ITEM NO. 4

CITY OF MILPITAS ENGINEERING

Date: February 11, 2009

To: City of Milpitas Transportation & Land Use Subcommittee

cc: Milpitas City Council

From: **Jaime Rodriguez, Traffic Engineering**

Subject: Milpitas Community Based Transportation Plan

Background

The Metropolitan Transportation Commission (MTC), the regional transportation planning agency for the San Francisco Bay Area, has initiated a program to develop Community Based Transportation Plans for high-minority population and low-income communities throughout the Bay Area. The City of Milpitas is identified as a high-minority population area and MTC is working in cooperation with the Valley Transportation Authority (VTA) and the City of Milpitas to develop a Community Based Transportation Plan for the City. The purpose of the Community Based Transportation Plans is to unite community residents &, community-based organizations and to identify transportation solutions that may help to enhance mobility within these communities.

Upon the completion of the Milpitas Community Based Transportation Plan, the VTA and the City will be able to pursue regional funding from MTC to implement recommendations of the plan. Recommendations may include the implementation of a Community Bus Shuttle Program for the City with service to school zones and/or the City's Midtown District and enhanced public transit service to senior facilities or employment centers.

Development of the plan is anticipated to take approximately six months and will consist of participation from working groups that consist of members from City staff, MTC, Santa Clara County social services, and community based organizations. Two citywide community meetings are also scheduled to occur April 2nd and May 28th to ensure that the entire community has an opportunity to provide input on public transit and other transportation improvements that the Milpitas community feels may enhance mobility across the City. City staff will work to ensure that consistency with existing specific plans and transportation goals are met.

The Milpitas CBTP will be complete in early summer. Transportation solutions pertaining to improved VTA transit routes will be implemented with the fall service change. As a side, the VTA is also exploring Community Bus Service to meet the new transit demands of Milpitas Midtown's Library reopening, medical health center, and senior residential living.

Financial impacts

There are no financial impacts to the Milpitas CBTP.

Action

Note, Receipt and File.

ITEM NO. 5

M E M O R A N D U M

Engineering Division

To:	Mayor Livengood and Councilmember Giordano Transportation & Land Use Subcommittee
From:	Greg Armendariz Public Works Director
Through:	Thomas C Williams City Manager
By:	Jaime O. Rodriguez Traffic Engineer
Tech Memo:	**N Park Victoria Dr – Bike Lane Installation Proposal Jacklin Rd to Calaveras Blvd**
Date:	February 18, 2009

Recommendation:

① Receive Staff Report on a Proposal to Install Bike Lanes on N Park Victoria Drive between Jacklin Rd and Calaveras Blvd Including a Summary of Input on the Project from a Community Outreach Meeting Held on February 10th

② Forward Recommendation to the Milpitas City Council for Approval of Bike Lane Installations on N Park Victoria Dr as Part of the Street Resurfacing Program 2009

Background:

N Park Victoria Dr between Jacklin Rd and Calaveras Blvd is scheduled for Slurry Seal treatment as part of the 2009 Roadway Resurfacing Program. The implementation of bike lanes on N Park Victoria is being recommended to ensure compliance with the recommendations from the Draft Milpitas Bikeway Master Plan. The installation of bike lanes on N Park Victoria Dr is identified as a goal of the Draft Milpitas Bikeway Master Plan in efforts to provide a continuous bike lane connection from the northern city limits to the southerly city limits.

Analysis:

Roadway Geometry

N Park Victoria Dr currently has a 4-lane configuration through the proposed project limits of Jacklin Rd and Calaveras Blvd. On-street parking is available throughout the project area except for the portion between Ayers St and Calaveras Blvd. Existing traffic signal controls are provided at each end of the project limits including an existing all-way stop control at Kennedy Dr.

Traffic Data Analysis

Traffic counts for the corridor were conducted between January 16, 2009 and January 23, 2009 to determine the average AM and PM peak period traffic volumes as well as the average daily traffic volumes for a weekday and weekend.

The traffic count data collected indicate that that the traffic volumes during both the AM and PM peak hour periods is not high and that one vehicle lane in each direction of N Park Victoria Dr would be enough to accommodate the existing traffic volumes and a minimum roadway segment Level of Service (LOS) B per the City's General Plan.

Vehicle speed data within the speed zone segment was also collected and indicates that vehicle speeds are not at all excessive along the project area and that the posted speed limit is consistent with the current driving behavior of the community.

<u>Proposed Roadway Geometry</u>
In efforts to meet the goal of providing bicycle lanes on N Park Victoria Dr as envisioned within the Draft Milpitas Bikeway Master Plan, a lane reduction from four to three lanes is required so that impacts to the existing on-street parking capacity is minimized. The additional roadway width gained through the 4-lane to 3-lane reduction allows also allows for the installation of a continuous two-way left-turn lane from Daniel Ct to Ayers St which provides for enhanced left-turn access to homes on and along N Park Victoria Dr.

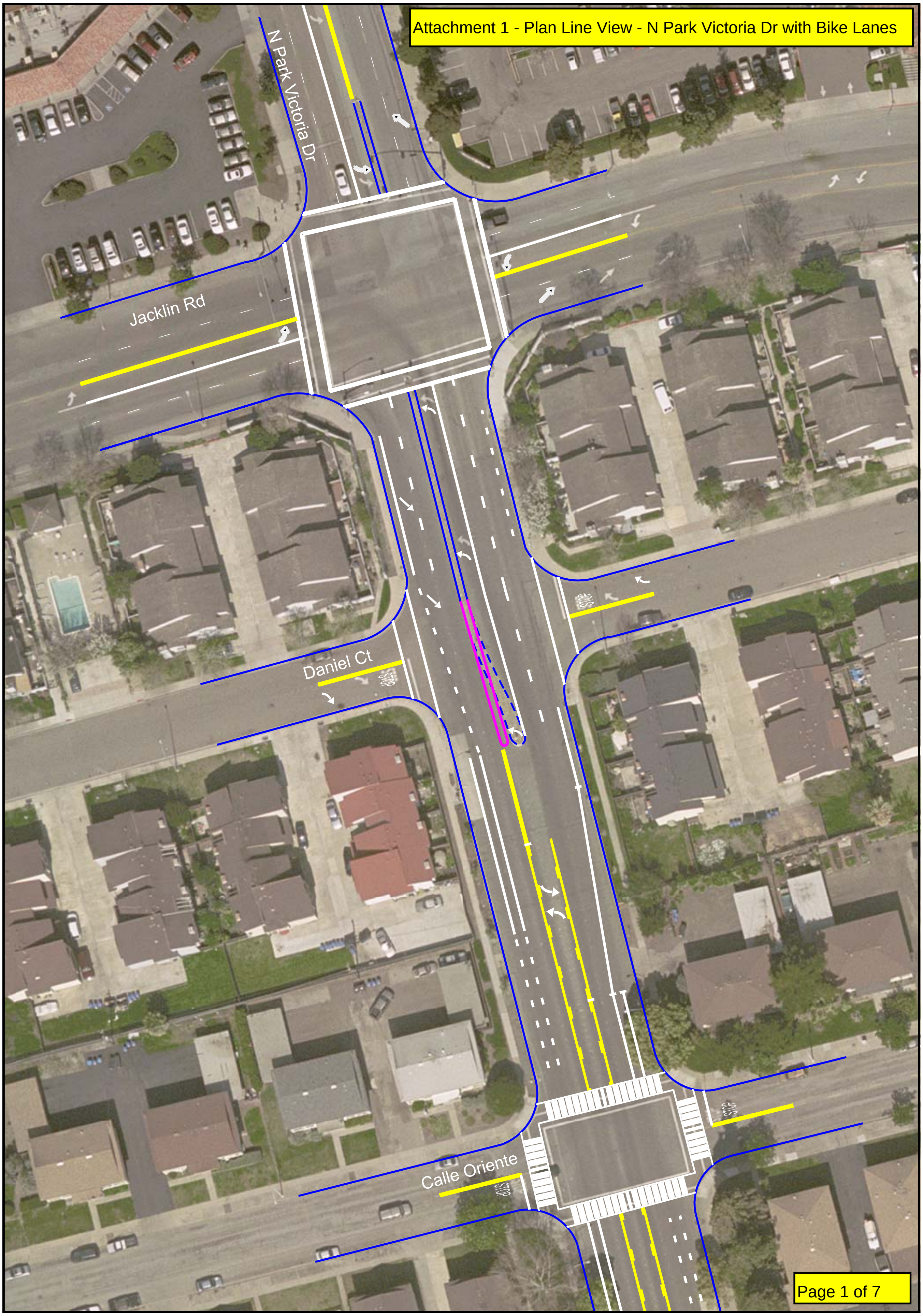
A plan line view of the proposed roadway geometry for the project area is provided in *Attachment 1 – Plan Line View – N Park Victoria Dr with Bike Lanes*. The proposal does result in the loss of approximately ten parking spaces. The impacted parking spaces are located at the intersection of N Park Victoria Dr & Ayers St (3 spaces) and N Park Victoria Dr & Kennedy Dr (7 spaces); the locations are noted in red on Attachment 2.

To further reduce impacts from the proposed lane reduction the existing lane configurations at the signalized intersections of Jacklin Rd and Calaveras Blvd should be maintained to avoid impacted to the Level of Service of those intersections. In addition, at Kennedy Dr separate left-turn lanes and right turn lanes should be maintained at the northbound approach of N Park Victoria Dr and a separate left-turn in the southbound approach.

<u>February 10th Community Outreach Meeting</u>
A community outreach meeting was held February 10th and attended by approximately ten residents. Staff did a direct mailer to every residence along the project area on N Park Victoria Drive and Kennedy Dr and every residence within 300-ft of both of those streets. In addition, an ad was placed in the Milpitas Post the week prior to the community meeting to ensure proper community notification.

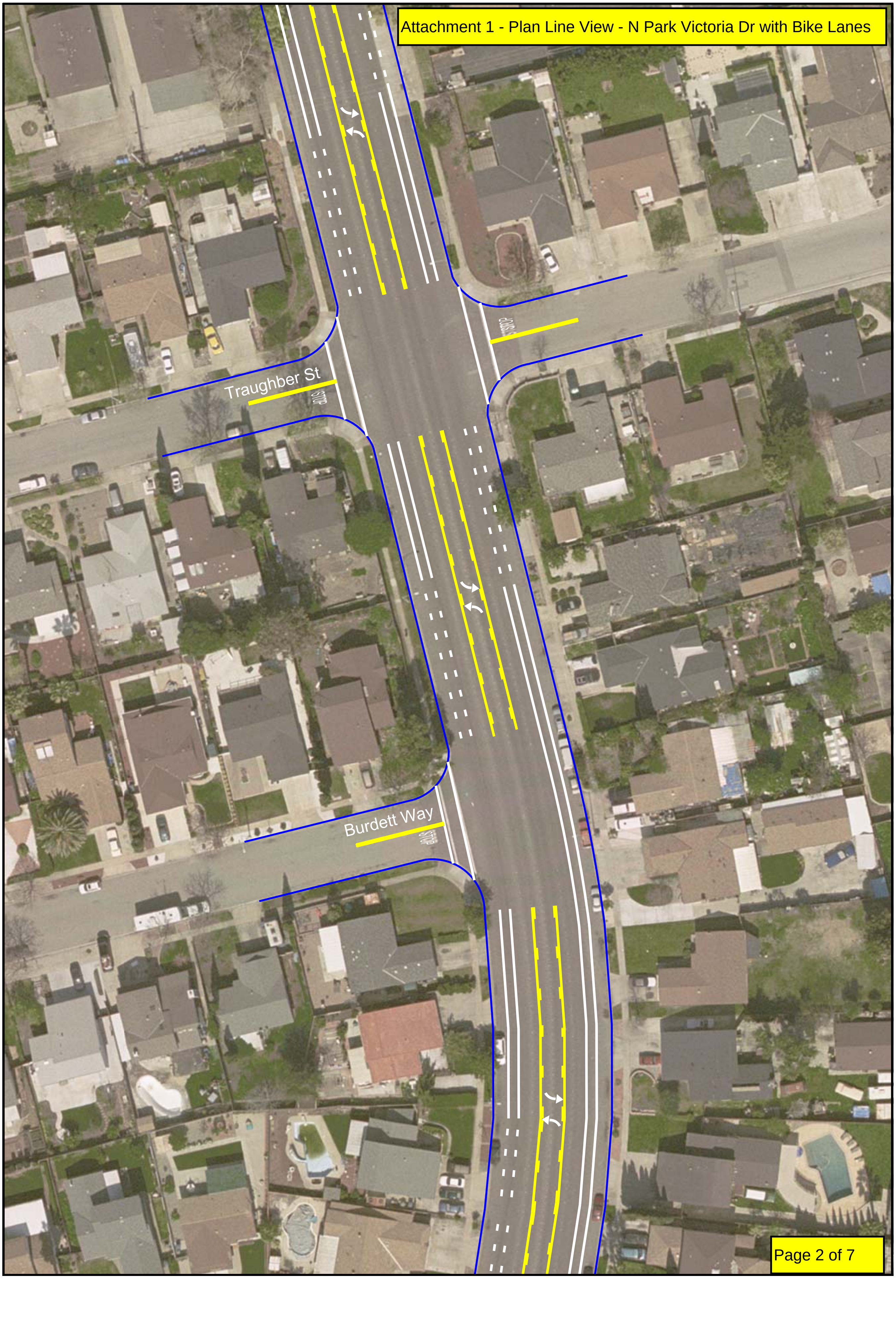
Attendants of the community meeting expressed unanimous support for the bike lane installations but noted that any residents that may be impacted by the loss parking in front of their residence should receive an additional notice from the City of the project so that they may continue to have opportunities to provide input as the development of the project progresses.

Recommendations:
The proposed roadway marking changes on N Park Victoria Dr provide for the installation of bike lanes as envisioned in the Draft Milpitas Bikeway Master Plan and do not have a significant impact on existing nor future traffic volumes. Staff recommends that the Transportation & Land Use Subcommittee receive this report and forward a recommendation to the City Council for approval of the installation of bike lanes on N Park Victoria Dr between Jacklin Rd and Calaveras Blvd as part of the Street Resurfacing Program 2009.

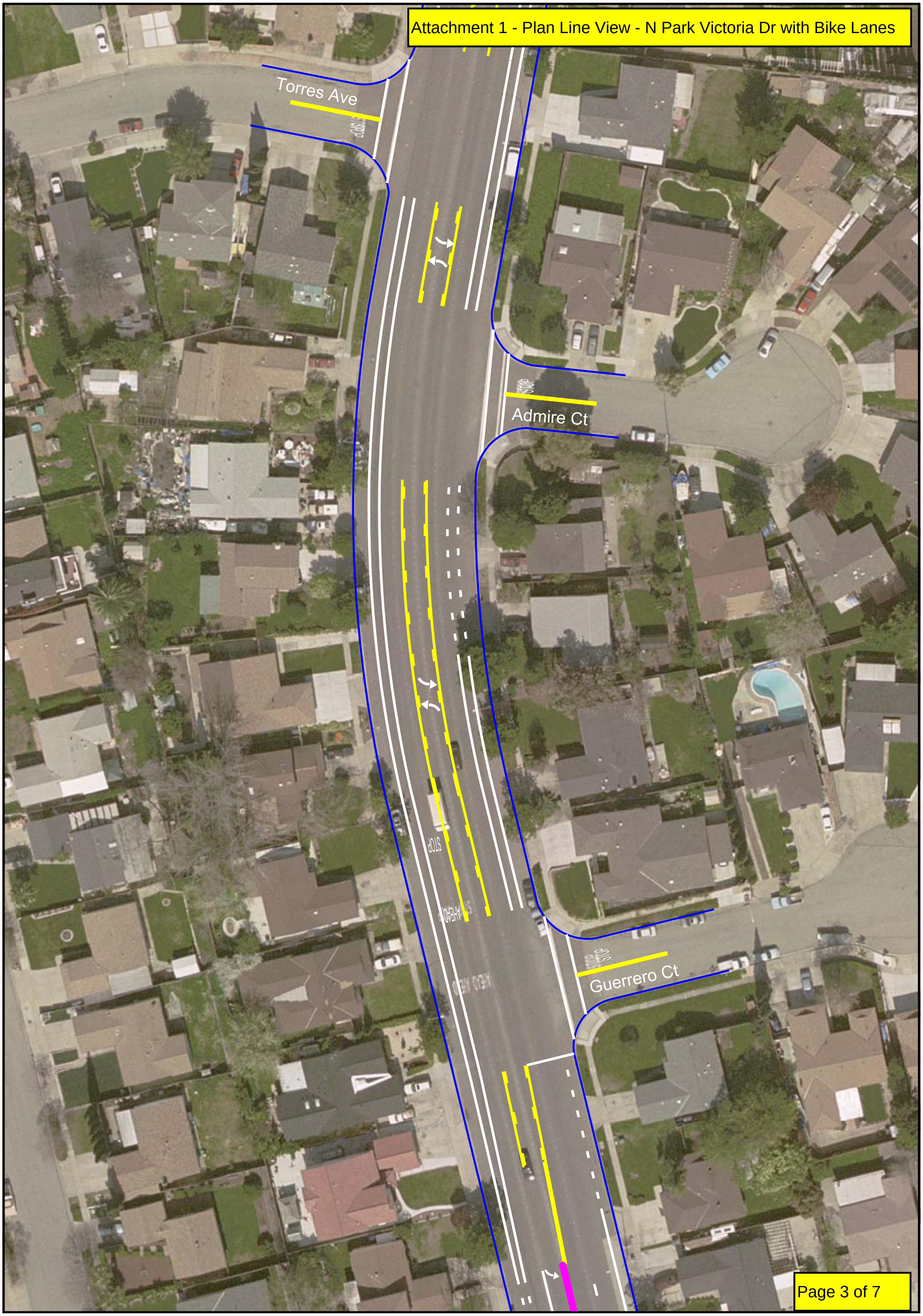


Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes
N Park Victoria Dr
Jacklin Rd
Daniel Ct
Calle Oriente
STOP

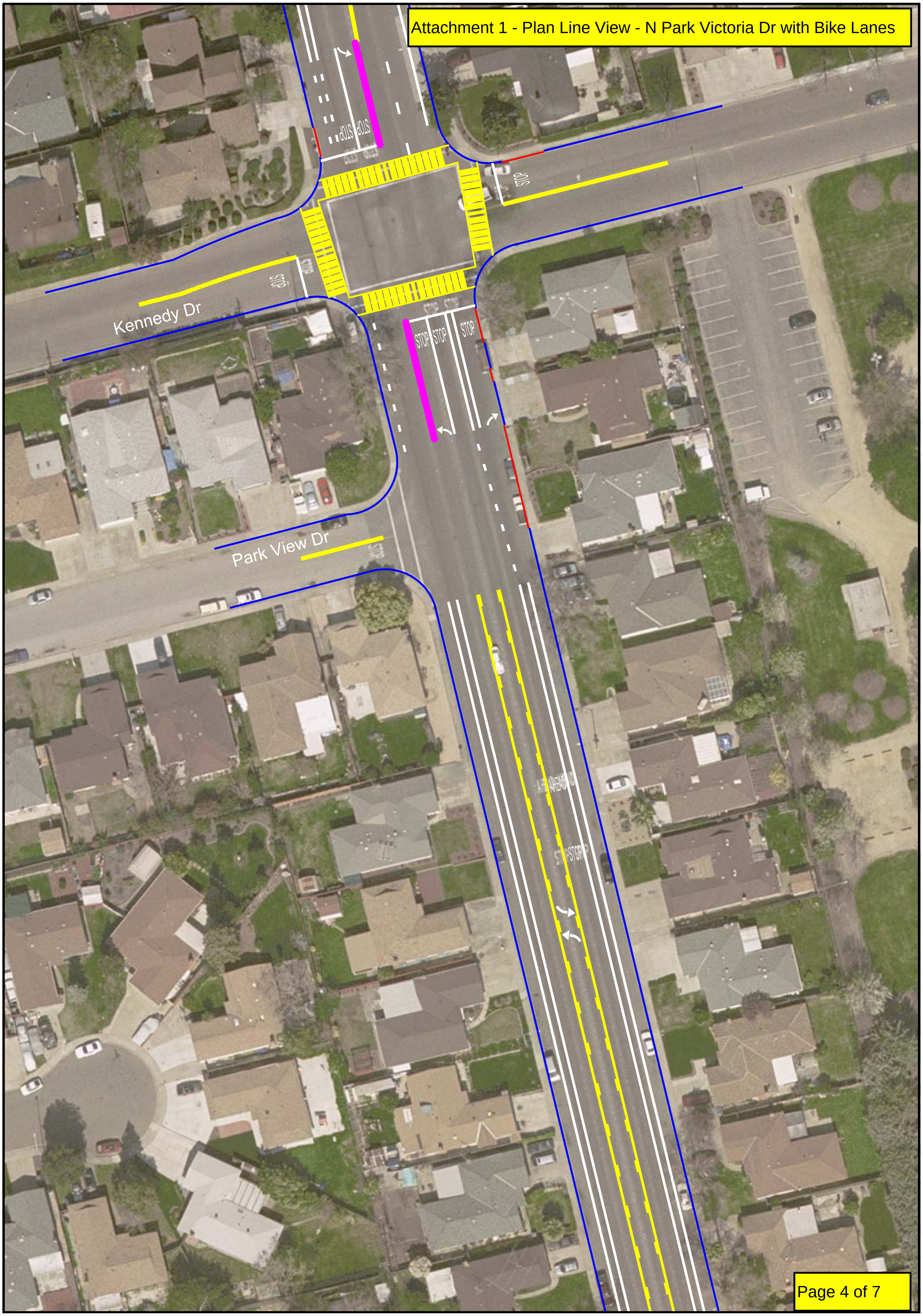
Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes



Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes

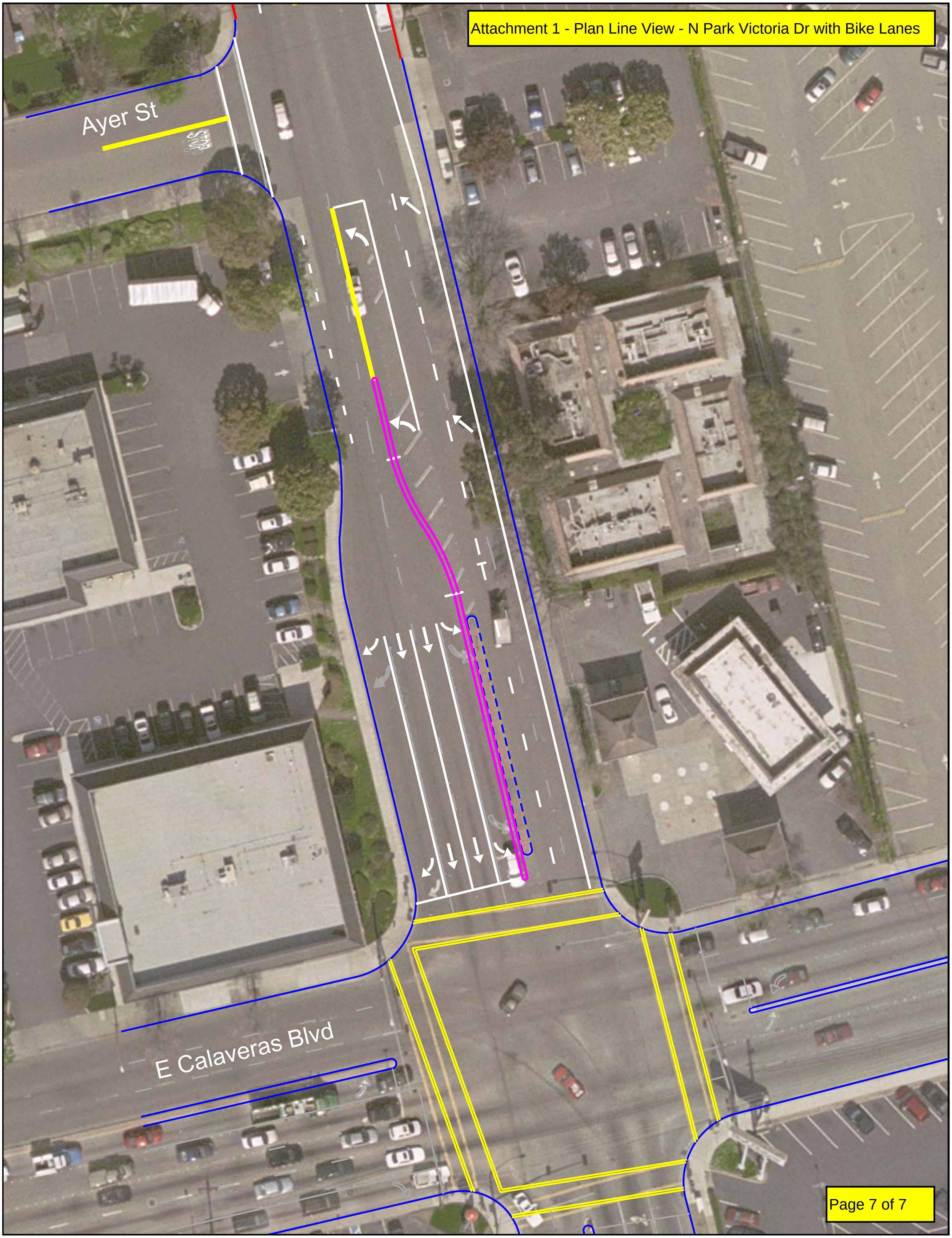


Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes




Park Heights Dr

Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes
Park Grove Dr
Ayer St
Page 6 of 7


Attachment 1 - Plan Line View - N Park Victoria Dr with Bike Lanes
Ayer St
STOP
E Calaveras Blvd
Page 7 of 7

M E M O R A N D U M

Planning & Neighborhood Services Department

To: Transportation & Land Use Subcommittee

Through: Thomas C. Williams, City Manager

From: James Lindsay, Planning & Neighborhood Services Director

Subject: **Financial Assistance Request for the Integral Mixed-Use Project**

Date: February 19, 2009

Introduction

The City has been working with Integral Communities over the past year and half to analyze the feasibility of their project and the level of financial participation being requested of the Redevelopment Agency (RDA). Integral has made several adjustments to their proposal during this time and the structure of their most recent proposal has been thoroughly reviewed by two advisors hired by the City to analyze its financial feasibility. The City retained the services of Economic Planning Systems and Emily Wagner who are considered two of the top experts in real estate economics and municipal finance, their conclusions and staff's recommendation are provided below.

Recommendation

Staff supports and recommends approval of Integral's planning applications. However, their request for RDA participation in the amount of up to $197 million in future tax increment dollars is not feasible and therefore, we are not recommending any direct financial participation in the project. The basis of this recommendation is summarized at this end of this memo. Staff does support assisting the project by completing the purchase of the 4.8 acre McCandless park site (appraised at $15 million) and transferring the density to Integral (equal to 211 additional units) allowing them to reach their target of 1,573 units. The location of the park site is indicated on the attached Integral Site Location exhibit.

Project Summary

Integral Communities is proposing to build 1,573 units and approximately 92,000 square feet of retail space on 23 acres located along McCandless Drive at Great Mall Parkway. The Transit Area Specific Plan requires approximately 87,296 square feet of retail within the northern portion of their project area along Great Mall Parkway. A grocery store ranging in size from 15,000 to 42,000 square feet is proposed on the corner of McCandless Drive and Great Mall Parkway as part of the retail space. Fifteen percent, 234 units, would be restricted for moderate income families. Public open space included in the project consists of 3 acres of new trails / paseos / landscape buffers and a 0.58 acre urban plaza (3.58 acre total). One acre of the new trails would be created on the existing Penitencia Creek levee. An opportunity may exist in the future to create additional open space on excess City right-way located along Great Mall Parkway, this will be determined once more detailed plans are submitted for the project.

Integral's Request for Financial Assistance

Integral is requesting the following financial assistance from the Redevelopment Agency to make their project financially viable:

- **A maximum of $70 million in tax increment dollars and net bond proceeds to serve as development cost reimbursement from increment generated solely by the project**. This would be provided through the issuance of tax allocation bonds, community facility district (CFD) bonds (to be issued by the City), and direct payments. Cost reimbursement would occur after completion of each phase of development and is limited in size by the amount of tax increment generated by each phase. The reimbursement would pay for eligible costs that may include public infrastructure, impact fees, affordable housing, and public parking.
- **Transfer of density to allow Integral to reach their 1,573 unit target**. Staff will be recommending the City/Redevelopment Agency purchase a 4.8 acre parcel that is designated for a future park in the Transit Area Specific Plan. The applicant is requesting a transfer of all density from that site, enabling the project to build an additional 211 units. The value of this land has been appraised at $15 million.

Background

The project is proposing 511 more units than the 1,062 units allowed by the underlining land use designations (MXD2 & R3). Integral has applied for a transit oriented density bonus, yielding 176 units, and an affordable housing density bonus, yielding 124 units. The project would still exceed the maximum density by 211 units if both density bonuses were granted. As such, Integral has requested a density transfer from the RDA's potential purchase of a 4.8 acre site designated for a new park in the Transit Area Specific Plan. This transfer would result in the maximum density being increased by 211 units as shown below. The Redevelopment Agency would be reimbursed over time for the purchase of the 4.8 acre park site through the payment of Transit Area Development Impact Fees from other projects. Integral desires to be the sole beneficiary of the additional units from the density transfer.

	Units
Unit yield with TOD and affordable housing bonuses	1,362
Density transfer resulting from possible park purchase	192
Additional affordable housing bonus	19
Maximum density yield	**1,573**

Integral estimates that the project could generate a total of $197 million in tax increment revenue over the next 40 years and is requesting up to 100% of these monies for reimbursement to Integral for costs that may include public infrastructure, impact fees, affordable housing, and public parking. This reimbursement would be achieved through the issuance of approximately $88 million in tax allocation bonds and community facility bonds (nine bond issues) generating net proceeds of $66 million payable to Integral and the remaining $4 million would be direct payment to Integral from the tax increment bringing the total reimbursement to Integral to $70 million. Integral has estimated the cost of issuance and total interest cost of the bonds to be $88 million assuming favorable underwriting terms and favorable interest rates averaging 5.50%. These assumptions would result in a total cost of committed tax increment of $134 million; the remaining $24 million in interest costs of would be borne by the property owner(s) through payment of CFD special taxes. Actual bond sizes, costs, and reimbursement to Integral will depend on market conditions but the maximum amount of reimbursement requested is net proceeds of $70 million.

Analysis
The City's financial advisors, Economic Planning Systems and E. Wagner & Associates have provided a detailed assessment of Integral's proposal (attached to this memo). Their main conclusions have been summarized in the following bullet points.

- **100% ($197 million) of the new tax increment projected from the project would be needed to service Integral's request when more realistic bond interest rates are applied.**
- **The project does not provide enough public benefit to justify the commitment of up to $197 million in tax increment dollars.**
- **While Integral is providing a tenant space for a grocery store and is willing to deed restrict the space, they are not willing to guarantee the space be occupied in a reasonable time or before receiving any tax increment revenue. Their market study indicated the feasibility of the grocery store was dependant on the buildout of the Transit Area.**
- **Integral is not including a hotel within the project as recommenced by the specific plan. This omission would eliminate one of two hotel sites identified in the plan and result in an opportunity cost to the City's general fund of approximately $650,000 per year in unrealized transit occupancy tax.**
- **The project would not result in any additional general fund revenue to the City. The shortfall between the estimated $1.4 million in revenue from the project and the projected $2.2 million in expenses would be offset by the municipal service special tax levied in the Transit Area with CFD 2008-1.**
- **The level of financial assistance being requested requires the developer to pay prevailing wages for most if not all of the project and would therefore raise project costs beyond that currently contemplated by Integral. Integral disagrees as to the extent to which prevailing wages might apply to the project and therefore would like to pursue a State Department of Industrial Relations (DIR) opinion on the matter. Staff supports the pursuit of a DIR opinion on the project, but believes that it should be provided prior to execution of any agreements between the City and Integral in order to ensure project feasibility and timelines if the City Council desires to financially participate in the project.**

Attachments

1. EPS & E. Wagner & Assoc. memo dated 2/18/09
2. Integral Project Location exhibit with a project site plan, retail exhibit, conceptual entry elevation, and park concepts

MEMORANDUM

To: Tom Williams

From: Walter Kieser, Partner, Economic Planning Systems (EPS)
Emily Wagner, President, E. Wagner & Associates, Inc. (E. Wagner)

Subject: Proposed Integral Communities McCandless, LLC Owner Participation Agreement

Date: February 18, 2009

You have requested that we offer our mutual opinion regarding an Owner Participation Agreement (Agreement) proposed by Integral Communities for their pending development project located within the City's Transit Area. The basic terms of this Agreement involve a substantial commitment of the property tax increment – approximately $70 million of "present value" that could require up to 100 percent of tax increment that would be generated by this project over time when interest is included. This property tax increment would support the issuance of tax allocation bonds by the Agency. The Agreement also proposes the formation of a Mello Roos Community Facilities District (CFD) and the issuance of special tax bonds by the City.

EPS' perspective on this matter derives from our experience preparing the Financing Plan for the Transit Area Specific Plan and assisting the City with formation of the Community Facilities District (CFD) formation, pursuant to recommendations of the Financing Plan. E. Wagner's perspective on this matter derives from their role as the City's Financial Advisor and their 30 years of experience involved with municipal finance, including serving as the financial advisor to numerous jurisdictions throughout California, including the City of Milpitas.

This memorandum presents a number of concerns that we, acting as your financial advisor (E. Wagner) and economic and fiscal advisor (EPS), have determined regarding this Agreement. We have focused our concerns on what we view as its flaws and the related risk it poses to the City. It is possible that these flaws and risks can be addressed by changes to its key terms, thus creating an Agreement that is consistent with standard practices for such agreements and also lowering the City's risk profile within an acceptable range.

The Economics of Land Use

Economic & Planning Systems, Inc.
2501 Ninth Street, Suite 200
Berkeley, CA 94710-3883
510 841 9190 tel
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Berkeley
Sacramento
Denver

www.epsys.com

Project Description

The Integral Communities McCandless, LLC project proposes to construct 1,573 residential rental units on a 23 acre site located within City's Transit District, including 15 percent (234 units) of the units affordable to moderate income families. The Project would also include 92,000 square feet of retail space to include a grocery store. The residential units and commercial space would be built in the form of multi-story mixed use buildings with a portion of the ground floor space dedicated to retail/commercial space with residential units, largely "stacked flats" located in the space above. Public open space included in the project consists of 3 acres of new trails/paseos / landscape buffers and a 0.58 acre urban plaza (3.58 acre total). One acre of the new trails would be created on the existing Penitencia Creek levee.

This project has been under planning and design throughout preparation of the recently adopted Transit Area Specific Plan, which established the land use designations and policies allowing high density mixed use projects, exemplified by the Integral Communities project, in the Transit Area. The Transit area presently includes a mix of retail-commercial buildings, low-rise office, warehouse, research and development space, and vacant sites. The land use designations in the Specific Plan create capacity for some 7,000 residential units in the Transit Area, presuming redevelopment of the existing commercial, office, and industrial uses. At 1,573 units, the Integral Communities project would comprise approximately 23 percent of this total capacity.

Statement of Concerns

General Concerns

1. The Agreement commits the RDA to a substantial financial subsidy to the Integral Communities Project, potentially up to $200 million (nominal) dollars to create the requested bond funding totaling $70 million. While the Project is consistent with the Specific Plan and as such has considerable merit, and will generate an equivalent amount of tax increment over time, it does not generate, in our view, a level of public benefit consistent with this amount of public subsidy.

2. The recitals as they currently appear in the draft Agreement lack a clear and compelling statement of the public interest achieved and the necessary finding that "but for" the financial subsidy the Integral project would be infeasible. The documentation necessary to ascertain that such a subsidy level is justified is lacking or not compelling (e.g. the "gap" analysis prepared by RSG). Normally there are two "tests" for redevelopment support – the aggregate public benefit received that would not be gained through normal development conditioning and the "but for" test, that the project (and desired public benefits) would not occur without a subsidy. Neither of these tests are presented in the Agreement nor is any adequate supporting material provided. While project construction costs and market conditions influence this equation, it seems that the biggest problem with the Project's financial performance derives from excessive land cost (pending option agreement); thus, the public subsidy is actually a return to the existing landowner.

3. One of the justifications for public participation is the proposition that the Integral Communities McCandless project would serve as a "catalyst" project for the Transit Area. However, the Piper Montague sub-district of the Transit Area will have received approval for over 900 units before the end of February 2009, without any RDA participation/tax increment assistance requested.

4. It is important that the Agreement contains a precise relationship (a detailed schedule) linking the requested $70 million public subsidy requested to specific infrastructure projects, affordable housing units not otherwise achievable, and the cost of other project amenities (e.g. the grocery store). While not a part of the original draft Agreement such a schedule has been prepared by Integral Communities subsequently (see Agreement Exhibit B dated February 10, 2009). Such linkage assures that the improvements sought by the City through the financial participation actually occur in a timely manner over time.

5. Integral needs 4.81 acres (equating to 192 residential units) offsite in order to meet their unit target. Staff is supporting the City's purchase of the 4.81 acre McCandless park site for $15 million and transferring that density to Integral Communities Project. This is effectively an additional subsidy to the Project not reflected as such in the Agreement.

6. The Agreement is silent regarding the "prevailing wage issue" – the requirement, based upon federal law, that projects receiving public financing (e.g. tax-exempt bonds) be required to pay "prevailing wages", generally interpreted as being union pay scales for construction workers.

Structure of the Proposed Financing

7. The financing structure proposed in the Agreement includes the issuance of creating a project-specific Mello Roos Community Facilities District (CFD) and issuing debt, secured by special taxes levied upon property owners in the CFD, and use of the property tax increment generated by the Project over time. As proposed the RDA property tax increments could be used for direct payments to the developer, reimbursements for qualifying infrastructure built by the developer, used to offset CFD special taxes otherwise due, or used to support RDA tax allocation bonds (TABs). Nine bond issues, including both CFD and TABs, are proposed, occurring over a ten-year or more time-frame as the project develops. The timing and number of these bonds is prescribed in the Agreement leaving little City/RDA discretion regarding the timing, use, or amount of bonds issued.

Issuance of Bonds

8. The issuance of any CFD debt or tax allocation bonds is not clearly limited in the Agreement by the respective debt capacity of the CFD or the RDA at the time of issuance. In the case of the CFD, the special tax receipts will be limited, at any given time, by the terms of the Special Tax Rate and Method as applied to the completed residential (or commercial) properties. Similarly, tax increment bonds can only be issued upon actual assessed value and related capture of tax increments. These property tax increments typically lag actual creation of real estate value by a year or more. These constraints, along with uncertain interest and underwriting requirements, will limit the amount of bond funding available at any given time.

9. The issuance of any CFD debt or tax allocation bonds was not delimited in the original draft Agreement by the respective debt capacity of the CFD or the RDA at the time of issuance. In the case of the CFD, the special tax receipts will be limited, at any given time, by the terms of the Special Tax Rate and Method as applied to the completed residential (or commercial) properties. Underwriting standards, market considerations and sometimes adopted guidelines limit CFD special taxes to not exceed a certain percentage of aggregate property value, typically 1.8 percent annually. The CFD bonds will also be limited by a value-to-lien ratio, typically 4:1, within the district.

10. Because the Project is proposed to be a rental project by Integral Communities, there will be either one property owner or a very limited number of property owners in the CFD. Currently that property owner is a limited liability corporation. If property owner fails to make property tax payments, bonds (both tax allocation bonds issued by the Agency and the CFD bonds issued by the City and secured by special taxes levied against the Project and collected on the property tax bill) will go into default. Typical bond underwriting criteria for these types of bonds is the typically that top ten taxpayers' pro rata share of the annual debt service should not represent more than 10 percent of the bond debt service. In this case, the top ten (or one) property owner(s) would represent 100 percent of the bond debt service. Therefore, CFD bonds are not likely to be marketable; or are marketable at above-market interest rates.

11. If bonds were marketable given the risk of default as discussed above, the interest rate on the Bonds would be very high in this market (given the current economic climate and its lack of confidence in the current real estate market). However, Integral Communities assumed below market interest rates (5.5 percent to 5.75 percent) to develop pro forma for project and bonds. Even under more normal conditions, the interest rate that that Integral Communities has assumed in their analysis would not be 5.25 percent to 5.75 percent but instead as much as 7.5 percent to 8.0 percent. If the rates are in this higher range, then 100 percent of the net tax increment projected to be generated from the Project would be needed to service the bonds. In that case rather than Integral Communities receiving 68 percent of the net tax increment cash flow from the Project and the Agency receiving 32 percent as claimed by Integral Communities, Integral Communities would in fact could receive all of the tax increment generated by the Project, including the 20 percent housing set-aside. The projections of bond debt service prepared by E. Wagner at an assumed interest rate of 7 percent resulted in the pro forma bond proceeds being reduced because the amount of debt service imposed by the bonds issued under the pro forma ($66 million in net bond proceeds and $79.4 million in par amount of bonds) exceeded the amount of net tax increment generated by the Project.

Grocery Store

12. While achieving a full-service grocery store in the Transit Area is a major policy objective of the Agreement from the City's perspective, a restricted deed on property does not guarantee that a grocery store will be located with the Project.

13. If the retail space is actually going to be occupied by retail tenants it will be necessary, addition to creating and restricting the use of the space, for the developer to engage in an active effort to attract and keep a grocery tenant or the other local/neighborhood serving retail tenants. This may require a direct rent subsidy for the retail space. The report prepared by MapInfo/Pitney Bowes indicated that the feasibility of the grocery store was

dependant on the complete buildout of the Transit Area. Therefore, indicating that the grocery store would more than likely occur in the latter phases of the Transit Area.

Fiscal Effects

14. The project is "revenue neutral" to the City's General Fund (except for the opportunity cost of not providing a hotel, as discussed below) only because of the CFD services special tax applied. As demonstrated by the Fiscal Impact Report municipal revenue in the Project's fourth year is estimated at $1.4 million and expenses are estimated at $2.2 million. The cause of this shortfall is the transfer of property taxes within the RDA Project Area to the RDA which can only be used for redevelopment purposes. The "shortfall" to the City will be offset by a municipal service special tax levied pursuant to CFD 2008-1.

15. The Transit Area Specific Plan identified the opportunity for 350 new hotel rooms in the Transit Area at two preferred locations, one of which is within the Integral Communities Project area. Assuming the 350 rooms would consist of two 175 room hotels, the opportunity cost of not providing a hotel on the site would equal 50 percent ($650,000) of the $1.3 million in anticipated annual transient occupancy taxes from the 350 rooms assumed in the Fiscal Impact Report.

Affordable Housing

16. The City's 20 percent set-aside funding, which the Agreement commits to the Project, is normally only made available to subsidize, through one means or another, units affordable by low and very low income families.

17. The Agreement limits the developer's obligation to creating 15 percent of the units available to "moderate income" households (without adequately defining "moderate"). This is a significant concession given the City's obligation under the California Redevelopment Law to include within the 15 percent inclusionary requirement at least 6 percent (40 percent of the 15 percent) housing affordable by very low income households.

18. Failure to include a reasonable portion of this very low income affordable housing obligation, given the proportional size of the Integral project, may make it more difficult to achieve this overall obligation on other sites in the Transit Area (or elsewhere in the RDA) without making other private development projects bear a disproportional burden for these units or using land otherwise slated for "market rate" development for affordable housing projects.

Implementation and Administration

19. There will be significant City costs involved in the ongoing administration of the Agreement particularly related to establishing and administering the CFD and related use of tax increment financing. The City will need to set up special accounts for related activities of the Community Development Department, Finance, the City Attorney, and the City Engineer which can properly account for and charge the "cost of issuance" or "administration" to the respective funding sources, either the CFD special tax proceeds or tax increments. These charges are not reflected in the Agreement as "netted out" of Project tax increment flows so there could be additional costs to the City's General Fund.

20. The overall financing proposal in the Agreement involving the issuance of multiple bonds is complex and will be costly to administer given issuance costs and ongoing auditing and the numerous bond issues contemplated. Also the overlap of both CFD debt and tax allocation bonds multiplies the number of issues. It would be preferable (and more standard), and less risky for the City if the financing structure was built around a sequence of three or four RDA issued tax allocation bonds or, alternatively, City issued CFD bond issues, the debt service for which could be derived, all or part, from available, net property tax increments, consistent with the terms of the Agreement.

Attachment 2

Integral Project Location

9 AT THE DISTRICT

McCANDLESS DRIVE MILPITAS, CALIFORNIA

INTEGRAL COMMUNITIES, LLC

DAHLIN GROUP

BUILDING A			GLA w/o Mezzanine	GLA w/ Mezzanine
	A-1	Grocery:	27,615	35,900
	A-2	Bakery:	947	1,231
	A-3	Restaurant:	6,388	8,304
	A-4	Restaurant:	5,480	7,124
	A-5	Commuter Hub:	1,950	0
		Retail Subtotal	42,380 SF	52,559 SF
		Misc. Retail Area	1,140 SF	1,140 SF
		Building A Totals	43,520 SF	53,699 SF

BUILDING B			GLA w/o Mezzanine	GLA w/ Mezzanine
	B-1	Pharmacy:	12,829	16,678
	B-2	Small Retailer:	756	983
	B-3	Medium Retailer:	3,832	4,982
	B-4	Restaurant:	3,670	4,771
	K-1	Small Retailer:	650	0
		Retail Subtotal	21,737 SF	27,413 SF
		Misc. Retail Area	530 SF	530 SF
		Building B Totals	22,267 SF	27,943 SF

BUILDING C			GLA w/o Mezzanine	GLA w/ Mezzanine
	C-1	Coffee Shop:	1,636	2,127
	C-2	Small Retailer:	1,063	1,382
	C-3	Dry Cleaners:	923	1,200
	C-4	Postal Services:	1,146	1,490
	C-5	Restaurant:	2,663	3,462
	C-6	Bank:	3,401	4,421
		Retail Subtotal	10,832 SF	14,082 SF
		Misc. Retail Area	1,819 SF	1,819 SF
		Building C Totals	12,651 SF	15,901 SF

*All square footages noted are based on schematic design layout, as shown.

Sub-Retail Plan

NORTH

9 AT THE DISTRICT

McCANDLESS DRIVE MILPITAS, CALIFORNIA

INTEGRAL COMMUNITIES, LLC

DAHLIN GROUP
ARCHITECTURE
PLANNING

2671 Crow Canyon Rd.
San Ramon, CA 94583
925.837.8286
925.837.2543 fax

McCANDLESS DRIVE ENTRY

McCANDLESS DRIVE MILPITAS, CALIFORNIA

INTEGRAL COMMUNITIES, LLC

DAHLIN GROUP

TRIANGLE PARK/ URBAN PLAZA

9 AT THE DISTRICT

McCANDLESS DRIVE MILPITAS, CALIFORNIA

INTEGRAL COMMUNITIES, LLC

DAHLIN GROUP

LINEAR PARK

McCANDLESS DRIVE MILPITAS, CALIFORNIA

INTEGRAL COMMUNITIES, LLC

DAHLIN GROUP

INTEGRAL
Communities
A DIVERSIFIED REAL ESTATE COMPANY

February 21, 2009

Mr. James Lindsay
Mr. Tom Williams
City of Milpitas
455 E.Calaveras Boulevard
Milpitas, CA 95035

RE: Memorandum from EPS and Wagner & Associates as it relates to Integral Communities Owner Participation Agreement.

Dear Tom and James:

This letter is to serve as our response to the memorandum dated February 18, 2009 written by Walter Kieser, Partner, Economic Planning Services and Emily Wagner, President, E. Wagner & Associates, Inc. pursuant to which your consultants have issued their opinion on our Finance Plan and Owner Participation Agreement in anticipation of our Monday February 23, 2009 hearing date with the Finance and Land Use Sub Committee.

Enclosed please find our annotations contained directly on the EPS/Wagner memorandum as direct counter to their specific points. Please furnish this annotated copy to the Sub Committee immediately as a counter the EPS/Wagner & Associates memorandum.

We would further would like to note that many of the consultant's comments are in our opinion not factual as to what has either been presented by our firm to the City regarding our finance requests, consistent with the specific language we have agreed to in the OPA/DA, contain misrepresentations of presentations made by our firm and consultant team including DPFG, RSG, David Cole Esq, Pitney Bowes MapInfo, and Latham & Watkins, misrepresentation as to the status regarding the City's Redevelopment Project Area, and misrepresentation as to our findings on other pending approvals within the city of Milpitas.

We appreciate your review of this letter and as such we are available to discuss this at your earliest convenience.

I look forward to hearing from you in the near future.

Sincerely,

C. Evan Knapp
Principal

160 Newport Center Drive, Suite 240 • Newport Beach, CA 92660 • (949) 720-3612 • (949) 720-3613 fax • integralcommunities.com

MEMORANDUM

To: Tom Williams

From: Walter Kieser, Partner, Economic Planning Systems (EPS)
Emily Wagner, President, E. Wagner & Associates, Inc. (E.Wagner)

Subject: Proposed Integral Communities McCandless, LLC Owner Participation Agreement

Date: February 18, 2009

You have requested that we offer our mutual opinion regarding an Owner Participation Agreement (Agreement) proposed by Integral Communities for their pending development project located within the City's Transit Area. The basic terms of this Agreement involve a substantial commitment of the property tax increment - approximately $70 million of "present value" that could require up to 100 percent of tax increment that would be generated by this project over time when interest is included. This property tax increment would support the issuance of tax allocation bonds by the Agency. The Agreement also proposes the formation of a Mello-Roos Community Facilities District (CFD) and the issuance of special tax bonds by the City.

EPS' perspective on this matter derives from our experience preparing the Financing Plan for the Transit Area Specific Plan and assisting the City with formation of the Community Facilities District (CFD) formation, pursuant to recommendations of the Financing Plan. E. Wagner's perspective on this matter derives from their role as the City's Financial Advisor and their 30 years of experience involved with municipal finance, including serving as the financial advisor to numerous jurisdictions throughout California, including the City of Milpitas.

This memorandum presents a number of concerns that we, acting as your financial advisor (E. Wagner) and economic and fiscal advisor (EPS), have determined regarding this Agreement. We have focused our concerns on what we view as its flaws and the related risk it poses to the City. It is possible that these flaws and risks can be addressed by changes to its key terms, thus creating an Agreement that is consistent with standard practices for such agreements and also lowering the City's risk profile within an acceptable range.

Project Description

The Integral Communities McCandless, LLC project proposes to construct 1,573 residential rental units on a 23 acre site located within City's Transit District, including 15 percent (234 units) of the units affordable to moderate income families. The Project would also include 92,000 square feet of retail space to include a grocery store. The residential units and commercial space would be built in the form of multi-story mixed use buildings with a portion of the ground floor space dedicated to retail/commercial space with residential units, largely "stacked flats" located in the space above. Public open space included in the project consists of 3 acres of new trails/paseos / landscape buffers and a 0.58 acre urban plaza (3.58 acre total). One acre of the new trails would be created on the existing Penitencia Creek levee. This project has been under planning and design throughout preparation of the recently adopted Transit Area Specific Plan, which established the land use designations and policies allowing high density mixed use projects, exemplified by the Integral Communities project, in the Transit Area. The Transit area presently includes a mix of retail-commercial buildings, low-rise office, warehouse, research and development space, and vacant sites. The land use designations in the Specific Plan create capacity for some 7,000 residential units in the Transit Area, presuming redevelopment of the existing commercial, office, and industrial uses. At 1,573 units, the Integral Communities project would comprise approximately 23 percent of this total capacity.

Statement of Concerns

General Concerns

1. The Agreement commits the RDA to a substantial financial subsidy to the Integral Communities Project, potentially up to $200 million (nominal) dollars to create the requested bond funding totaling $70 million. While the Project is consistent with the Specific Plan and as such has considerable merit, and will generate an equivalent amount of tax increment over time, it does not generate, in our view, a level of public benefit consistent with this amount of public subsidy.

- *According to our experts at Development Planning & Financing Group (DPFG), an increase in the interest rate would result in the Developer receiving less in bond proceeds and more "pay as you go" funds and the Agency still receiving excess revenue of approximately $50 million between 2040 and 2049. DPFG has prepared an additional model using a 7 % interest rate which illustrates the impact of a higher interest rate which we have available for your review.*
- *The City's Consultants failed to address the significant benefits of the Project which include:*
    - *Recycling of 23 acres of outdated business park*
        - *Without use of condemnation nor payment of relocation benefits*
    - *3,544 jobs during construction*
    - *343 permanent retail related jobs*
    - *92,000 sf retail space (includes mezzanine space)*
        - *Designated space reserved and designed for a grocery store*
    - *$456,000 in annual sales tax revenue at build-out*
    - *15% (236 units), moderate level income affordable units*

- *2 major parks with an amphitheatre, fountains and lush gardens*
- *Extensive pedestrian trail system, maximizing access to vta*
- *1,573 residential units, nearly 4,000 new residents*

2. The recitals as they currently appear in the draft Agreement lack a clear and compelling statement of the public interest achieved and the necessary finding that "but for" the financial subsidy the Integral project would be infeasible. The documentation necessary to ascertain that such a subsidy level is justified is lacking or not compelling (e.g. the "gap" analysis prepared by RSG). Normally there are two "tests" for redevelopment support - the aggregate public benefit received that would not be gained through normal development conditioning and the "but for" test, that the project (and desired public benefits) would not occur without a subsidy. Neither of these tests are presented in the Agreement nor is any adequate supporting material provided. While project construction costs and market conditions influence this equation, it seems that the biggest problem with the Project's financial performance derives from excessive land cost (pending option agreement); thus, the public subsidy is actually a return to the existing landowner.

- *We have submitted <u>three</u> Gap analyses over a two-year time period and never received any specific comments until the staff report. These analyses clearly demonstrate that "but for" the $70 Million requested, this catalyst Project is not feasible.*
- *Although we have submitted draft OPAs to the Agency we have not had the opportunity to review every section of the proposed form of OPA with the City and its Consultants.*
- *We have no objections to revising the recitals to more clearly outline the specific benefits we outlined under statement 1 above. Our experts at RSG, Inc.(RSG) and Latham & Watkins LLP (L&W) note, however, that the supporting documentation and conclusions the Consultants suggested are missing are most often included in the staff report accompanying the OPA at the time it is presented to the Agency Board.*
- *The City is purchasing real property from the same seller at approximately the same price per acre as the Developer's purchase. Such purchase is supported by an independent appraisal. Thus we are perplexed by the Consultants' unsupported conclusion that the "biggest problem with the Project's financial performance derives from excessive land cost."*

3. One of the justifications for public participation is the proposition that the Integral Communities McCandless project would serve as a "catalyst" project for the Transit Area. However, the Piper Montague sub-district of the Transit Area will have received approval for over 900 units before the end of February 2009, without any RDA participation/tax increment assistance requested.

- *According to our records, the Piper Montague development is not within a redevelopment project area and therefore is not eligible for tax increment financing.*
- *Furthermore, our records indicate that the Piper Montague development does not include a retail and affordable housing component which are two of the significant public benefits 9 At The District provide to the City and the redevelopment project area.*

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- *Finally, 9 At The District is uniquely situated to act as a catalyst to the TASP- it is located next to an existing rail station and located across from the Great Mall. Comparing our development to the Piper Montague development fails to acknowledge these fundamental and very significant differences.*

4. It is important that the Agreement contains a precise relationship (a detailed schedule) linking the requested $70 million public subsidy requested to specific infrastructure projects, affordable housing units not otherwise achievable, and the cost of other project amenities (e.g. the grocery store). While not a part of the original draft Agreement such a schedule has been prepared by Integral Communities subsequently (see Agreement Exhibit B dated February 10, 2009). Such linkage assures that the improvements sought by the City through the financial participation actually occur in a timely manner over time.

- *Financial participation is not requested until AFTER the construction of each Phase has been completed. Thus by definition the Agency's participation will be timely. We also note that such timing was addressed in narrative detail in the OPA.*

- *We prepared Exhibit B for inclusion in the OPA.*

5. Integral needs 4.81 acres (equating to 192 residential units) offsite in order to meet their unit target. Staff is supporting the City's purchase of the 4.81 acre McCandless park site for $15 million and transferring that density to Integral Communities Project. This is effectively an additional subsidy to the Project not reflected as such in the Agreement.

- *In our view we are supporting the Council's vision as articulated in the Transit Area Specific Plan by maximizing density on a site which has a transit orientation and will include new retail development. Such additional density is necessary to achieve the City's stated vision for this area.*

6. The Agreement is silent regarding the "prevailing wage issue" - the requirement, based upon federal law, that projects receiving public financing (e.g. tax-exempt bonds) be required to pay "prevailing wages", generally interpreted as being union pay scales for construction workers.

- *We have agreed to pay prevailing wage on all public works projects.*

- *Furthermore, the OPA is NOT silent on prevailing wage. In addition, Developer has offered but staff has not agreed to include in the Development Agreement a covenant that states that prevailing wage will be paid as required by law and requires the Developer to seek a DIR letter ruling prior to any construction.*

Structure of the Proposed Financing

7. The financing structure proposed in the Agreement includes the issuance of creating a project-specific Mello Roos Community Facilities District (CFD) and issuing debt, secured by special taxes levied upon property owners in the CFD, and use of the property tax increment generated by the Project over time. As proposed the RDA property tax increments could be used for direct payments to the developer, reimbursements for qualifying infrastructure built by the developer, used to offset CFD special taxes otherwise due, or used to support RDA tax allocation bonds

(TABs). Nine bond issues, including both CFD and TABs, are proposed, occurring over a ten-year or more time-frame as the project develops. The timing and number of these bonds is prescribed in the Agreement leaving little City/RDA discretion regarding the timing, use, or amount of bonds issued.

- *According to our experts at DPFG, RSG, Inc., and L&W we have proposed the most effective financing plan to meet the Agency's and the Developer's objectives.*
- *As currently contemplated there would be a single TAB and a single CFD bond issue at the conclusion of each of the three phases. Thus, at most we contemplated 6 series of bonds- two at the end of each Phase of construction.*
- *The Developer is asking for the Agency's and City's best efforts only in the sale of such bonds. The Developer recognizes that no one can accurately predict market conditions years into the future and is willing to take the risk that the structure it is proposing today will be achievable.*

Issuance of Bonds

8. The issuance of any CFD debt or tax allocation bonds is not clearly limited in the Agreement by the respective debt capacity of the CFD or the RDA at the time of issuance. In the case of the CFD, the special tax receipts will be limited, at any given time, by the terms of the Special Tax Rate and Method as applied to the completed residential (or commercial) properties. Similarly, tax increment bonds can only be issued upon actual assessed value and related capture of tax increments. These property tax increments typically lag actual creation of real estate value by a year or more. These constraints, along with uncertain interest and underwriting requirements, will limit the amount of bond funding available at any given time.

- *We concur that the issuance of bonds is limited by several factors, including those stated above. To the extent we were unclear that the Agency's and City's obligations will be "limited by the respective debt capacity of the CFD or the RDA at the time of issuance" we will add such a clarification to the OPA. It is our intent that the City's and Agency's obligations are best efforts only within the general parameters set forth in both the OPA (for the TABs) and the Development Agreement (for the CFD special tax bonds).*
- *The risk of not being able to issue bonds are the Developer's- not the City's or the Agency's, and the Developer is willing to shoulder that burden within clearly articulated goals and objectives of the parties as proposed in the Developer's financing plan.*

9. The issuance of any CFD debt or tax allocation bonds was not delimited in the original draft Agreement by the respective debt capacity of the CFD or the RDA at the time of issuance. In the case of the CFD, the special tax receipts will be limited, at any given time, by the terms of the Special Tax Rate and Method as applied to the completed residential (or commercial) properties. Underwriting standards, market considerations and sometimes adopted Guidelines limit CFD special taxes to not exceed a certain percentage of aggregate property value, typically 1.8 percent annually. The CFD bonds will also be limited by a value-to-lien ratio, typically 4: 1, within the district.

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- *We agree to these statements generally and regret that we have not had more opportunity to discuss them in the context of our proposed changes to the CFD section in the Development Agreement to which the City has not yet responded. We have always understood and agreed that the then prevailing market conditions were the Developer's risk.*

10. Because the Project is proposed to be a rental project by Integral Communities, there will be either one property owner or a very limited number of property owners in the CFD. Currently that property owner is a limited liability corporation. If property owner fails to make property tax payments, bonds (both tax allocation bonds issued by the Agency and the CFD bonds issued by the City and secured by special taxes levied against the Project and collected on the property tax bill) will go into default. Typical bond underwriting criteria for these types of bonds is the typically that top ten taxpayers' pro rata share of the annual debt service should not represent more than 10 percent of the bond debt service. In this case, the top ten (or one) property owner(s) would represent 100 percent of the bond debt service. Therefore, CFD bonds are not likely to be marketable; or are marketable at above-market interest rates.

- *Our experts disagree and have numerous examples of single owner CFDs. Marketability will be further enhanced since bonds are not issued until after a Phase is complete. Nevertheless, as we stated above we acknowledge that none of us can predict market conditions over the next ten years, and the Developer is willing to assume that risk.*

11. If bonds were marketable given the risk of default as discussed above, the interest rate on the Bonds would be very high in this market (given the current economic climate and its lack of confidence in the current real estate market). However, Integral Communities assumed below market interest rates (5.5 percent to 5.75 percent) to develop pro forma for project and bonds. Even under more normal conditions, the interest rate that that Integral Communities has assumed in their analysis would not be 5.25 percent to 5.75 percent but instead as much as 7.5 percent to 8.0 percent. If the rates are in this higher range, then 100 percent of the net tax increment projected to be generated from the Project would be needed to service the bonds. In that case rather than Integral Communities receiving 68 percent of the net tax increment cash flow from the Project and the Agency receiving 32 percent as claimed by Integral Communities, Integral Communities would in fact could receive all of the tax increment generated by the Project, including the 20 percent housing set-aside. The projections of bond debt service prepared by E. Wagner at an assumed interest rate of 7 percent resulted in the pro forma bond proceeds being reduced because the amount of debt service imposed by the bonds issued under the pro forma ($66 million in net bond proceeds and $79.4 million in par amount of bonds) exceeded the amount of net tax increment generated by the Project.

- *According to DPFG, a firm which has participated in over 500 CFDs in California, and the California Debt and Investment Advisory Commission, the historical ten year average for CFD bonds has been 5.73 percent. It was this assumption that we used in our projections. Nevertheless, we all agree that none of us know what the rates will be over our projected three separate issuances of CFD bonds, the first of which is not anticipated to occur for almost 4 years. Our ability to receive CFD proceeds will be constrained by* *interest rate, just as both the TABs and CFD bonds will be constrained by the actual tax increment generated by the Project.*

Grocery Store

12. While achieving a full-service grocery store in the Transit Area is a major policy objective of the Agreement from the City's perspective, a restricted deed on property does not guarantee that a grocery store will be located with the Project.

- *Although a grocery store is not required under the TASP, the community indicated its strong desire to have a store at this location, and we appreciate the Council's determination to meet the community's desire.*
- *Pitney Bowes MapInfo (PBMI), a leader in market research for retail stores, has studied the proposal and has determined that at least half of the population predicted for the TASP is needed before a store will be viable.*
- *The Developer, who will invest millions in the construction of the grocery store space and will pay the carrying cost of the space until that tenant is in place, is <u>extremely</u> motivated to find a grocery store tenant. These up front and sizable costs, as well as the long-term carry are risks the Developer is willing to take. But no one can guarantee a grocery store tenant today. PBMI has indicated the inherent difficulties in attracting a store in advance of the population. Nevertheless at your insistence we are committed to building the store and seeking a tenant.*
- *Furthermore, delaying reimbursement of costs actually incurred due to the lack of a grocery store tenant could have unintended consequences; it could delay construction of future phases and thus, new residents <u>that are the key</u> to attracting the grocery store tenant in the first place.*

13. If the retail space is actually going to be occupied by retail tenants it will be necessary, addition to creating and restricting the use of the space, for the developer to engage in an active effort to attract and keep a grocery tenant or the other local/neighborhood serving retail tenants. This may require a direct rent subsidy for the retail space. The report prepared by Maplnfo/Pitney Bowes indicated that the feasibility of the grocery store was dependant on the complete buildout of the Transit Area. Therefore, indicating that the grocery store would more than likely occur in the latter phases of the Transit Area.

- *We believe that the Consultants may have misread the PBMI study which concludes that approximately half of the TASP area needs to be built out before a grocery store is viable. See the attached updated letter from PBMI.*
- *Nevertheless, we agree that we will actively seek a tenant for the reasons stated under statement 12 above.*

Fiscal Effects

14. The project is "revenue neutral" to the City's General Fund (except for the opportunity cost of not providing a hotel, as discussed below) only because of the CFD services special tax applied. As demonstrated by the Fiscal Impact Report

municipal revenue in the Project's fourth year is estimated at $1.4 million and expenses are estimated at $2.2 million. The cause of this shortfall is the transfer of property taxes within the RDA Project Area to the RDA which can only be used for redevelopment purposes. The "shortfall" to the City will be offset by a municipal service special tax levied pursuant to CFD 2008-1.

- *The Developer has already agreed to the imposition of a CFD special tax to pay for services provided by the City.*
- *We also believe that the consultants have not given any consideration to the revenue generated through the jobs created and sales tax collected as a result of the Project.*

15. The Transit Area Specific Plan identified the opportunity for 350 new hotel rooms in the Transit Area at two preferred locations, one of which is within the Integral Communities Project area. Assuming the 350 rooms would consist of two 175 room hotels, the opportunity cost of not providing a hotel on the site would equal 50 percent ($650,000) of the $1.3 million in anticipated annual transient occupancy taxes from the 350 rooms assumed in the Fiscal Impact Report.

- *Since we began our discussions with the City and Agency over two years ago our Project has been a residential and retail development. In fact, when the TASP was adopted, the Council knew that our development was residential/retail only. To address a hotel at this time in disingenuous at best.*

Affordable Housing

16. The City's 20 percent set-aside funding, which the Agreement commits to the Project, is normally only made available to subsidize, through one means or another, units affordable by low and very low income families.

- *We <u>originally</u> proposed a building of low and very low income age restricted housing. We were told by the City that moderate housing open to all ages was what was needed and the modification to moderate income housing has been in our proposal since the summer of 2008. Neither the City nor the Agency has expressed an objection.*

17. The Agreement limits the developer's obligation to creating 15 percent of the units available to "moderate income" households (without adequately defining "moderate"). This is a significant concession given the City's obligation under the California Redevelopment Law to include within the 15 percent inclusionary requirement at least 6 percent (40 percent of the 15 percent) housing affordable by very low income households.

- *See above, the City informed us that it had met its low and very low housing objectives elsewhere.*

18. Failure to include a reasonable portion of this very low income affordable housing obligation, given the proportional size of the Integral project, may make it more difficult to achieve this overall obligation on other sites in the Transit Area (or elsewhere in the RDA) without making other private development projects bear a disproportional burden for these units or using land otherwise slated for "market rate" development for affordable housing projects.

- *See above. The City informed us that it had otherwise met its housing obligations.*

Implementation and Administration

19. There will be significant City costs involved in the ongoing administration of the Agreement particularly related to establishing and administering the CFD and related use of tax increment financing. The City will need to set up special accounts for related activities of the Community Development Department, Finance, the City Attorney, and the City Engineer which can properly account for and charge the "cost of issuance" or "administration" to the respective funding sources, either the CFD special tax proceeds or tax increments. These charges are not reflected in the Agreement as "netted out" of Project tax increment flows so there could be additional costs to the City's General Fund.

- *We have included escalating administrative costs into the annual tax levy that will be paid by the Developer. If there are additional ordinary and customary costs that we have failed to include in our projections we are happy to discuss them. In addition, the first of the distribution of proceeds provisions proposed in the Owner Participation Agreement is "initially to the payment of Agency's reasonable administrative and other costs related to the Agency Account" (which receives and distributes all tax receipts), and there is a comparable priority provision for distributions in the Development Agreement.*

20. The overall financing proposal in the Agreement involving the issuance of multiple bonds is complex and will be costly to administer given issuance costs and ongoing auditing and the numerous bond issues contemplated. Also the overlap of both CFD debt and tax allocation bonds multiplies the number of issues. It would be preferable (and more standard), and less risky for the City if the financing structure was built around a sequence of three or four RDA issued tax allocation bonds or, alternatively, City issued CFD bond issues, the debt service for which could be derived, all or part, from available, net property tax increments, consistent with the terms of the Agreement.

- *Our experts have thoroughly reviewed and studied the proposed transaction. They concluded that this structure is commonly used (in fact there was a recent article on similar transactions in the Community Redevelopment Agency Association newsletter). Very simply put, tax increment is used to pay the TABs first and excess tax increment is deposited in the special tax fund and used to pay CFD debt.*

Pitney Bowes MapInfo

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Dublin, CA 94568
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February 20, 2009

Mr. C. Evan Knapp
Integral Communities
160 Newport Center Drive
Suite 240
Irvine, California 92660

Re: Conditions of Entry for a Proposed Supermarket
SWC Great Mall Parkway/Mc Candles Drive
Milpitas, California
(MI #1739-001)

Dear Mr.Knapp:

Pitney Bowes MapInfo (PBMI) has reviewed our earlier (June 2008) report for a proposed supermarket at your site in Milpitas to highlight the build-out schedule we assumed in our sales projections at that point in time. Specifically, the Milpitas Transit Area Specific Plan discussed in our study and ultimately planned for some 7, 700 dwelling units (including rental units), was shown to be totally contained within Map Sectors 12 and 13 in our trade area map and within one mile of the site. In 2008, the combined population for these respective map sectors was estimated at 3,517 persons. And, at an estimated absorption level of 500 units annually or +1,500 more persons by June 2012, we projected population to increase to 7,266 persons for both sectors. This combined base was then projected to grow by and additional 5,000 more persons between June 2012 to June 2016, reflecting a net new growth of 3,500 dwelling units within the Milpitas Transit Area Specific Plan or 49% of total build-out.

As far as supermarkets go, the estimated minimal condition of entry relative to projected sales is about \$400,000 to \$450,000 per week through that store's first full year of operation (assuming market rents). Thus, our report would indicate that the deployment for a supermarket at your site would appear to light sometime in 2014, to be conservative. The situation highlighted in our report was not too dissimilar from the study and market conditions we projected for the Safeway Santa Clara trade area for Shea Properties at Map Key 8. That specific store is now thought to be within Safeway's top 20 operations in the United States. Subsequently, we also recommended that each of the chains targeted in our report monitor the rooftops within the Milpitas Transit Area Specific Plan so that they can plan their own condition of entry date.

Sincerely,

Rick Domanski

Rick Domanski
Director, Client Services

SHORT BIOGRAPHY
Rick Domanski

Rick Domanski currently serves as Director of Client Services for PB MapInfo out of the company's Western Regional office in Dublin, California. Mr. Domanski continues his 18-year career that started initially with Thompson Associates in 1990, which was subsequently acquired by MapInfo in 2003, and most recently by Pitney Bowes last year. Rick Domanski continues to spearhead all venues of research relating to supermarket site analyses including conducting and overseeing sales forecast reports, market entry strategies and shopping center acquisition assessments for numerous portfolio and REIT clients nationwide.

Prior to joining Thompson Associates, Mr. Domanski was Director of Area Research for both Federated Department Stores and Ralphs Grocery Company for 15 years and oversaw all new store sites and remodel programs. Rick joined Ralphs after a short non-grocery tour of duty with Real Estate Research Corporation after graduating from CSU Northridge in 1972. Mr. Domanski also serves as Chairman of the Board of the California Shopping Cart Retrieval Corporation, a wholly owned subsidiary of the California Grocers Association.