



## MILPITAS PLANNING COMMISSION AGENDA REPORT

### PUBLIC HEARING

Meeting Date: October 26, 2011

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**APPLICATION:** GENERAL PLAN AMENDMENT NO. GP11-0001, ZONING AMENDMENT NO. ZA11-0001, SPECIFIC PLAN AMENDMENT NO. ST11-0001, ENVIRONMENTAL IMPACT ASSESSMENT NO. EA11-0001, MAJOR TENTATIVE MAP NO. MT11-0001, SITE DEVELOPMENT PERMIT NO. SD11-0007 AND CONDITIONAL USE PERMIT NO. UP11-0031

**APPLICATION SUMMARY:**

A request for a General Plan Amendment, Zoning Amendment, Specific Plan Amendment for approximately 24 acres located along Montague Expressway and Trade Zone Blvd. and a Major Tentative Map and Site Development Permit to construct 276 Single Family attached townhomes and condos on 12.3 acres at the northwest corner of Montague Expressway and McCandless Drive.

**LOCATION:**

General Plan, Zoning, and Specific Plan Amendments (APN's: 086-41-022, 86-41-016, 017) Major Tentative Map and Site Development Permits for 1765 McCandless Drive (APN's: 086-41-019, 020, 021, & 022)

**APPLICANT:**

D.R. Horton, 6630 Owens Drive, Pleasanton, CA 94588

**OWNER:**

BERG, & BERG Developers, 10050 Bandlely, Cupertino, CA 95014

**RECOMMENDATION:**

**Staff recommends that the Planning Commission: Close the public hearing and Adopt Resolution No. 11-047 recommending approval to the City Council.**

**PROJECT DATA:**

General Plan/  
Zoning Designation:

See Figures 1 and 2

Specific Plans:

See Figures 3 and 4

CEQA Determination:

In accordance with Section 15070(b), an Environmental Impact Assessment No. EA11-0001 was prepared and circulated between August 29, 2011 and October 25, 2011, 2011. Alternatively, the

project can be found to be exempt under Section 15168(c) of the CEQA Guidelines

PJ: 2709

PLANNER: Tiffany Brown, Assistant Planner

ATTACHMENTS:

- A. Resolution No. 11-047
- B. Site Plans
- C. Environmental Impact Assessment & TAC Study
- D. Updated TASP Exhibits
- E. Council Staff Report & Minutes approving Park/ School Site Purchase
- F. Adams Broadwell Joseph & Cardozo Letter, dated September 27, 2011 and Lozeau Drury LLVP Letter, dated September 27, 2011
- G. D.R. Horton Letter, dated October 19, 2011

**BACKGROUND**

In 2008, the City of Milpitas adopted the Transit Area Specific Plan (TASP) and Environmental Impact Report (EIR) which encompasses 437 acres of land located just south and southeast of the Great Mall to the Milpitas border near San Jose. The TASP incorporates a variety of High Density Mixed Use and Residential around the existing light rail station and the planned location for BART. On February 15, 2011 the Milpitas Redevelopment Agency approved an agreement with Mission West Properties to purchase three parcels totaling 10.89 acres of developed land located along the east side of McCandless Drive. The intended use of these parcels is for the future development of a joint community park and school pursuant to Transit Area Specific Plan Policy 3.49.

A condition of this sale is the City completing amendments to the General Plan, Transit Area Specific Plan (TASP), and Zoning Map to change the land use designation of two other properties owned by Mission West Properties located along Montague Expressway from Boulevard Very High Density Mixed Use (MXD3) to High Density Transit Orientated Residential (R3). The owner is requesting these changes to facilitate the sale of these properties to residential builders. This request is consistent with the current state of the housing market where funding for new high density construction is severely limited.

On July 15, 2011, D.R. Horton submitted an application requesting a General Plan Amendment, Zoning Amendment, Specific Plan Amendment for the rezone of approximately 24 acres located along Montague Expressway and Trade Zone Blvd. See Figures 1 and 2. A Major Tentative Map and Site Development Permit to construct 276 Single Family attached townhomes and condos on 12.3 acres at the northwest corner of Montague Expressway and McCandless Drive is also requested. See Figure 5 Harmony Project Location on the previous page.

This item was agendaized for the September 28, 2011 Planning Commission meeting and was continued to the October 26, 2011 Planning Commission Meeting at the request of the applicant.

**PROJECT DESCRIPTION*****Proposed Plan Amendments***

The General Plan and Zoning Amendments are located in-between Trade Zone Blvd and Great Mall Parkway, along McCandless and Montague Expressway. See Table 1 and Maps on the following pages.

**Table 1**  
**Proposed Acreage Rezone**

<b>Current Zone</b>	<b>Existing Acres</b>	<b>Rezoned To</b>	<b>Acres</b>
Mixed Use Very High Density (MXD3) / Very High Density Transit Oriented Residential	13.16	Multi-Family Residential High Density (R3) / High Density Transit Oriented Residential	13.6
Multi-Family Residential High Density (R3) / High Density Transit Oriented Residential	10.87	Parks and Open Space, Schools (POS) / Parks Plazas/ Community Facilities	10.87

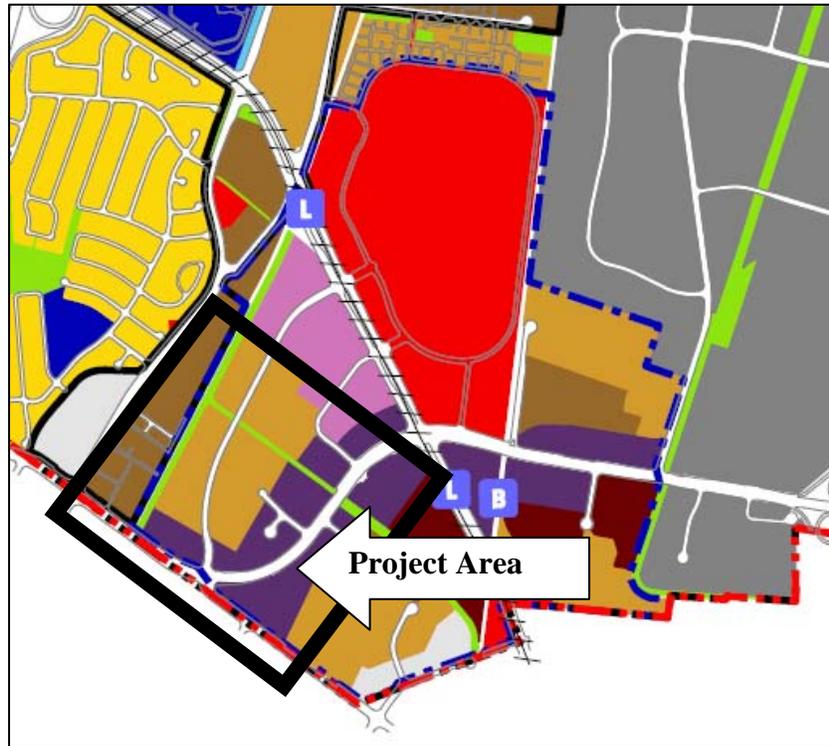
The property is surrounded on four sides by developed parcels and/or creeks. East of the site includes numerous vacant industrial and office buildings (which is the new location of the park within the Specific Plan). To the north of the project are East Penitencia Creek and other existing industrial buildings on residentially zoned properties. To the south of the project are Montague Expressway and the City boundary. To the west of the property is the Lower Penitencia Creek, a rail line and the existing Paragon residential community.

The Transit Area Specific Plan envisions this area to incorporate High Density Residential and Mixed uses. Recent entitlements were approved for the property just to the north of the Harmony project site for a mixed use product called Integral. Integral includes 1,328 dwelling units in eight buildings, including 92,000 square feet of commercial space on 23 acres (57.7 dwellings per acre).

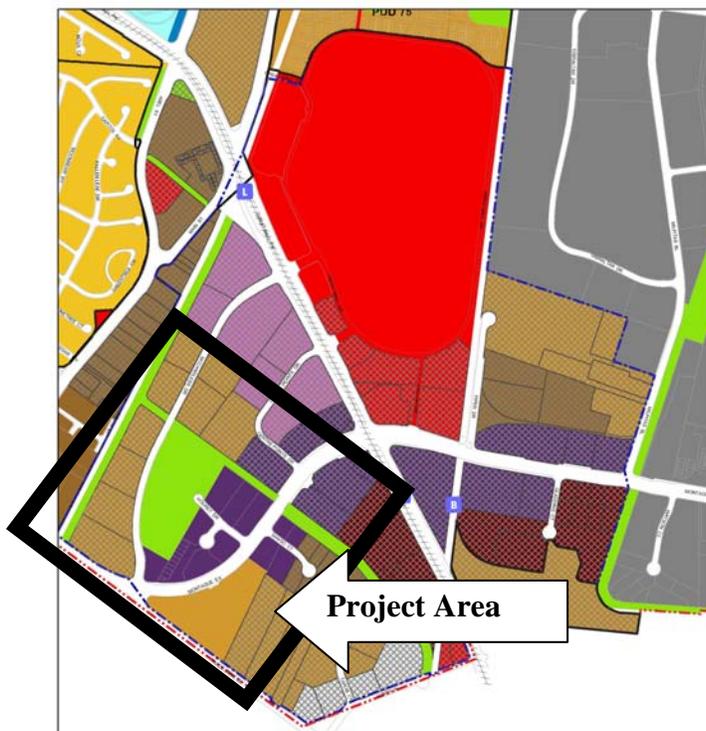
The Harmony project would demolish the existing buildings, grade and prepare the 12.3 acre site for 276 townhomes and condominiums. The project will be built in two phases (*See Attachment B Site Plans*). The first phase will be the northern portion of the property and the second phase will be the southern portion of the project site facing Montague Expressway. The project proposes 93 townhomes and 183 condominiums that will stand between three and four stories high, not to exceed 50 feet in height, and have a mixed variety of styles that provide a contrast to one another.

**Figure 1: General Plan / Zoning Amendments**

**Existing**



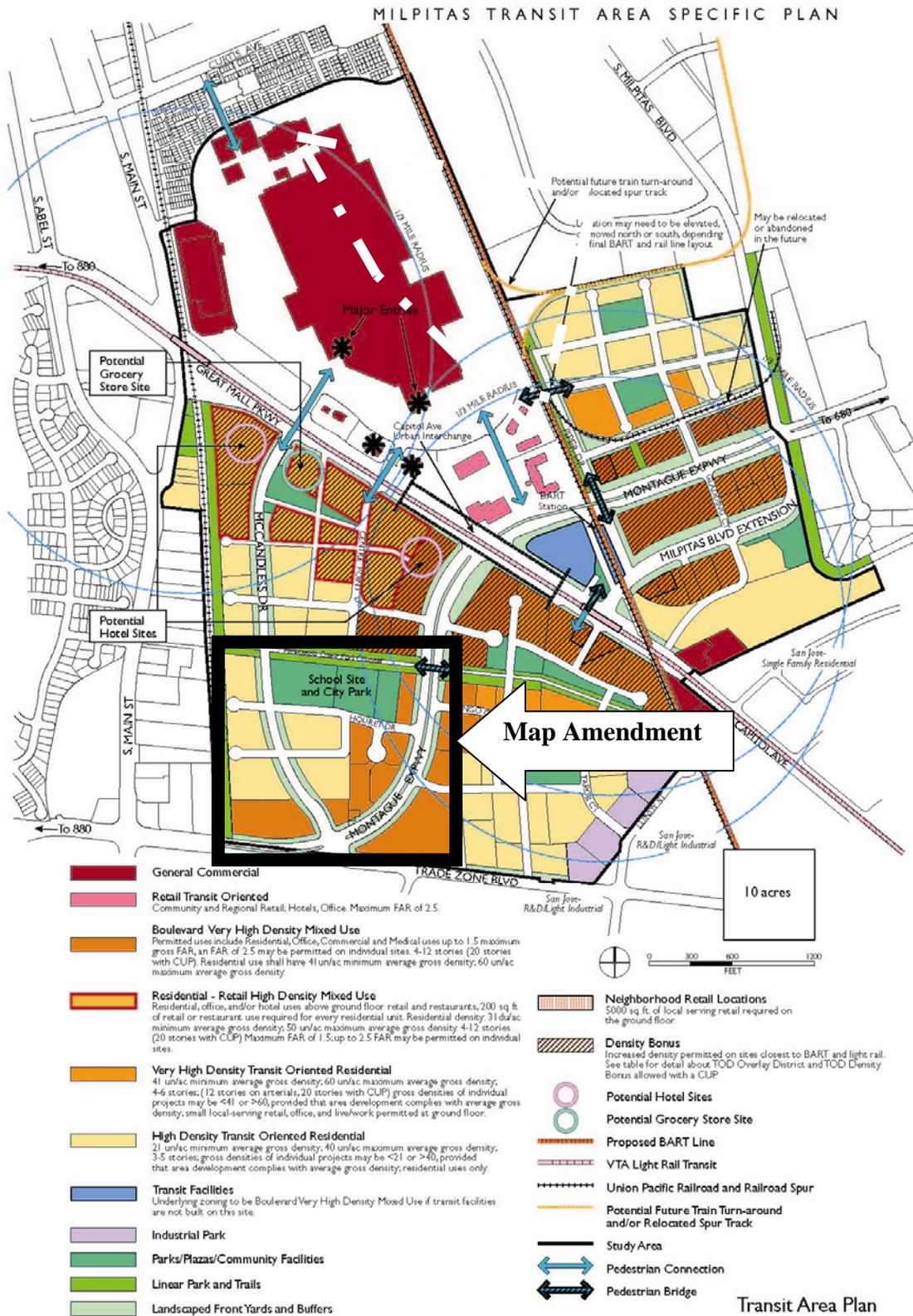
**Proposed**



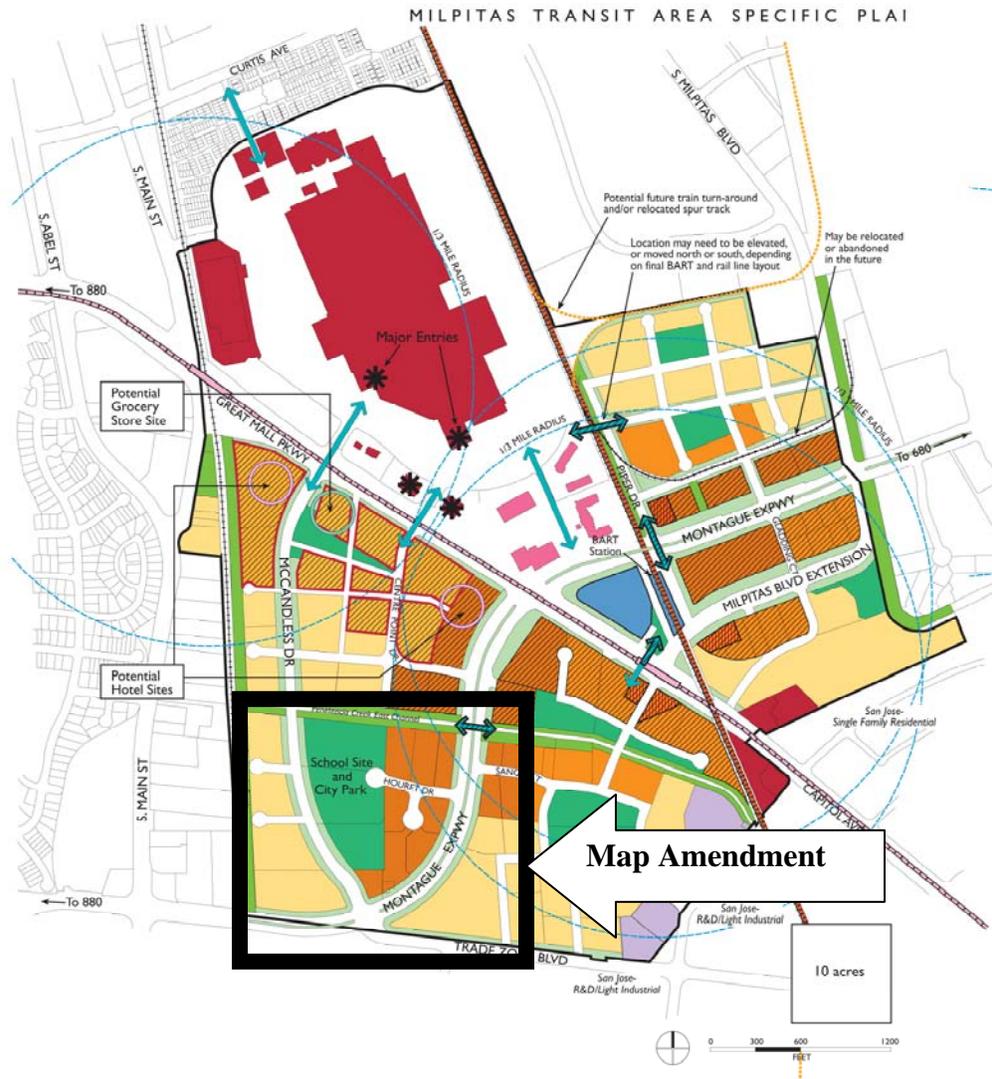
**Legend**

- Hillside Very Low Density (HVL) up to 1 unit/10 gross acres
- Hillside Low Density (HLD) up to 1 unit/gross acre
- Hillside Medium Density (HMD) up to 3 units /gross acre
- Single Family Low Density (SFL) 3-5 units/gross acre
- Single Family Medium Density (SMD) 6-15 units/gross acre
- Multi-Family Residential Medium Density (MFM) 7-11units/gross acre
- Multi-Family Residential High Density (MFH) 12-20 units/gross acre; up to 40 units/gross acre with special findings and PUD approval
- Multi-Family Residential, Very High Density (VHD) 31-40 units/gross acre; up to 60 units/gross acre in TOD
- Urban Residential (URR) 41-75 units/gross acre; up to 25% additional density with CUP approval
- Mobile Home Park Overlay (MHP)
- Mixed Use (MXD)
- Residential Retail High Density Mixed Use (RRMU)
- Boulevard Very High Density Mixed Use (BVMU)
- Professional and Administrative Office (PAO)
- Retail Subcenter (RSC)
- General Commercial (GNC)
- Highway Services (HWS)
- Town Center (TWC)
- Manufacturing and Warehousing (MW)
- Industrial Park (INP)
- Public Facilities (PF)
- Parks and Open Space (POS)
- Waterways (Shown for reference only)
- Midtown Specific Plan Area Boundary
- Transit Area Specific Plan Area Boundary
- Sphere Influence
- City Boundary
- Urban Service Area Boundary
- Urban Growth Boundary
- Light Rail
- Future BART Station
- VTA Light Rail Station
- Fire Station
- Police Station

**Figure 2: Existing Transit Area Specific Plan Area Map**



**Figure 3: Proposed Transit Area Specific Plan Area Map Amendment**



- General Commercial**
- Retail Transit Oriented**  
Community and Regional Retail; Hotels, Office. Maximum FAR of 2.5.
- Boulevard Very High Density Mixed Use**  
Permitted uses include Residential, Office, Commercial and Medical uses up to 1.5 maximum gross FAR, an FAR of 2.5 may be permitted on individual sites. 4-12 stories (20 stories with CUP). Residential use shall have 41 un/ac minimum average gross density; 60 un/ac maximum average gross density.
- Residential - Retail High Density Mixed Use**  
Residential, office, and/or hotel use above ground floor retail and restaurants, 200 sq. ft. of retail or restaurant use required for every residential unit. Residential density: 31 du/ac minimum average gross density; 50 un/ac maximum average gross density. 4-12 stories. (20 stories with CUP) Maximum FAR of 1.5; up to 2.5 FAR may be permitted on individual sites.
- Very High Density Transit Oriented Residential**  
41 un/ac minimum average gross density; 60 un/ac maximum average gross density; 4-6 stories; (12 stories on arterials, 20 stories with CUP) gross densities of individual projects may be <41 or >60, provided that area development complies with average gross density; small local-serving retail, office, and live/work permitted at ground floor.
- High Density Transit Oriented Residential**  
21 un/ac minimum average gross density; 40 un/ac maximum average gross density; 3-5 stories; gross densities of individual projects may be <21 or >40, provided that area development complies with average gross density; residential uses only.
- Transit Facilities**  
Underlying zoning to be Boulevard Very High Density Mixed Use if transit facilities are not built on this site.
- Industrial Park**
- Parks/Plazas/Community Facilities**
- Linear Park and Trails**
- Landscaped Front Yards and Buffers**
- Neighborhood Retail Locations**  
5000 sq. ft. of local serving retail required on the ground floor.
- Density Bonus**  
Increased density permitted on sites closest to BART and light rail. See table for detail about TOD Overlay District and TOD Density Bonus allowed with a CUP.
- Potential Hotel Sites**
- Potential Grocery Store Site**
- Proposed BART Line**
- VTA Light Rail Transit**
- Union Pacific Railroad and Railroad Spur**
- Potential Future Train Turn-around and/or Relocated Spur Track**
- Study Area**
- Pedestrian Connection**
- Pedestrian Bridge**

**Figure 4. Harmony Project Location**



No scale

 - Project Site

Development Standards

**Table 2**  
**Development Standards**

	<b>TASP / Zoning Ordinance</b>	<b>Proposed</b>
<u>Density</u> (Minimum-Maximum)	20 - 40 un/ac	22 un/ac
<u>Setbacks</u> (Minimum)		
McCandless Drive to Primary Structure	44' from curb	20'+
Montague Expressway to Primary Structure	45' from curb	40' - 60' from existing curb 25' - 60' from future curb
Side Yard North Property line(Minimum)	20'	40'+
Rear Property line to Primary Structure	20'	5'8" at closest point
<u>Building Height</u> (Maximum)	75'	50' or less
<u>Parking</u> (Minimum) See Traffic/Transportation/parking section below for further detail	573 parking spaces	659 spaces
<u>Landscaping</u> (Minimum)	See Parks/Landscaping/Open Space section	

Conditional Use Permit (Exceptions to Standards)

The project site is a 12.3 acre parcel that starts to narrow towards the northern portion of the property. Due to the shape of the property, use of the prescribed development standards would create a very limited building envelope. Pursuant to Section 5.2 of the TASP, the applicant has applied for a conditional use permit to allow for four exceptions. In order for the exception to be allowed an additional finding must be made by the decision-making authority.

The first and second exception is a request to allow for a minimum 20' setback along McCandless Drive and a 5'8" minimum setback for the rear property line. Approval of the McCandless Drive setback minimum will provide consistency with the Integral project to the north. The streetscape will be heavily landscaped and adds architectural details that are aesthetic and compatible with the Integral project. See Attachment B. Site Plans for more details. The third exception is a request to allow for a reduced building setback along Montague Expressway from 45' to 25' at its closest point near the Penitencia Creek Trail. This reduction is a result of a possible future auxiliary lane being needed along this segment of Montague Expressway.

The TASP calls for a minimum setback 25' between the top of creek bank and the edge of trail. The fourth exception is for the request to have a minimum 15' setback between top of creek bank

to the edge of trail. The trail will still meet the minimum width of 10’ for a shared bicycle pedestrian trail.

The applicant also requests a fifth exception related to tandem parking requirements. Please see the Traffic/Transportation/Parking for the Proposed Harmony Development for further detail.

Architecture

The Harmony project proposes two types of housing products; townhomes and condominiums. The condominiums are located along the north and south end of the project site with the townhomes in the middle. The condos stand four stories or 48’-5” in height and range from 3-plexes, to 6-plexes, to 9-plexes. Styles for the condos include Spanish Colonial and Italian Revival. The townhomes stand three stories tall or 39’-6” in height and range from 3-7-plexes and 9-plexes. The townhomes utilize stucco for the main building and are of Italianate and Spanish Revival style. The Spanish styles utilize a stucco finish with creams, tans, and reds as the color palette. Details include rounded finishes and with a stamped detail at the top of the buildings. The Italian styles also utilize stucco for the main buildings and have more of the earth tone greens, tans, and creams for the color palette. Accent details include ledge stone, and crown molding around the doors and some windows. See Attachment B “Site Plans” for further detail.

**TRAFFIC/ TRANSPORTATION/PARKING**

*Proposed Plan Amendments*

The Transit Area Specific Plan EIR anticipated the specific plan area to generate a large amount of trips due to the high density and mixture of uses within the Transit Area. The EIR estimates the trip generations based on the expected buildout of the Transit Area. Rezoning portions of the Transit Area lowers the anticipated trip generations and will therefore not result in any additional traffic impacts. The project will remain subject to the conclusions of the TASP EIR.

**Table 3**  
**Rezone, Density, and Trips Generated**

<b>Current Zone</b>	<b>Existing Acres</b>	<b>Estimated Density</b>	<b>Rezoned To</b>	<b>Acres</b>	<b>Estimated Density</b>
Mixed Use Very High Density (MXD3) / Very High Density Transit Oriented Residential	13.16	561	Multi-Family Residential High Density (R3) / High Density Transit Oriented Residential	13.6	175
Multi-Family Residential High Density (R3) / High Density Transit Oriented Residential	10.87	157	Parks and Open Space, City Parks Plazas/ Community Facilities	10.87	None

***Proposed development (Harmony)***

The project site is accessed via Montague Expressway, a six-lane east-west roadway and McCandless Drive, a two-lane, north-south roadway bisects that project. Within the vicinity is Great Mall Parkway, a six-lane, east-west roadway to the North of the project site that intersects with McCandless. Regional access is provided to the project via Interstates 880 and 680, Montague Expressway, and State Route 237. Local access is provided by Main Street, Milpitas Boulevard and Great Mall Parkway. Existing transit services include bus routes from VTA and AC Transit available along Montague Expressway and McCandless Drive with service to Fremont and throughout Santa Clara County via the Great Mall Transit Station. The Great Mall Light Rail Station is located elevated within the median of Great Mall Parkway at Main Street. (See Figure 5, Project Location map)

Because the project is a residential development that is proposed within 500 feet of active rail lines where vehicles emit diesel exhaust, or roadways where total daily traffic volumes from all roadways within 500 feet of such location exceed 100,000 vehicles per day, an Air Quality Study was conducted by ENVIRON International Corporation. The project will be required to provide vegetative barriers and installing MERV-13 or equivalent filters on both the air intake and recirculation for affected residences.

**Pedestrian and Bicycle Facilities**

The area includes sidewalks along streets and Class I and Class II trail facilities that are accessible in the area. The Integral project, approved project just north of the Harmony project, is providing a Class I trail improvements along the Penitencia Creek and Harmony proposes to continue those improvements along the creek to Montague Expressway.

**Estimated Trip Generation**

As mentioned previously, the Transit Area Specific Plan EIR anticipated the specific plan area to generate a large amount of trips due to the high density and mixture of uses within the Transit Area. The EIR estimates the trip generations based on the expected buildout of the Transit Area. The Harmony project falls within the anticipated trip generations that were counted for within the TSAP EIR and therefore is considered to have no impact.

**Parking**

Harmony proposes a development for 276 residential units. Tables 4 through 7 below summarize the TASP required parking and the parking proposed for the development.

**Tables 4-7**  
**Parking Summary**

<b>Table 4</b>						
<b>Required Parking</b>						
<i>Description</i>	<i>Units</i>	<i>Covered Parking Ratio</i>	<i>Un-Covered Parking Ratio</i>	<i>Required Covered Parking</i>	<i>Required Uncovered Parking</i>	<i>Total Required Parking</i>
2-3 Bedroom	242	1.6	-	387	0.0	387
4+ Bedroom	34	2.0	0.6	68	20	88
<b>Totals</b>				<b>455</b>	<b>20</b>	<b>476</b>

<b>Table 5</b>	
<b>Proposed Covered Parking</b>	
<i>Required Covered Spaces</i>	475
<i>Covered Spaces Provided</i>	552
<b><i>Surplus</i></b>	<b>97</b>

<b>Table 6</b>	
<b>Proposed Un-Covered Parking</b>	
<i>Required Guest Parking</i>	95
Required Un-Covered Resident Parking	20
Total Required uncovered parking	116
Un-covered Spaces Provided	107
<b>Uncovered Parking Shortfall</b>	<b>-9</b>

<b>Table 7</b>		
<b>Tandem Parking</b>		
Allowed Tandem parking	50% Max	Percentage
Parking Spaces	285	50%
Provided Tandem Parking	366	64%

The proposed development requires 592 parking spaces. Harmony proposes a total of 659 parking spaces (552 covered and 107 uncovered). Although Harmony provides 97 more parking spaces than required, they are required to provide nine more parking spaces that are uncovered and designated for the homes with the four bedroom option. As conditioned, the project will provide the extra nine designated parking spaces required, or reduce the number of four bedroom units proposed.

The Zoning Ordinance (Section 53.07 D.) states that tandem parking may be allowed with the approval of a Conditional Use Permit. The section continues to state that the maximum tandem spaces allowed for private individual garages is 50%. This requirement was part of the changes made to the City’s parking requirements from the work of the former Parking Task Force. The project proposes 366 tandem parking spaces which is 64% of the project and exceeds the

maximum allowed tandem parking ratio. The applicant requests an exception to the maximum tandem parking requirements. Staff does not support granting the exception given how recently the maximum tandem allowance was changed.

Table 53.09-1 of the Zoning Ordinance requires new development to provide 5% of the total required parking (592 • 5%) of bicycle parking. As conditioned, the project will supply 5%, for a total of 30 bicycle parking spaces.

**PARKS/LANDSCAPING/OPEN SPACE**

The City adopted a development impact fee in September 2008 to fund the necessary public improvements needed to support development in the Transit Area Specific Plan. Developments can receive credits towards these fees for any public improvements that are constructed as part of the project.

*Proposed Plan Amendments*

These sites will remain subject to the conclusions of the TASP EIR and require compliance with the City’s Parks, Landscaping, and Open Space requirements.

*Proposed Development (Harmony)*

Landscaping

There are approximately 187 trees located on the Development site. Of these trees, 55 are protected under the City’s Tree Ordinance. Some of them are mature and established, and line McCandless Drive. Within the McCandless/Centre Pointe Subdistrict, a TASP development policy (Policy 4.59) and the TASP EIR call for the preservation of a line of street trees along McCandless, but only to the extent feasible. The applicant proposes to replace the existing tree line with a new one, as maintenance of the current tree line is not feasible due to utilities and streetscape infrastructure requirements for the area and development characteristics. The applicant proposes planting 685 new trees (3.66:1 planting ratio) onsite along with 52 trees following the upgraded City Trail. The developer proposes to move the existing tree line on McCandless Drive and replace the existing trees with 36” and 48” box trees interspersed along McCandless Drive as conditioned.

Per the Zoning Ordinance, a minimum of 25% of the total lot area (not including paved parking area) shall be landscaped or recreational open space. This excludes parking and the vehicular traffic area. Harmony proposes over 25% recreational and open space and therefore meets the ordinance. See table 8 below for calculations.

**Table 8**  
**Landscaping requirements**

<b>Harmony (square feet)</b>	<b>Required Landscaping (square feet)</b>	<b>Proposed landscaping (square feet)</b>
535,788	133,947	164,598

Usable Open Space

“Usable Open Space” is any open space with a minimum dimension of 4½ feet including balconies, porches, or roof decks and which is not used as storage or for movement of motor

vehicles. Per the Ordinance, an average of two hundred square feet of usable open space shall be provided for each dwelling unit and at least 30% of required usable open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. Harmony meets the Usable Open Space requirements. For more details, see Attachment B for Site Plans, Page L.7, and/or see calculations below (Table 9).

**Table 9**  
**Usable Open Space & Private Open Space**

Harmony	Required	Provided
Usable Open Space	200 sq. ft. for each dwelling unit 276 units ( 200 sq.ft.) = <u>55,200 sq. ft.</u>	88,393 sq. ft.
Private Usable Open Space	30% of required usable open space 30% (55,200 sq.ft.) = <u>16,560 sq.ft.</u>	28,463 sq. ft.

Penitencia Creek Trail

The TASP envisions a network of trails along Penitencia Creek and rail-road right of ways. The Harmony project incorporates continuing the improvements along the creek from the approved Integral Project at the North, all the way down to Montague Expressway. The TASP calls for a minimum setback 25’ between the top of creek bank and the edge of trail. The Harmony project requests an exception for a minimum 15’ setback between the top of creek bank to the edge of trail. The trail will meet the minimum width of 10’ for a shared bicycle pedestrian trail. The total square foot age of the creek trail is 24,388 square feet.

**NOISE AND VIBRATION**

***Proposed Plan Amendments***

These sites will remain subject to the conclusions of the TASP EIR and require compliance with the City’s Noise Ordinance.

***Project Development (Harmony)***

Because the project is adjacent to an active railroad, a Noise and Vibration Study was conducted by Charles M. Salter Associates, Inc. This study analyzed the sound presence of freight rail operations, light rail operations and vehicular traffic near the project site. The project will be required to provide soundproofing to the satisfaction of the noise and vibration study for the proposed units. The mitigation will be implemented during the plan checking of construction documents.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 10**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-1-12: Use zoning for new residential developments to encourage a variety and mix in housing types and costs</i>	<b>Consistent.</b> The change in zones will allow for a variety of housing types and a much larger park/school site to serve the new upcoming residential area.
<i>2.a-1-25: Require development in the Transit Area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.</i>	<b>Consistent.</b> The rezone of properties is maintains the purpose and intent of the Transit Area Specific Plan (TASP). The TASP allows for exceptions to development standards, such as property setbacks, through a conditional use permit. Harmony conforms to the design guidelines and requirements with the approval of a conditional use permit to allow for exceptions to the McCandless Street setback, rear yard setback, and trail width requirements.

***Zoning Ordinance***

The proposed amendments maintain the goals, objectives, policies, and are internally consistent with the General plan. The amendments are also consistent with the intent of the TASP and will not create internal inconsistencies with the specific plan. The uses proposed in the specific plan amendment are compatible with adjacent uses and properties and will not adversely affect the public health, safety and welfare. The Harmony project is consistent with the Zoning Ordinance in that the TASP calls for High Density Residential within this project site, the layout of the site and design are compatible and aesthetically harmonious with adjacent and surrounding development, and if conditionally approved, meets all the development standards and guidelines.

***Transit Area Specific Plan***

**Table 11**  
**Consistency with Transit Area Specific Plan Policies**

<b>Policy</b>	<b>Compliance</b>
<b>Policy 3.12:</b> Preserve adequate right-of-way along capitol Avenue, Great Mall Parkway, and Montague Expressway to accommodate future regional roadway improvements.	<b>Yes</b>
<b>Policy 3.13:</b> Prevent cut-through traffic in neighborhoods.	<b>Yes</b>
<b>Policy 3.54:</b> Include a network of trails along Penitencia Creek and rail-road right of ways.	<b>Yes</b>
<b>Policy 3.58:</b> Preserve and protect trees on McCandless Drive	<b>No.</b> The project does not preserve the street trees along McCandless.
<b>Policy 3.59:</b> Create a 45 foot deep continuous	<b>No.</b> The majority of the Montague

Policy	Compliance
landscaped setback on Montague Expressway.	Expressway frontage will have a 40 feet setback from the edge of curb and ranges from 25 feet at closest point to 60 feet.
<b>Policy 4.5:</b> New development along Montague Expressway must dedicate land, such that a total of 79 feet from the roadway centerline is provided, to accommodate the future Montague Expressway widening project.	<b>Yes.</b> The new development will be dedicating the necessary land that will accommodate the future Montague Expressway widening project.
<b>Policy 4.6:</b> Buildings will be designed with facades facing Montague Expressway.	<b>Yes</b>
<b>Policy 4.59:</b> To the maximum extent feasible (and with exceptions such as removal for emergency, health, or fire hazard purposes), retain the corridor of trees along McCandless Drive and in the vicinity both as an important visual resource and a potential resource for habitat. Also maintain the existing double row of trees on Great Mall Parkway north of McCandless Drive.	<b>No.</b> The project does not preserve the street trees along McCandless; however they will be planting new 36” and 48” box trees interspersed along McCandless Drive consistent with the approved Integral project to the north.
<b>Policy 4.60:</b> Break the area into smaller scale blocks that are appropriate to residential development and the desired pedestrian scale for the neighborhood. Block dimensions shall generally be between 300 and 400 feet, and shall never exceed 450 feet.	<b>Yes</b>
<b>Policy 4.61:</b> Transform McCandless Drive into a two lane boulevard with bike lanes and street parking.	<b>Yes</b>
<b>Policy 4.66:</b> Create new streets between McCandless Drive and Lower Penitencia Creek which will provide access to parking garages, and will also provide on-street parking.	<b>No.</b> None are proposed. Pedestrian paseos are provided.
<b>Policy 4.67:</b> Do not create new curb cuts along McCandless Drive or Centre Point Drive, in order to preserve the existing trees and to create a pedestrian environment along the street.	<b>Yes.</b>
<b>Policy 4.70:</b> Create a high-density residential neighborhood at the interior of the sub-district, centered along McCandless Drive.	<b>Yes</b>
<b>Policy 4.74:</b> Create a trail along the Penitencia Creek East Channel.	<b>Yes</b>

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff prepared an initial study and distributed a Notice of Intent to Adopt a Mitigated Negative Declaration. The

mitigated negative declaration was circulated for public review between August 29, 2011 and October 25, 2011.

The Planning Division also considered whether pursuant to Section 15168(c) of the CEQA Guidelines, the project could be found exempt due to it being within the scope of the project covered by the Transit Area Specific Plan EIR and does not involve new effects beyond those analyzed in that document. Based upon the materials and review of the application, the Planning Division recommends that the Planning Commission recommend that the City Council find the project exempt under Section 15168(c) of the CEQA Guidelines.

### **PUBLIC COMMENT/OUTREACH**

The applicant also sent out notices to all property owners and residential renters within a 1,000 foot radius of the project site. The applicant held a community meeting on September 13, 2011 and four people from the public attended. Staff publicly noticed the application in accordance with City and State law. Staff received a comment letter which stated that the railroad is active and requested that appropriate measures be taken when developing residences next to the railroad. A number of existing project components and mitigation measures address the concerns raised therein, particularly the Condition No. 7 of the proposed resolution, which addresses toxic air contaminants. The applicant has satisfied this condition; see Attachment C for the TAC report.

The International Brotherhood of Electrical Workers Local 104 also submitted a request for the public comment period for CEQA be extended on the Mitigated Negative Declaration (See Attachment F.) The request was granted and the public comment period was extended to October 25, 2011.

In addition, a number of comments were submitted by letter dated September 27, 2011, on behalf of Carpenters Local Union No. 405 (See Attachment F). None of the issues raised therein bear any merit or prevent consideration of this project at this time. Each issue is addressed below:

#### ***Significant Air Quality Impacts***

The Transit Area Specific Plan assumed at build out a minimum and maximum amount of development density. A reasonable worst case scenario (RWCS) was calculated for residential and commercial development to be used as the basis for analysis of the TASP EIR. The RWCS is calculated as 90 percent of the midpoint between the minimum and maximum densities allowed—including the 25 percent increase allowed with a density overlay—with assumption that up to 90 percent of the opportunity sites will actually redevelop during the 20 year timeframe of the Plan.

The TASP and its EIR assumed 7,109 units of residential development. Any impacts with respect to CEQA were based on the RWCS, which to date has not been exceeded. The project is subject to the Policies of the TASP, which reduce impacts.

***Toxic Air Contaminants***

The ambient background of toxic air contaminants (TACs) is the combined result of many diverse human activities, including gasoline stations, automobiles, dry cleaners, industrial operations, and painting operations. In general, mobile sources contribute more significantly to health risks than do stationary sources. As part of the EIR process for the TASP, the Bay Area Air Quality Management District commented that a TAC study should be done in certain circumstances and that if certain thresholds are exceeded that the city may require upgraded ventilation systems for the projects impacted. Policy 5.25 of the TASP incorporates that comments and requires that this study be done by the project's owner or applicant. This study has been performed and measures required under TASP Policy 5.25 are part of the proposed project. Attention is drawn to proposed Condition of Approval No. 34 of the Planning Commission resolution for the project.

***Traffic Impacts***

As stated previously, the Transit Area Specific Plan EIR anticipated the specific plan area to generate a large amount of trips due to the high density and mixture of uses within the Transit Area. The proposed rezone and development reduces density and would therefore result in lower population and vehicle miles traveled. Accordingly, the project with the new proposed zone changes, complies with trip counts and traffic impacts previously cleared in the TASP EIR.

Applicant is required to prepare a operational traffic study pursuant to Condition of Approval 64 in order to address any project specific mitigation that may be required as identified by the study. Furthermore, conditions of approval numbers 24 through 26 require the Harmony project to comply with the TASP parking standards and provide 30 bicycle spaces for residents which further reduce the need for vehicular travel. The project is therefore not a substantial change to the project analyzed in the prior TASP EIR and does not require a supplemental EIR.

***Greenhouse Gas Impacts***

The request for the preparation of a supplemental EIR because of the creation of new BAAQMD thresholds for greenhouse gases is also unfounded. In 2008, the City Council approved an EIR for the Transit Area Specific Plan. The Draft EIR extensively considered greenhouse gas emissions and the potential climate change impacts of projects within the Transit Area, including developments like the Harmony Residential Project. (DRAFT EIR, Section 3.12.) In view of this preexisting environmental documentation and the content of the commenter's request, no further action under CEQA is required.

After a city has approved an EIR, it cannot require a supplemental EIR unless amongst other things “[n]ew information, which was not known and could not have been known at the time the [EIR] report was certified as complete, becomes available.” Pub. Resources Code § 21166.

Under this standard, the mere adoption of new BAAQMD thresholds for greenhouse gases does not constitute “new information” that requires the preparation of a supplemental EIR. The adoption is not a change in a change in circumstances for the purposes of applying CEQA's subsequent review provisions, nor did the passage of the new air standards result in new information under those provisions.

The current CEQA “project” is a residential development that was previously considered in the TASP EIR. There has been no change to the physical environmental conditions or improvements and facilities that were previously contemplated in the TASP EIR. Greenhouse gas and climate change impacts were considered in the TASP EIR and do not constitute “new information” that was not known or could not have been known at the time of the TASP EIR’s certification in 2008. The United Nations Framework Convention on Climate Change was established in 1992. The regulation of greenhouse gas emissions to reduce climate change impacts was being extensively debated and analyzed since at least the 1970’s. The studies and analysis of this issue resulted in many climate change initiatives, including the Kyoto Protocol in 1997. Therefore, the impact of greenhouse gases on climate change was known at the time of certification of the TASP EIR in 2008.

Accordingly, the new BAAQMD standard on greenhouse gases is not “new information” that requires analysis in a supplement EIR. This matter therefore does not merit further consideration.

### ***Public Services and Schools***

The Initial Study Checklist identifies this as a less than significant impact. Per the Final Environmental Impact Report (FEIR), Government Code Section 65995 states that the payment of school impacts is sufficient to offset a project’s effect on school facilities.

“The number of new students generated by buildout of the proposed Plan will require at least one new elementary school and expansions of existing facilities. California Government Code Sections 65995-65998, sets forth provisions for the payment of school impact fees by new development as the exclusive means of “considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property.” [§65996(a)] The legislation goes on to say that the payment of school impact fees “are hereby deemed to provide full and complete school facilities mitigation” under CEQA. [§65996(b)] School districts are responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts’ methods of implementing measures specified by Government Code 65996 would offset project-related increases in student enrollment.

Therefore the project is not a significant and unavoidable impact and does not require a supplemental EIR.

### **CONCLUSION**

The proposed General Plan Amendment, Zoning Amendment, and Specific Plan Amendments support the intent of the TASP, designate a larger park/school for the new residences, and will provide consistency throughout the plans. The Harmony project provides aesthetic street frontages along McCandless Drive and Montague Expressway and High Density Multi-Family Residential neighborhood with the look and feel of attached single family homes. With the approval of conditional exceptions to development standards, the project is consistent with the all plans.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing after hearing testimony and recommend approval to the City Council of **GP11-0001, ZA11-0001, ST11-0001, EA11-0001, MT11-0001, SD11-0007 AND UP11-0031**, for **Harmony Residential Project and Trade Zone Rezone** subject to the attached Resolution and Conditions of Approval.

*Attachments:*

- A. Resolution No. 11-047
- B. Site Plans
- C. Environmental Impact Assessment & TAC Study
- D. Updated TASP Exhibits
- E. Council Staff Report & Minutes approving Park/ School Site Purchase
- F. Adams Broadwell Joseph & Cardozo Letter, dated September 27, 2011 and Lozeau Drury LLVP Letter, dated September 27, 2011
- G. D.R. Horton Letter, dated October 19, 2011