

**RESOLUTION NO. 19-033**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF GENERAL PLAN AMENDMENT GP18-0001, ZONING AMENDMENT ZA18-0003, PLANNED UNIT DEVELOPMENT PD18-0001, SITE DEVELOPMENT PERMIT SD18-0015, VESTING TENTATIVE MAP MT18-0003, and ENVIRONMENTAL ASSESSMENT EA19-0003 TO ALLOW DEVELOPMENT OF A RESIDENTIAL SUBDIVISION WITH 36 SINGLE-FAMILY HOMES AND TEN ACCESSORY DWELLING UNITS ON A 4.88 ACRE SITE LOCATED AT 1005 NORTH PARK VICTORIA DRIVE AND MAKING FINDINGS PURSUANT TO SECTION XII-1.00, *et seq.* OF THE MILPITAS MUNICIPAL CODE AND CEQA FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15070 *et seq.***

**WHEREAS**, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 *et seq.*), the State CEQA Guidelines (California Code of Regulations, title 14, § 15000 *et seq.*) (collectively, "CEQA"), the City of Milpitas is the lead agency for the proposed project described below; and

**WHEREAS**, on November 18, 2018, Robson Homes (the "Applicant") originally submitted an application to the City of Milpitas for the approvals necessary to allow development of a residential subdivision with 36 single-family homes and ten accessory dwelling units located at 1005 North Park Victoria Drive, which was subsequently revised to allow development of a residential development with 34 market rate single-family homes, four affordable single-family homes and ten accessory dwelling units. The project (the "Project") thus consists of and requires:

- a. General Plan Amendment GP18-0001: To change the land use designation from Single-Family Low Density (SFL) to Single-Family Medium Density (SMD); and
- b. Zoning Amendment P-ZA18-0003: To amend the zoning maps to change the property zoning designation from Single-Family Residential (R1-6) to Single-Family Residential (R1-3); and
- c. Planned Unit Development P-PD18-0001: To allow for variation from the standard development standards of the Municipal Zoning Code and permit a Planned Unit Development; and
- d. Site Development Permit SD18-0015: To allow a 38-unit single family home development, including 34 market-rate housing units, four affordable housing units (paired homes), and ten accessory dwelling units on the 4.88-acre site; and
- e. Vesting Tentative Map P-MT18-0003: To establish 38 single-family home lots and to record site easements; and
- f. Environmental Assessment EA19-0003: To review and assess all requested entitlements for consistency with the California Environment Quality Act (CEQA).

**WHEREAS**, the Planning Department completed an environmental assessment for the project, and, based on which assessment, decided to prepare an Initial Study and Mitigated Negative Declaration (IS/MND) in accordance with the California Environmental Quality Act (CEQA), including, without limitation, CEQA Guidelines sections 15070 *et seq.*. On December 5, 2019 the City provided a notice of intent to adopt a mitigated negative declaration to the public, responsible agencies, trustee agencies and the county clerk. The IS/MND is available for public review from 12/05/2019 through 12/27/2019 and is available for public review and inspection at City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California; and

**WHEREAS**, the IS/MND reflects the independent judgment and analysis of the City, as lead agency under CEQA and, based upon the information contained in the IS/MND, pending any comments received thereon, and the whole record before the City, there is not a fair argument nor substantial evidence that the Project, together with Conditions of Approval, including without limitation, mitigation measures identified in the IS/MND and the Mitigation Monitoring and Reporting Program adopted herein, will not have a significant effect on the environment; and

**WHEREAS**, the Planning Commission considered the proposed IS/MND prior to making any decision on the Project; and

**WHEREAS**, the Planning Commission makes and accepts as its own the findings set forth in **Exhibit 2 to Exhibit A** attached hereto;

**WHEREAS**, the Planning Commission is an advisory body to the City Council pursuant to Milpitas Municipal Code Section XI-10-64.03 (Consideration of Concurrent Applications), where, as here, due to the applications for General Plan Amendment, Zoning Amendment and Planned Unit Development pursuant to Milpitas Municipal Code Section XI-1-4.03, the City Council is the highest review authority for the Project and, accordingly, all review by other bodies with approval authority over the application shall be in the form of a recommendation to the City Council; and

**WHEREAS**, the Planning Commission has reviewed the draft "Resolution of the City Council of the City of Milpitas Approving General Plan Amendment No. GP18-0001, Zoning Amendment No. ZA18-0003, Planned Unit Development No. PD18-0001, Site Development Permit No. SD18-0015, Vesting Tentative Map No. MT18-0003, and Environmental Assessment No. EA19-0003 for 1005 North Park Victoria Drive," attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, on December 11, 2019, the Planning Commission held a duly-noticed public hearing, during which meeting the Planning Commission discussed the Exhibits listed above, heard a presentation from staff, and had the opportunity hear from members of the public; and

**WHEREAS**, the documents and other materials which constitute the record of proceedings upon which the Planning Commission bases the recommendation and the findings contained within this Resolution are available and may be reviewed at Milpitas City Hall, located at 455 E. Calaveras Boulevard, Milpitas, California 95035; and

**WHEREAS**, the findings and conclusions made by the Planning Commission pursuant to this Resolution are based upon the oral and written evidence before it as a whole.

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

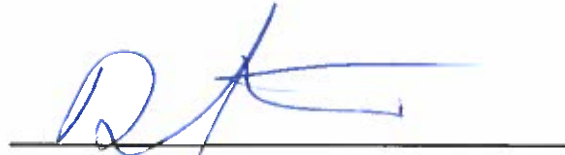
1. The recitals set forth above are adopted as further findings of the Planning Commission.

2. An Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared to conform to the requirements of the California Environmental Quality Act (CEQA), the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.) and the regulations and policies of the City of Milpitas. The purpose of this IS/MND is, among other things, to provide objective information regarding the environmental consequences of the proposed project to the decision makers and the public and to identify measures to substantially lessen or avoid significant adverse environmental effects of the project. The IS/MND is available for public review from 12/5/2019 through 12/27/2019. Also in conformance with CEQA, the City has prepared a Mitigation Monitoring and Reporting Program for reporting or monitoring

on the measures the City hereby has either required or made a condition of approval to the project to mitigate or avoid significant environmental effects.

3. Having likewise reviewed and considered the documents attached hereto and incorporated herein as **Exhibit A**, and having adopted the findings set forth therein as its own, the Planning Commission recommends the City Council approve and adopt **Exhibit A**, subject to any minor technical or clerical revisions that may be necessary or appropriate.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on December 11, 2019:



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 December 11, 2019 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Ricky Ablaza	X			
Tim Alcorn	X			
Evelyn Chua	X			
Bill Chuan	X			
Sudhir Mandal				X
Demetress Morris	X			
Steve Tao			X	

**EXHIBIT 'A'**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING GENERAL PLAN AMENDMENT GP18-0001, ZONING AMENDMENT ZA18-0003, PLANNED UNIT DEVELOPMENT PD18-0001, SITE DEVELOPMENT PERMIT SD18-0015, VESTING TENTATIVE MAP MT18-0003, and ENVIRONMENTAL ASSESSMENT EA19-0003 TO ALLOW DEVELOPMENT OF A RESIDENTIAL SUBDIVISION WITH 36 SINGLE-FAMILY HOMES AND TEN ACCESSORY DWELLING UNITS ON A 4.88 ACRE SITE LOCATED AT 1005 NORTH PARK VICTORIA DRIVE AND MAKING FINDINGS PURSUANT TO SECTION XII-1.00, *et seq.* OF THE MILPITAS MUNICIPAL CODE AND CEQA FINDINGS PURSUANT TO CEQA GUIDELINES SECTION 15070 *et seq.***

**WHEREAS**, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 *et seq.*), the State CEQA Guidelines (California Code of Regulations, title 14, § 15000 *et seq.*) (collectively, "CEQA"), the City of Milpitas is the lead agency for the proposed project described below; and

**WHEREAS**, On November 18, 2018, Robson Homes (the "Applicant") originally submitted an application to the City of Milpitas for the approvals necessary to develop a 36-unit single-family home development including ten accessory dwelling units (ADUs) at 1005 North Park Victoria Drive, which was subsequently revised to allow development of a residential development with 34 market rate single-family homes, four affordable single-family homes and ten ADUs. The project (the "Project") thus consists of and requires:

- a. General Plan Amendment GP18-0001: To change the land use designation from Single-Family Low Density (SFL) to Single-Family Medium Density (SMD); and
- b. Zoning Amendment P-ZA18-0003: To amend the zoning maps to change the property zoning designation from Single-Family Residential (R1-6) to Single-Family Residential (R1-3); and
- c. Planned Unit Development P-PD18-0001: To allow for variation from the standard development standards of the Municipal Zoning Code and permit a Planned Unit Development; and
- d. Site Development Permit SD18-0015: To allow a 38-unit single family home development, including 34 market-rate housing units, four affordable housing units (paired homes), and ten accessory dwelling units on the 4.88-acre site; and Vesting Tentative Map P-MT18-0003: To establish 38 single-family home lots and to record site easements; and
- e. Environmental Assessment EA19-0003: To review and assess all requested entitlements for consistency with the California Environment Quality Act (CEQA).

**WHEREAS**, the Planning Department completed an environmental assessment No. EA19-0003 for the Project in accordance with CEQA, an Initial Study was conducted and based on the study a Mitigated Negative Declaration was prepared, the Planning Commission recommended that the City Council adopt the Initial Study/Mitigated Negative Declaration; and

**WHEREAS**, the Planning Commission is an advisory body to the City Council pursuant to Milpitas Municipal Code Section XI-10-64.03 (Consideration of Concurrent Applications), where, as here, due to the applications for a General Plan Amendment, Zoning Amendment and Planned Unit

Development the City Council is the highest review authority for the Project, and, accordingly, all review by other bodies with approval authority over the application shall be in the form of a recommendation to the City Council; and

**WHEREAS**, on December 11, 2019, the Planning Commission held a duly-noticed public hearing, during which meeting the Planning Commission considered General Plan Amendment No. GP18-0001, Zoning Amendment No. ZA18-0003, Planned Unit Development No. PD18-0001, Site Development Permit No. SD18-0015, Vesting Tentative Map No. MT18-0003, and Environmental Assessment No. EA19-0003 for 1005 North Park Victoria Drive heard a presentation from staff, and had the opportunity hear from members of the public; and

**WHEREAS**, by adoption of Resolution No. 19-033, the Planning Commission recommended the City Council approve General Plan Amendment No. GP18-0001, Zoning Amendment No. ZA18-0003, Planned Unit Development No. PD18-0001, Site Development Permit No. SD18-0015, Vesting Tentative Map No. MT18-0003, And Environmental Assessment No. EA19-0003; and

**WHEREAS**, the documents and other materials which constitute the record of proceedings upon which the City Council bases the findings contained within this Resolution are available and may be reviewed at Milpitas City Hall, located at 455 E. Calaveras Boulevard, Milpitas, California 95035; and

**WHEREAS**, on \_\_\_\_\_, 2020, the City Council held a duly-noticed public hearing, during which meeting the City Council considered the Environmental Assessment No. EA19-0003, as well as General Plan Amendment No. GP18-0001, Zoning Amendment No. ZA18-0003, Planned Unit Development No. PD18-0001, Site Development Permit No. SD18-0015, Vesting Tentative Map No. MT18-0003 for 1005 North Park Victoria Drive, heard a presentation from staff, and had the opportunity hear from members of the public; and

**WHEREAS**, the findings and conclusions made by the City Council pursuant to this Resolution are based upon the oral and written evidence before it as a whole; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**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 incorporated herein by reference.

#### **SECTION 2. California Environmental Quality Act Findings**

An Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared to conform to the requirements of the California Environmental Quality Act (CEQA), the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.) and the regulations and polices of the City of Milpitas. The purpose of this IS/MND is, among other things, to provide objective information regarding the environmental consequences of the proposed project to the decision makers and the public and to identify measures to substantially lessen or avoid significant adverse environmental effects of the project. The IS/MND is available for public review from 08/09/2019 through 09/09/2019. Also in conformance with

CEQA, the City has prepared a Mitigation Monitoring and Reporting Program for reporting or monitoring on the measures the City hereby has either required or made a condition of approval to the project to mitigate or avoid significant environmental effects.

### **SECTION 3. General Plan Amendment Findings (Section XI-1-57.02)**

The City Council makes the following findings based on the evidence in the public record in support of General Plan Amendment No. GP18-0001:

- A. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.*

The requested General Plan amendment will change the land use designation of the project site from Single-Family Low Density (SFL) to Single-Family Medium Density (SMD) thereby increasing the density range from 3-5 dwelling units/acre to a density range of 6-15 dwelling units/acre. Aside from the change in density, the project is otherwise consistent with the Guiding Principles and Policies of the General Plan such as providing infill development of land already serviced by City infrastructure and providing a variety and mix in housing types and costs.

- B. The proposed amendment will not adversely affect the public health, safety, and welfare.*

The scale and layout of the subdivision will effectively integrate into the existing neighborhood and provide a suitable environment for family life. As designed, the proposed project is sensitive to pedestrian and traffic safety through effective traffic and circulation design. Additionally, the project has been subject to CEQA review through the preparation of an Initial Study (IS) and Mitigated Negative Declaration (MND). The MND has prescribed mitigation measures such as NOI-1 which requires management of equipment noise during construction and AIR-1 which requires the installation of HVAC systems with a control efficiency to remove a minimum level of air particulate that will prevent any public health problems from occurring.

### **SECTION 4. Zoning Maps Amendment Findings (XI-1-57.02)**

The City Council makes the following findings based on the evidence in the public record in support of Zoning Amendment No. ZA18-0003:

- A. The proposed amendment is consistent with the General Plan.*

As discussed above, the proposed amendment is generally consistent with the Milpitas General Plan and the project will be fully consistent if granted an amendment from land use designation SFL to SMD to allow for a slightly increased dwelling unit/acre density. The project is otherwise consistent with the Guiding Principles and Policies of the General Plan such as providing infill development of land already serviced by City infrastructure and providing a variety and mix in housing types and costs.

- B. The proposed amendment will not adversely affect the public health, safety and welfare.*

The scale and layout of the subdivision will effectively integrate into the existing neighborhood and provide a suitable environment for family life. As designed, the proposed project is sensitive to pedestrian and traffic safety through effective traffic and circulation design. Additionally, the

project has been subject to CEQA review through the preparation of an Initial Study (IS) and Mitigated Negative Declaration (MND). The MND has prescribed mitigation measures such as NOI-1 which requires management of equipment noise during construction and AIR-1 which requires the installation of HVAC systems with a control efficiency to remove a minimum level of air particulate that will prevent any public health problems from occurring.

#### **SECTION 5.Planned Unit Development Findings (XI-1-57.07)**

The City Council makes the following findings based on the evidence in the public record in support of Planned Unit Development No. PD18-0001:

- A. *Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.*
- B. Overall, the project offers 34 market rate, single-family homes, four affordable homes and ten purpose-built accessory dwelling units (ADUs) with various associated social and financial benefits to the public. The PUD allows for effective integration of the four affordable homes by accommodating the “paired” nature of the homes and the reduced side and rear setbacks from typical R1-3 standards. The project will also be a demonstration of how ADUs can be integrated into a neighborhood of single-family market rate homes. Further, the project will be efficiently sited in a way that is respectful to the character of the existing neighborhood and will incorporate a vacant lot and complete the neighborhood. *The proposed Planned Unit Development is consistent with the Milpitas General Plan.*

The proposed PUD is generally consistent with the Milpitas General Plan and the project will be fully consistent if granted the requested land use designation amendment from SFL to SMD. The project is otherwise consistent with the Guiding Principles and Policies of the General Plan such as providing infill development of land already serviced by City infrastructure and providing a variety and mix in housing types and costs.

- C. *The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.*

The project’s site layout seeks to effectively integrate into the existing neighborhood by offering two-story home heights and mirroring the existing home orientations along Creed Street and Rankin Drive. Further, the Spanish/Craftsman-style architectural design visually relates to the surrounding landscape and respects the character of the existing neighboring homes. The project as built will further strengthen the identity of the existing neighborhood and achieve compatibility and aesthetic harmony with the nearby hillside landscape.

#### **SECTION 6.Site Development Permit Findings (Section XI-10-57.03(F)(1))**

The City Council makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD18-0015:

- A. *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 project's site design is outward looking and seeks to effectively integrate into the existing neighborhood. The project consists of 34 market rate homes, four affordable homes and ten accessory dwelling units (ADUs) and associated site amenities on a 4.88-acre site. The building's Spanish/Craftsman-style architectural design visually relates to the surrounding landscape and respects the character of the existing neighboring homes. The project as built will further strengthen the identity of the existing neighborhood and achieve compatibility and aesthetic harmony with the nearby hillside landscape.

*B. The Project is consistent with the Milpitas Zoning Ordinance.*

The project is generally consistent with the development standards pursuant to the Single Family Residential (R1) Zone of the Milpitas Zoning Ordinance and will be fully consistent if granted approval of the Zoning Maps Amendment to adjust the property from R1-6 to R1-3 and if granted the alternative setbacks proposed in the request for the Planned Unit Development (PUD). See the Zoning Maps Amendment and PUD discussions above for further detail.

**Table 1:  
Summary of R1-3 Development Standards**

<b>Standard (R1-3 (PUD))</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies?</b>
<b>Lot Area Minimum</b>	3,000	3,540 - 5,787 square feet (market rate) 2,500 – 2,677 square feet (affordable)	Y <i>Y – with approved PUD</i>
<b>Lot Width Min</b>	30 feet	40.4 feet – 55 feet (market rate) 20 – 30 feet (affordable)	Y <i>Y – with approved PUD</i>
<b>Lot Density (Min/Max)</b>	1 dwelling unit/lot and 3-15 units/gross acre	1 dwelling unit/lot and 7.8 units/gross acre	Y
<b>Front Yard Setback</b>	20 feet	6.8 feet – 15 feet (market rate) 12.3 feet (affordable)	<i>Y – with approved PUD</i>
<b>Side Yard Setback (Interior) Min</b>	One side 5 feet	4 feet – 8.1 feet (market rate) 0 feet – 8.7 (affordable)	<i>Y – with approved PUD</i>
<b>Street Side Yard Setback Min</b>	10 feet	6 feet – 15.4 feet (all homes)	<i>Y – with approved PUD</i>
<b>Rear Yard Setback, Min (two stories or greater)</b>	20 feet	12 feet – 25 feet (market rate) 14 feet – 24.3 feet (affordable)	<i>Y – with approved PUD</i>



<b>Lot Coverage</b>	No more than 50% of the front width of the front yard setback may be paved	50% or less	Y
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*C. The Project is consistent with the Milpitas General Plan.*

The project is generally consistent with the development standards pursuant to the Single Family Low Density (SFL) Zone of the Milpitas Zoning Ordinance and will be fully consistent if granted approval of a General Plan Amendment to Single-Family Medium Density (SMD). See General Plan consistency discussion set out above in support of issuing the General Plan Amendment and the Vesting Tentative Map.

**SECTION 7. Vesting Tentative 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 Vesting Tentative Map No. MT18-0003:

*D. The tentative subdivision map is consistent with the General Plan.*

The project applicant is requesting a General Plan Amendment from SFL to SMD. The intent of this designation is to provide medium-density, single-family housing at a density range of 6-15 dwelling units/acre. As this project proposes 7.4 dwelling units/acre, if granted the General Plan amendment, it is consistent with both the intended land use of the General Plan and the relevant density requirement.

*E. None of the conditions identified in California Government Code Section 66474 exist, to wit:*

- 1. That the proposed map is not consistent with applicable general and specific plans as specified in Government Code Section 65451.*

As set forth in Finding 1 above, the map proposes the development of the site into 34 market rate homes, four affordable homes and ten accessory dwelling units (ADUs) at a density of 7.8 dwelling units/acre. If granted the General Plan amendment, the proposed map is consistent with the intended SMD land use of the General Plan and the relevant density requirement. The project site does not fall within a specific plan area.

- 2. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The design and improvement of the subdivision is consistent with the density range of 6-15 dwelling units per acre as permitted by the General Plan amendment from SFL to SMD. The proposed density is 7.8 dwelling units per acre. The project site does not fall within a specific plan area.

- 3. That the site is not physically suitable for the type of development.*

The site is surrounded by properties designated for single-family and hillside residential development under the City's General Plan. The project's proposed single-family homes are well-suited to the site and surrounding neighborhood context.

- 4. That the site is not physically suitable for the proposed density of development.*

If granted the General Plan amendment from SFL to SMD, the site is physically suitable for development at the proposed density of 7.8 dwelling units per acre. The site gradually slopes from the southeast corner of the lot and as planned will be directly

connected to the existing adjacent streets (Creed Street, Rankin Drive and South Park Victoria Drive).

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The project, including the subdivision and its associated improvements, has been subject to environmental review under CEQA through the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND). On the basis of the initial study, it has been determined that although the project could have a significant effect on the environment, the prescribed mitigation measures of the MND will prevent any significant environmental effects from occurring. Additionally, the proposed project is an infill development in an existing urban area and is not anticipated to cause damage to the habitats of fish or wildlife.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems.*

The project, including the subdivision and its associated improvements, has been subject to CEQA review through the preparation of an IS/MND. The MND did not find that the project would be likely to cause serious public health problems and further, the prescribed mitigation measures of the MND will prevent any significant environmental effects from occurring.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Upon review of the subdivision map, it has been determined that the design of the subdivision will not conflict with existing public easements for access through or use of the property. This subdivision does propose the vacation of a sanitary sewer pipeline and easement along the rear of Lots 1 through 7 along the southern edge of the development, but a new pipeline located within the new private street will be provided to replace it. Street right-of-way for the widening of the adjacent three public streets will be dedicated, and Public Service and Utility Easements (PSUEs) will be dedicated along the adjacent public street frontages and interior private streets.

#### **SECTION 8. Affordable Housing Ordinance (Section XII-1-4.00)**

The City Council approves the Applicant's request to provide four affordable housing units on site and an exception from the requirement to construct the remaining 1.1 units affordable housing units as part of the Project as required by the Milpitas Municipal Code Section XII-1-00, *et seq.* The Applicant has demonstrated that the Project qualifies for such an exception based upon the following findings based on the evidence in the public record for the affordable housing exception request:

- A. *The exception requested exceeds the minimum affordable requirements; and*

Analysis: The applicant proposes to construct four affordable housing on site, as well as pay the remaining 1.1-unit equivalent affordable in-lieu fee. In addition to providing the units and the

fee, the applicant will provide ten ADUs within the project, and these smaller studio units will be affordable by design. The California Department of Housing and Community Development (HCD) identifies ADUs as a valuable tool in providing affordable housing to couples, small families, friends, young people, and seniors. ADUs can also be a source of income for homeowners, allow flexible living arrangements for families, and provide as much living space as many newly-built apartments and condominiums. ADUs can also allow seniors to age in place as they require more care over time. Staff recommends that the requested exception exceeds the minimum requirements of the City's Affordable Housing Ordinance.

*B. The community benefits exceed the project benefits.*

Analysis: The proposed project is the first residential development of its kind in Milpitas to include purpose-built ADUs as part of the overall project design. As discussed in the previous finding, ADUs provide a myriad of benefits to residents, including the provision of incremental housing density while maintaining a residential character and suitability for family life. Overall, the project will demonstrate how a concentrated number of ADUs can be seamlessly integrated and appropriately scaled to a single-family home neighborhood. The project's ADUs will also directly support the goals set by the State of California and City of Milpitas to increase the number of ADUs in local communities. Paired with the potential financial and social community benefits associated with ADUs, staff recommends that the community benefits exceed the project benefits.

**SECTION 9. Severability**

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held incorrect, invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared incorrect, invalid, illegal, or unenforceable.

**SECTION 10. City Council Approval**

The City Council hereby approves General Plan Amendment No. GP18-0001, Zoning Amendment No. ZA18-0003, Planned Unit Development No. PD18-0001, Site Development Permit No. SD18-0015, Vesting Tentative Map No. MT18-0003, And Environmental Assessment No. EA19-0003 (subject to the Conditions of Approval attached hereto and incorporated herein as **Exhibit 1**), based on the above findings.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Mary Lavelle, City Clerk

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

APPROVED:

Rich Tran, Mayor

## EXHIBIT '1'

### CONDITIONS OF APPROVAL 1005 NORTH PARK VICTORIA DRIVE ROBSON HOMES SINGLE-FAMILY DEVELOPMENT

GENERAL PLAN AMENDMENT NO. GP18-0001  
ZONING AMENDMENT NO. ZA18-0003  
PLANNED UNIT DEVELOPMENT NO. PD18-0001  
SITE DEVELOPMENT PERMIT NO. SD18-0015  
VESTING TENTATIVE MAP NO. MT18-0003

### GENERAL CONDITIONS

1. **General Compliance:** The Permittee and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. **GENERAL PLAN AMENDMENT GP18-0001, ZONING AMENDMENT ZA18-0003, PLANNED UNIT DEVELOPMENT PD18-0001, SITE DEVELOPMENT PERMIT SD18-0015, and VESTING TENTATIVE MAP MT18-0003** (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. The Permittee shall develop the site in accordance with the approved Attachments and as modified by these Conditions of Approval.
2. **CEQA Compliance:** The Permittee shall comply with each and every mitigation measure identified in the Mitigation Monitoring and Reporting Program (MMRP) prepared for the 1005 North Park Victoria Project ("Project") and approved by the City Council together with the Permit. The MMRP document is wholly incorporated herein by reference.
3. **Effective Date:** Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the City Council adopted this Resolution, with the effective date of the Permit as stated in Section 11 of the Resolution.
4. **Acceptance of Permit:** Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
5. **Permit Expiration:** Pursuant to Section XI-10-64-06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit 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 Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced 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.

6. Time Extension: Pursuant to Section XI-10-64.07 of the Milpitas Municipal 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)**
7. Project Job Account: If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's project job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit as applicable, Permittee shall pay in full the Project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P/E)**
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).
9. 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. **(ALL)**
10. 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 Project is operating under the permits and approvals in this Resolution. **(ALL)**
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. **(CAO/P/E/B)**
12. Indemnification: To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including, but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Permittee, City and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. 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 Vesting Tentative Map No. MT16-0003, and the balance of the Permit shall be unaffected by Government Code Section 66474.9.

13. Certificate of Insurance: Permittee shall provide certificate of insurance and name City as an additional insured in its insurance policies for the Project.
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. Severability: If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, 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.
16. Response to Conditions of Approval: Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. (P)
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 buildings requires review and approval by the Fire Department. (F)
18. Development in Conformance with Approved Plans: Permittee shall develop the approved Project in conformance with the plans dated July 10, 2019 and approved by the City Council on , 2019, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan 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 owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

#### **PLANNING CONDITIONS**

19. Landscape: All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. All street tree species must adhere to Milpitas Municipal Code Section X-2-3.02 - Approved Street Tree List.
20. Parks and Open Space: The "Tot Lot" park located at the corner of Creed Street and Rankin Drive and all landscaped areas not located on individually owned single-family lots must remain publicly-accessible in perpetuity.
21. Pedestrian Gate: The pedestrian gate providing access to North Park Victoria Drive, located at the southeast corner of the property must be maintained by the development's Homeowner's Association and remain publicly-accessible in perpetuity.
22. Architecture: Permittee shall submit updated Project Architecture depicted on the Building Elevations sheets to the Planning Department and obtain approval from the Planning Director or Designee prior to Building Permit submittal. Any deviations from approved Project Architecture shall be approved at the sole discretion of the Director of Planning or his/her approved designee.
23. Street Lights: Permittee shall provide street lighting along all street frontages subject to the review and approval of the Planning Department. Permittee shall likewise install pedestrian scale lights along



all public and private street frontages. The Permittee shall submit a photometric plan to determine appropriate light levels with submittal of on-site improvement plans.

24. **Parking:** Parking shall be provided as depicted on the Site Plan approved by the City Council and shall consist of the following:
  - a. **RESIDENT:** A minimum of three off-street parking spaces must be provided for each market-rate home and two off-street parking spaces for each affordable home.
  - b. **GUEST:** A minimum of 23 guest spaces are to be provided along the internal private street.
25. **Public Art Requirement:** Permittee shall comply with the City's Public Art Requirements for Private Development, as set forth in Milpitas Municipal Code Section XI-10-14. Fee shall be no less than one-half of one percent of building development costs and shall be payable at time of building permit issuance.
26. **Affordable Housing Requirement:** Permittee shall comply with the City's Affordable Housing Ordinance, as set forth in Milpitas Municipal Code Section XI-1-3.00. Permittee is requesting to build four affordable units on site and an exception to the remaining 1.1 units as set forth in Milpitas Municipal Code Section XI-1-4.00. In accordance with the Affordable Housing Ordinance, the City Council has sole discretion over granting an exception to the requirement for on-site affordable units, including the payment of in-lieu fees.
27. **Planned Unit Development:** Prior to building permit issuance, Permittee must provide a general development plan showing the use, dimensions and locations of proposed structures and of areas to be reserved for vehicular and pedestrian circulation, parking, landscaping, and other open spaces, and architectural drawings and sketches demonstrating the design and character of the proposed uses and the physical relationship of the uses as well as any restrictions to altering the structures including:
  - a. Prohibition on further physical expansion of any of the habitable structures and prohibition of the conversion of existing living space into additional bedrooms unless approval is obtained via a Planned Unit Development Permit Amendment subject to City Council approval.

## **ENGINEERING CONDITIONS**

### **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)*

28. **Modifications:** The Site Development Plan dated 8/9/2019 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
29. **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.

30. Stormwater Control Plan: Permittee shall submit City approved 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.
31. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along North Park Victoria Drive (NPVD), Creed Street, and Rankin Drive that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines.
32. 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.
33. 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 per the current City fee schedule.
34. The project site is within a seismic hazard area as indicated on the official Earthquake Fault or Seismic Hazard Zone maps, released by the State Geologist. In accordance with State law, the project geotechnical engineer must prepare a seismic hazard report which must be reviewed and approved by the City and filed with the State Geologist. The project improvements and building construction shall conform to the recommendations of the seismic hazard report. City consultant peer review of project geotechnical report to the satisfaction of the City Engineer is required prior to building permit issuance.
35. Submit to, and obtain approval from the Land Development Engineering Section the following:
  - a. Preliminary Grading Plan refinement to account for new retaining walls - Note that retaining wall foundations shall not encroach within the City easements or street right-of-way.
  - b. Preliminary Grading Plan refinements to account for overland flow drainage releases, including high storm runoff flows (e.g., Q(100) )
  - c. Preliminary Utility Plan refinements to confirm required utility crossing clearances
  - d. Clarify the Stormwater Treatment Plan & Details to account for the high groundwater table elevation, and public storm system HGL
  - e. The stormwater storage vaults shall be designed to support all imposed loads, including but not limited to loading from the adjacent roadway, retaining walls and buildings. Note that modification to the Lot B or Lot C boundary geometry possibly necessitated by the need for use of an alternate vault system may require going back to Council to modify the VTM approval, and additional conditions may apply.

**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)*

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

37. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
38. Relinquish Abutter's Rights: Permittee shall relinquish abutter's rights along NPVD along the new Private Street terminus.
39. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.
40. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
41. Street Name Approval: Permittee shall obtain approval from the City Council for all new street names based upon recommendation from the Planning Commission and City guidelines.
42. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, Comcast) for abandonment of existing and dedication of new public service utilities easements.
43. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines.
44. Covenant, Conditions & Restrictions (CC&Rs): Permittee shall provide CC&Rs for City's review and approval for perpetual maintenance of private roadways, private utilities, stormwater management facilities in accordance with a separately recorded Stormwater Management Facilities Operation and Maintenance Agreement, and private common areas.
45. 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).
46. 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) 2005-1, and agree to pay the special taxes levied by the CFD 2005-1 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 non-severable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 14 notwithstanding.

**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)*

47. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with all applicable public improvement design standards, including but not limited to:

- a. Milpitas Design Guidelines:  
(<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>);
  - b. Standard details and specifications:  
(<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/standard-details-and-specifications/>);
  - c. Americans with Disabilities Act (ADA) requirements, where applicable.
48. Sanitary Sewer Calculations: Permittee shall submit a completed "Sewer Needs Questionnaire" form and sanitary sewer calculations to justify lateral size design, allocation of discharge for each of the lateral, and impact to the existing main. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
  49. 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.
  50. 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. Permittee shall be responsible to implement any necessary improvements if there is any identified deficiency to the existing main as a result of the project.
  51. Utilities: Permittee shall obtain approval of all utility engineering and design to ensure that any proposed public utility relocations on the project site, as well as within the public right-of-way, are acceptable to the City for perpetual operation/repair/ maintenance of City utilities and to optimize utility right-of-way management.
  52. Utility Protection: All existing public utilities shall be protected in place, or if necessary relocated as approved by the City Engineer. No Permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.
  53. Backflow Devices: All backflow devices shall be located outside of city easements throughout the site.
  54. Water meters (residential): Landscape water meters, defined as dedicated water service meters, shall be installed for all residential (including single family) irrigated landscapes of 2,500 square feet or greater. A privately owned meter or sub-meter is only allowed upon approval of the City Engineer.
  55. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (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 tap and meter for each of the following services: residential, irrigation, and fire.
    - b) Installation of separate utility service lines (domestic water, fire service, sanitary sewer) for residential.

- c) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
  - d) The required extent of improvements (i.e., new tie-in paving, and/or grinding and overlay as applicable to street centerline) along the project fronting streets and associated conforms shall be determined to the satisfaction of the City.
  - e) Installation of new street tree wells along the project frontage. The locations, spacing of tree wells and tree species shall be in compliance with applicable City standards and details.
  - f) Install two radar speed feedback signs (locations to be determined later) on the project frontage along NPVD
  - g) Provide public street lighting per IESNA standards with minimum illumination of 0.1 foot-candle and uniformity ratio (avg/min) of six to one.
  - h) Permittee shall loop the water system by extending the water main fronting lots 1 through 8 and connect it to the water main on N. Park Victoria Dr. for water quality purposes as well as public safety pertaining firefighting.
  - i) Permittee shall abandon the existing sanitary sewer main which runs behind the proposed lots, number 1 through 8 per City's Abandonment Notes and to the City's satisfaction. This main shall be capped and filled at nearest existing manhole downstream which is located behind a property west of lot 1, eastward to the existing manhole at the southwestern corner of Country Club Dr. and N. Park Victoria Dr. intersection.
  - j) Permittee shall ensure that utility appurtenances are not located within concrete collars, and/or beneath curb and gutters.
56. 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.
57. Relocation and Adjustment of Existing Public Utilities: Permittee shall relocate and/or adjust existing public utilities as needed that are in conflict with the proposed improvements.
58. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.
59. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, 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.
60. Pothole Encroachment Permit: Due to multiple new utility service connections on the adjacent public streets and public utility easements, Permittee shall pothole and verify all potential utility crossing conflict as part of the public improvement plan during the design stage.

**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)*

61. City consultant peer review of the project geotechnical reports and tentative map plan revisions as deemed appropriate by the City Engineer are required.
62. Final Map Recordation: Permittee shall record the final map.
63. Easements on the Building Permit Plans: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on applicable building permit plans.
64. 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 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).
65. 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. The subject O&M Agreement shall be referenced in the CC&Rs, if applicable.
66. 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.
67. 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.
68. 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.
69. 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.

70. 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.

71. Development Fees: Permittee shall pay the following development fees. The information listed in items "a" through "h" 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. Parkland:

1. The project is required to dedicate 0.86 acres of parkland, equivalent to \$2,394,542.40 fees-in-lieu.
2. The applicant will receive credit for 0.36 acres of private recreation space on site. Upon demonstration of provision of this private recreation space to the satisfaction of the Direction of Planning or his/her designee, the total acreage/fees provided are 0.5 acres/\$1,393,920.00.

Project Unit Count	48
Project Population Estimate	173
Parkland Requirement	5 acres/1,000 people or equivalent fees-in-lieu. Currently \$2,787,840 per acre.
PARKLAND ACREAGE DUE/FEE EQUIVALENT	0.86 acres/\$2,394,542.40
Less Private Recreation Acreage Credit (40% Max.) and Provided Public Park (0.02 acres)	0.36 acres/\$1,003,622.40
TOTAL ACREAGE/FEES PROVIDED	0.50 acres/\$1,393,920.00

- b. Storm water connection fee at \$16,771/acre for residential and \$21,562/acre for commercial.
- c. Water connection fee at \$1,164/unit for residential and \$5.97/gpd for commercial, based upon increased water usage.
- d. Sewer connection fee at \$1,406/unit for residential and \$8.52/gpd for commercial, based upon increased average wastewater flow.
- e. Wastewater Treatment Plant fee per MMC VIII, Chapter 2, Section 7.04.
- f. Calaveras Boulevard Widening Traffic Impact fee per Resolution No. 7894.
- g. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- h. FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each.

**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)*

72. 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.
73. 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.
74. 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.
75. Water Shut-down Plan: Permittee shall provide a water shut-down plan at least seven days in advance of the shut-down in coordination with the Engineering Inspector, and notify affected property owners/tenants when cut-in tee(s) is/are required.

#### **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.*

76. Completion of Public Improvements: Permittee shall complete all public improvements along the NPVD, Creed Street and Rankin Drive project frontages and conforms, including but not limited to curb, gutter, sidewalk, paving, landscaping, signing and stripping, public storm drain, sanitary sewer, water main improvements, paving, street lighting and related improvements, including the relocation of adjacent street lights necessitated by the new curb line and conforms, as shown on approved Tentative Map and associated Conditions of Approval.
77. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
78. Record Drawings: Permittee shall submit record drawings in AutoCAD, Tiff, and PDF formats for City records. Record drawings shall include all public improvements. Additionally, if the project uses recycled water, the permittee shall also submit record drawings of on-site irrigation facilities.
79. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.

#### **FIRE SAFETY CONDITIONS**

*The plans approved by City Council are **not** building plans and have not been reviewed nor approved for conformance to the California Building Code (CBC), California Fire Code (CFC) and the Milpitas Municipal Code (MMC). Do not consider the plan set approved by City Council as final building plans approved by the Fire Department. Building plans **must** be submitted for review and approval before construction is to commence. The following notes are a general list of the applicable code requirements (2016) and are provided to assist with the building permit process. Please note that these are not all inclusive. All applicable Building, Fire and Municipal Code requirements must be met in advance of any building permit approvals or related construction. Note, Jan. 01, 2020, new CA Building Codes go into effect.*



80. Technical Assistance: To determine the acceptability of technologies, processes, products, facilities, materials, and uses attending the design, operation or use of a building or premises subject to inspection by the Fire Code Official, the Fire Code Official is authorized to require the owner or agent to provide, without charge to the jurisdiction, a technical opinion(s), plan review(s) and/or reports. (CFC Section 104.7.2)
81. Electronic documents: The Fire Code Official may require electronic base documents for all construction documents and operational permits. The Fire Code Official shall designate the software base format for the electronic documents. (CFC Section 105.4.2.2, added by MMC Section V-300-2.11, and CFC Section 102.9)
82. Fire Department Access: Fire Department apparatus and staff access shall be provided to all buildings and site. Detailed review will be done during construction permit process. (CFC Section 503)
- a. Minimum Number of Fire Apparatus Access Points: A Minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided for the site. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760 m<sup>2</sup>) shall be provided with at least two means of fire apparatus access for each structure. (International Fire Code, Section D104.1, adopted and amended by MMC V-300-2.143)

Site as proposed, meets the (2) points of access requirements.

- b. Turning Radius: 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 (center). (CFC Section 503.2.4)
- c. Fire Apparatus Clearance: Fire apparatus access roads shall provide a minimum clear width of 20 feet. (CFC Section 503.2.1)
- d. Fire Apparatus Clearance at Hydrants: Fire apparatus roads shall provide not less than 26' clear width at hydrant locations. (CFC Appendix D, Section D103.1)
- e. Timing of Installation and Serviceability of Fire Protection Elements: 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)

- f. Fire Apparatus Access: 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 503.1.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided.
- g. Adjacent Access Rights: No source of access from lands adjoining a property to be developed shall be considered fire apparatus access roads, unless there is obtained the irrevocable and unobstructed rights and recorded as an ingress/egress access easement with the Country of Santa Clara. (CFC Section 503.7, added by MMC V-300-2.48)

- h. Fire Access Road Materials and Load Bearing Requirements: Fire access roads shall be paved (concrete and/or asphalt cement, or other concrete type pavement approved by the Fire Dept.). 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)
- i. Obstruction of Fire Access: Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. (CFC Section 503.4)
- j. Marking of 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 pole signage and red curb with "FIRE LANE – CVC 22500.1" stencil. Signage and red curbs shall be done throughout and as needed to clearly identify the no parking zones.

- k. Site Design Changes: 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.
83. Fire Protection Water Supply (hydrants, on-site and public): 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 and the CFC Section 507, Appendix B and Appendix C. Fire flow reduction as noted in the Appendix B of the Fire Code is not permitted.
- a. Water System Calculations: 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)
- The minimum water flow at the worst case hydrant outlet within the private system shall be not less than 1,500 gpm.
- b. Fire Hydrant Location: The location and quantity of hydrants will be evaluation during the construction permit process. This applies to the on-site private streets as well as to the public streets. (CFC Section 507.5)

- c. Private Hydrant Requirements: 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 V-300-2.54. )
  - d. No Parking in Front of Hydrants: 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
84. Access Control Devices: When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which 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 504.6, added by MMC Section V-300-2.51
85. 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

86. All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52
87. Building/Structure Requirements:
- a. Automatic Fire Sprinklers: The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 D Standards (minimum requirements). (CFC Section 903.3)
  - b. Sprinkler Drainage: 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. Storm Water Pollution Regulations
  - c. Sprinkler Design: Hydraulic design for the automatic fire sprinkler system shall provide a minimum of 20% safety margin. (CFC Section 903.3.5.6, MMC V-300-2.68)
  - d. One sprinkler design: One sprinkler design system is not permitted. (CFC Section 903.3.1.4, MMC V-300-2.64)
88. Plan Submittal: 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)

## BUILDING CONDITIONS

### ARCHITECTURAL

89. Applicable codes shall be 2016 California Residential Code (CRC), California Mechanical Code (CMC), California Electrical Code (CEC), California Plumbing Code (CPC), Green Building Standards Code (CalGreen), California Energy Code (CEnc) and 2017 Milpitas Municipal Code (MMC).
90. Unless there will be no legal property lines between each single family residence or duplex buildings, the buildings shall not be considered one building for the determination of required wall and opening protection and roof covering requirements per CBC sec. 705.3. If there will be no legal property lines between individual buildings and they are considered as portions of "one building" and when it contains more than two dwelling units, the building cannot be classified as Group R-3 occupancy but shall be classified as Group R-2 occupancy.
91. All new dwellings shall be fire-sprinklered as per CRC sec. R313.2.
92. Fire-sprinklered structures shall be located 3 feet minimum from property line and non-sprinklered structures located 5 feet minimum from the property line per CRC, Table R302.1 or exterior walls shall be one-hour fire-resistive construction.
93. Projections (eaves) shall not extend less than 24" to the property line. Projections (eaves) shall be one-hour rated on the underside in the area where projections (eaves) is 24" or less from property line as per CRC Table 302.1.
94. In enclosed private garages attached to R occupancies, provide 1 sq. ft. of ventilation area located at the lower 12" of garage wall. Said ventilation areas shall be directly communicable with the exterior, but shall not be installed where protection of openings is required as per MMC sec. II-3.5-2.03.
95. Minimum class "B" roofing is required at hillside construction per MMC sec. II-3.5-2.06.
96. In addition to smoke alarms required by CRC sec. R314, provide carbon monoxide alarms as per sec. R315.
97. Sidewalks shall be minimum 48" wide as per CBC sec. 11B-403.5.1 exception 3 and provided with accessible curb cuts and detectable warnings as per CBC sec. 11B-406.
98. Structural members exposed to weather shall be naturally durable or preservative-treated wood per CRC section R317.
99. All structures and their elements located in the hillside area shall be designed for a minimum wind speed (Vasd) of 95 mph and exposure C as per MMC sec. II-3-2.09.
100. All structures located in the hillside shall conform to minimum requirements of CBC sec. 2308.7.5 as per MMC sec. II-3-2.09.
101. Projects for all structures located in the hillside area must be prepared and designed by Civil, Structural Engineer or Architect licensed in the State of California per City Policy BDP-BLG09.

102. Provide structural design and details for all detached structures and their footings over 120 square feet and decks exceeding 200 square feet that are over 30" above grade, attached to the dwelling and/or serve the required exit as per MMC sec. II-1-17.03.
103. The buildings shall comply with solar ready requirements per CEnC 110.10.
104. No mechanical duct shall penetrate exterior walls unless approved by Planning Division.
105. New dwelling unit shall comply with the electric vehicle charging requirements to facilitate future installation and use of EV chargers per CEnC sec. 4.106.4.
106. Balconies, landings, decks, stairs and similar floor projections exposed to the weather shall comply with City Policy No. BDP-BLG40:  
[http://www.ci.milpitas.ca.gov/\\_pdfs/BLG40\\_RequirementsforConstructionofBalconies.pdf](http://www.ci.milpitas.ca.gov/_pdfs/BLG40_RequirementsforConstructionofBalconies.pdf)

### **CIVIL**

107. A soil report shall be provided when applying for grading, site improvement and building permit.
108. Paving shall comply with MMC section II-13-18. Pervious paving and turf blocks shall meet minimum TI requirement of 3.5.
109. All non-structural flat concrete work shall be as per MMC sec. II-13-17.05.
110. Grading and erosion control plan shall be submitted when applying for grading permit as per MMC sec. II-13-10 and shall be prepared by a licensed Civil Engineer.
111. Site must be recently surveyed for the verification of the slopes. Signature of Surveyor or Engineer must show date of survey.
112. All downspouts shall be directed to the landscaped areas and per soils report recommendations. Discharging into the street or City storm system is not permitted. Alternate method of discharge shall be approved by the Building and Safety Department and Engineering Department.
113. Drainage shall not be directed toward adjacent property lines.
114. Prior to issuance of building permit, all easements including private storm drain easement through adjacent parcels shall be recorded. The developer shall include interim erosion control provisions and schedules in 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 as per MMC sections II-13-10 and II-13-11.

### **LEGEND**

**P = Planning Department**  
**B = Building Department**  
**E = Engineering Department**  
**F = Fire Department**  
**CAO = City Attorney's Office**  
**ALL = All Reviewing Departments**

**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 of Permittee