

RESOLUTION NO. 11-048**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING THE MILPITAS CITY COUNCIL APPROVE SITE DEVELOPMENT PERMIT AMENDMENT NO. SA11-0005, MAJOR TENTATIVE MAP AMENDMENT NO. TM11-0001 AND CONDITIONAL USE PERMIT AMENDMENT NO. UA11-0008 FOR THE CITATION RESIDENTIAL PROJECT, TO ALLOW THE DEVELOPMENT OF 732 CONDOMINIUM UNITS LOCATED AT 1200 PIPER DRIVE**

WHEREAS, on July 1, 2011, an application was submitted by Michael Sullivan of SCS Development, for a request to amend a previously approved project to allow for a fifth story on two buildings and the replacement of one building with townhomes. The parcels could accommodate up to 732 dwelling units with a density transfer agreement. The proposal includes a vesting tentative map for condominium purposes. Other amendments substantially conform to the previously approved project. This proposal includes development plans and architectural review for the project. The property is located within the High Density Residential with Transit Oriented Development Overlay and Site and Architectural Overlay (R3-TOD-S) Zoning district (APN: 086-32-037); and

WHEREAS, Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission recommend that the City Council determine this project exempt; and

WHEREAS, on September 28, 2011, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and continued the public hearing to October 12, 2011; and

WHEREAS, on October 12, 2011, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

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

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is exempt pursuant to Section 15168(c)(2) of the CEQA Guidelines because staff determined that the project is consistent with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council

Section 3: With respect to the Site Development Permit:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the project follows the design guidelines and the street sections

identified in the Transit Area Specific Plan. The project allows for the movement of pedestrians throughout the site.

Section 4: With respect to the Site Development Permit, Conditional Use Permit and Major Tentative Map:

1. The project is consistent with the Milpitas Subdivision Ordinance in that the project meets the standards for a Tentative Map.

2. The project is consistent with the Milpitas Zoning Ordinance in that the project meets the density allowed for the zoning district through density averaging.

3. The project is consistent with the Milpitas General Plan in that the project meets the density allowed for in the land use designation through density averaging.

4. The project is consistent with the Transit Area Specific Plan in that the project meets the allowable density (with the density transfer agreement) and follows the design guidelines and street sections prescribed in the plan.

Section 5: With respect to the Conditional Use Permit the proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare in that those applicable standards for development will be followed.

Section 6: The Planning Commission authorizes staff to make minor technical changes as needed to the Conditions of Approval recommended to the City Council to accommodate engineering and regulatory requirements.

Section 7: The Planning Commission of the City of Milpitas hereby recommends the Milpitas City Council approve Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008, subject to the above Findings, Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on October 12, 2011.

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 October 12, 2011, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				
John Luk				

EXHIBIT 1

**RESTATED CONDITIONS OF APPROVAL
Citation Residential Project (SA11-0005, TM11-0001, and UA11-0008)**

General Conditions

1. These conditions of approval supersede the conditions stated in Resolution No. 09-069 adopted by the Planning Commission on January 28, 2009. (P)
2. The owner or designee shall develop the approved project in conformance with the approved plans, sample color and materials board approved by the Planning Commission on September 28, 2011, in accordance with these Conditions of Approval. (P)
3. Any deviation from the approved site plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee 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, in accordance with the Zoning Ordinance. (P)
4. SA11-0005 and UA11-0008 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:
 - 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.
5. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of 18 months if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein for the Conditional Use Permit and Site Development Permit. (P)
6. Major Tentative Map Amendment No. TM11-0001 shall be effective for two years, unless a time extension is requested and approved by the City Council upon recommendation from the Planning Commission. All other extensions shall be in accordance with State law. (P)

7. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
8. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
9. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place pursuant to the approved phasing plan as approved by the Planning Director or designee. (P)
10. Portion of the proposed development is located within the Special Flood Hazard Zone AO (depth 1), and therefore shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code Federal Regulations and City's Flood Plain Management Regulations, City of Milpitas Code Title XI Chapter 15. Prior to final map approval for the phase II mapping of the project (parcel 2 subdivision), the owner or designee shall obtain a Conditional Letter of Map Revision (CLOMR) from Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain. The developer shall also obtain a Letter of Map Revision (LOMR) prior to building permit issuance, and provide all elevation certificates prior to final building inspection or certificate of occupancy for any portion of the development. (E)
11. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
12. Prior to issuance of any building permits, the owner or designee shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
13. The owner or designee shall comply with new Municipal Regional Permit (MRP) Order R2-2009-0074 or latest revision requirements for post construction C3 provisions for new development and redevelopment regulated projects storm water treatment requirements, and National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009—0009 NPDES No. CAS000002 or latest revision for pre construction storm water treatment requirements. (E)

14. Prior to final map approval for the phase II mapping of the project (parcel 2 subdivision), the owner or designee shall submit a storm water management plan that incorporates best management practices (BMPs) for treatments of stormwater run off from all parcels. The stormwater management plan shall incorporate source control, site design and stormwater treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the latest California Stormwater Quality Association (CASQA) BMP handbooks. Developer agrees to modify site plan to incorporate said BMPs as required and to the satisfaction of the City Engineer including the following conditions of approval:
- A. Owner or designee shall submit a Storm Water Management Plan package for review and approval.
 - B. Owner or designee shall revise site plan and site grading and drainage plan, landscaping and building plans to be consistent with the approved Storm Water Management Plan. The Plan and Report shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
 - C. Prior to issuance of Certificate of Occupancy, the Owner or designee shall submit a Storm water Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure 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). The treatment BMPs shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
 - D. Owner or designee shall include in the approved CC&R, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination System (NPDES) requirements. If the City does not receive the report, City will conduct the field inspection and report, and the owner shall be responsible to pay all associated costs.
 - E. Prior to Final occupancy, the Owner or designee shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
 - F. Owner or designee shall comply with all "Model Conditions Of Approval For Stormwater Quality" as shown in the Stormwater Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 or latest revisions and are hereby incorporated as conditions of project approval.

- G. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the Owner or designee approved Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Any changes to the approved Storm water Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.
- H. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb one (1) acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and accepted by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
15. Prior to any building permit issuance, the Owner or designee shall submit an executed petition to annex the subject property into the future Transit Area Community Facility District (CFD 2008-1), and agree to pay the special taxes levied by CFD for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the parcel map recordation or prior to any building permit issuance, whichever occurs first. The developer 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. (E)
16. Owner or designee shall comply with all obligations as defined in the approved and recorded "COST SHARING AND REIMBURSEMENT AGREEMENT-Milpitas Transit Area Specific Plan-Piper/Montague Sub-district-Milpitas, California," Document 20427520, O.R., recorded 9/10/2009 in the County of Santa Clara Recorder's Office, State of California. The shared infrastructure improvements shall be subject to the City Engineer approval. (E)

17. Prior to building permit issuance, Owner or designee will be required to contribute toward the upsizing of the sewer line on Curtis Avenue, known as sewer project 11E in the City of Milpitas Sewer Master Plan. (E)
18. The Owner or designee shall submit the following items with the building permit application and pay the related fees prior to building permit issuance, or as directed by the City Engineer:
 - A. Storm water connection fee of **\$268,336** (based on 16 acre @ \$16,771/acre). This fee shall be paid in full with the first phase of development.
 - B. Water connection fee of **\$922,172** (based on 94 units at \$1,910/U and 638U @ \$1,164/U).
 - C. Sewer connection fee of **\$1,076,380** (based on 94 units at \$1,908/U and 638U @ \$1,406/U).
 - D. Water Service Agreement(s) for water meter(s) and detector check(s).
 - E. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). (E)
19. Owner or designee shall comply with the Transit Area Specific Plan requirements, and approved EIR requirements, pay the impact fees and address all required mitigations. (E)
20. Prior to building permit issuance, Owner or designee must pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. These fees are collected as part of the secured subdivision improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
21. In accordance with Milpitas Municipal Code XI-1-7.02-2, the Owner or designee shall underground all existing wires within the proposed subdivision. All existing poles within the proposed subdivision and the project frontage, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more, have to be undergrounded. (E)
22. The Owner or designee shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)

23. Prior to start of any construction, the Owner or designee shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, and construction information signage. The Owner or designee shall coordinate their construction activities with other construction activities in the vicinity of this project. Upon City Engineer's request, developer's contractor is also required to submit updated construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
24. The Owner or designee shall not obstruct the noted sight distance areas as indicated on the City standard drawing, as approved by ordinance 66.3. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
25. The Owner or designee shall submit an agreement for density averaging of the project to the satisfaction of the City Attorney. The recordation of this agreement with the County of Santa Clara shall occur prior to the recordation of the final map. (P/CA)
26. Prior to building permit issuance, the Owner or designee shall submit an acoustical and vibration study. The findings of such study shall demonstrate compliance with the City's Municipal Code, General Plan and Transit Area Specific Plan and incorporate the findings into the plans for building permit consideration. (P)
27. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements (existing or proposed) and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
28. Prior to any work within public right of way or City easement, the Owner or designee shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
29. If necessary, the Owner or designee shall obtain required construction dewatering, or industrial wastewater discharge approvals from the City and San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755, and pay the related fees. (E)
30. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The Owner or designee shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
31. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the Owner or designee shall:

- A. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

32. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240); the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. Recycled water irrigation shall be provided for all common areas within the townhome in-tract parcel, and all other areas maintained by the HOA for the project, including Piper Cul-de-Sac landscape areas. To meet the recycle water guideline the Owner or designee shall:

- A. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines and California Department of Public Health (CDPH) separation requirements. Prior to building permit issuance the City will submit the plans to the CDPH for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and (CDPH) approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
- B. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas. (E)

33. It is the responsibility of the Owner or designee to obtain any necessary permits/approvals from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Transportation Agency, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)

34. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the Owner or designee may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)

35. The Owner or designee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
36. Owner or designee shall make changes as noted on Engineering Services Exhibit "T"(dated 9/16/2011) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)

Site Development Permit:

37. The Owner or designee shall coordinate with the property owner(s) to the north to place a pedestrian gate or passageway to allow access between the industrial properties to the north and the project site. Demonstration of this passageway shall be incorporated on plans submitted for site improvement plan check. (P)
38. Prior to building permit plan check submittal, the Owner or designee shall work with staff on the design and intent of the “bonus” rooms within the townhome product to ensure compliance with the zoning ordinance. (P)
39. All units shall have a minimum 60 square feet of balcony space in accordance with the zoning ordinance. The Unit B3 floor plan of the wrap product shall be revised prior to building permit plan check submittal to include a minimum 60 square feet of balcony space in compliance with the zoning ordinance. (P)
40. To deter vandalism on the perimeter walls of the project, the Owner or designee shall demonstrate prior to building permit issuance the incorporation of deterrent measures such as anti-graffiti coatings and provide for the growth and maintenance of vines. (P)
41. Prior to issuance of building permits of each building or as directed by the City Engineer and Planning and Neighborhood Services Director, the Owner or designee shall pay the Transit Area Development Impact Fee. (P/E)
42. Owner or designee shall submit a final solid waste handling plan showing how the trash and recycling waste will be handled prior to any building permits issuance for Parcels 1 and 3. (E)
43. Prior to any building permit issuance for parcel 1 and 3, Owner or designee shall incorporate following solid waste services requirements to the satisfaction of the City Engineer:
 - A. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house self-contained compactor equipment. The access to the location and size of the enclosure shall be designed to the City Engineer’s satisfaction and shown on the plans prior to building permit issuance.

The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.

- B. The property management shall be responsible for solid waste management, including transfer of material to the compactors. Developer shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall state how the residential waste will be conveyed to the collection the compactor area for disposal. Show the path of travel for refuse. Demonstrate how recycling shall have a separately maintained process from garbage handling.
 - C. Prior to occupancy permit issuance, the property management shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Allied Waste Services (formally BFI). After the applicant has full occupancy, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact Allied Waste Services at (408) 432-1234. (E)
44. The proposed modifications to the Piper Drive Cul-de-Sac/Over all Piper Drive will be subject to the following conditions:
- A. Owner or designee shall design, construct improvements and maintain all such area via a conditional Encroachment Permit agreement defining covenants of such agreement for improvements upon such public right-of-way for the Piper Drive Cul-de-Sac.
 - B. The proposed plan shall not conflict with the proposed BART improvements along Piper Drive. Owner or designee shall modify plans to the satisfaction of the City Engineer for any design conflicts to address this concern. Construction improvements of Piper Drive by Owner or designee shall be coordinated with the Piper Drive BART construction improvements. (E)

Tentative Map

45. Prior to final map approval for the phase II (parcel 2 subdivision), Owner or designee shall complete an area wide Flood Study, demonstrating that the proposed development has NO adverse impact to the surrounding flood plain within the Special Flood Hazard Area and flood carrying capacity of the area. The study should include cumulative effect of the proposed development combined with existing and anticipated developments will not increase the water surface elevation of the Base Flood (BFE) more than one-tenth of a foot at any point. Additionally, for the AO Flood Zone, the flood study is required in

order to establish the BFE and development requirements. The flood study must be prepared consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. Project to be included in this study, including but not limited to, D.R. Horton on McCandless, Integral, Trumark @ Trade Zone, Capitol Towers, Montague/Piper TASP sub-district, and the BART Project. (E)

46. The proposed modifications to Parcel 2, amending TM08-0004, into 10 building parcels for townhome purposes is hereby subject to the following additional conditions of approval:
 - A. Owner or designee shall submit a solid waste handling plan to adequately address requirements for curbside service prior to final map approval. Developer shall make changes to the proposed site plan to address any identified issues to provide curb side service with the approved solid waste handling plan. Any changes to the approved site plan will require City review and approval. The HOA shall be fully responsible for property owners to manage and set out the solid waste bins in accordance with the approved solid waste handling plan.
 - B. Owner or designee shall submit a hydraulic analysis report by a registered engineer to adequately address in-tract private water system with master meters to meet requirements for water flow for domestic and fire service. (E)
47. Prior to building permit issuance, the Owner or designee shall submit a grading plan and a drainage study prepared by a registered Civil Engineer, consistent with the approved CLOMR. The drainage study shall analyze the existing and ultimate conditions and facilities, taking into account cumulative impacts for all projects within the affected area. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study. (E)
48. Prior to final map approval, the Owner or designee shall establish necessary homeowner association (HOA). Membership of the HOA shall include all owners. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets and shall have assessment power. The HOA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
49. Owner or designee shall process and record the master final map as shown in the phasing plan to include offers of dedication to include LOT I (Public Street A, Public Street B, Public Street C, and Public Street D), LOT J (Public Park). The City will accept such offers of dedication upon public improvement completion as better defined in the subdivision improvement agreement to be approved by the City Council. (E)

50. Prior to final map approval, the Owner or designee shall bond for design and construction of all necessary public improvements, including but not limited to, the public improvements on Milpitas Boulevard, Piper Drive, proposed public park, and proposed public streets A, B, C and D, as identified and consistent with requirements and obligations of the *Cost Sharing and Reimbursement Agreement for Milpitas Transit Area Specific Plan – Piper/Montague Subdistrict*. Plans for all public improvements shall be prepared on Mylar (24"x 36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format) upon completion of improvements. The developer shall also execute a secured subdivision improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor and materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the Transit area Specific Plans requirements and City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance. (E)
51. Prior to final map approval, Owner or designee is required to conduct a hydraulic modeling of Water and Sewer system to verify capacity of the proposed system for the subarea. (E)
52. Prior to any map recordation, the Owner or designee shall update accordingly the "Traffic Operations Analysis for the Piper-Montague Sub-district, dated September 22, 2008" and provide the updated study to the City. (E)
53. Due to the Utility Relocation project by VTA/BART the points of connections as shown on the approved Master Tentative Map will/may slightly change. Owner or designee shall coordinate with VTA/BART for the new point of connections for the proposed utilities. (E)
54. Prior to any building permit issuance, the Owner or designee shall record a final map. (E)
55. Prior to final map recordation, the Owner or designee shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
56. Prior to or concurrent with the final map recordation Owner or designee shall vacate the existing easements that are not needed and relocate/abandon the existing private/public easements to the City Engineer satisfaction. (E)
57. The tentative map and the subsequent final map(s) shall designate all common lots and easements as lettered lots or lettered easements. (E)
58. Prior to or concurrent with recordation of the first Final Map for the project, Owner or designee shall dedicate Lot "J" to the City in fee, as public park land. (E)

59. The Owner or designee shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes. (E)
60. Prior to final map recordation, the Owner or designee shall vacate the existing easements that are not needed and relocate/abandon the existing private/public utilities to the city satisfaction. (E)
61. Prior to recordation of final map, the Owner or designee shall revise Sheet C-01 to reflect allowable open space areas for the purpose of being consistent with the Transit Area Specific Plan and any credits towards open space requirements. (P)
62. Pursuant to Policy 5.25 of the Transit Area Specific Plan, the owner or applicant shall perform an analysis of toxic air contaminants (which includes primarily diesel particulate matter DPM). If the results show that the carcinogenic human health risk exceeds the 10 people in a million standard established by BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents. (P)
63. To the fullest extent permitted by law, Owner or designee 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 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. 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 applicant, City, and/or the parties initiating or bringing such proceeding. The applicant 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. The applicant 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. City shall promptly notify the project applicant of any claim, action, or proceeding. If City fails to so promptly notify the project applicant, then the applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The applicant shall not be required to pay or perform any settlement unless the settlement is approved by the applicant. (CA)
64. Prior to recordation of final map, the Owner or designee shall demonstrate compliance with the Regional Water Board's recommendation to place a deed restriction to prohibit the installation of wells or the use of groundwater under the project site. (P)

65. The owner or designee shall install a vapor barrier to further limit the exposure of future residents and users of the project site from soil vapors emanating from the water table. Such vapor barrier must be installed prior to the issuance of certificates of occupancy for any improvement in the project site. (P)

(P): Planning Division

(E): Engineering Division

(CA): City Attorney Office