

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL ADOPTING A
MITIGATED NEGATIVE DECLARATION, MITIGATION MEASURES, AND
A MITIGATION MONITORING AND REPORTING PROGRAM FOR A
PROPOSED MIXED-USE DEVELOPMENT WITH 34 RESIDENTIAL UNITS,
7,595 SQ. FT. COMMERCIAL SPACE, AND THE REMOVAL AND
REPLACEMENT OF 51 DEVELOPMENT TREES. LOCATED AT 1655 S. DE
ANZA BLVD. (APN: 366-10-061, -126)**

SECTION I: PROJECT DESCRIPTION

Application No.: EA-2022-005
Applicant: Carlson Chan (Prospect Venture LLC)
Property Owner: Prospect Venture, LLC
Location: 1655 S. De Anza Blvd. (APNs 366-10-061, -126)

SECTION II: ENVIRONMENTAL REVIEW PROCESS

WHEREAS, the City of Cupertino received an application on June 20, 2021 for a Development Permit, Architectural and Site Approval, Use Permit, Tentative Map, and Tree Removal Permit, to allow the development of a new mixed-use development consisting thirty-four (34) residential units and 7,595 sq. ft. of commercial with associated site and landscaping improvements, and associated environmental review ("Project"); and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) ("CEQA Guidelines"), the City prepared an Initial Study and proposed Mitigated Negative Declaration ("Project"); and

WHEREAS, the Project is described in the March 2021 "1655 South De Anza Boulevard Mixed-Use Project Initial Study" ("Draft IS/MND"); and

WHEREAS, on October 14, 2022 the City issued a Notice of Intent to Adopt a Mitigated Negative Declaration; and

WHEREAS, on October 14, 2022, the IS/MND for the project was distributed to responsible agencies and the public for review and comment for a 20-day period that ended November 2, 2022; and

WHEREAS, the IS/MND concluded that significant environmental effects on Noise, and Transportation would be avoided or reduced to less-than-significant levels by mitigation measures (“MM”) identified in the IS/MND; and

WHEREAS, on October 20, 2022, the City of Cupertino’s Environmental Review Committee held a duly noticed public hearing to receive public testimony and reviewed and considered the information contained in the Draft IS/MND, and voted 4-0-1 to recommend that the City Council adopt the Draft IS/MND (EA-2022-005) and mitigation measures; and

WHEREAS, a Response to Comments (RTC) document dated May 15, 2023 was prepared in response to comments received during the public review period, which together with the Draft IS/MND constitute the Final IS/MND; and

WHEREAS, the comments received do not require major revisions to the Draft IS/MND due to new or substantially more severe significant effects on the environment; and

WHEREAS, on May 23, 2023, the Planning Commission held a duly noticed public hearing to receive staff’s presentation and public testimony, and to consider the information contained in the Final IS/MND along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing, and recommended on a 5-0 vote, based on substantial evidence in the record, that the City Council adopt the Final MND, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the Final IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, the City Council has independently reviewed and considered the Final IS/MND together with the comments and the responses to those comments prior to taking action on the Project; and

WHEREAS, the comments received between the Planning Commission meeting and the City Council meeting do not require major revisions to the Final IS/MND due to new or substantially more severe significant effects on the environment; and

WHEREAS, on _____, 2023 prior to taking action on the Project, the City Council held a duly noticed public hearing to receive staff’s presentation and public testimony, and to further consider the information contained in the Final IS/MND, along with all staff reports, other pertinent documents, and all written and oral statements received prior to and at the public hearing.

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of the Final IS/MND, comments on the Final IS/MND, maps, facts, exhibits, testimony, staff reports, public comments, and other evidence submitted in this matter, the City Council:

1. Finds that the Final IS/MND for the Project has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City.
2. Finds that, on the basis of the whole record before it, there is no substantial evidence that the Project as proposed and mitigated will have a significant effect on the environment.
3. Finds that the text revisions to the Final IS/MND merely clarify, amplify or make insignificant modifications to the Final IS/MND; therefore, recirculation of the Final IS/MND is not required.
4. Adopts the Mitigated Negative Declaration for the Project.
5. Adopts and incorporates into the Project all of the mitigation measures identified in the Final IS/MND. The City Council further makes the mitigation measures, which are listed below, required conditions of approval of the Project to the extent they are within the responsibility and jurisdiction of the City:

a. NOISE

Mitigation Measure NOISE-1a: The project applicant shall identify in the Construction Noise Control Plan required pursuant to Cupertino Municipal Code Section 17.04.050(G)(2), Manage Noise During Construction, that a temporary sound barrier between the construction zone on the project site and the adjacent residences along the entirety of the project site boundary to the west with a minimum height of 12 feet and free of gaps and holes made of either a (a) 0.75-inch-thick plywood wall or (b) hanging blanket/curtain with a surface density or at least 2 pounds per square foot, would be installed to reduce construction noise levels to meet the 80 dBA limit in CMC Section 10.48.053.

Mitigation Measure NOISE-1b: Prior to issuance of building permits, the mechanical equipment and heating, ventilation, and air conditioning (HVAC) equipment shall be selected and designed to reduce impacts on surrounding uses to meet the Cupertino Municipal Code noise limits of 60 dBA and 50 dBA at residential uses during daytime and nighttime, respectively, and 65 dBA and 55 dBA at non-residential sensitive uses during daytime and nighttime, respectively. A qualified acoustical consultant shall be retained by the project applicant to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level

requirements. Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's noise level requirements. Noise reduction measures could include, but are not limited to:

- Selection of equipment that emits low noise levels;
- Installation of noise dampening techniques, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors; or
- Locating equipment in less noise-sensitive areas, where feasible.

Mitigation Measure NOISE-2: If paving activity during construction is required within 25 feet of nearby structures, the use of a static roller in lieu of a vibratory roller shall be employed. This mitigation measure shall be identified on the permit application drawing set and as part of the construction drawing set, and shall be implemented by the on-site Construction Manager.

b. TRANSPORTATION

Mitigation Measure TRANS-1: The project applicant shall implement the following measures to reduce vehicle miles traveled (VMT) to meet the residential vehicle-miles traveled threshold of 11.50 VMT per capita.

- **Project Fair Share Contribution.** Prior to approval of the final subdivision map, the project applicant shall pay a fair share contribution of \$10,000 toward the bicycle improvements along Prospect Road that are planned in the City of Cupertino 2016 Bicycle Transportation Plan. The improvements include the addition of Class II buffered bike lanes along Prospect Road between De Anza Boulevard and Stelling Road, which would narrow the travel lanes on Prospect Road east of Galway Drive thereby reducing vehicle speeds to create a safer environment and promote walking and biking as alternatives to driving and reduce VMT.
- **Transportation Coordinator.** Prior to certificate of occupancy, the project applicant shall establish a "transportation coordinator" that shall implement and monitor the residential VMT reduction strategies described in this mitigation measure and future VMT reduction strategies if changes to the residential VMT reduction strategies described in this mitigation measure are warranted. The transportation coordinator shall be responsible for the preparation and submittal of an Annual Residential VMT Reduction Status Report, to be reviewed and approved by the City of Cupertino. The Annual Residential VMT Reduction Status Report shall include supporting

documentation prepared by a City-approved qualified transportation engineer retained by the transportation coordinator to demonstrate the residential VMT reduction strategies are reducing residential VMT per capita from the residential 13.97 VMT per capita estimated in the Initial Study towards meeting the City of Cupertino's adopted threshold. Where it is demonstrated in the Annual Residential VMT Reduction Status Report that the residential VMT reduction strategies are not reducing residential VMT to the satisfaction of the City of Cupertino, the transportation coordinator together with the City of Cupertino, shall select from other approved VMT reduction strategies in the Santa Clara Countywide VMT Evaluation Tool. The transportation coordinator shall retain a City-approved qualified transportation engineer to apply the new VMT reduction strategies in the Santa Clara Countywide VMT Evaluation Tool to demonstrate the reduction strategies will achieve the City of Cupertino's adopted VMT threshold. Once the Annual Residential VMT Reduction Status Report demonstrates that residential VMT is being reduced from the residential 13.97 VMT per capita estimated in the Initial Study towards meeting the City of Cupertino's adopted threshold for five consecutive years from issuance of the certificate of occupancy, no additional reporting shall be required.

- School Pool Program. Prior to issuance of certificate of occupancy, the project applicant shall prepare a School Pool Program to the satisfaction of the City of Cupertino to reduce residential VMT by matching parents of the proposed residential development who transport students to and from schools without a bussing program, including private schools, charter schools, and neighborhood schools where students cannot walk or bike, or where parents would rather their children not walk or bike. The School Pool Program shall be:
 - Included in resident welcome packets and clearly stated that the program is open to all residents. The building management would be responsible for preparing the welcome packet materials and distributing to all new residents; and,
 - Provided via an online kiosk/webpage with current school pool program information available at all times. The online kiosk/webpage would provide resident and school information for residents interested in participating in the school carpool program. Those residents that register for the program online could connect with other residents participating in the program to schedule carpools. The building management would be responsible for

creating the online kiosk/webpage so that it is up and running as soon as the residential development is ready for leasing. The building management (and/or website designer) would be responsible for adding new information to the website so that the online kiosk remains current and informative.

- Electric Bicycle Program. Prior to the issuance of building permits, the project applicant shall submit a site-wide Electric Bicycle Program (EBP) to the Community Development Department, for review and approval. The EBP shall include the following:
 - The project applicant shall initially purchase a total of 20 mid-range (\$1,500 to \$2,500), commuter/leisure electric bicycles (e-bikes), that are Underwriters Laboratory (UL) 2849 certified e-bikes that provide fire safety certification by examining the electrical drive train, battery, and charger system combinations, to form an e-bike pool. These e-bikes shall be purchased prior to certificate of occupancy.
 - Because e-bikes are an evolving field and new technological advances are occurring regularly, the EBP shall include provisions for updating the e-bike pool with safe and efficient fleet over the life of the program.
 - The e-bikes shall be available for use to any resident of the project (apartment units and townhomes) by advanced reservation on an hourly or daily basis.
 - The EBP shall identify how the reservation system will be managed and by whom. For example, the reservation system could be a pen and paper sign up system, online, etc. and would be coordinated through the Transportation Coordinator.
 - The EBP shall identify where the secure e-bike parking will be located and how it will be accessed by future residents of the apartments and townhomes. For example, the e-bike parking area could be located in the covered parking area and would be accessible by distributing electronic key cards or fobs to residents.
 - The e-bike parking shall provide 20 charging stations so that each e-bike is fully charged each day, secure, and accessible to residents only.
 - The EBP shall identify who is responsible for coordinating the routine maintenance of the e-bike fleet by a professional e-bike service semi-annually or as needed when a bike is operational. For example, the

Homeowners Association, or equivalent body, could be responsible for this task.

- The EBP shall identify where the bike maintenance station would be provided on site to allow residents to perform basic maintenance and repairs on their own personal bicycles (e-bikes and non-e-bikes) without having to purchase their own tools and also make basic adjustments to an e-bike from the e-bike pool for seat adjustments, etc.
- The bike maintenance station shall be in the e-bike storage location or in close proximity and shall include, at a minimum, a bicycle pump, wrenches, a chain tool, lubricants, tire levers, hex keys/Allen wrenches, torx keys, screwdrivers, and spoke wrenches. The bike repair station shall be available for residents to maintain and fix their bicycles without having to purchase their own tools.
- The EBP shall identify who is responsible for maintaining the bike maintenance station. For example, the Homeowners Association, or equivalent body, could be responsible for this as part of their job assignment.
- The EBP shall include the procedures for implementing an annual e-bike program survey to be given to residents to gather information on the success of the program and ascertain information on how to make the program more successful. The procedures shall state that first survey shall be conducted within six months of initiating the program, the second within 12 months, and then on an annual basis.
- The project applicant shall provide this program to residents of the project site at no cost for at least five years. If the annual e-bike program survey generates the need for more bikes, then it may be appropriate to add a fee structure at that time.
- Car Share Program. Prior to issuance of certificate of occupancy, the project applicant shall demonstrate to the satisfaction of the City of Cupertino that the project would provide subsidized memberships to a car sharing program (e.g., Zipcar and GetAround) for residents with a valid driver's license upon request. The Car Share Program shall include a dedicated car share vehicle parking on-site or at a convenient location within 0.25 miles of the project site. Because the car sharing services are a low-cost alternative to car ownership and provide flexibility to those who use other transportation modes for their daily commute but may need to access a car for mid-day errands, car sharing

helps support the use of walking, biking, carpooling, and transit by providing another means for business/day vehicle trips or a guaranteed ride home option, allowing for overall reductions in automobile use which results in reduced VMT.

- Behavioral Intervention Program. Prior to certificate of occupancy, the project applicant shall prepare a Behavior Intervention Program that will provide individualized transportation information for each resident to the satisfaction of the City of Cupertino that will reduce residential VMT by encouraging residents to use travel modes other than single-occupant vehicles as part of the new resident move-in process. To implement this program, “transportation coordinator” will work with residents to prepare the individualized transportation information for each resident. The transportation coordinator shall review the most current Santa Clara Valley Transportation Authority (VTA) bicycle and transit maps and work with each resident to identify key destinations for that resident which may include locations such as work, school, shopping and/or recreational destinations. The resident and transportation coordinator would then map out feasible bicycle routes including the bicycle facility class types and transit routes to each destination including travel times, necessary bus transfers, and fare pricing. Bicycle and transit routes to common amenities such as grocery stores, drug stores, banks, and post offices would also be mapped out. Implementing this program would encourage the use of transit, shared ride modes, bicycling, and walking, thereby reducing drive-alone vehicle trips and residential VMT. Additional encouragement could be provided in the form of subsidies if participation in the program is lower than expected.

6. Adopts the Mitigation Monitoring and Reporting Program for the Project, as amended, attached hereto as Exhibit EA-1, and incorporated herein by reference, which incorporates all the mitigation measures identified in the Final IS/MND.
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PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 21st day of June, 2023 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Hung Wei, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

Mitigation Monitoring and Reporting Program

1655 S. De Anza
Blvd.

APN: 366-10-061& -126

June 2023

Mitigation Measure	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p><u>NOISE</u></p> <p>Mitigation Measure NOISE-1a: The project applicant shall identify in the Construction Noise Control Plan required pursuant to Cupertino Municipal Code Section 17.04.050(G)(2), Manage Noise During Construction, that a temporary sound barrier between the construction zone on the project site and the adjacent residences along the entirety of the project site boundary to the west with a minimum height of 12 feet and free of gaps and holes made of either a (a) 0.75-inch-thick plywood wall or (b) hanging blanket/curtain with a surface density of at least 2 pounds per square foot, would be installed to reduce construction noise levels to meet the 80 dBA limit in CMC Section 10.48.053. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</p>	Applicant. Prior to issuance of building permits	During Plan review and approval, site inspections. Once for plan review/ during scheduled construction site inspections.	City of Cupertino Public Works
<p>Mitigation Measure NOISE-1b: Prior to issuance of building permits, the mechanical equipment and heating, ventilation, and air conditioning (HVAC) equipment shall be selected and designed to reduce impacts on surrounding uses to meet the Cupertino Municipal Code noise limits of 60 dBA and 50 dBA at residential uses during daytime and nighttime, respectively, and 65 dBA and 55 dBA at non-residential sensitive uses during daytime and nighttime, respectively. A qualified acoustical consultant shall be retained by the project applicant to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level requirements. Mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's noise level requirements. Noise reduction measures could include, but are not limited to:</p> <ul style="list-style-type: none"> • Selection of equipment that emits low noise levels; 	Applicant. Prior to issuance of building permits	During Plan review and approval, site inspections. Once for plan review/ during scheduled construction site inspections.	Qualified acoustical consultant and City of Cupertino Public Works & Building Department

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<ul style="list-style-type: none"> • Installation of noise dampening techniques, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors; or • Locating equipment in less noise-sensitive areas, where feasible. 			
Mitigation Measure NOISE-2: If paving activity during construction is required within 25 feet of nearby structures, the use of a static roller in lieu of a vibratory roller shall be employed. This mitigation measure shall be identified on the permit application drawing set and as part of the construction drawing set, and shall be implemented by the on-site Construction Manager.	Applicant. During Construction.	Plan review and approval, site inspections. Once for plan review/ during scheduled construction site inspections	Qualified acoustical consultant and City of Cupertino Public Works & Building Department
<p><u>TRANSPORTATION</u></p> <p>Mitigation Measure TRANS-1: The project applicant shall implement the following measures to reduce vehicle miles traveled (VMT) to meet the residential vehicle-miles traveled threshold of 11.50 VMT per capita.</p> <ul style="list-style-type: none"> ▪ Project Fair Share Contribution. Prior to approval of the final subdivision map, the project applicant shall pay a fair share contribution of \$10,000 toward the bicycle improvements along Prospect Road that are planned in the City of Cupertino 2016 Bicycle Transportation Plan. The improvements include the addition of Class II buffered bike lanes along Prospect Road between De Anza Boulevard and Stelling Road, which would narrow the travel lanes on Prospect Road east of Galway Drive thereby reducing vehicle speeds to create a safer environment and promote walking and biking as alternatives to driving and reduce VMT. 	Applicant and Transportation Coordinator. Prior to approval of the final subdivision map and certificate of occupancy	Approval of the final subdivision map, issuance of certificate of occupancy and annual approval of the Annual Residential VMT Reduction Status Report. During permit issuance for building permits, certificate of occupancy, and annually until a reduction in VMT has occurred to the satisfaction of the City for five consecutive years.	City of Cupertino Public Works, and Planning and Building Department

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<ul style="list-style-type: none"> Transportation Coordinator. Prior to certificate of occupancy, the project applicant shall establish a “transportation coordinator” that shall implement and monitor the residential VMT reduction strategies described in this mitigation measure and future VMT reduction strategies if changes to the residential VMT reduction strategies described in this mitigation measure are warranted. The transportation coordinator shall be responsible for the preparation and submittal of an Annual Residential VMT Reduction Status Report, to be reviewed and approved by the City of Cupertino. The Annual Residential VMT Reduction Status Report shall include supporting documentation prepared by a City-approved qualified transportation engineer retained by the transportation coordinator to demonstrate the residential VMT reduction strategies are reducing residential VMT per capita from the residential 13.97 VMT per capita estimated in the Initial Study towards meeting the City of Cupertino’s adopted threshold. Where it is demonstrated in the Annual Residential VMT Reduction Status Report that the residential VMT reduction strategies are not reducing residential VMT to the satisfaction of the City of Cupertino, the transportation coordinator together with the City of Cupertino, shall select from other approved VMT reduction strategies in the Santa Clara Countywide VMT Evaluation Tool. The transportation coordinator shall retain a City-approved qualified transportation engineer to apply the new VMT reduction strategies in the Santa Clara Countywide VMT Evaluation Tool to demonstrate the 			

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<p>reduction strategies will achieve the City of Cupertino's adopted VMT threshold. Once the Annual Residential VMT Reduction Status Report demonstrates that residential VMT is being reduced from the residential 13.97 VMT per capita estimated in the Initial Study towards meeting the City of Cupertino's adopted threshold for five consecutive years from issuance of the certificate of occupancy, no additional reporting shall be required.</p> <ul style="list-style-type: none"> ▪ School Pool Program. Prior to issuance of certificate of occupancy, the project applicant shall prepare a School Pool Program to the satisfaction of the City of Cupertino to reduce residential VMT by matching parents of the proposed residential development who transport students to and from schools without a bussing program, including private schools, charter schools, and neighborhood schools where students cannot walk or bike, or where parents would rather their children not walk or bike. The School Pool Program shall be: ▪ Included in resident welcome packets and clearly stated that the program is open to all residents. The building management would be responsible for preparing the welcome packet materials and distributing to all new residents; and, ▪ Provided via an online kiosk/webpage with current school pool program information available at all times. The online kiosk/webpage would provide resident and school information for residents interested in participating in the school carpool program. Those residents that register for the 			

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<p>program online could connect with other residents participating in the program to schedule carpools. The building management would be responsible for creating the online kiosk/webpage so that it is up and running as soon as the residential development is ready for leasing. The building management (and/or website designer) would be responsible for adding new information to the website so that the online kiosk remains current and informative.</p> <ul style="list-style-type: none"> ▪ Electric Bicycle Program. Prior to the issuance of building permits, the project applicant shall submit a site-wide Electric Bicycle Program (EBP) to the Community Development Department, for review and approval. The EBP shall include the following: <ul style="list-style-type: none"> ○ The project applicant shall initially purchase a total of 20 mid-range (\$1,500 to \$2,500), commuter/leisure electric bicycles (e-bikes), that are Underwriters Laboratory (UL) 2849 certified e-bikes that provide fire safety certification by examining the electrical drive train, battery, and charger system combinations, to form an e-bike pool. These e-bikes shall be purchased prior to certificate of occupancy. ○ Because e-bikes are an evolving field and new technological advances are occurring regularly, the EBP shall include provisions for updating the e-bike pool with safe and efficient fleet over the life of the program. ○ The e-bikes shall be available for use to any resident of the project (apartment units and townhomes) by advanced reservation on an hourly or daily basis. 			

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<ul style="list-style-type: none"> ○ The EBP shall identify how the reservation system will be managed and by whom. For example, the reservation system could be a pen and paper sign up system, online, etc. and would be coordinated through the Transportation Coordinator. ○ The EBP shall identify where the secure e-bike parking will be located and how it will be accessed by future residents of the apartments and townhomes. For example, the e-bike parking area could be located in the covered parking area and would be accessible by distributing electronic key cards or fobs to residents. ○ The e-bike parking shall provide 20 charging stations so that each e-bike is fully charged each day, secure, and accessible to residents only. ○ The EBP shall identify who is responsible for coordinating the routine maintenance of the e-bike fleet by a professional e-bike service semi-annually or as needed when a bike is operational. For example, the Homeowners Association, or equivalent body, could be responsible for this task. ○ The EBP shall identify where the bike maintenance station would be provided on site to allow residents to perform basic maintenance and repairs on their own personal bicycles (e-bikes and non-e-bikes) without having to purchase their own tools and also make basic adjustments to an e-bike from the e-bike pool for seat adjustments, etc. 			

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transportation coordinator would then map out feasible bicycle routes including the bicycle facility class types and transit routes to each destination including travel times, necessary bus transfers, and fare pricing. Bicycle and transit routes to common amenities such as grocery stores, drug stores, banks, and post offices would also be mapped out. Implementing this program would encourage the use of transit, shared ride modes, bicycling, and walking, thereby reducing drive-alone vehicle trips and residential VMT. Additional encouragement could be provided in the form of subsidies if participation in the program is lower than expected.			