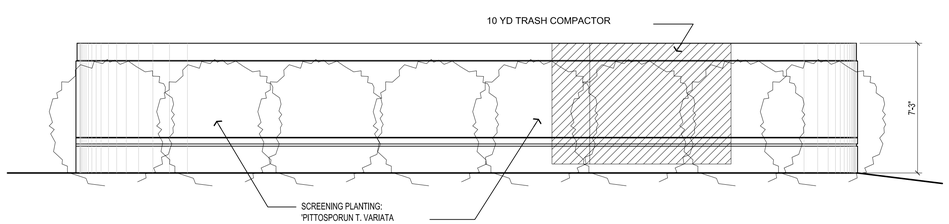
SCREEN WALL WEST ELEVATION

SCALE : 1/4" = 1-0"



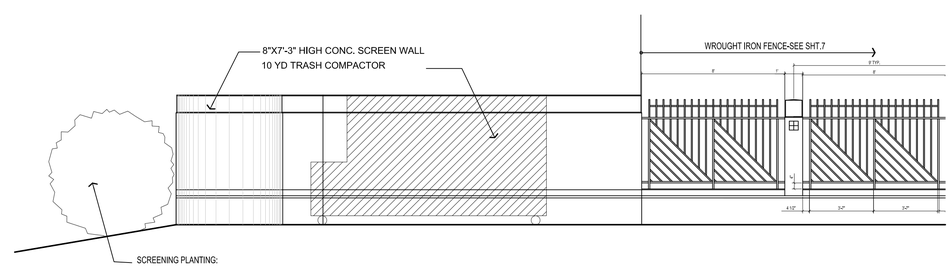
SCREEN WALL NORTH ELEVATION

SCALE : 1/4" = 1-0"



SCREEN WALL SOUTH ELEVATION

SCALE : 1/4" = 1-0"



SCREEN WALL EAST ELEVATION

SCALE : 1/4" = 1-0"

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4	11-27-2014

Drawing Title:
TRASH COMPACTOR ENCLOSURE

Sheet No:
8

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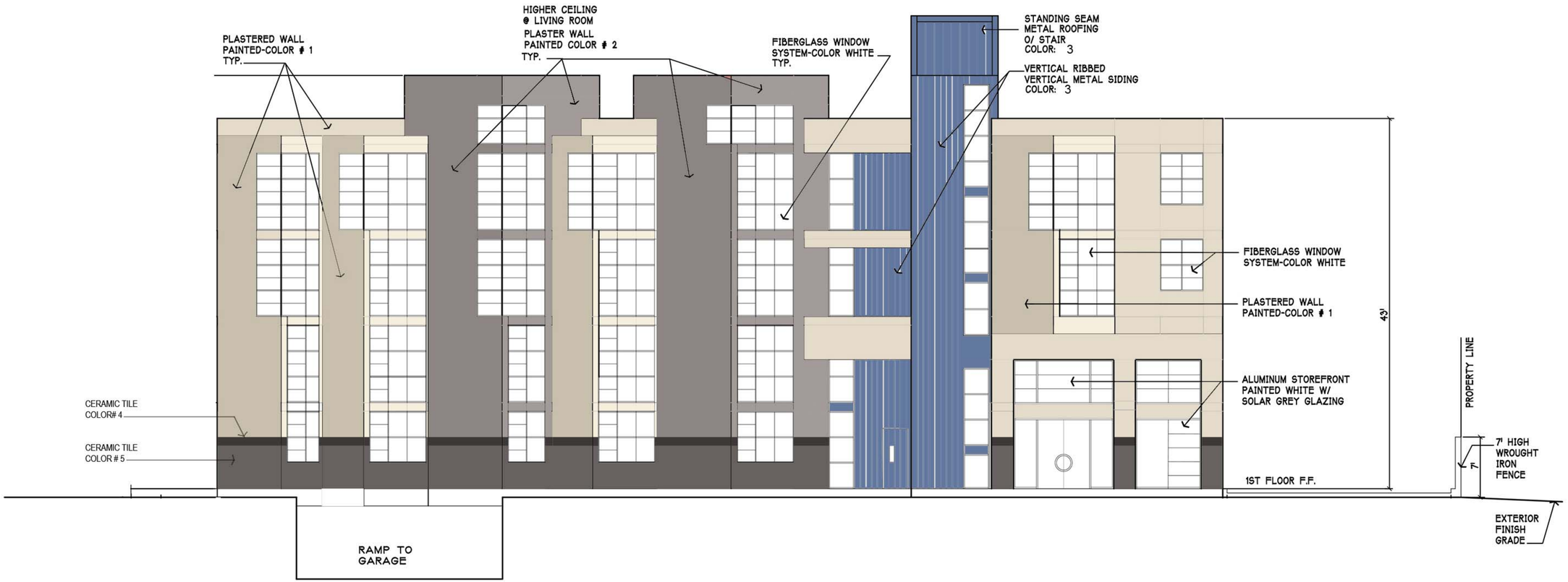


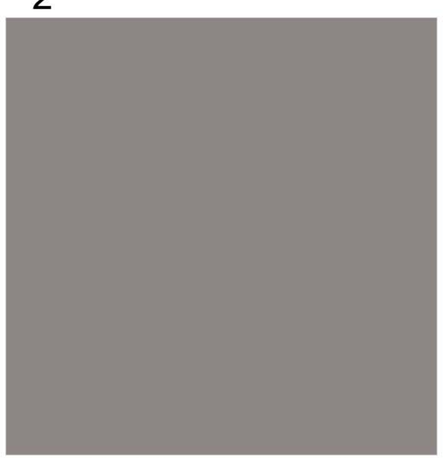
SOUTH ELEVATION - Montague Expressway

SCALE : 1/8" = 1'-0"

1

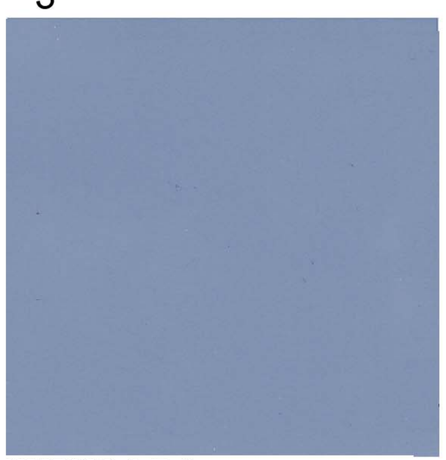
KM4450-1 Cafe Latte

2



KM4847-3 Mississippi River

3



KM5020-1 Fate

4

KM4869-5 Rocky Creek

5

KM4848-5 Capri Isle

ENTRY COURT PAVERS
Pacific Coast Pavers
Style: Sierra Blend

OWNER:

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EMAIL :

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MONTAGUE EXPRESSWAY
Milpitas - California

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Scale: 1/16" = 1'-0"
Revisions:
5-14-2014
9- 25-2014
11-27-2014

Drawing Title: COLOR SAMPLE

Sheet No: 9

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PERSPECTIVE - View from Montague Expressway

OWNER:

NAME : Manou Movassate
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TELEPHONE:
EMAIL :

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Revisions:
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Drawing Title:
PERSPECTIVE

Sheet No:
10

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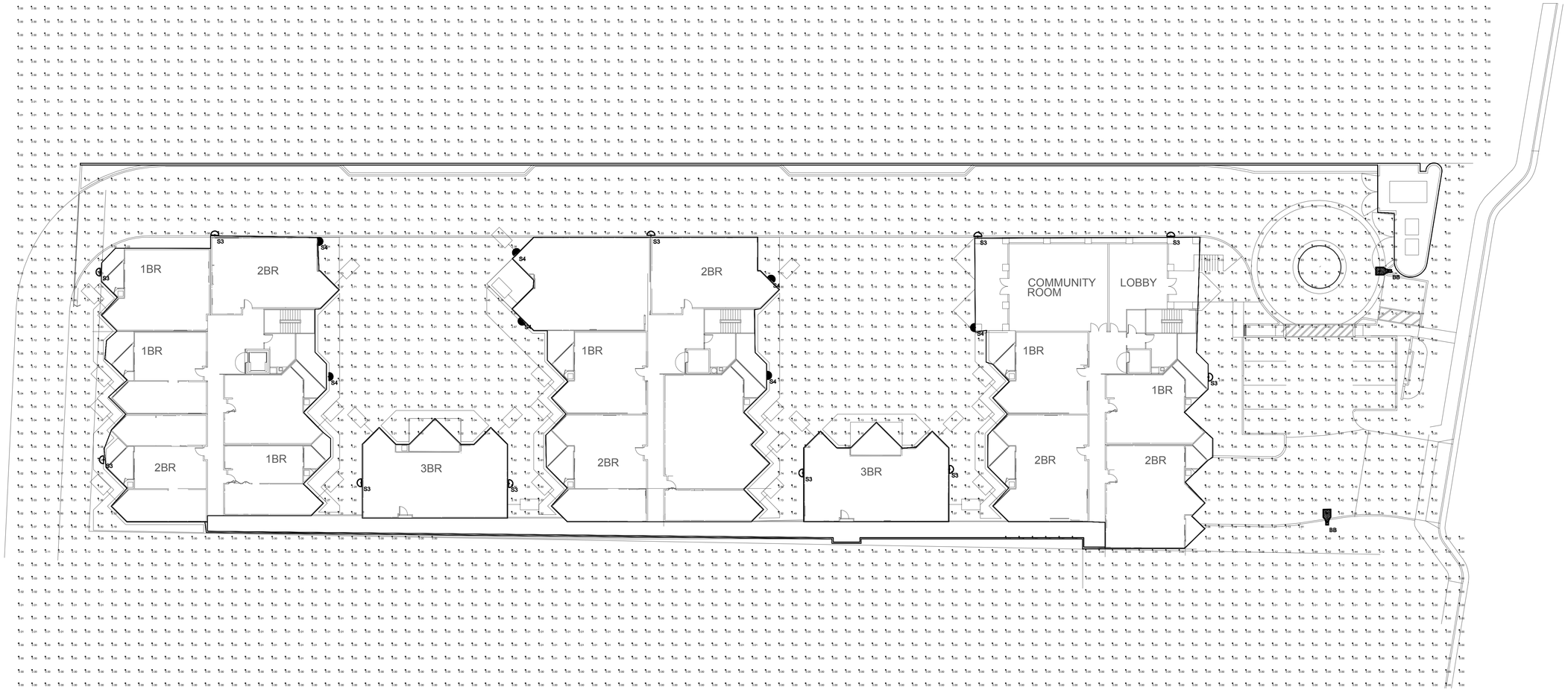

Luminaire Schedule LED											
Project: VERONA CROSSING - MILPITAS											
Symbol	Qty	Label	Arrangement	Lum. Watts	Lum. Lumens	LLF	LDD	LLD	BF	Description	Filename
	2	BB	SINGLE	69	5532	0.900	1.000	0.900	1.000	WILLIAMS VA1-LED60_740-T4HS-F-S-DBR-EDP-PH-UNV @ 20'	VA1-LED60-740-T4HS-F.IES
	11	S3	SINGLE	28.75	1741	0.900	1.000	0.900	1.000	Millenium Finite 9 FN9L-3-7-MB-26L40K-DV @ 10'	FN9L-3-7-XX-26L40K.ies
	7	S4	SINGLE	28.723	1695	0.900	1.000	0.900	1.000	Millenium Finite 9 FN9L-4-7-MB-26L40K-DV @ 10'	FN9L-4-7-XX-26L40K.ies

Calculation Summary								
Project: VERONA CROSSING - MILPITAS								
Description	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min	# Pts
	Illuminance	Fc	0.00	0.04	0.00	N.A.	N.A.	1332
	Illuminance	Fc	0.02	2.67	0.00	N.A.	N.A.	1475
TYPICAL ENTRANCE, DRIVES AND COURTYARD AREAS	Illuminance	Fc	0.63	5.42	0.04	15.75	135.50	1012

OWNER:

NAME : Manou Movassate
ADDRESS : 83 Santiago Ave.
Atherton, CA 94027-5412
TELEPHONE:
EMAIL :

VERONA CROSSING
RESIDENTIAL DEVELOPMENT
MONTAGUE EXPRESSWAY
Milpitas - California

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Consulting Engineers
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Date:
Scale:
Revisions:

Drawing Title:

Sheet No:
SE1

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2F

LSA

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CARLSBAD
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PALM SPRINGS
PT. RICHMOND
RIVERSIDE
ROCKLIN
SAN LUIS OBISPO

M E M O R A N D U M

DATE: July 8, 2016

TO: Cecilia Jaroslawsky, Contract Planner, City of Milpitas

FROM: Theresa Wallace, Associate/Project Manager
Judith H. Malamut, AICP, Principal

SUBJECT: California Environmental Quality Act (CEQA) Exemption Memo for the 91 Montague Expressway Project, Milpitas, California

This memorandum and attachments provide a description of the 91 Montague Expressway Project (project) and substantial evidence to confirm that the project is exempt from further environmental analysis per Section 15168(c) of the California Environmental Quality Act (CEQA). The approximately 1.8-acre project site is located at 91 Montague Expressway in Milpitas, Santa Clara County. The proposed project would involve demolition of the existing building and concrete pavements on the site and construction of 72 residential units and associated parking, open space, and landscaping.

Attachment A provides a project description of the 91 Montague Expressway Project. This attachment includes a description of the project location, existing site characteristics, the proposed project and required approvals and entitlements. The City of Milpitas (City) is the CEQA lead agency for the project.

The responses in an environmental checklist (included in Attachment B to this memo) prepared for the project demonstrate for each CEQA topic that because the proposed project was evaluated and impacts were mitigated to the degree possible as part of the Milpitas Midtown Specific Plan Final Environmental Impact Report (FEIR), no additional CEQA review is required. CEQA Guidelines 15168(c)(4) recommends using a written checklist or similar device to confirm whether the environmental effects of a subsequent activity were adequately covered in a program EIR. The responses contained in the checklist confirm that the project was considered within the scope of the evaluation within the FEIR and no new impacts were identified and no new mitigation measures are required.

The City can approve the 91 Montague Expressway Project as being within the scope of the Midtown Specific Plan covered by its FEIR and no new environmental document for the purposes of CEQA clearance is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 91 Montague Expressway Project is exempt from further review under CEQA. This analysis finds that a Notice of Exemption may be prepared for the project and filed with the Santa Clara County Clerk.

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ATTACHMENT A

PROJECT DESCRIPTION

91 MONTAGUE EXPRESSWAY RESIDENTIAL PROJECT
PROJECT DESCRIPTION

The following describes the proposed 91 Montague Project (project), which is located within the planning area for the Milpitas Midtown Specific Plan. This section includes a summary description of the project's location and existing site characteristics, required approvals, and entitlements. The City of Milpitas (City) is the lead agency for review of the project under the California Environmental Quality Act (CEQA).

A. PROJECT SITE

The following section describes the location and site characteristics for the project site and provides a brief overview of the existing land uses within and in the vicinity of the site.

1. Location

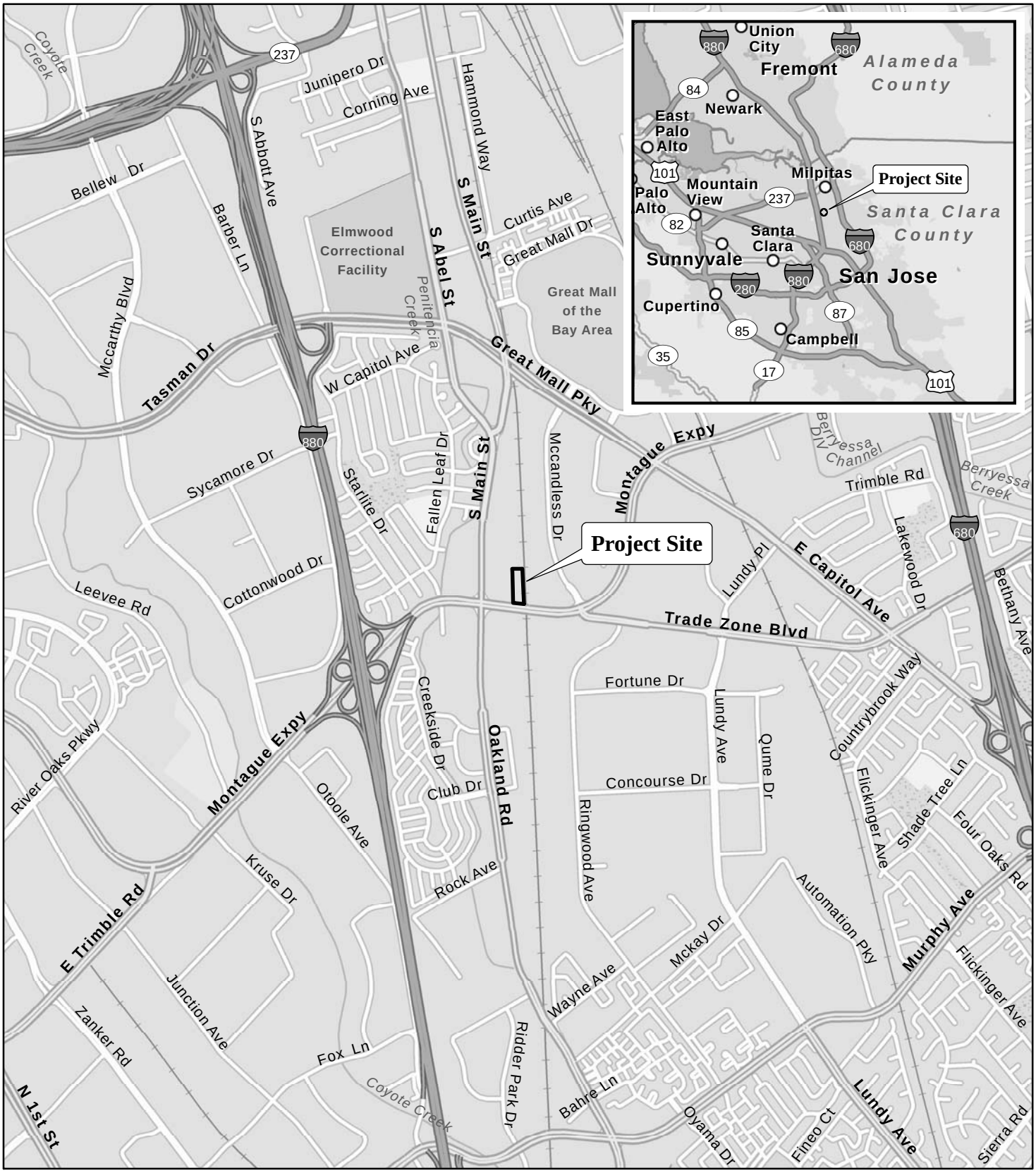
The approximately 1.8-acre project site is located at 91 Montague Expressway and is situated south of Great Mall Parkway and the Great Mall Shopping Center in the southern portion of the City of Milpitas, Santa Clara County. The project site is bounded by residential development to the north and west, Union Pacific Railroad tracks to the east, and Montague Expressway runs along the southern site boundary. Penitencia Creek is located immediately east of the Union Pacific Railroad tracks.

Regional vehicular access to the project site is provided by Interstate 880 (I-880) located to the west and by Interstate 680 (I-680) located to the east of the site. The future Milpitas BART station is currently under construction and will be co-located with the existing Valley Transportation Authority (VTA) light rail station, approximately 0.6 miles northeast of the project site and south of the intersection of Great Mall Parkway/East Capitol Avenue and the Montague Expressway.

Figure 1 shows the site's regional and local context. Figure 2 depicts an aerial photograph of the project site and surrounding land uses.

2. Site Characteristics and Current Site Conditions

The generally level project site includes Assessor's Parcel Number (APN) 086-034-023. The site is currently occupied by a vacant single-story building located on the western edge of the site, towards the center of the parcel. Concrete pavements are located east and south of the existing structure. The remaining portions of the site are vacant and covered with ruderal grasses and weeds. There are no trees located on the project site. Access to the site is provided via a driveway on Montague Expressway.



LSA

FIGURE 1

0 1000 2000
FEET

SOURCE: ESRI StreetMap North America (2012).

I:\MLP1604 91 Montague\figures\Fig_1.ai (5/17/16)

91 Montague Expressway Residential Project

Project Location and Regional Vicinity Map

LSA

FIGURE 2

N

Project Location

0 150 300
FEET

91 Montague Expressway Residential Project

Aerial View of Project Site and Surrounding Land Uses

SOURCES: GOOGLE EARTH 4/5/16; LSA, MAY 2016.

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3. Existing General Plan and Zoning

The project site is currently designated in the General Plan and Midtown Specific Plan as Multi-Family Residential, Very high Density (VHD). The site is zoned Very High Density (MXD3) and located in the Midtown Specific Plan area.

4. Milpitas Midtown Specific Plan

In 2002, the City of Milpitas adopted the Midtown Specific Plan[1] as a guide for development and redevelopment for a 942-acre area in the City of Milpitas. The Midtown Specific Plan area encompasses land near the western limits of Milpitas, generally bounded by the Union Pacific Railroad lies on the east and north, Abel Street and the Elmwood Rehabilitation Facility on the west; and the City limits to the South. The Midtown Specific Plan provides development goals and land use directives for the Midtown area for a 20-year planning horizon. Included in the Midtown Specific Plan are the following: proposed land use designation changes; a development strategy; recommended public and private improvements; and urban design recommendations, including new development regulations and guidelines.

Environmental impacts associated with implementation of the Midtown Specific Plan were previously evaluated in the Final Environmental Impact Report (FEIR).[2] The Midtown Specific Plan FEIR evaluates the environmental impacts of approximately: 1) 2,379 units of residential development; 2) 6,400 new residents; 3) 61,000 square feet of retail space; 4) 720,000 square feet of office space; and 5) 300,000 square feet highway-oriented retail.

5. Surrounding Land Uses

The project site is located in an area consisting of light-industrial, residential and commercial uses in the City of Milpitas. The project site is generally surrounded by light-industrial and commercial uses. However, new residential units constructed as part of the Midtown Specific Plan and Milpitas Transit Area Specific Plan implementation are located to the east and west of the project site. In addition, the project site is also located southwest of the under-construction Milpitas BART station and is within close proximity to the Great Mall Shopping Center in Milpitas, located approximately 0.6 miles north of the project site.

B. PROPOSED PROJECT

This section provides a description of the proposed project as identified in the materials provided by the project applicant that are dated May 3, 2016. The project applicant proposes to demolish the existing building and concrete pavements on the site and construct 72 residential condominium units. Development of the site would include parking as well as open space and landscaping throughout the project site. The proposed project would include an underground parking garage for residents and visitors. In addition, a total of eight on-street parking spaces would be provided at ground level.

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[1] Milpitas, City of, 2002. *Milpitas Midtown Specific Plan*. March. Amended 2010.

[2] Milpitas, City of, 2002. *Milpitas Midtown Specific Plan Final Environmental Impact Report*. January

Figure 3 depicts the overall conceptual site plan for the proposed project and individual project components are further detailed below.

1. Residential Units

The proposed project would result in the demolition of the vacant single-story structure and limited surface pavements on the site and the development of a residential building that would face the Montague Expressway frontage. The project would develop a total of 72 units at a density of approximately 40 dwelling units per acre including 28 one-bedroom units, 26 two-bedroom units and 18 three-bedroom units. The building would also include residential amenity space including a lobby and community room. Floor plans range from 838 square feet for the smallest units to 1,860 square feet for the largest units. Total building height would not exceed 48 feet (four stories). Figure 4 depicts conceptual building elevations for the proposed project.

2. Open Space and Landscaping

The proposed project would include a total of 23,051 square feet of usable open space and landscaped areas. Common open space would include two courtyards for use by project residents. In addition, the project would contain 7,096 square feet of private open space including 2,842 square feet in the form of private patios or balconies for each unit. Landscaping would be provided throughout the site, including within the courtyards and along the western portion of the site to provide a buffer with the adjacent residential development. A total of 26 trees would be planted with 22 planted along the property line abutting the Union Pacific Railroad and 4 trees along the Montague Expressway frontage.

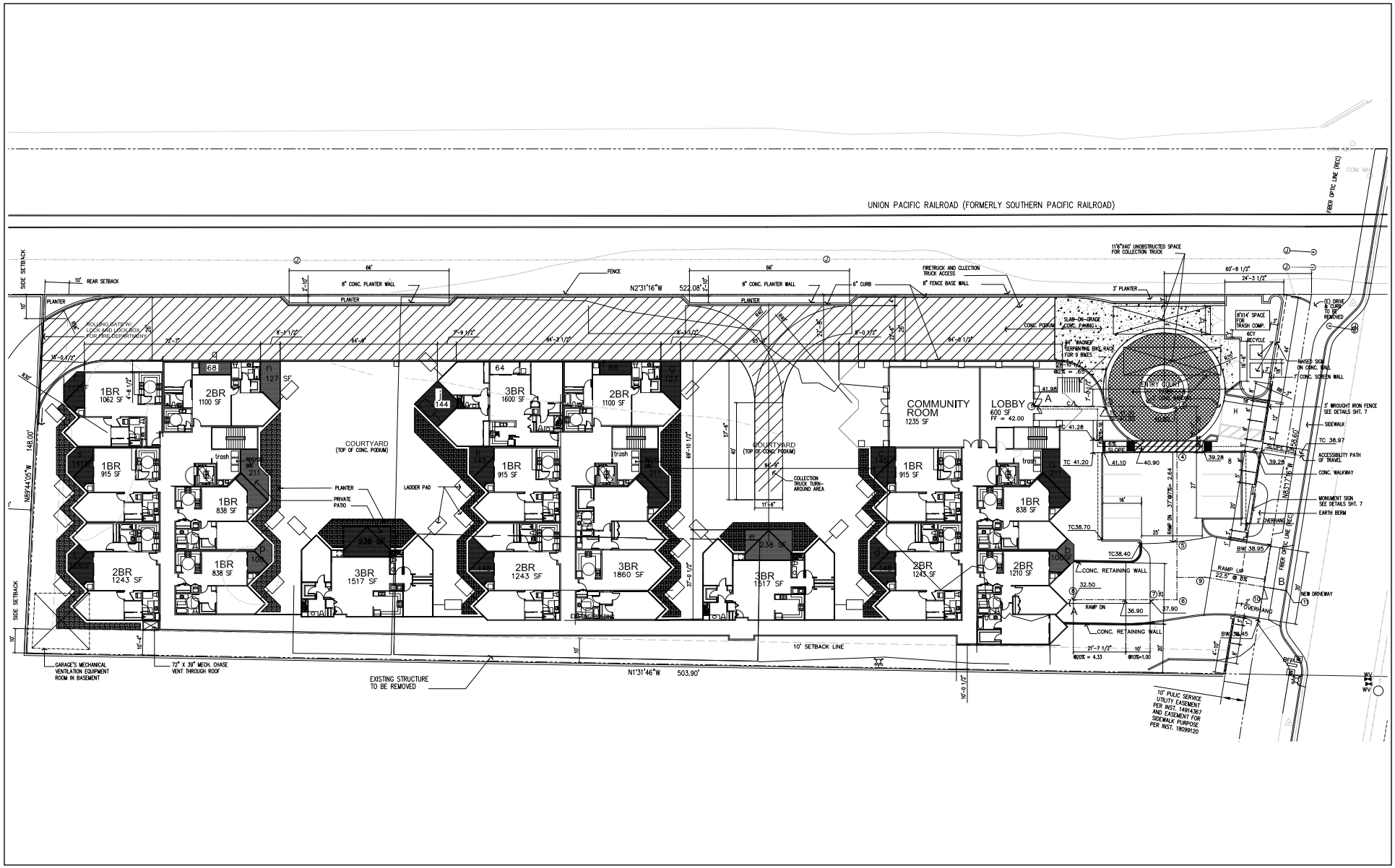
3. Access, Circulation and Parking

Access to the project site would be via a new 30-foot-wide driveway from Montague Expressway. The new driveway would provide direct access to a subterranean garage where a total of 150 parking spaces would be provided. Ingress and egress to the site would accommodate fire and emergency access vehicles as well as solid waste collectors. A total of eight guest parking spaces would be provided at street-level. The parking garage would also provide a total of 24 vertical lockers for bicycles and bicycle racks for nine bicycles would be provided at the street level.

Ingress and egress to the site for fire and emergency access vehicles as well as solid waste collectors would be accommodated via an internal road on the eastern end of the project site that would connect to the driveway on Montague Avenue. Specifically, vehicles would enter the site from the new driveway, turn right and then turn left onto the new internal driveway. In addition, fire and emergency access vehicles would have access to the site from Ede Lane located north of the project site. A rolling gate with lock box for the fire department would restrict access to fire and emergency access vehicles only.

4. Utilities and Infrastructure

The project site is located in an urban area and is currently served by existing utilities, including: water, sanitary sewer, storm drainage, electricity, and telecommunications infrastructure. The majority of existing utilities within the boundary of the project site would be removed. Existing and proposed utility connections are discussed below.



LSA

FIGURE 3

NOT TO SCALE

N

91 Montague Expressway Residential Project

Conceptual Site Plan

SOURCE: LPMD ARCHITECTS, FEBRUARY 2015.

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LSA

FIGURE 4

NOT TO SCALE

91 Montague Expressway Residential Project

Conceptual Building Elevations

SOURCE: LPMD ARCHITECTS, NOVEMBER 2014.

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a. Water. Water service in the City of Milpitas is provided by the Santa Clara Valley Water District (SCVWD). The proposed project includes the installation of new water connections to serve the proposed project. New water lines would connect to the City's existing 12-inch lines located on Montague Expressway.

b. Wastewater. The San José/Santa Clara Water Pollution Control Plant (WPCP) provides wastewater treatment for Milpitas. The City of Milpitas maintains existing sanitary sewer lines within the vicinity of the site, including a line along Montague Expressway. The proposed project includes connection to the City's existing line along Montague Expressway.

c. Stormwater. The existing building and impervious surfaces on the project site account for approximately 35,179 square feet (45 percent) of the project site. The remaining 42,793 square feet (55 percent) of the project is covered by pervious surfaces. Upon construction of the proposed improvements, approximately 70,639 square feet (91 percent) of the project site would be covered by impervious surfaces and about 7,333 square feet (9 percent) would be covered by landscaped areas including lawns, shrubs and trees. Water would be treated with a combination of flow-through planters, media filters and bioretention to treat runoff before entering the storm drain system.

Bio-retention areas would be incorporated into the landscape design to provide appropriate vegetation and water quality treatment in open spaces, roofs, parking areas and driveways. On-site drainage would be designed consistent with the C.3 requirements for Low Impact Development.

d. Electricity and Natural Gas. Electricity and natural gas services to the site are provided by Pacific Gas and Electric Company (PG&E). Existing underground utility connections and gas mains provide electricity and gas to the project site. New electrical lines (servicing the project only) would be installed underground.

To reduce energy usage, the project would incorporate green building measures in compliance with CALGreen's 2013 standard building measures for residential buildings and Title 24 requirements.

C. APPROVALS/PERMITS

The following approvals and permits would be required for the project:

- Site Development Permit
- Conditional Use Permit
- Vesting Tentative Map
- Demolition Permit
- Building Permit
- Encroachment Permit

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ATTACHMENT B

PROGRAM EIR CHECKLIST
PURSUANT TO CEQA GUIDELINES SECTION 15168

PROGRAM EIR CHECKLIST
PURSUANT TO CEQA GUIDELINES SECTION 15168

CEQA Guidelines Section 15168(c)(4) recommends using a written checklist or similar device to confirm whether the environmental effects of a subsequent activity were adequately covered in a program EIR. This checklist confirms that the 91 Montague Expressway Project is within the scope of the Midtown Specific Plan Final Environmental Impact Report (FEIR)[1] and will have no effects and no new mitigation measures are required, and as such, the City can approve the 91 Montague Expressway Project as being within the scope of the Midtown Specific Plan (Specific Plan) covered by its FEIR and no new environmental document is required. Pursuant to Public Resources Code section 21166 and CEQA Guidelines Section 15168, the 91 Montague Expressway Project is exempt from further review under CEQA.

ENVIRONMENTAL CHECKLIST

		Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
I.	**AESTHETICS.** Would the project:				
a)	Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	☐	☐	☐	☒
c)	Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d)	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒

DISCUSSION

As described in more detail in the project description (Attachment A), the 1.8-acre site currently includes a vacant single-story buildings located on the western edge of the site and concrete pavement located east and south of the structure. The remainder of the site is vacant and covered with grass and weeds. The proposed project would result in the demolition of the existing structure and pavement on

[1] FEIR Milpitas, City of, 2002. *Final Environmental Impact Report for the Midtown Milpitas Specific Plan*. January

the site. The project would construct a new residential development on the site consisting of 72 residential units and associated open spaces, landscaping and circulation improvements. As previously noted, the project site is located within the City's Midtown Specific Plan area. Specific policies that apply to the Midtown Specific Plan area are outlined further below and would be applicable to the proposed project.

The Midtown Specific Plan FEIR identified that implementation of the Specific Plan would introduce a cohesive urban form designed to reinforce pedestrian accessibility to the area. As noted in the Midtown Specific Plan FEIR, implementation of the Midtown Specific Plan would enhance the visual and aesthetic character of the planning area by incorporating specific development standards to ensure that impacts to visual resources are less than significant. These development standards and design guidelines are detailed in Section 8 of the Midtown Specific Plan and include policies related to street design, land use, building height, setbacks, parks and building design that are identified below.

Under the Midtown Specific Plan, the proposed project site is designated as Multi-Family Residential, Very High Density. Permitted densities for residential uses range from a minimum of 31 units per acre average gross density to 40 units per acre maximum average gross density. In addition, the maximum permitted building height is 4 stories and 60 feet under this designation. The 91 Montague Expressway Project complies with these standards and proposes 40 units per acre on the site and would be 4 stories in height and would not exceed 43 feet in height. The Midtown Specific Plan FEIR determined that implementation of the Midtown Specific Plan, including the proposed project, would not create a substantial new source of light and glare and that it would not substantially damage scenic resources. The Midtown Specific Plan FEIR identified that compliance with the development standards and design guidelines would result in improvements to the visual environment within the area.

The 91 Montague Expressway Project is consistent with the type of development analyzed in the Midtown Specific Plan FEIR; it would be within the density and height ranges analyzed within the Midtown Specific Plan FEIR and would be consistent with Midtown Specific Plan policies relating to aesthetics. As such, there is no new impact on visual and aesthetic resources.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Plan Policies

- *Policy 5.3: Promote high-quality private development that contributes to the visual identity and environmental quality of the Midtown Area through the application of the Development Standards and Design Guidelines.*
- *Policy 5.5: Place street tree landscaping at the curb edges of sidewalks to improve the environment for pedestrians.*
- *Policy 6.13: Require the undergrounding of new utilities.*

- *Policy 6.14: Prioritize the undergrounding of existing above ground facilities within the Midtown Area for the use of PG&E Rural 20A money. Consider using other financial resources to complete the undergrounding of utilities, as necessary*.
- *Policy 7.1: Enforce the Development Standards and Design Guidelines (see Section 8.0 of this plan) to ensure that new development is of a high-quality and consistent with Specific Plan objectives.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the potential aesthetic impacts of the 91 Montague Expressway Project and no new impacts would result.

		Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
II.	**AGRICULTURAL AND FORESTRY RESOURCES.** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:				
	a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to a non-agricultural use?	☐	☐	☐	☒
	b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒

DISCUSSION

There are not agricultural or forestry resources located within or near the project site. Midtown Specific Plan area is predominantly urbanized and is classified as "Urban and Built-Up Land" by the State Department of Conservation. The City of Milpitas does contain prime farmland between North McCarthy Boulevard and Coyote Creek, north of Route 237. However, this prime farmland is not located within the boundaries of the Midtown Specific Plan. The proposed project is also not located on land that is currently under a Williamson Act contract. In addition, the City does not contain woodland or forestland cover, nor land zoned for timberland production

Therefore, the proposed project would not result in a significant impact to agriculture or forestry resources.

APPLICABLE MITIGATION

No new mitigation measures are required.

CONCLUSION

There would be no agriculture or forestry impacts associated with the 91 Montague Expressway Project.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☒
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or State ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☒
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☒

DISCUSSION

Air Quality Management Plan Consistency

An air quality plan describes air pollution control strategies to be implemented by a city, county, or region classified as a non-attainment area. The main purpose of an air quality plan is to bring an area into compliance with the requirements of federal and State air quality standards.

The Bay Area Air Quality Management District (BAAQMD) guidelines were referenced to determine if a project would conflict with or obstruct implementation of an applicable air quality plan, which for the Midtown Specific Plan FEIR was the 1997 Bay Area Clean Air Plan.[2] In forecasting future stationary and mobile source emissions and preparing the regional air quality plan, the BAAQMD uses growth projections prepared by ABAG. The BAAQMD based its 1997 Bay Area Clean Air Plan on population and housing projections in the 2000 ABAG Projections.[3] The Midtown Specific Plan FEIR found that buildout of the Midtown Specific Plan would generate additional housing units, and thus population, in the Midtown area; however the project would not result in significant growth in the San Francisco Bay region as a whole. In addition, the Midtown Specific Plan FEIR determined that because the Midtown Specific Plan encourages the use of transit, it is expected that vehicle miles traveled associated with the units proposed under the Specific Plan would be less compared to development in a more suburban location in the region. Therefore, the Midtown Specific Plan FEIR determined that the Midtown Specific Plan is consistent with the projected growth for the region and has been designed to address regional air quality considerations.

[2] Bay Area Air Quality Management District, 1997. *Bay Area 1997 Clean Air Plan*.

[3] Association of Bay Area Governments, 2000. *1999-2006 Regional Housing Needs (RHNF) 1996-2006 Allocation*.

The proposed project would locate future residents within walking distance of public transportation, jobs, restaurants, and services. Implementation of the Midtown Specific Plan includes policies that address transportation and land use that are consistent with the Clean Air Plan. Midtown Policy 3.13 requires development standards and design guidelines for mixed-use and to create a lively pedestrian development; Policy 4.2 would provide pedestrian connections between the transit stations and commercial, employment and residential destinations that are direct, attractive and interconnected with the larger city sidewalk and pedestrian path system; Policy 4.12 would establish an interconnected system of sidewalks and pedestrian paths that provides safe and convenient pedestrian access between the transit stations and other destinations within the Midtown area; and Policy 4.16 would provide secure and weather protected bicycle parking facilities at the transit stations and within new residential, retail and employment destinations.

The proposed land use and zoning of the 91 Montague Project would result in a building density at the project site that is similar to what was evaluated in the Midtown Specific Plan. Therefore, the population growth associated with the proposed project is consistent with the Midtown Specific Plan and would not result in any new impacts related to consistency with the Clean Air Plan.

The Midtown Specific Plan FEIR identified Mitigation Measure Air-2, which identified the Midtown Specific Plan contains policies directed at reducing vehicle miles traveled, such as a mixture of land uses, supporting major transit facilities, locating higher density development around hubs and commercial centers, providing for the continuation of pedestrian-oriented retail development, and providing pedestrian connections between the transit stations and important destinations, but concluded that air quality impacts would be significant and unavoidable. The project would implement the Mitigation Measure Air-2 and would not increase the previously-identified impacts. Thus conclusions about compliance with the Clean Air Plan in the Midtown Specific Plan FEIR remain applicable to the project.

Regional Air Pollutant Emissions

The Midtown Specific Plan FEIR identified that development of projects under the Midtown Specific Plan could result in additional dispersed and intermittent sources of criteria air pollutants. The Midtown Specific Plan FEIR determined that buildout of the Midtown Specific Plan could exceed the BAAQMD's annual significance threshold for each of the regional criteria air pollutants.

The 91 Montague Project would develop the site with new residential uses, similar to what the Midtown Specific Plan envisioned. The new uses would result in mobile air quality impacts from increased vehicle trips to and from the project site and air quality impacts such as emissions generated from the use of landscaping equipment and consumer products. Therefore, the proposed project would also contribute to the significant regional and local air quality impacts identified in the Midtown Specific Plan FEIR. The Midtown Specific Plan FEIR identified Mitigation Measure Air-2, which includes policies contained in the Midtown Specific Plan to reduce vehicle trip generation and thus vehicle emissions from the project. Although the policies would reduce air quality impacts, regional emissions would remain significant and unavoidable as identified in the Midtown Specific Plan FEIR. The proposed project, however, would not result in any new or more significant regional or local air quality impacts than described and evaluated in the Midtown Specific Plan FEIR.

Construction-Related Impacts

Construction activities would cause temporary adverse effects on local air quality. Construction activities such as earthmoving, construction vehicle traffic, and wind blowing over exposed earth would generate exhaust emissions and fugitive particulate matter emissions that affect local and regional air quality. Construction activities are also a source of organic gas emissions. Solvents in adhesives, non-water-based paints, thinners, some insulating materials, and caulking materials would evaporate into the atmosphere and would participate in the photochemical reaction that creates urban ozone. Asphalt used in paving is also a source of organic gases immediately after its application. Construction dust could affect local air quality at various times during construction of the project. The dry, windy climate of the area during the summer months creates a high potential for dust generation when, and if, underlying materials are exposed to the atmosphere. The effects of construction activities would be increased dustfall and locally elevated levels of particulate matter downwind of construction activity.

Development of the proposed project would result in similar construction-related, short-term air quality impacts as those impacts identified in the Midtown Specific Plan FEIR. Implementation of Mitigation Measure Air-1, as identified in the Midtown Specific Plan FEIR, would reduce construction-related air quality impacts; therefore, the proposed project would also not result in any new or more significant construction-related air quality impacts than were evaluated in the Midtown Specific Plan FEIR. This impact would remain less than significant.

Local Community Risk and Hazard Impacts to Sensitive Receptors

The Midtown Specific Plan FEIR did not address toxic air emissions generated by buildout of the Midtown Specific Plan. Toxic air contaminants are generated by diesel exhaust and those from dry cleaning facilities, in addition to emissions that could be released from construction projects and operations associated with the proposed project.

According to the BAAQMD, a project would result in a significant impact if it would: individually expose sensitive receptors to TACs resulting in an increased cancer risk greater than 10.0 in one million, increased non-cancer risk of greater than 1.0 on the hazard index (chronic or acute), or an annual average ambient $PM_{2.5}$ increase greater than 0.3 $\mu g/m^3$.[4] A significant cumulative impact would occur if the project in combination with other projects located within a 1,000-foot radius of the project site would expose sensitive receptors to TACs resulting in an increased cancer risk greater than 100.0 in one million, an increased non-cancer risk of greater than 10.0 on the hazard index (chronic), or an ambient $PM_{2.5}$ increase greater than 0.8 $\mu g/m^3$ on an annual average basis.[5] Impacts from substantial pollutant concentrations are discussed below.

Construction activities associated with the proposed project may expose nearby sensitive receptors to airborne particulates and fugitive dust, as well as a small quantity of pollutants associated with the use of construction equipment (e.g., diesel-fueled vehicles and equipment) on a short-term basis.

[4] Bay Area Air Quality Management District, 2011. *CEQA Air Quality Guidelines*. May.

[5] Ibid.

However, as discussed in the Midtown Specific Plan FEIR, project construction would generate PM_{10} and $PM_{2.5}$ emissions that are well below the BAAQMD's significance criteria. Additionally, implementation of the BAAQMD PM_{10} construction control measures required in Mitigation Measure Air-1 would reduce construction-related emissions to a less-than-significant level, thus minimizing possible exposure of these sensitive receptors to substantial pollutant concentrations during construction.

The proposed project would locate future residents adjacent to UPRR tracks. For projects that have a carcinogenic human health risk exceeding the 10.0 in one million standard for carcinogenic human health impacts established by the BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents. The proposed project would be required to incorporate filters with a MERV rating of 11 or higher; therefore, implementation of the project would not result in any new air quality impacts related to the exposure of sensitive receptors to risk and hazards.

Objectionable Odors

The Midtown Specific Plan FEIR evaluated potential odor impacts for the Midtown Specific Plan and determined the buildout would not include land uses that are known odor generators. In addition, the existing industrial land uses within the planning area have not been known to generate odor complaints. The Midtown Specific Plan FEIR determined that implementation of the Midtown Specific Plan would reduce the potential for odor complaints as a result of a general shift from industrial land uses. Therefore, proposed project would not include any activities or operations that would generate objectionable odors and, once operational, the project would not be a source of odors. The project would not create objectionable odors affecting a substantial number of people. The proposed project would not increase impacts beyond those evaluated in the Midtown Specific Plan FEIR and would have a less-than-significant impact related to odors.

APPLICABLE MITIGATION

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the Midtown Specific Plan FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 3.d-G-2: Provide adequate bicycle parking and end-of trip support facilities for bicyclists at centers of public and private activity.*
- *Policy 3.d-I-9: Require developers to make new projects as bicycle and pedestrian "friendly" as feasible, especially through facilitating pedestrian and bicycle movements within sites and between surrounding activity centers.*

- *Policy 3.d-I-10: Encourage developer contributions toward pedestrian and bicycle capital improvement projects and end-of-trip support facilities.*
- *Policy 3.d-I-14: Include evaluation of bicycle facility needs in all planning applications for new developments and major remodeling or improvement projects.*
- *Policy 3.d-I-15: Encourage new and existing developments to provide end-of-trip facilities such as secure bicycle parking, on-site showers and clothing storage lockers, etc.*
- *Policy 2.b-I-2: Consider locating housing in close proximity to industrial developments where they can be served by existing city services and facilities.*

Midtown Specific Plan Policies

- *Policy 3.13: Adopt development standards and design guidelines for the Mixed-Use District that will create a lively pedestrian environment.*
- *Policy 4.1: Work with the VTA to ensure that the transit stations are attractive facilities which accommodate pedestrians and bicyclists.*
- *Policy 4.2: Provide pedestrian connections between the transit stations and commercial, employment and residential destinations that are direct, attractive and interconnected with the larger city sidewalk and pedestrian path system.*
- *Policy 4.3: Support the establishment of BART service on the Union Pacific Railroad line.*
- *Policy 4.4: Ensure that parking needed for the LRT stations do not displace or otherwise diminish the potential for transit oriented development.*
- *Policy 4.5: Maintain an interconnected pattern of streets within the Midtown Area. More specifically, streets developed to serve new developments should be pedestrian in scale and interconnected with the existing street system (see Figure 4.3[of the Midtown Specific Plan]).*
- *Policy 4.13: Establish an interconnected system of sidewalks and pedestrian paths that provides safe and convenient pedestrian access between the transit stations and other destinations within the Midtown Area.*
- *Policy 4.14: Require a public access easement through new developments, when necessary, to ensure that public parks and the City's trail network are accessible to the general public.*
- *Policy 4.15: Implement improvements, such as bulb-outs, raised crosswalks, and other appropriate mechanisms to calm traffic and make Main Street safer for pedestrians.*
- *Policy 4.16: Provide secure and weather protected bicycle parking facilities at the transit stations and within new residential, retail and employment destinations.*
- *Policy 4.21: Require new development within the Midtown Area to encourage the use of alternative modes of transportation through programs such as carpool parking, the VTA VTA's EcoPass Program, shuttles to transit stations and lunchtime destinations, alternative work schedules, telecommuting, etc.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the air quality impacts of the 91 Montague Project. Therefore, potential impacts would be less-than-significant and additional mitigation is not required.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
IV. BIOLOGICAL RESOURCES. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) Through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or State habitat conservation plan?	☐	☐	☐	☒

DISCUSSION

The majority of the Midtown Specific Plan area is already developed and a total of approximately 87 acres of vacant and undeveloped lands exists within the planning area. The Midtown Specific Plan FEIR found that implementation of the Midtown Specific Plan would largely have minimal impacts on biological resources. However, the Midtown Specific Plan FEIR concluded that proposed development could affect wildlife, including burrowing owl and nesting raptors (Impacts Bio-1 and Bio-2). The Midtown Specific Plan FEIR also found that development activities near jurisdictional hydrologic features, such as Berryessa Creek, Penitencia Creek and Lower Wrigley Ford, could result in potentially significant (Impact Bio-3). The Midtown Specific Plan FEIR concluded that implementation of the mitigation measures contained in the FEIR would ensure that potential impacts to biological resources are less than significant.

The only records of special-status species occurring within the area are for burrowing owls and nesting raptors. Burrowing owl habitat is known to occur within undeveloped sites in the Midtown Specific Plan area, which includes portions of the proposed project site. The Midtown Specific Plan FEIR noted that development of vacant sites could potentially result in take of burrowing owls and destruction of burrowing owl nests. However, the project site would be required to implement Mitigation Measure Bio-1 related to burrowing owl habitat and would ensure impacts are reduced to less-than-significant levels. In addition, the Midtown Specific Plan FEIR identified potential impacts to nesting raptors including red-shouldered hawk. Impacts to nesting raptors occur when large trees are removed and because there are no trees on the project site, the proposed project would not provide suitable habitat for red-shouldered hawks and would therefore not result in any impacts to red-shouldered hawks. Therefore, there would be no new impacts related to special-status species as a result of the proposed project.

The City implements a tree and planting ordinance to protect significant trees,[6] which requires approval of a permit for tree removal. According to the City ordinance, any tree that is located on developed commercial or industrial property or on vacant, undeveloped property is protected if the trunk measures 37 inches or greater circumference at 4.5 feet above the ground. There are currently no trees on the project site and a tree removal permit would not be required for the project. The project applicant proposes to plant 26 trees throughout the project site as part of the landscaping of the project.

Penitencia Creek, which is located east of the project site, is protected under Section 404 of the Clean Water Act. The Midtown Specific Plan FEIR found that while development could have an impact on wetlands and other waterways including Penitencia Creek (Impact Bio-3), potential impacts were mitigated as part of the Midtown Specific Plan. The General Plan also requires the project applicant to coordinate with appropriate agencies such as the U.S. Army Corps of Engineers, California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB) if necessary. The General Plan policies outlined below ensure that impacts would be less than significant. Therefore, the 91 Montague Expressway Project would have no direct impact on Penitencia Creek.

[6] Milpitas, City of. Municipal Code, Title X, Street and Sidewalks, Section 7 – Tree Protection and Heritage Tree Program.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 4.b-I-4 Require a biological assessment of any project site where sensitive species are present, or where habitats that support known sensitive species are present.*
- *Policy 4.b-I-5 Utilize sensitive species information acquired through biological assessments, project land use, planning and design.*

Municipal Tree and Planting Ordinance

- *The Tree and Planting Ordinance of the City of Milpitas protects significant trees, as defined by the Ordinance, including heritage trees, throughout the city. A tree removal permit is required to remove any protected tree and compensation for lost trees may be requested by the City (Ord.201.1, 3/1/88).*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the potential biological impacts of the 91 Montague Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan FEIR concluded that the potential impact of development within the Midtown Specific Plan area on cultural resources, including historic, archaeological and paleontological and human remains would be less than significant. However, the Midtown Specific Plan FEIR concluded that disturbance to cultural resources could occur during grading and development of individual project sites within the Midtown Specific Plan area, and that there is a reasonable possibility that archaeological deposits, cultural sites, and human remains could be uncovered and identified during grading (Impacts Cult-2, Cult-3, and Cult-4). The Midtown Specific Plan FEIR provides various mitigation measures that would ensure potential impacts on known or undisclosed cultural resources would be reduced to less than significant levels.

There are no known historic or cultural resources within the project site.[7] The existing structure that would be demolished as part of the project is approximately 30 years old and was previously used for storage at a cement-mixing plant and is not likely to yield important information about the State or region's history. The project applicant would be required to adhere to all applicable State laws if human remains are discovered during project construction. Construction of the 91 Montague Expressway Project would not result in any new impacts to cultural resources.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Pursuant to CEQA Guidelines 15064.5 (f), if potentially significant cultural resources are discovered during ground-disturbing activities associated with project preparation, construction, or completion, work shall halt in that area until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate treatment measures in consultation with Santa Clara County and other appropriate agencies and interested parties. For example, a qualified archaeologist shall follow accepted professional standards in recording any find including submittal of the standard Department

[7] Milpitas, City of, 2016. Cultural Resources Register. Available online at: www.ci.milpitas.ca.gov/_pdfs/plan_cultural_resources.pdf (accessed on June 13).

of Parks and Recreation (DPR) Primary Record forms (Form DPR 523) and locational information to the California Historical Resources Information Center Office (Northwest Information Center). The consulting archaeologist shall also evaluate such resources for significance per California Register of Historical Resources eligibility criteria (Public Resources Code Section 5024.1; Title 14 CCR Section 4852). If the archaeologist determines that the find does not meet the CEQA standards of significance, construction shall proceed. On the other hand, if the archaeologist determines that further information is needed to evaluate significance, the Planning Department staff shall be notified and a data recovery plan shall be prepared.

All future development in the Midtown Specific Plan area will be in accordance with State laws pertaining to the discovery of human remains. Accordingly, if human remains of Native American origin are discovered during project construction, the developer and/or the Planning Department would be required to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (PRC Sec. 5097). Sections 21083.2 and 21084.1 of the PRC states that if any human remains are discovered or recognized in any location on the project site, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

- The Santa Clara County Coroner/Sheriff has been informed and has determined that no investigation of the cause of death is required; and
- If the remains are of Native American origin,
    - The descendants of the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98, or
    - The Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the potential cultural resource impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
VI. GEOLOGY AND SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☒
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☒
ii) Strong seismic ground shaking?	☐	☐	☐	☒
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan FEIR concluded that the geologic and soil impacts in the Midtown Specific Plan area are primarily related to potential ground shaking and associated ground failure (liquefaction), soil expansion, settlement and soil erosion during construction activities. Since the Midtown Specific Plan area is not located within an Earthquake Fault Hazard Zone, the likelihood of surface fault rupture is minimal. In addition, the Midtown Specific Plan FEIR found that slope instability hazards are also minimal.

The Midtown Specific Plan FEIR determined that impacts related to strong seismic ground shaking would be less than significant when projects are built in accordance with the California Building Code. Specifically, the Midtown Specific Plan FEIR states that State of California building codes and construction standards contained in Title 24 of the California Code of Regulations reduce impacts to a less-than-significant level. The 91 Montague Expressway Project would be designed and constructed in accordance with these requirements.

The Midtown Specific Plan FEIR determined that liquefaction of soils during earthquakes poses a hazard to structures in the planning area and is regarded as high, depending on the specific area of the Midtown Specific Plan area. As part of the proposed project, a Soil Engineering Study and Liquefaction Analysis[8] was prepared which determined that development would not be affected by liquefaction to the extent that would require mitigation. The study also determined that surface manifestation and lateral spreading at the site are considered to be unlikely.

Additionally, in accordance with the City Code, building permit applications for subdivisions and projects with extensive grading (for example, projects that move more than 1,000 cubic yards of cut and fill and have cuts and/or fill more than 10 feet deep) must be accompanied by a preliminary soils report. The report must address site soil conditions, including expansive soils, settlement, and erosion, and provide recommendations to offset potential soils problems. Compliance with the recommendations included in the preliminary soils report would help reduce potential liquefaction hazards to less-than-significant levels.

The 91 Montague Expressway Project is consistent with the type of development analyzed in the Midtown Specific Plan FEIR and is required to adhere to General Plan and Midtown Specific Plan policies relating to building standards and emergency service needs. A Stormwater Control Plan[9] was prepared for the project and provides Best Management Practices (BMPs) to be implemented at the project site in accordance with NPDES permits and Santa Clara County Urban Runoff Pollution Prevention guidance.

Implementation of measures identified in the soils report would be required as a Condition of Approval. In addition, the project applicant is required to conduct a site-specific design-level geotechnical study that provides specific recommendations that the project must implement. Since the 91 Montague Expressway Project would comply with Midtown Specific Plan policies, including implementing the recommendations of the preliminary geotechnical report, there are no new impacts related to geology and soils.

APPLICABLE MITIGATION

No new mitigation measures are required.

[8] Earth Systems Pacific, 2012. *Update Soil Engineering Study and Liquefaction Analysis*. June 18.

[9] Underwood & Rosenblum, Inc. 2014. *Stormwater Control Plan for 91 Montague Expressway Milpitas, CA*. December.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 5.a-I-3: Require projects to comply with the guidelines prescribed in the City's Geotechnical Hazards Evaluation manual. Mandatory compliance with building codes and construction standards established in the California Building Code, the requirements of the Seismic Hazards Mapping Act and the City of Milpitas Municipal Code, and policies contained in the City of Milpitas General Plan would reduce seismic-related ground shaking and liquefaction to less than significant levels.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the potential geology and soil impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
VII. GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

DISCUSSION

The Midtown Specific Plan FEIR did not address greenhouse gas emissions associated with buildout of the Midtown Specific Plan. The primary sources of greenhouse gas (GHG) emissions related to the proposed project are anticipated to be from combustion of fossil fuels by motor vehicles and from electric power generation. Short-term impacts are anticipated from construction activity that would occur during construction.

GHGs are present in the atmosphere naturally, are released by natural sources, or are formed from secondary reactions taking place in the atmosphere. The gases that are widely seen as the principal contributors to human-induced global climate change are:

- Carbon dioxide (CO_2);
- Methane (CH_4);

- Nitrous oxide (N_2O);
- Hydrofluorocarbons (HFCs);
- Perfluorocarbons (PFCs); and
- Sulfur Hexafluoride (SF_6).

Over the last 200 years, humans have caused substantial quantities of GHGs to be released into the atmosphere. These extra emissions are increasing GHG concentrations in the atmosphere and enhancing the natural greenhouse effect, which is believed to be causing global warming. While manmade GHGs include naturally-occurring GHGs such as CO_2, CH_4, and N_2O, some gases, like HFCs, PFCs, and SF_6 are completely new to the atmosphere.

Certain gases, such as water vapor, are short-lived in the atmosphere. Others remain in the atmosphere for significant periods of time, contributing to climate change in the long term. Water vapor is excluded from the list of GHGs above because it is short-lived in the atmosphere and its atmospheric concentrations are largely determined by natural processes, such as oceanic evaporation.

These gases vary considerably in terms of Global Warming Potential (GWP), which is a concept developed to compare the ability of each GHG to trap heat in the atmosphere relative to another gas. The GWP is based on several factors, including the relative effectiveness of a gas to absorb infrared radiation and the length of time that the gas remains in the atmosphere ("atmospheric lifetime"). The GWP of each gas is measured relative to CO_2, the most abundant GHG; the definition of GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to the ratio of heat trapped by one unit mass of CO_2 over a specified time period. GHG emissions are typically measured in terms of pounds or tons of "CO_2 equivalents" (CO_2e).

The Midtown Specific Plan FEIR also did not include an evaluation of the project's compliance with the City's 2013 Climate Action Plan (CAP) which was not in place at the time the EIR was certified. The CAP was designed to streamline environmental review of future development projects in the City of Milpitas consistent with the CEQA Guidelines Section 15183.5(b) and the BAAQMD CEQA Air Quality Guidelines. The CAP identifies a strategy, reduction measures, and implementation strategies the City will use to achieve the State-recommended GHG emissions reduction target of 15 percent below 2005 emissions levels by 2020.

Construction Greenhouse Gas Emissions

The combustion of fossil-based fuels creates GHGs such as CO_2, CH_4, and N_2O. Furthermore, CH_4 is emitted during the fueling of heavy equipment. Exhaust emissions from on-site construction activities would vary daily as construction activity levels change. Neither the City of Milpitas nor the BAAQMD have an adopted Threshold of Significance for construction-related GHG emissions, however the BAAQMD does recommend the implementation of construction best management practices to reduce emissions as identified in Mitigation Measure Air-1 of the Midtown Specific Plan FEIR. Construction activities would produce combustion emissions from various sources. During site preparation and construction of the project, GHGs would be emitted through the operation of construction equipment and from worker and builder supply vendor vehicles, each of which typically uses fossil-based fuels to operate. Project excavation, grading, and construction would be a temporary condition limited to the project construction period and would not result in a permanent increase in

emissions that would interfere with the implementation of the CAP's GHG reduction strategies or the State's AB 32. Therefore, the impact from construction emissions associated with the proposed project would be less than significant.

Operational Greenhouse Gas Emissions

As discussed above, the City of Milpitas has an adopted CAP. The CAP meets the BAAQMD requirements for a Qualified Greenhouse Gas Reduction Strategy and, therefore, the significance of the project's impacts is based on the project's compliance with the measures identified in the CAP. Any project relying on the CAP for CEQA purposes must demonstrate consistency with the CAP. The CAP includes various strategies for reducing greenhouse gas emissions and adapting to the effects of climate change.

The project's greenhouse gas emissions would not be considered a significant impact if the project would be consistent with the strategies included in the CAP. The proposed project includes transit-oriented development and would incorporate green building measures in compliance with CALGreen's 2013 standard building measures for residential buildings and Title 24 requirements, which are consistent with the Climate Action Plan's transportation and land use goals. Therefore, the proposed project would be in conformance with the City's Climate Action Plan and the impact from GHG emissions associated with operation of the proposed project would be less than significant.

Climate Action Plan Consistency

The 91 Montague Expressway Project adheres to the building guidelines of the Midtown Specific Plan, is consistent with the Milpitas CAP, and promotes reductions in greenhouse gas emissions through high-density development in close proximity to transit. To reduce energy usage, the project would incorporate green building measures in compliance with CALGreen 2013 standard building measures for residential buildings and Title 24 requirements. In addition, landscaping and trees would be planted according to City standards, which would help offset greenhouse gas emissions. Therefore, the proposed project would not conflict with any applicable plan, policy or regulation adopted for the purpose of reduction emissions of greenhouse gases.

APPLICABLE MITIGATION

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the Midtown Specific Plan FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Specific Plan Policies

- *Policy 3.13: Adopt development standards and design guidelines for the Mixed-Use District that will create a lively pedestrian environment.*

- *Policy 4.1: Work with the VTA to ensure that the transit stations are attractive facilities which accommodate pedestrians and bicyclists.*
- *Policy 4.2: Provide pedestrian connections between the transit stations and commercial, employment and residential destinations that are direct, attractive and interconnected with the larger city sidewalk and pedestrian path system.*
- *Policy 4.5: Maintain an interconnected pattern of streets within the Midtown Area. More specifically, streets developed to serve new developments should be pedestrian in scale and interconnected with the existing street system (see Figure 4.3[of the Midtown Specific Plan]).*
- *Policy 4.13: Establish an interconnected system of sidewalks and pedestrian paths that provides safe and convenient pedestrian access between the transit stations and other destinations within the Midtown Area.*
- *Policy 4.15: Implement improvements, such as bulb-outs, raised crosswalks, and other appropriate mechanisms to calm traffic and make Main Street safer for pedestrians.*
- *Policy 4.16: Provide secure and weather protected bicycle parking facilities at the transit stations and within new residential, retail and employment destinations.*
- *Policy 4.21: Require new development within the Midtown Area to encourage the use of alternative modes of transportation through programs such as carpool parking, the VTA VTA's EcoPass Program, shuttles to transit stations and lunchtime destinations, alternative work schedules, telecommuting, etc.*
- *Policy 6.1: Provide adequate water facilities to serve the needs of new development and apply water conservation techniques to help reduce overall demand.*
- *Policy 6.2: Reduce water consumption through a program of water conservation measures, such as use of recycled water, water saving fixtures, and drought-tolerant landscaping.*
- *Policy 6.8: Encourage creativity in design of new development in order to reduce stormwater runoff, increase percolation, and improve water quality.*
- *Policy 6.11: Incorporate energy saving devices into new development in order to promote energy conservation.*
- *Policy 6.17: Implement existing recycling programs in the Midtown Area.*
- *Policy 6.18: Promote recycling of construction and demolition debris.*

CONCLUSION

Potential impacts of GHG emissions associated with the 91 Montague Project would be less-than-significant and additional mitigation is not required.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project located within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan FEIR concluded that due to past land uses and previously reported hazardous material releases and spills within the Midtown Specific Plan area, there are potential impacts associated with existing soils and groundwater contamination in areas of the Midtown Specific Plan (Impact HazMat-1). These potential impacts include the risk of upset during demolition and renovation activities and could expose construction workers and the public to hazardous materials from existing soils and groundwater contamination. All projects implemented as part of the Midtown Specific Plan are subject to the existing hazardous materials regulations for the use, transport and disposal of hazardous materials. The Midtown Specific Plan FEIR found that any impact from potential exposure during construction can be reduced to a less-than-significant level with implementation of applicable Federal, State and local requirements.

A Phase I Environmental Site Assessment[10] (ESA) was prepared for the project site and found that the site was previously used for cement-mixing purposes beginning in 1961 but the facility was subsequently removed in 1999. The existing building on the site was constructed in 1982 and was used for storage purposes. The Phase I ESA also identified the existence of a 5,000-gallon diesel tank, 1,250-gallon unleaded gasoline tank, and a propane tank previously used on the site. In addition, waste oil was stored in a 55-gallon drum for offsite disposal. However, all tanks were properly removed.

The Phase I also noted that records obtained from the Santa Clara Valley Water District (SCVWD) indicated that a leaking Underground Storage Tank (UST) was detected on the site in 1992. However, the two USTs were removed and a contamination assessment was performed. As part of the contamination assessment, soil borings were drilled to measure the extent of contamination and groundwater-monitoring wells were installed. The case was closed in 1997 and the monitoring wells were abandoned in July 1998 under the supervision of the SCVWD. The Phase I also noted that additional soil sampling activities at the site indicated low levels of contaminants which do not pose a risk to the site. In addition, the Phase I indicated that there is a very low risk of the site being affected from secondary sources of contamination

The nearest school to the project site is Zanker Elementary School at 1585 Fallen Leaf Drive, approximately 0.35 miles west of the project site. Since there are no schools within 0.25 miles of the project site, no impacts related to handling hazardous materials near a school would occur. The project site is located approximately 3.0 miles northeast of the nearest public use airport, Norman Y. Mineta San Jose International Airport (SJIA). As the project site is not located within the SJIA Airport Influence Area, no safety hazards from the airport would be anticipated. No private airstrips are located in the project vicinity.[11] The proposed project would not be expected to impair implementation or interfere with an adopted emergency plan. Midtown Specific Plan Policy 6.19 would ensure that adequate emergency services are available. The project site is not located in or adjacent to a wildland area and would not be subject to wildland fire risks.

[10] Medina Consulting Corporation, 2001. *Phase I Environmental Site Assessment Al-Hilaal Islamic Charitable Foundation's Masjid Dar-us-Salaam 91 Montague Expressway Milpitas, CA 95035*. June 29.

[11] Santa Clara County Airport Land Use Commission, 2011. *Comprehensive Land Use Plan, Santa Clara County, Norman Y. Mineta San Jose International Airport, Figure 8: Airport Influence Area*. May 25.

The 91 Montague Expressway Project is consistent with the overall vision of the Midtown Specific Plan. Since the proposed project would comply with Midtown Specific Plan policies, there are no new impacts related to hazards or hazardous materials.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Specific Plan Policies

- *Policy 5.20: Ensure that adequate Fire, Police and Emergency Services are in place to serve new development in Midtown.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated potential impacts related to hazards and hazardous materials at or affecting the 91 Montague Expressway Project and no new impacts would result.

		Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
IX.	**HYDROLOGY AND WATER QUALITY.** Would the project:				
a)	Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☒
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒

		Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
IX.	**HYDROLOGY AND WATER QUALITY.** Would the project:				
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☒
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☒
e)	Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☒
f)	Otherwise substantially degrade water quality?	☐	☐	☐	☒
g)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒
h)	Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☒
i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding of as a result of the failure of a levee or dam?	☐	☐	☐	☒
j)	Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan FEIR determined that implementation of the Midtown Specific Plan would have minimal impacts on hydrology and water quality in the area including drainage, flooding, and water quality. Impacts to groundwater are not anticipated to occur within the Midtown Specific Plan area because the City is served by a municipal water system which does not depend on local groundwater and because the area is 90 percent developed. The Midtown Specific Plan area is also not subject to inundation by seiche, tsunami or mudflow. The Midtown Specific Plan FEIR concluded compliance with specific municipal policies, General Plan and Midtown Specific Plan policies would

further reduce potential impacts related to stormwater quality, runoff, and flooding to less-than-significant levels.

The Midtown Specific Plan area, including the proposed project site, is within a Federal Emergency Management Agency (FEMA)-designated floodplain. While flooding hazards would primarily take the form of ponding water and overflows of open drainage channels that result in shallow flooding of 1 to 2 feet deep. New construction could be required to be constructed at an elevation above the base flood under existing requirements National Flood Insurance Program. The Midtown Specific Plan FEIR also identified that flooding impacts would not be considered significant because potential impacts associated with flooding would not cause a risk to life or property. In addition, implementation of the City's Flood Plain Management Ordinance and FEMA guidelines would further ensure potential impacts associated with flooding would be less than significant.

The Midtown Specific Plan FEIR identified that implementation of the Midtown Specific Plan would result in minor local alterations of the existing drainage system and minor increases in stormwater runoff. However, implementation of the Midtown Specific Plan would not require substantial alteration to the storm drainage system. As such, impacts related to drainage were identified as less than significant.

In addition, construction projects are required to prepare a Stormwater Control Plan, which requires implementing Best Management Practices (BMPs) to control stormwater peak flows and pollutant levels. This requirement is stipulated in Provision C.3 of the Santa Clara County National Pollutant Discharge Elimination System (NPDES). The applicant submitted a Stormwater Management Plan as part of the project application materials.[12] The City will confirm that this plan conforms to all applicable local and State requirements. The 91 Montague Expressway Project conforms to the Midtown Specific Plan FEIR, and, therefore, there is no new impact on hydrology and water quality.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

City of Milpitas Municipal Policies

- Standards of Construction (Section XI-15-5.1) – specify requirements for anchoring, construction materials and methods, and elevation and flood-proofing
- Standards for Utilities (Section XI-15-5.2) – specify requirements for new and replacement water supply and sanitary sewage systems, and on-site waste disposal systems
- Standards for Subdivisions (Section XI-15-5.3)

[12] Underwood & Rosenblum, Inc., 2014, op. cit.

- Floodways (Section XI-15-5.6) – specify requirements and constraints for encroachments, and other flood hazard reduction provisions

General Plan Policies

- *Policy 4.d-G-1: Protect and enhance the quality of water resources in the Planning Area.*
- *Policy 4.d-I-1: Continue implementing the National Pollutant Discharge Elimination System (NPDES) requirements of the Regional Water Quality Control Board – this is implemented through Chapter 16 of the City's Zoning Ordinance.*

Midtown Specific Plan Policies

- *Policy 6.7: Provide storm drainage infrastructure to adequately serve new development and meet City standards.*
- *Policy 6.8: Encourage creativity in design of new development in order to reduce stormwater runoff, increase percolation, and improve water quality.*
- *Policy 6.9: Provide necessary improvements to the storm drainage system to serve new development within the Midtown Area.*

CONCLUSION

The Midtown Specific FEIR adequately evaluated the hydrology and water quality impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
X. LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan FEIR concluded that while implementation of the Midtown Specific Plan would significantly change the land use designations and pattern of development for the area, impacts related to land use would be minimal. Implementation of the Midtown Specific Plan would not result in the division of an established community because the area was primarily developed with industrial uses prior to the development of the Midtown Specific Plan. In addition, there is no habitat conservation or natural community conservation plans within the Midtown Specific Plan area.

The project site is currently designated in the General Plan and Midtown Specific Plan as Multi-Family Residential, Very high Density (VHD). The site is zoned as Mixed-Use, Very High Density (MXD3) and located in the Midtown Specific Plan area. The Midtown Specific Plan identified that new development would create a more cohesive urban pattern within the area and help transform the area into a vibrant mixed-use office district. As previously discussed, the Midtown Specific Plan establishes the types, locations and intensities of land use to be accommodated within the Midtown Specific Plan area. The plan designates seven land use designations that represent the overall mix of land uses envisioned for the Midtown area. These designations are currently found within the Milpitas General Plan.

Under the Midtown Specific Plan, the proposed project site is designated as Multi-Family Residential, Very High Density. Permitted densities for residential uses range from a minimum of 31 units per acre average gross density to 40 units per acre maximum average gross density. In addition, the maximum permitted building height is 4 stories and 60 feet under this designation. The 91 Montague Expressway Project complies with the standards of the Multi-family Very High Density land use designation and would develop the site within the range and intensity standards from what was assumed in the Midtown Specific Plan FEIR.

Since the land use impacts of the 91 Montague Expressway Project are consistent with the impacts identified in the Midtown Specific Plan FEIR, and because the project would comply with the building standards of the Midtown Specific Plan, there is no new impact on land use.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Specific Plan Policies

- *Policy 3.1: Allow for up to 1,104 new housing units in Milpitas Midtown.*
- *Policy 3.4: Establish a minimum density of 21 units per gross acre in the Mixed-Use District, 31 units per gross acre in the multifamily, very high-density area and a minimum of 41 units per gross acre around the transit stations.*

- *Policy 3.5: Provide housing for all income levels (i.e., very low, low, moderate, and above moderate households as defined by the US Department of Housing and Urban Development) throughout the Midtown Area.*
- *Policy 3.8: Encourage creativity in high-density residential design. Consider housing types, such as live/work lofts, that are not currently developed in the city.*
- *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*

CONCLUSION

The Midtown Specific Plan adequately evaluated the land use impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XI. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	☐	☐	☐	☒
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

DISCUSSION

The City of Milpitas General Plan does not identify mineral resources within the Midtown Specific Plan area. Therefore, the 91 Montague Expressway Project would have no impact on mineral resources.

CONCLUSION

There are no mineral resources located within the Midtown Specific Plan area. As such, the 91 Montague Expressway Project would not result in any impacts to mineral resources.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XII. NOISE. Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☒
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?	☐	☐	☒	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

DISCUSSION

Construction-Period Impacts

The proposed project would be consistent with the buildout projected for the Midtown Specific Plan, and would implement the policies identified in the Midtown Specific Plan FEIR to reduce potential noise impacts to less-than-significant levels. Construction of the project would adhere to the noise standards and requirements set forth in the City's Municipal Code and General Plan.

As described in the Midtown Specific Plan FEIR, construction noise impacts would vary depending the specific construction activities being performed, the time and duration of construction, and distance to sensitive receptors. Compliance with the General Plan and Municipal Code would ensure that construction noise impacts would be less than significant.

The City's Noise Abatement Ordinance would restrict construction hours to between 7:00 a.m. and 7:00 p.m. The City's General Plan Policy 6-I-13 would minimize construction noise impacts by restricting the hours of operation, technique, and equipment used.

The proposed project would not result in any new or more significant construction-period noise impacts than were described in the Midtown Specific Plan FEIR. Implementation of the Noise Ordinance and the City of Milpitas General Plan would reduce construction noise impacts to a less-than-significant level.

Groundborne Vibration Impacts

Construction activities are known sources of groundborne vibration. Vibration impacts could occur during construction of the proposed project, which would require the use of heavy excavation equipment, and the possible use of pile-driving equipment. To determine potential construction vibration impacts, an impact evaluation is described below.

When assessing annoyance from groundborne noise, vibration is typically expressed as root mean square (rms) velocity in units of decibels of 1 micro-inch per second. Vibration levels, different from noise levels, are written as vibration velocity decibels (VdB). However, construction vibration impacts on building structures are generally assessed in terms of peak particle velocity (PPV). Therefore, for purposes of this analysis, project-related impacts are expressed in terms of PPV.

Typical groundborne vibration levels measured at a distance of 25 feet from heavy construction equipment in full operation, such as vibratory rollers, range up to approximately 0.210 PPV. Based on the Federal Transit Administration (FTA) data, large bulldozers generate 0.089 PPV at 25 feet and small bulldozers generate 0.003 PPV at 25 feet. Loaded trucks generate 0.076 PPV at 25 feet, an impact pile driver generates 0.644 PPV at 25 feet, and a sonic pile driver generates 0.170 PPV at 25 feet. Except for the impact driver, these vibration levels would not be expected to cause damage to residential buildings of typical northern California construction.

The Midtown Specific Plan FEIR did not evaluate potential groundborne vibration impacts; however, the proposed project would develop residential uses and therefore could expose sensitive receptors to unacceptable levels of groundborne vibration, specifically from operation of the UPRR, as the proposed project would locate residential uses adjacent to the rail line.

A Vibration Report was prepared for the proposed project, which evaluated the potential vibration impacts on the proposed project.[13] The report found that the current measured maximum vibration level was 75.9 VdB, which is below the maximum vibration criteria established by the City for residential projects with fewer than 30 events per day, which is 80 VdB. Therefore, the proposed project complies with the established criteria and would have a less-than-significant impact related to groundborne vibration.

Operational-Period Impacts

As discussed in the Midtown Specific Plan FEIR, the City of Milpitas has identified a “normally acceptable” noise compatibility goal of 65 L_{dn}, or less, for multi-family residential land uses. Noise levels of 60 to 70 dBA L_{dn} are considered “conditionally acceptable” and noise levels of 70 to 75 dBA L_{dn} are considered “normally unacceptable.” The Midtown Specific Plan FEIR determined that

[13] Mei Wu Acoustics, 2013. *91 Montague Vibration Report – Stage 1*. July 7.

predicted noise levels in the vicinity of the proposed multi-family residential land uses would likely exceed the City's "normally acceptable" land use compatibility noise standard of 65 dBA L_{dn}. However, according to the Midtown Specific Plan FEIR, implementation of Title 24 standards would reduce interior noise levels to 45 dBA L_{dn}. Title 24 measures could include construction of walls with resilient channels, staggered studs, or double-stud walls, and dual glazed windows with laminated glass and a 2½- to 4-inch airspace. If the windows must remain closed to obtain the required noise reduction, then mechanical ventilation shall be installed in these units.[14] Therefore, the Midtown Specific Plan FEIR determined that implementation of Title 24 would ensure that the proposed residential uses in the Midtown area would not be exposed to an incompatible noise environment and the impact would be less than significant.

The proposed project would result in an increase in people living close to transit stations which could expose sensitive receptors to higher noise levels from train activity. An Acoustic Report was prepared for the proposed project, which evaluated the potential noise impacts on the proposed project.[15] The report found that traffic noise would be the dominant source of noise given that the railroad is not a commuter rail line, therefore it should not have heavy train traffic (there should be trains probably once or twice a day). The report included a 24-hour noise measurement, which determined noise levels at the project site are approximately 62.9 dBA L_{dn}. This noise level is below the City's normally acceptable criterion. Therefore, this condition would not result in any impacts that would be more severe than those analyzed in the Midtown Specific Plan FEIR.

Stationary Noise Source Impacts

The proposed long-term use of the project site is transit-oriented residential development. Potential long-term stationary source impacts at the project site would be primarily associated with transportation activities, operations associated with delivery truck activities, and the operation of heating, ventilation, and air condition (HVAC) units. However, the proposed project would not increase stationary source noise impacts above those analyzed in the Midtown Specific Plan FEIR.

Aircraft Noise Source Impacts

The Midtown Specific Plan FEIR did not address aircraft noise levels; however, according to the City's current and projected noise contours for San José International Airport, the project site is not within an area exposed to aircraft noise levels greater than 60 dB CNEL. Therefore, aircraft noise would have a less-than-signficant impact on the project site.

Traffic Noise Impacts

Although the proposed project would result in an increase in traffic noise levels over existing conditions on the street network in its vicinity, it would not result in any additional or more severe noise impacts than were addressed in the Midtown Specific Plan FEIR. The project would generate 479 average daily trips which would not increase the surrounding traffic noise by a perceptible level.

[14] Milpitas, City of, 2002. *Final Environmental Impact Report for the Midtown Milpitas Specific Plan*. January.

[15] Mei Wu Acoustics, 2013. *91 Montague Noise Report – Stage 1*. July 1.

APPLICABLE MITIGATION

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the Midtown Specific Plan FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 6-G-1: Maintain land use compatibility with noise levels similar to those set by State guidelines.*
- *Policy 6-G-2: Minimize unnecessary, annoying, or injurious noise.*
- *Policy 6-I-1: Use the guidelines in Table 6-1 [of the General Plan] (Noise and Land Use Compatibility) as review criteria for development projects.*
- *Policy 6-I-2: Require an acoustical analysis for projects located within a conditionally acceptable or normally unacceptable exterior noise exposure area. Require mitigation measures to reduce noise to acceptable levels.*
- *Policy 6-I-3: Prohibit new construction where the exterior noise exposure is considered clearly unacceptable for the use proposed.*
- *Policy 6-I-4: Where actual or projected rear yard and exterior common open space noise exposure exceeds the normally acceptable levels for new single-family and multifamily residential projects, use mitigation measures to reduce sound levels in those areas to acceptable levels.*
- *Policy 6-I-5: All new residential development (single family and multifamily) and lodging facilities must have interior noise levels of 45 dB DNL or less. Mechanical ventilation will be required where use of windows for ventilation will result in higher than 45 dB DNL interior noise levels.*
- *Policy 6-I-6: Assist in enforcing compliance with noise emissions standards for all types of vehicles, established by the California Vehicle Code and by federal regulations, through coordination with the Milpitas Police Department, Santa Clara County Sheriff's Department, and the California Highway Patrol.*
- *Policy 6-I-7: Avoid residential DNL exposure increases of more than 3 dB or more than 65 dB at the property line, whichever is more restrictive.*
- *Policy 6-I-9: Enforce the provisions of the City of Milpitas Noise Ordinance and the use of established truck routes.*
- *Policy 6-I-13: Restrict the hours of operation, technique, and equipment used in all public and private construction activities to minimize noise impact. Include noise specifications in requests for bids and equipment information.*

Midtown Specific Plan Policies

- *Policy 5.3: Promote high-quality private development that contributes to the visual identity and environmental quality of the Midtown Area through the application of the Development Standards and Design Guidelines.*
- *Policy 7.1: Enforce the Development Standards and Design Guidelines (see Section 8.0 of [the Midtown Specific Plan]) to ensure that new development is of a high-quality and consistent with Specific Plan objectives.*
- *Policy 7.2: Proposed plans shall undergo a supplemental architectural review for new office and high-density residential and other appropriate development to ensure high-quality development. The applicant will bear the cost of such a review.*

CONCLUSION

The Midtown Specific Plan FEIR adequately covered the noise impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XIII. POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

DISCUSSION

Implementation of the Midtown Specific Plan would transform a predominantly industrial area by adding high density and mixed-use developments to the area and creating a community gathering place, reinforcing the use of alternative modes of transportation and developing stronger linkages between Midtown and Milpitas as a whole.

The Midtown Specific Plan FEIR identified that implementation of the Midtown Specific Plan would allow for new housing areas, including the proposed project, but would not directly displace existing housing or displace substantial numbers of people. The Midtown Specific Plan FEIR noted that the

designation of the Johnsville Mobile Home Park property in the southern portion of the Midtown Specific Plan area to a higher density residential designation (41 to 60 dwelling units per acre) could accelerate the redevelopment of this property. However, the proposed project is not located in the vicinity of the Johnsville Mobile Home Park and would not be impacted by its redevelopment.

The Midtown Specific Plan evaluated potential environmental impacts associated with approximately 2,379 units of residential development and 6,400 new residents within the Midtown Specific Plan area. As the population and housing units proposed by the project would fall within the total development anticipated by the Midtown Specific Plan FEIR, the project would result in no new impacts associated with population and housing.

APPLICABLE MITIGATIONS

No new mitigation measures are required.

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the population and housing impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XIV. PUBLIC SERVICES.				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
i. Fire protection?	☐	☐	☐	☒
ii. Police protection?	☐	☐	☐	☒
iii. Schools?	☐	☐	☐	☒
iv. Parks?	☐	☐	☐	☒
v. Other public facilities?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan area contains three school districts: the Milpitas Unified School District (MUSD), Berryessa Union School District (BUSD), and East Side Union School District (EUSD). The Midtown Specific Plan FEIR evaluated the impact that the Midtown Specific Plan's anticipated increase in population and associated increase in student population would have on the three school districts. The Midtown Specific Plan FEIR determined that the school districts would have adequate capacity to serve build-out of the Midtown Specific Plan, including the proposed project, if the developer fee structure remains in place, discussed below, and no significant impacts would result.

The project site falls within the MUSD attendance boundaries. Due to the project's location, school-aged children would attend Zanker Elementary School, Rancho Milpitas Middle School, and Milpitas High School. Build-out of the Midtown Specific Plan would generate an additional 441 students within the specific plan area. The Midtown Specific Plan would result in approximately 237 elementary students (K-6), 68 middle school students (7-8), and 136 high school students (9-12).[16]

Policies in the General Plan and Midtown Specific Plan would reduce the impact to school services and include coordination with the school districts to update their comprehensive facilities plans, update school fees for developers, and consider joint use agreements for potential shared facilities; as well as payment of school impact fees pursuant to State Government Code 65995 to 65998, which is a means of offsetting development's school impacts. As indicated above, residential growth associated with implementation of the proposed project would fall within the growth parameters evaluated within the Midtown Specific Plan FEIR and the proposed project's impacts on schools have been adequately analyzed in the Midtown Specific Plan FEIR; as such, the project would not result in a new impact to school facilities.

The Midtown Specific Plan FEIR concluded that the Milpitas Fire Department would need to provide additional fire and emergency services in the form of additional personnel required to respond to emergency situations as a result of implementation of the Midtown Specific Plan. The Midtown Specific Plan FEIR concluded that the Milpitas Fire Department would continue to add firefighters and EMTs on an as-needed basis to provide adequate public safety in the City, including the Midtown Specific Plan area and project site. However, the addition of firefighters and EMTs and their related equipment would not necessitate the construction of additional facilities or the expansion of existing facilities. As such, the proposed project would not result in new impacts associated with fire services.

As noted in the Midtown Specific Plan FEIR, implementation of the Midtown Specific Plan would increase the long-term demand for police assistance and new staff and equipment would be required; however, a new police station would not be warranted. An addition of 20 officers would be needed to service the Midtown Specific Plan's increase in population. The Midtown Specific Plan FEIR concluded that the impacts to police services would be less than significant. The 91 Montague Expressway Project adheres to policies in the Specific Plan and General Plan and because the population and housing units proposed by the project would fall within the total development anticipated by the Midtown Specific Plan FEIR, the project would not result in new impacts associated with fire services.

[16] Milpitas, City of, 2001. *Draft Environmental Impact Report for the Midtown Milpitas Specific Plan*. October.

The proposed project includes 23,051 square feet of usable open space and landscaped areas. The Midtown Specific Plan FEIR concludes that the impacts to parks would be less than significant because of various policies regarding open space requirements, park land dedication and in-lieu fees for new development. The Midtown Specific Plan also provides policies related to parks which are incorporated into the Parks and Recreation section (Section XV, Recreation) of this checklist. For a more comprehensive discussion on impacts to parks, please refer to Section XV, Recreation.

The Midtown Specific Plan FEIR adequately evaluates public service impacts and the proposed project's impacts are adequately included in and analyzed by the Midtown Specific Plan FEIR. Therefore, the 91 Montague Expressway Project has no new impact on public services.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 2.c-I-1: Continue working with Milpitas Unified School District (MUSD), Berryessa Union High School District, and East Side Union School District in its update of the comprehensive facilities plan and to ensure adequate provision of school facilities.*
- *Policy 2.c-I-3: Work with MUSD, Berryessa Union High School District, and East Side Union School District to monitor statutory changes and modify school fees when necessary to comply with statutory changes. Following this policy will permit the MUSD to update school fees for developers to cover the cost of constructing a new school and expanding Milpitas High School.*
- *Policy 5.c-I-1 Maintain a response time of four minutes or less for all urban service areas.*

Midtown Specific Plan Policies

- *Policy 6.20: Coordinate with the school districts in planning for adequate public school facilities.*
- *Policy 6.19: Ensure that adequate Fire, Police and Emergency Services are in place to serve new development in Midtown.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the public service impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XV. RECREATION				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒

DISCUSSION

The Midtown Specific Plan includes three kinds of open spaces within the Midtown Specific Plan area including public parks, common open spaces, and private open spaces. Public parks are community open spaces that are publicly-accessible and meant for use (e.g. Town Square, Transit Green, pedestrian and bicycle trails). Common open spaces are those that are incorporated into a housing development. These spaces could include private park areas with uses such as swimming pools, tot-lots, club houses, exercise rooms, large lawn areas for playing and tennis courts. Common open space also includes landscaped areas that create the environment within the development. Private open space includes patios and balconies.

The City of Milpitas has a citywide standard of 5 acres of parkland per 1,000 residents. As specified in Policy 3.24 of the Midtown Specific Plan, new residential development would be required to provide public parks at a ratio of 3.5 acres per 1,000 residents, which is lower than the existing parkland standard. As noted in the Midtown Specific Plan FEIR, the reduction for required parkland is desirable in the area to ensure density and intensity are higher in the Midtown Specific Plan area than other areas of the City to encourage pedestrian activity and transit opportunities.

The proposed project would include a total of 23,051 square feet of usable open space and landscaped areas. Common open space would include two courtyards for use by project residents. In addition, the project would contain 7,096 square feet of private open space including 2,842 square feet in the form of private patios or balconies for each unit. Landscaping would be provided throughout the site, including within the courtyards and along the western portion of the site to provide a buffer with the adjacent residential development

The Midtown Specific Plan FEIR adequately evaluated the environmental impacts associated with implementation of the Midtown Specific Plan, including parks and recreation impacts. Development of the proposed project would fall within the development assumptions evaluated within the Midtown Specific Plan FEIR. Therefore, the proposed project has no new impact on parks and recreation.

APPLICABLE MITIGATION

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Specific Plan Policies

- *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*
- *Policy 3.26: Encourage new or expanding office and public/quasi-public uses to provide publicly accessible outdoor open spaces (plazas, gardens, arcades) as a part of new development. Ensure that open spaces are linked to sidewalks and pedestrian paths.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the recreation impacts of the 91 Montague Expressway Project and no new impacts would result.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XVI. TRANSPORTATION/TRAFFIC. Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio of roads, or congestion at intersections)?	☐	☐	☐	☒
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Conflict with adopted polices, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☒

DISCUSSION

This section compares traffic impacts from the proposed project with impacts identified in the Midtown Specific Plan FEIR.

Trip Generation

Trip generation rates from the Institute of Transportation Engineer's (ITE) Trip Generation Manual, 9th Edition,[17] were used to estimate the daily and peak-hour trip generation from the proposed 91 Montague Expressway Project. Table 1 below summarizes the trip generation for the proposed project.

Table 1: Trip Generation

Land Use	Size	ITE Code [a]	Daily Trips	AM Peak Hour			PM Peak Hour		
				Total	In	Out	Total	In	Out
Apartments	72	220	479	40	12	28	48	29	19

[a] Rates per ITE Trip Generation Manual, 9th Edition

Source: LSA Associates Inc., June 2016.

As shown in Table 1 above, the 91 Montague Expressway Project is expected to generate approximately 479 daily vehicle trips, with 40 trips occurring during the AM peak hour and approximately 48 trips occurring during the PM peak hour.

Intersection Level of Service Impacts

Based on the estimated project trip generation, the proposed project would not cause any significant traffic impacts to the surrounding area. The 91 Montague Expressway Project conforms to the development parameters anticipated in the Midtown Specific Plan and evaluated in the Midtown Specific Plan FEIR, and there are no new impacts related to intersection level of service associated with the proposed project.

[17] Institute of Transportation Engineers, 2012. *Trip Generation Manual, 9th ed.*

Site Circulation and Access

As discussed in the Project Description, access to the project site would be via a new 30-foot-wide driveway from Montague Expressway. The new driveway would provide direct access to a subterranean garage where a total of 150 parking spaces would be provided. Ingress and egress to the site would accommodate fire and emergency access vehicles as well as solid waste collectors. A total of eight guest parking spaces would be provided at street-level. The parking garage would also provide a total of 24 vertical lockers for bicycles and bicycle racks for nine bicycles would be provided at the street level.

Ingress and egress to the site for fire and emergency access vehicles as well as solid waste collectors would be accommodated via an internal road on the eastern end of the project site that would connect to the driveway on Montague Avenue. Specifically, vehicles would enter the site from the new driveway, turn right and then turn left onto the new internal driveway. In addition, fire and emergency access vehicles would have access to the site from Ede Lane located north of the project site. A rolling gate with lock box for the fire department would restrict access to fire and emergency access vehicles only.

Pedestrian, Bicycle, and Transit Facilities

As indicated in the Midtown Specific Plan FEIR, the current pedestrian network within the Midtown area includes sidewalks, crosswalks, and pedestrian signals. Crosswalks and pedestrian signals are provided at all of the study intersections included in the Midtown Specific Plan FEIR. However, gaps in the sidewalk system are provided at all of the undeveloped parcels within the Midtown area. Many of these missing segments are to be provided upon development allowed under the Midtown Specific Plan and/or in association with roadway improvements and the light rail extension.

Bicycle facilities within the Midtown area include bike paths (Class I), lanes (Class II), and routes (Class III). As identified in the Midtown Specific Plan FEIR, in the vicinity of the Midtown area, bike lanes are designated on Tasman Drive-Great Mall Parkway between I-880 and Montague Expressway, S. Main Street between Weller Land and Montague Expressway, McCandless Drive between Great Mall Parkway and Montague Expressway, Milpitas Boulevard between Yosemite Drive and Calaveras Boulevard, and Yosemite Drive between Milpitas Boulevard and I-680. Bike routes are located on Main Street continuing to Marilynn Drive north of Weller Lane. Based on measures included as part of the Midtown Specific Plan, bicycle circulation would be improved.

Development due to the Midtown Specific Plan would generate additional transit trips that existing and planned bus, light rail, and BART transit lines would be able to accommodate. Impacts from development of the project site were also analyzed for the Midtown Specific Plan analysis. The proposed project would not cause any additional or more severe impacts to sidewalks, bicycle circulation, or transit services than were identified in the Midtown Specific Plan FEIR.

APPLICABLE MITGATION

No substantial changes in environmental circumstances have occurred for this topic, nor revisions to the project, nor new information that could not have been known at the time the Midtown Specific Plan FEIR was certified leading to new or more severe significant impacts, and no new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

General Plan Policies

- *Policy 3.a-G-1: Continue to utilize the City's adopted Level of Service standards in evaluating development proposals and capital improvements.*
- *Policy 3.1-G-2: Maintain acceptable service standards for all major streets and intersections.*
- *Policy 3.a-G-3: Create accessible transportation networks system to meet the needs of all segments of the population, including youth, seniors, persons with disabilities and low-income households.*
- *Policy 3.b-G-1: Develop a street network integrated with the pattern of living, working and shopping areas, and which provides for safe, inviting, convenient, and efficient intermodal movement within the City and to other parts of the region.*
- *Policy 3.b-I-2: Require all projects that generate more than 100 peak-hour (A.M. or P.M.) vehicle trips to submit a transportation impact analysis that follows guidelines established by CMP.*
- *Policy 3.c-G-1: Implement measures that increase transit use and other non-motorized travel modes that lead to improved utilization of the existing transportation system, such as improvements to access public transit stops and stations by walking and biking, and provide transit stops near employment centers and higher density residential developments.*
- *Policy 3.c-l-4: Encourage feeder services to carry commuters to transit stations, including shuttle connections from businesses, residences, and attractions to bus and rail services.*
- *Policy 3.d-G-2: Promote walking and bicycling for transportation and recreation purposes by providing a comprehensive system of sidewalks, bicycle lanes and routes and off-street trails that connects all parts of the City.*
- *Policy 3.d-G-3: Provide adequate bicycle parking and end-of trip support facilities for bicyclists at centers of civic, retail, recreation, education, and work activity.*
- *Policy 3.d-G-4: Promote intermodal commuting options by developing connected system of streets, roads, bridges, and highways that provides continuous, efficient, safe and convenient travel for all users regardless of age or ability.*
- *Policy 3.d-G-5: Encourage a mode shift to non-motorized transportation by expanding and enhancing current pedestrian and bicycle facilities to accommodate causal and experienced cyclists and pedestrians.*

- *Policy 3.d-I-4: Encourage walking, biking and transit use by improving bicycle and pedestrian connections to transit centers, specifically the Great Mall transit centers and light rail stations and the proposed commuter/passenger rail stations.*
- *Policy 3.d-I-9: Require developers to make new projects as bicycle and pedestrian "friendly" as feasible, especially through facilitating pedestrian and bicycle movements within sites and between surrounding civic, recreation, education, work, and retail centers.*
- *Policy 3.d-I-10: Require developer contributions toward pedestrian and bicycle capital improvement projects, bicycle parking, and end-of-trip support facilities to promote alternate modes of transportation.*
- *Policy 3.d-I-16: Include evaluation of bicycle facility needs in all planning applications for new developments and major remodeling or improvement projects.*
- *Policy 3.d-I-17: Require new developments to provide end of-trip facilities such as secure bicycle parking, and on-site showers and clothing storage lockers, etc. where feasible.*

Midtown Specific Plan Policies

- *Policy 4.2: Provide pedestrian connections between the transit stations and commercial, employment and residential destinations that are direct, attractive and interconnected with the larger city sidewalk and pedestrian path system.*
- *Policy 4.3: Support the establishment of BART service on the Union Pacific Railroad line.*
- *Policy 4.5: Maintain an interconnected pattern of streets within the Midtown Area. More specifically, streets developed to serve new developments should be pedestrian in scale and interconnected with the existing street system (see Figure 4.3[of the Midtown Specific Plan]).*
- *Policy 4.8: Increase street capacity where feasible to accommodate vehicular demand, while maintaining reasonable pedestrian crossing distances at intersections and minimizing potential vehicle conflicts for bicyclists.*
- *Policy 4.8: Increase street capacity where feasible to accommodate vehicular demand, while maintaining reasonable pedestrian crossing distances at intersections and minimizing potential vehicle conflicts for bicyclists.*
- *Policy 4.13: Establish an interconnected system of sidewalks and pedestrian paths that provides safe and convenient pedestrian access between the transit stations and other destinations within the Midtown Area.*
- *Policy 4.14: Require a public access easement through new developments, when necessary, to ensure that public parks and the City's trail network are accessible to the general public.*
- *Policy 4.16: Provide secure and weather protected bicycle parking facilities at the transit stations and within new residential, retail and employment destinations.*
- *Policy 4.17: Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.*
- *Policy 4.18: Consider credit for on-street public parking directly adjacent to a retail development to meet overall development parking requirements.*

- *Policy 4.20: Work with the VTA to allow the shared use of park and ride and transit station parking for off-peak users. In the future, design parking facilities to be compatible with adjacent areas and to reinforce the pedestrian environment.*
- *Policy 4.21: Require new development within the Midtown Area to encourage the use of alternative modes of transportation through programs such as carpool parking, the VTA VTA's EcoPass Program, shuttles to transit stations and lunchtime destinations, alternative work schedules, telecommuting, etc.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the transportation impacts of the 91 Montague Expressway Project. The proposed project would be required to comply with Midtown Specific Plan policies related to transportation including the traffic impact fees. Therefore, the 91 Montague Expressway Project would not create any new transportation impacts.

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
XVII. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒

	Potentially Significant Impact	Less Than Significant Impact with Mitigation	Less Than Significant Impact	No New Impact
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, State, and local statutes and regulations related to solid waste?	☐	☐	☐	☒

DISCUSSSION:

The Midtown Specific Plan FEIR concluded that development associated with implementation of the Midtown Specific Plan would result in less-than-significant impacts on utilities and service systems, including water supply, wastewater treatment, and stormwater drainage. The Midtown Specific Plan FEIR concluded that there would be an increase in water demand associated with build-out of the Midtown Specific Plan. The Midtown Specific Plan FEIR determined that anticipated growth associated with development of the Plan could be accommodated by the SCVWD.

The Midtown Specific Plan determined that sewer flow capacity as a result of the build-out of the Midtown Specific Plan would result in an additional 0.4 mgd dry weather peak week flow discharge to the San Jose/Santa Clara Water Pollution Control Plant (WPCP) above the discharge anticipated in the General Plan (Impact Util-1). Cumulative growth within the City of Milpitas could require 12.9 millions of gallons per day (mgd) average dry weather peak week flow of wastewater treatment plant capacity in the year 2020, with approval of the Midtown Specific Plan which exceeds the City's Master Agreement of 12.5 mgd dry weather peak week flow by 0.4 mgd. However, potentially significant impacts would be reduced to less-than-significant levels with mitigations included within the Midtown Specific Plan FEIR.

The Midtown Specific Plan FEIR determined that implementation of the Midtown Specific Plan, including the proposed project, would not require construction of any additional stormwater system facilities. As such, build-out of the Midtown Specific Plan would not contribute runoff water that would exceed the capacity of the existing stormwater drainage system and no new stormwater drainage facilities would be required.

The increase in residential density under the Midtown Specific Plan would cause an increase in solid waste generation. Solid waste from the City is disposed of at the Newby Island Landfill which has an estimated life-span of 20 years. The Midtown Specific Plan noted that the incremental growth associated with the Midtown Specific Plan would not substantially shorten the landfill's life-span as it is consistent with the growth that has been anticipated in the life-span projections for the landfill. Thus, the solid waste disposal needs of the Midtown Specific Plan area would be accommodated for the foreseeable future.

Since Midtown Specific Plan FEIR adequately addresses utilities and service systems, and the development associated with the 91 Montague Expressway Project falls within the development assumptions evaluated in the Midtown Specific Plan FEIR, the proposed project has no new impact on utilities and public services. In addition, the proposed project must comply with the Municipal

Code requirements and Conditions of Approval identified by the City related to utilities and service systems, including water supply, water easement, sewer, storm drainage, solid waste and property management.

APPLICABLE MITIGATION MEASURES

No new mitigation measures are required.

APPLICABLE POLICIES

The proposed project would comply with the following policies.

Midtown Specific Plan Policies

- *Policy 5.5: Place street tree landscaping at the curb edges of sidewalks to improve the environment for pedestrians.*
- *Policy 6.1: Provide adequate water facilities to serve the needs of new development and apply water conservation techniques to help reduce overall demand*
- *Policy 6.2: Reduce water consumption through a program of water conservation measures, such as use of recycled water, water saving fixtures, and drought-tolerant landscaping.*
- *Policy 6.3: Construct necessary improvements to provide an adequate water service and fireflow capacity to serve new development.*
- *Policy 6.5: Provide for the sanitary sewage needs of existing and future development.*
- *Policy 6.6: Provide necessary improvements to the wastewater collection system to serve new development within the Midtown Area.*
- *Policy 6.7: Provide storm drainage infrastructure to adequately serve new development and meet City standards.*
- *Policy 6.17: Implement existing recycling programs in the Midtown Area.*
- *Policy 6.9: Provide necessary improvements to the storm drainage system to serve new development within the Midtown Area.*
- *Policy 6.10: Require project developers to coordinate with the appropriate service providers to provide electrical, gas and telecommunications services to new development.*
- *Policy 6.11: Incorporate energy saving devices into new development in order to promote energy conservation.*

CONCLUSION

The Midtown Specific Plan FEIR adequately evaluated the utilities and service system impacts of the 91 Montague Expressway Project. In addition, the 91 Montague Expressway Project must comply with the Municipal Code requirements and Conditions of Approval identified by the City related to utilities and service systems, including water supply, water easement, sewer, storm drainage, solid waste and property management.

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