AGENDA ITEM: IX-1

MILPITAS PLANNING COMMISSION
STAFF REPORT

November 24, 2014

APPLICATION: **INTEGRAL DISTRICT 1, LOTS 2, 3 and 4 AMENDMENT—MT13-0006, SD13-0012, UP13-0011 -** A request for an amendment to the previously approved District One, Lots 2, 3 and 4 Major Tentative Map, Site Development Permit and Conditional Use Permit to eliminate Lots 3 (mixed-use building with approximately 169 dwelling units and 27,187 of commercial-retail space) from the District 1 Project, and replace the two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with 108 townhouse dwelling units on 4.79 acres (collectively the "Project").

RECOMMENDATION: **Staff recommends that the Planning Commission:**
Adopt Resolution No. 14-036 recommending the City Council deny the Major Tentative Map, Site Development Permit and Conditional Use Permit amendments to eliminate Lot 3 (mixed-use building with approximately 169 dwelling units and 27,187 of retail square footage) from District 1 Project, and replace two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with 108 townhouse dwelling units on 4.79 acres.

LOCATION:

Address/APN:	1400 McCandless Drive/ **(**APN 86-33-092, 86-33-093, and 86-33-101)
Area of City:	Transit Area Specific Plan (TASP) area – McCandless/Centre Pointe Subdistrict

PEOPLE:

Project Applicant:	Glenn Brown, Integral Communities
Consultant(s):	Jorge Duran, RJA Civil Engineers
Property Owner:	Integral Communities, a California Corporation
Project Planner:	Steve McHarris, Planning & Neighborhood Services Director

LAND USE:

General Plan Designation:	Residential – Retail High Density Mixed Use (RRMU)
Zoning District:	Residential Retail High Density Mixed Use (MXD2)
Overlay District:	Transit Oriented Development (TOD) and Site and Architectural Overlay (S)

ENVIRONMENTAL: As further explained in this Report, the proposed Project is inconsistent with the Transit Area Specific Plan and additional environmental review, study and analysis will be required if the City Council wishes to approve the proposed Project to determine whether the proposed Project is consistent with the Transit Area Specific Plan EIR (State Clearinghouse No. 2006032091) certified by the City Council on June 3, 2008 (Resolution No. 7759). Additional technical studies will be required including a traffic impact analysis, parking study, and noise study.

EXECUTIVE SUMMARY

The proposed Project includes entitlement requests to remove three (3) previously approved mixed use buildings totaling approximately 561 dwelling units and 33,000 square feet of retail, and replace them with 108 townhouse units over Lot 2 (55 units) and Lot 4 (53 units). The proposed units will be two and three bedrooms with three and four stories and two car garages (tandem and side by side). The proposed development would also include the creation of Market Street and associated site improvements. In addition, the proposed Project removes another previously approved mixed use building located on Lot 3, which is analyzed in a separate development application for the proposed Centre Pointe project (see separate Staff Report). Lastly, the Project includes relocation of the Urban Plaza Park from Lot 4 to Lot 3. The Project site is located within the Mixed Use Zoning District (MXD) (See Figure 1 - Zoning Map). The purpose of the MXD zoning district is to encourage a compatible mix of residential, retail, entertainment, office and commercial service uses within the framework of a pedestrian-oriented streetscape. In addition, the sites are located within the McCandless/Centre Pointe sub-district of the Transit Area Specific Plan which is envisioned to be the best location for successful retail mixed use district, building off the established retail destination of the Great Mall and the visibility along Great Mall. The TASP Land Use and Zoning maps also identify the sites as Residential – Retail High Density Mixed Use (see Figure 2 – TASP Land Use Plan and Zoning District Map).

Staff is recommending denial of the proposed Project because the proposed Project is **inconsistent** with the City of Milpitas General Plan, the TASP and the Zoning Ordinance. The proposed Project is inconsistent with these plans in four major areas:

1. Failure to comply with the overall vision, goals, and policies of the TASP;
2. Failure to meet the minimum residential density requirements;
3. Failure to meet the minimum commercial-retail requirements;
4. Failure to meet the required location for commercial-retail space;
5. Failure to provide the required high quality architecture.

The proposed Project does not implement the key TASP vision of an attractive high density urban neighborhood with mixed use districts and high profile buildings off of Great Mall Parkway and McCandless Drive. More specifically, the Project proposes ground floor residential uses in Zones where they are not allowed. For example, the proposed townhouses are located on parcels where the TASP envisioned and required very high density mixed use, high profile buildings and high quality architecture. Further, this Project proposes to isolate commercial uses by relocating commercial uses to the very front of the development, rather than establishing a mixed use neighborhood down McCandless as prescribed by the TASP. Because of these

inconsistencies with the General Plan, the TASP and the Zoning Ordinance, staff is recommending denial of the proposed Project.

Figure 1
Project Zoning Map

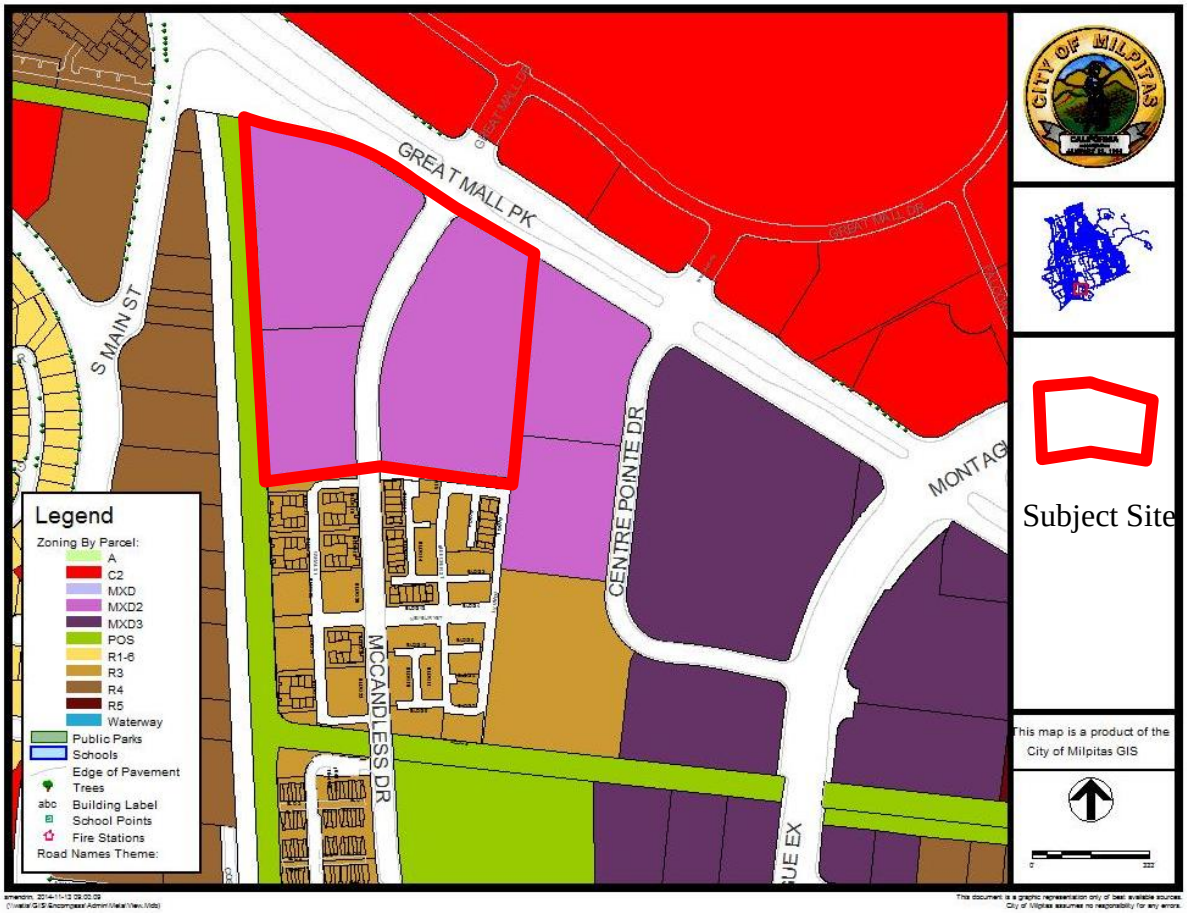
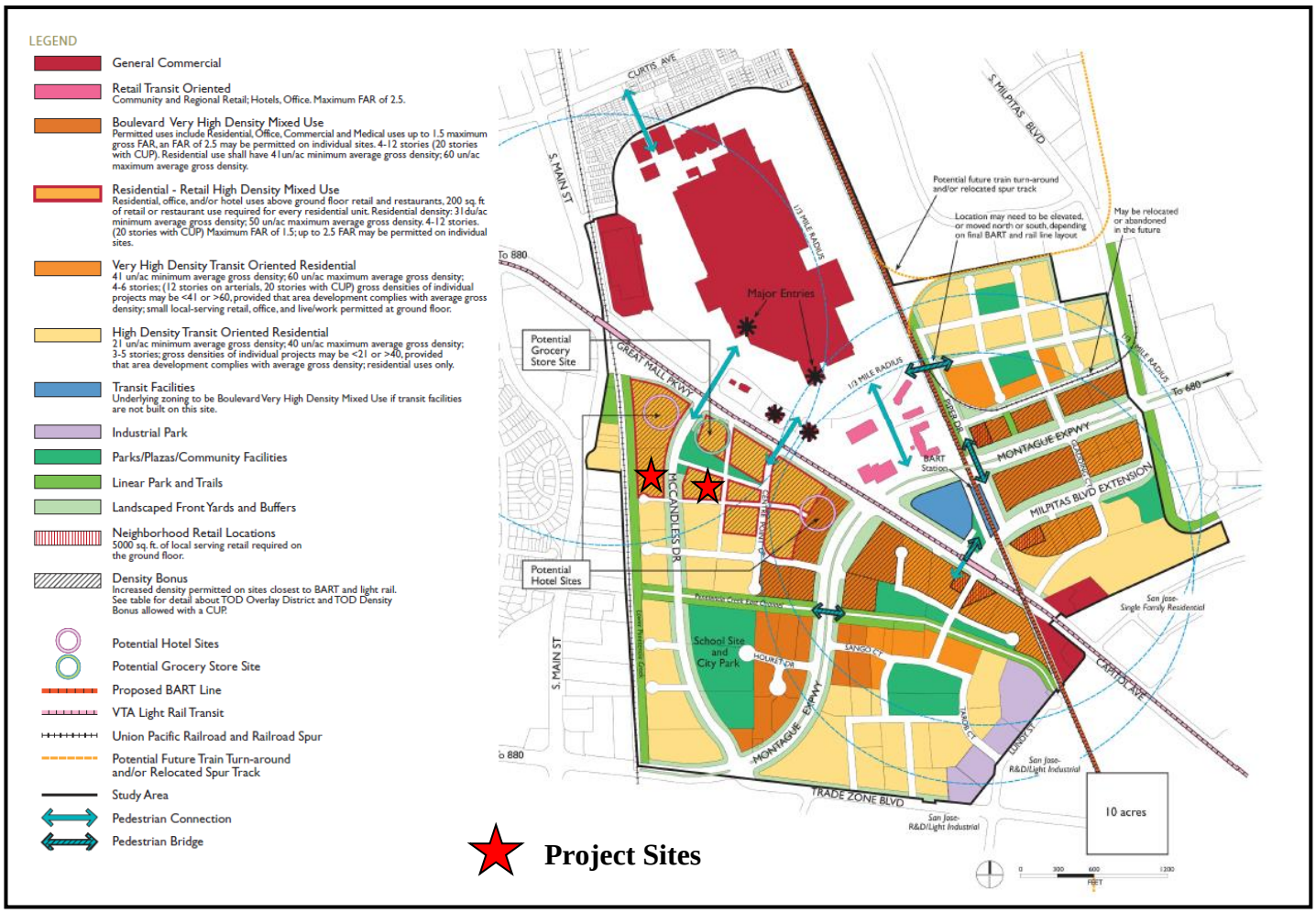


Figure 1-1
Location Map

Figure 2
TASP Land Use Plan-Current



BACKGROUND

Transit Area Specific Plan – History and Background

During the early to mid- 2000's, the City of Milpitas ("City") began a cooperative planning effort with the Federal Transit Administration, Association of Bay Area of Governments, the Metropolitan Planning Commission, the Santa Clara Valley Transportation Authority (VTA), various local property owners, developers, Milpitas citizenry, and stakeholders to ensure broad public input and planning support for a transit oriented community centered around the Great Mall, light-rail, and a possible future Milpitas BART station. This planning effort included countless hours of community meetings, public meetings, and input from various public agencies, residents, developers, and others. The vision was agreed upon to create a vibrant, urban, and compact transit area to support future ridership of BART, light-rail, and buses, and more importantly, to create a well-balance high-intensity transit orient district that encourages walking, biking, and uses of mass transportation.

In June 2008, the City Council adopted the Transit Area Specific Plan ("TASP"), assisting in the VTA's ability to secured a $900 million federal grant to supplement previously approved Local Measures A and B transit sales tax funding, and an additional $40 million in State Traffic

Congestion Relief Program funds by the California Transportation Commission for the Silicon Valley Extension which includes a BART Station in Milpitas serving the TASP Planning Area. A significant part of securing the funding for the BART extension from Fremont to Milpitas to San Jose, and to include a BART station in Milpitas, was the City Council's adoption of the TASP. The TASP created a framework and blueprint for an attractive and livable neighborhood, transforming an older light industrial district to meet high demand for housing, offices, hotels, and retails. As envisioned by the City Council and the Milpitas Community, the TASP represents a well thought out plan that includes approximately 7,109 housing units, 883,843 square feet office space, 287,075 square feet of retail space, and 350 hotel rooms strategically dispersed throughout the plan area for a walkable, bikable, and livable mixed use environment.

The future BART station will be co-located at the site of the elevated Montague light rail station, a short walk to our planned TASP neighborhoods, The Great Mall, and AC Transit and VTA bus hub. Approval of the TASP incorporated updates to the General Plan Text and Land Use Diagram, Midtown Specific Plan, Zoning Text, and the Zoning Map. As an important component of the City's General Plan, the TASP is binding legal authority which guides land use, circulation, and infrastructure in the TASP Planning Area.

The City has demonstrated the foresight, commitment, and investment in the TASP Planning area by advancing the following significant financial commitments necessary to construct and maintain the infrastructure requirements for the above-mentioned new TASP development without placing a burden or financial risk on the existing City's General Fund. These important City Council commitments include:

- Purchase of 1 million gallons per year wastewater capacity;
- Up-front infrastructure commitments;
- Purchase of the McCandless School Site;
- Establishment of the 2008 TASP Infrastructure Fee Program; and
- Establishment of the 2008 Community Facilities District for ongoing City services and maintenance.

It is important to keep the vision and goals of TASP in mind when reviewing the proposed project application, as the proposed project is a significant deviation from the TASP vision, goals, and policies discussed in this report. The proposed project essentially re-writes the TASP without a specific plan amendment as required under State and local laws. Further, the proposed Project deviates so much from the TASP and the underlying financial framework to support the TASP, ie 2008 TASP Infrastructure Fee Program and 2008 TASP CFD, that approval of the proposed project (and the adjacent proposed Centre Pointe project) will severely undermine the financial framework to support the TASP.

The TASP vision for the McCandless Centre Pointe subdistrict planning area in which the proposed project is located states:

> *The McCandless/Centre Pointe subdistrict provides the best location for a successful retail mixed use district, building off the established retail destination of the Great Mall and the visibility along Great Mall Parkway. Residential development along McCandless Drive can take advantage of the existing mature tree canopy, which will be preserved, creating an attractive living environment. The apartments and condominiums will look*

out onto the greenery, and their residents can stroll along McCandless to the restaurants and stores located near Great Mall Parkway. Meanwhile, the employees in the offices located along Montague Expressway will also be walking to the same shops and eateries at lunch and after work, requiring an urban design that is conducive to pedestrians and which amplifies the compactness and pleasant nature of the subdistrict.

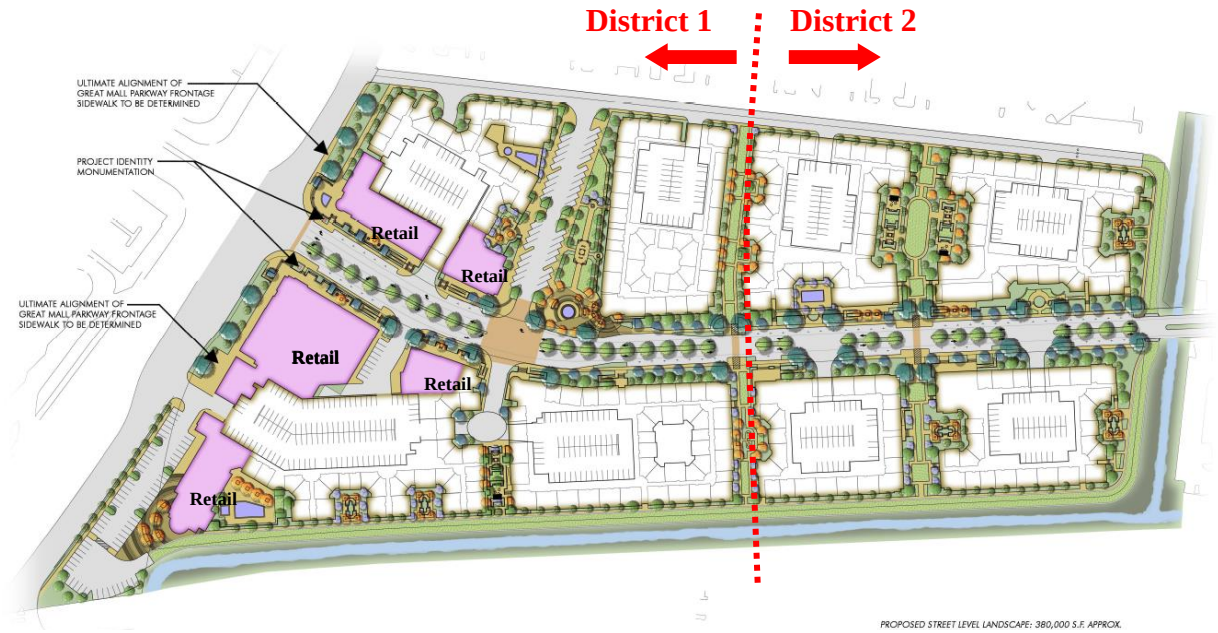
Integral Communities has been involved in the development of the TASP and one of the key projects in the plan area. The Project site has been referred to as the District and it has been part of a long history of approved Planning Applications. The following provides a brief history overview of the key dates and approvals relating to the Project sites.

Integral – The District History

- **2010: McCandless/The District Tentative Map Entitlements – 8 High-Density Mixed-Use Buildings**

  In 2008, the Project applicant submitted an application for a tentative map and conditional use permit requesting the approval of eight high density residential buildings along McCandless Drive with significant retail and commercial space in the first two building along Great Mall Parkway. The proposal included a Major Tentative Map (MT08-0002) and Conditional Use Permit (UP08-0046) and the proposed project was intended to establish future lots for the area, site improvements and laid the ground work for density distribution for the project. For reference, the project was referred to as "The District". The proposal included a maximum of 1,328 dwelling units and 75,000 square feet of retail/commercial space. The plans were reviewed and approved by the Planning Commission on August 25, 2010 and the City Council on September 7, 2010 (Resolution No. 8029, See Web Links for more information). The project also included an Owner Participation Agreement (OPA) which was approved by the City Council on August 3, 2010. The following diagram below is from plans submitted in 2008 and considered by the Planning Commission and City Council in 2010. The proposal included six large residential buildings and two mixed use buildings located on Great Mall Parkway. The City allowed the concentration of the commercial space near Great Mall Parkway due to the large scale of the project of 1,328 residential units with 75,000 square feet of retail/commercial space, large urban compact development with eight high-density buildings to support retail/commercial, and the overall proposal of constructing the retail/commercial first prior to the residential buildings. Figure 3 identifies the proposed site plan for the original approval of the 8 large buildings.

Figure 3
2008 Approved Plan for the District Project



- **2012: "The District" - Mixed-use "Santana Row" style buildings and townhouse units Entitlements.**
  In early 2011, the project applicant submitted an application requesting to amend the 2010 approved entitlements discussed above to replace four of the eight large buildings in the back along McCandless Drive with a sprawling 200 unit townhouse project, referencing the townhomes as "District 2." The project included a Site Development Permit (SD11-0001) to review the architecture of the buildings, Conditional Use Permit (UP11-0037) to allow a grocery store on Lot 1 and Major Tentative Map (MT11-0002) to create 27 townhouse building lots and associated common areas. Figure 4 below shows the revised development identifying the townhouse units in District 2. The approved changes resulted in a net decrease of 226 dwelling units from District 2 and net increase of 6,000 square feet of ground floor retail for Lots 2 and 4. Figures 5-1 and 5-2 are architectural renderings provided by the applicant, which were a considering factor by the City in accepting the proposed concept for the District 1 area. In addition, the recession was at its height in 2012, financing and the housing markets were very weak and the City worked extensively with the applicant to assist them in moving forward with the construction of District 2 with the explicit understanding that the mixed use building in District 1 would be constructed shortly. The Planning Commission reviewed the item on February 22, 2012 and the City Council approved the amendments on March 30, 2012 (Resolution No. 8165).

Figure 4
2012 Approved Plan for the District Project

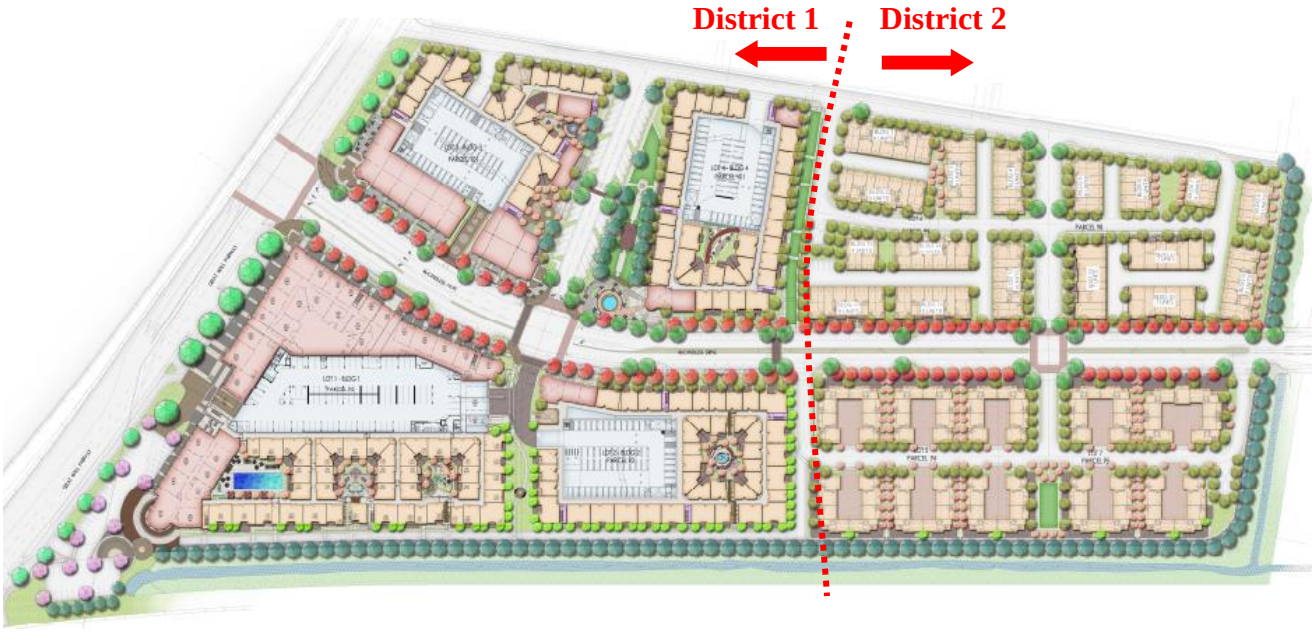


Figure 5-1
2012 Approved Architecture

Figure 5-2
2012 Approved Mixed Use Building Architecture

- **2014: "The District" Proposed Amendments – Remove Mixed-Use Building from Lot 3 Entirely from the District Project and Change Lots 2 & 4 from Two Mixed-Use Buildings to more Townhomes.**

The Application
The following is a summary of the applicant's request:

- *Site Development Permit (SD13-0010):* To allow an amendment to Lots 2 and 4 changing them from large high-density mixed-use residential buildings to townhouse units resulting in a net decrease of 284 units, a net decrease of approximately 6,000 square feet of ground floor retail, relocation of the Urban Plaza from Lot 4 to Lot 3 and removing Lot 3 from the District project to the adjacent Centre Pointe project resulting in the elimination of a high-density mixed-used building on Lot 3 *eliminating approximately 169 residential units and 27,000 square feet of retail/commercial space entirely from the District project*.
- *Major Tentative Map (MT13-0005):* To amend the original Tentative Map relocating the Urban Plaza to Lot 3 and the creation of 18 townhouse building lots, associated common lots on Lots 2 and 4 and removal of Lot 3 from the map.
- *Conditional Use Permit (UP13-0009):* To amend the original Conditional Use Permit pertaining to Lots 2 and 4 to allow: change from mixed use to townhouses, to allow tandem garage spaces and to allow reduction in TASP-required setbacks.

In June 2013, the Project applicant submitted an application requesting an approval of amendments to Lots 2 and 4 the two mixed use buildings with 108 townhouse units. The proposal will result in a decrease of 284 units, and decrease of 6,000 square feet of retail from Lots 2 and 4, eliminating 100% of the commercial-retail on these lots. In addition, the proposal includes the relocation of the Urban Park Plaza from Lot 4 to Lot 3 and removal of the development of Lot 3 to the applicant's Centre Pointe project on the Planning Commission agenda on November 24, 2014. In summary, the proposal will result in a net decrease of 528 residential units and a net decrease of 30,000 square feet of retail from the original District project approved in 2010 discussed above. Figure 6 below shows the proposed revised site plans for Lots 2 and 4 with the development of townhouse units rather than mixed use buildings.

Figure 6
2014 Proposed Changes to "The District"

PROJECT DESCRIPTION

Overview

The proposed Project includes the proposed construction of 18 new townhouse buildings with a total of 108 dwelling units, guest parking, landscaping and associated site improvements on Lots 2 and 4 of The District development. The Tentative Map includes the proposed lots to allow the townhouse development on Lots 2 and 4 and also include the relocation of the Urban Park Plaza from Lot 4 to Lot 3 and the removal of Lot 3 from the map and District project entirely.

Location and Context
The Project site is located at 1400 McCandless Drive east of the intersection of Great Mall Parkway and McCandless Drive. The site is located directly across from the VTA light rail station and the Great Mall. Vicinity and location maps of the subject site location are included on the previous pages.

PROJECT ANALYSIS

General Plan, Specific Plan and Zoning Conformance

General Plan & Transit Area Specific Plan (TASP)
The Project site has a General Plan and TASP land use designation of Residential – Retail High Density Mixed Use and the proposed Project is also located with the McCandless/Centre Pointe Sub-District. This designation is intended for residential, hotels, ground floor retail and restaurants with residential densities between 31-50 units per acre with allowances up to 80 units per acre with the allowed density Bonus. In addition, this district requires a minimum of 200 square feet of ground floor retail space for each dwelling unit required based on the minimum density. Based on the lot sizes totaling 4.79 acres, the proposed Project would be required to provide a minimum density of 149 units and 29,698 square feet of retail on Lots 2 and 4. The proposed amendment is not consistent with the General Plan and TASP in that it has removed the required retail space from Lots 2 and 4 entirely. With the removal of Lot 3 from District 1 and the proposed acreage for the remaining Lots 1, 2 and 4 in the District project, there should be 60,000 square feet of ground floor retail between Lots 1 and 2 and there is only 52,000 square feet proposed for Lot 1, in violation of the TASP.

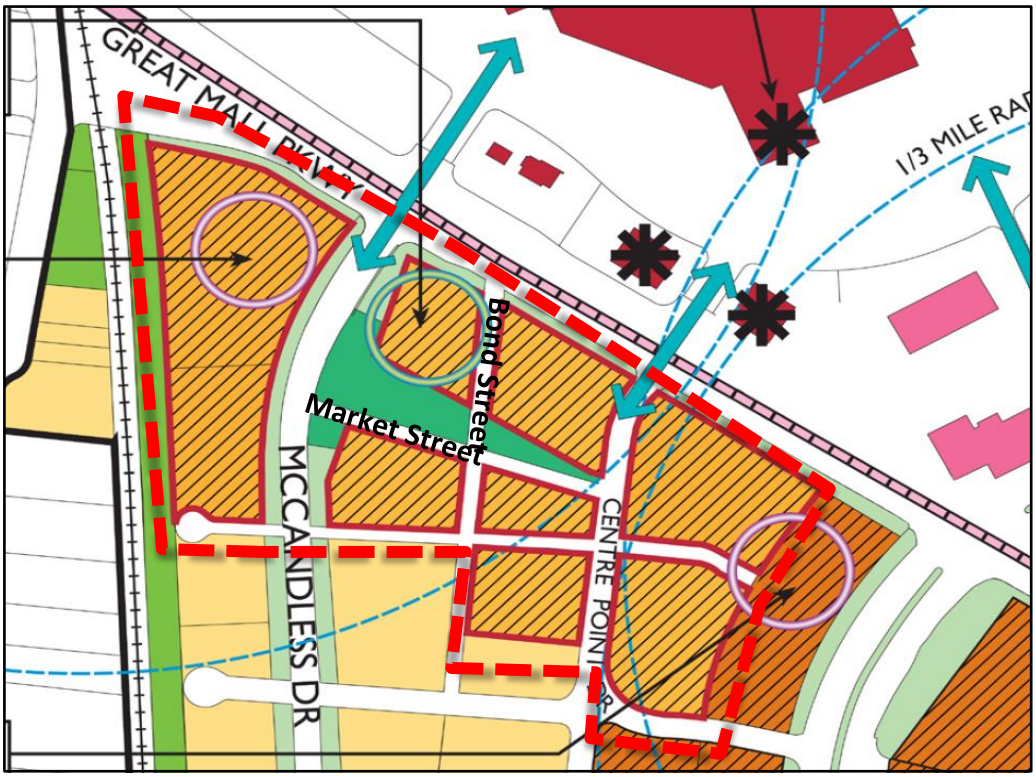
Zoning and TASP Zoning
The subject site (District 1) is zoned High Density Residential (MXD2) with site and Architectural and Transit Oriented Development Overlays focusing on design and treatment of projects near transit nodes.

Density
The TASP allows for a residential range between 31 and 50 units per gross acre. The project previously received a density bonus as part of an OPA which provided an increase of 25% allowing up to 62.5 dwelling units per acre (over District 1 and 2). The original OPA also resulted in higher density of units per acre (71.4) in District 1, resulting from averaging the residential density over the entire project area. In 2012, the applicant requested an amendment to the 2010 entitlements, which reduced the original density for District 2 to allow townhouse development. The applicant's proposal results in an additional reduction in the proposed density for District 1 for Lots 2 and 4. While the proposed townhouse development meets the minimum required density, it further erodes the applicant original entitlements in 2010 and extinguishes the promise to the City to implement the vision of the TASP. As noted above, if the City Council approves the requested amendments, the consequence would be a decrease in dwelling units from 1,328 to 828 and retail space from 80,000 square feet to 54,000 square feet as compared to the original entitlements in 2010.

Retail/Commercial Space
The MXD2 Zoning requires 200 square feet of retail/commercial space per number of dwelling units allowed under the minimum zoning. The applicant's proposal does not include any commercial/retail space in the development (Lots 2 and 4). The applicant has indicated that they

may transfer commercial use density from one lot to another. The TASP does not authorize such transferring of commercial/retail space. The intent of the MXD2 designation is to provide neighborhood retail space for the new TASP area and to integrate the retail area along the mixed use character of the TASP streets, such as McCandless and Market Streets. The proposed changes would result in a deficiency of 8,000 square feet and all the retail area concentrated on Lot 1. This does not meet the intent of the TASP and will make Lot 1 difficult to finance, impractical to be built, and likely to remain vacant. The TASP Land Use Plan illustrates the intent by designating specific amounts of land as MXD2 to provide retail services accessible to the new community as outlined in red in Figure 7 below.

Figure 7
TASP Retail Areas – McCandless/Centre Pointe



Development Standards
The following table indicates the project conformance to the development standards required in the MXD2 and TOD Overlay Districts.

Table 1:
Summary of Development Standards

MXD2-TOD	Standard	Proposed	Complies?
Setbacks (Minimum)			
Front			
o Lot 2	8-15 feet	19 feet	Yes
o Lot 4	8-15 feet	19 feet	Yes
Interior (North)			
o Lot 2	10 feet	28 feet	Yes
o Lot 4	10 feet	8 feet	**No**
Interior (South)			
o Lot 2	10 feet	7.2 feet	**No**
o Lot 4	10 feet	8 feet	**No**
Rear			
o Lot 2	10 feet	25 feet	Yes
o Lot 4 (Bond)	10 feet	6 feet	**No**
Creek Setback	25 Feet	25 feet	Yes
Floor Area Ratio (Maximum)	Up to 1.88	1.03	Yes
Density (Units/Acre)	31-50 Unit/Acre	23 Units/Acre	**No**
Building Height (Maximum)	Up to 12 stories	3 Stories	Yes
Ground Floor Retail	60,574 sf	52,400	**No**

The proposed Project is not consistent with required setbacks for interior side and rear as indicated in the table above. The applicant may request a Conditional Use Permit to allow exceptions to the requirements of the TASP; however, due to the larger consistency issues regarding density and retail space, staff does not recommend exceptions proposed by the applicant.

In addition, the applicant is also below the minimum density for the MXD2 area, which requires a minimum of 31 units per acre and the project is at 23 units per acre. The applicant may request a density transfer through the submittal of a Transfer of Density Agreement, which has not been submitted. The applicant does have an executed Density Transfer Agreement with the City, but the agreement was for the 2012 project when District 2 was changed to townhouses. Based on the current proposal and past changes to District 1 and 2, resulting in a cumulative loss in TASP vision and vibrant mixed use character, staff does not recommend additional transfer of residential densities.

Architecture
The proposed architectural styles are two distinct styles for each lot. Lot 2 is a contemporary style, using varied roof forms including arched, metal awnings, stucco reveals and complimentary colors. Lot 4 is a modern style using varied massing's of rectangular forms and contrasting colors. Lot 2 is proposed to have a cool color palate with soft blues and white and Lot 4 is proposed to have earth tones at the base and lighter earth tones and whites for the upper

floors. The proposed architecture departs from the architecture proposed for the Taylor Morrison development in District 2 and represents a stark contrast to the Art Deco building proposed on Lot 1. Staff has compiled the elevations for the development on McCandless for reference and illustration of the issue. Based on this, staff is not in support of the proposed Project due to the incompatibility of the architectural styles. The proposed architecture would result in architectural style inconsistency along McCandless.

View of Lot 1 from Great Mall Pkwy down McCandless

View of Lot 2 frontage on McCandless

View of District 2 frontage on McCandless

View of District 2 frontage on McCandless

The proposed Project includes private garages and open guest parking spaces on each lot. Lot 2 includes 55 units and the Lot 4 includes 53 units and both projects have a mix of 2 car and tandem garages. Tandem spaces may be allowed with a Conditional Use Permit (Section 53.07(D)(1)) with a maximum of 50% of the parking spaces as tandem garage spaces. The proposed Project meets this requirement by providing 33% of the garage spaces as tandem. The TASP includes a minimum and maximum for parking spaces required. Table 2 indicates the required parking based on the number of bedrooms and garages provided. The proposed Project is deficient on surface lot guest spaces on Lot 4. Although the site does provide additional garage spaces above the required, they are not available to guest and therefore do not meet the intent of guest spaces. The Project as proposed is deficient in guest parking space requirements.

Table 2
Proposed and Required Parking

Site	Garage		Guest	
	Required	**Proposed**	**Required**	**Proposed**
Lot 2	68	110	14	17
Lot 4	99	106	20	*16**
Totals	167	216	34	33
*4 spaces deficient				

Landscaping
The proposed Project will be landscaped in accordance with the Zoning Code and TASP. Lot 4 includes minimal landscape on the interior of the site. Lot 2 includes a large paseo between buildings 15 and 14, which will provide a connection to the Pentencia Creek Trail. Both projects would provide streetscape improvements consistent with the TASP. The entrance to Lot 2 leads to the solid waste receptacle, which is a 30 x 20 foot enclosure and it will be approximately 8 to 10 feet tall.

ADOPTED PLANS AND ORDINANCE CONSISTENCY

General Plan
The table below outlines the proposed Project consistency with applicable General Plan Guiding Principles an Implementing Guidelines:

General Plan	
Policy	**Consistency Finding**
2.a.1-25: Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.	***Not Consistent***. The proposed Project does not include any required retail/commercial space in Lots 2, 3 and 4 as part of this Project.
2.a-G-2 Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.	***Not Consistent***. The proposed Project does not include any required retail/commercial space in Lots 2, 3 and 4 as part of the Project. Furthermore, the TASP requires a minimum of 200 square feet of ground floor retail based on the units required for the minimum density, which would require approximately 60,000 square feet of ground floor retail in District 1 and removal of Lots 3 from District 1 and removal of all retail/commercial space from Lots 2 and 4, makes the proposed Project in violation of the TASP. In addition, the TASP vision is to provide the retail throughout the designated area instead of isolating and concentrating them as the current proposal.
2.a-G-2 Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.	***Not Consistent***. The proposed Project is not consistent with this Principle because it includes replacing two mixed-use buildings with 108 townhouse units. The development will eliminate potential neighborhood serving commercial space in the TASP.
2.a 1-31 Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.	***Not Consistent***. The proposed Project is not consistent with this policy because the proposal is further removing the original urban forms from the 2010 approval and the residential density is below the minimum required.

2.a 1-32 Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.	***Not Consistent***. The proposed Project is not consistent with this policy because the proposed changes result in a variety of incompatible architectural styles which detract from the neighborhood and overall feel of the area.

Transit Area Specific Plan

Overall compliance

The proposed Project's land use and street layout are not in compliance with the McCandless/Centre Pointe sub-district (Chapter 4.5 of the Specific Plan). The following table summarizes compliance/non-compliance with various specific plan policies. Additional discussion is provided for density, the required retail, and street sections.

Transit Area Specific Plan	
Policy	**Compliance**
Policy 3.4: Provide a variety of housing types for different types of households, different income levels, different age groups, and different lifestyles.	**No.** The proposed Project is eliminating high-density mixed-use buildings with Townhouse units.
Policy 3.6: Encourage creativity in high-density residential design. Allow housing types, such as live/work lofts, that are not currently developed in the city.	**No.** The proposed Project only includes townhouse style units.
Policy 3.17: New streets shall be located as generally shown on the Street System Map, Figure 3-2.	**Yes.** The street have been located in a pattern consistent with the TASP.
Policy 4.59 (MC-C): 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.	**Yes.** The 2010 approval allowed the removal of the existing trees on McCandless.
Policy 4.60 (MC-C): 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.	**Yes. Previously approved with 2010 approval.**
Policy 4.61 (MC-C): Transform McCandless Drive into a two lane boulevard with bike lanes and street parking.	**Yes.**
Policy 4.62 (MC-C): Create a boulevard	**Yes.**

street design on Great Mall Parkway between McCandless Drive and Centre Pointe Drive.	
Policy 4.64 (MC-C): Create a new north/south street parallel to McCandless Drive and Centre Pointe Drive to provide access to parking as well as service and loading functions.	**Yes.**
Policy 4.66 (MC-C): Create new streets between McCandless Drive and Lower Penitencia Creek which will provide access to parking garages, and will also provide on-street parking.	**No.** None are proposed. Pedestrian paseos are provided.
Policy 4.67 (MC-C): Do not create new curb cuts along McCandless Drive or Centre Pointe Drive, in order to preserve the existing trees and to create a pedestrian environment along the street.	**No.** New curb cuts are proposed and no street trees are preserved along McCandless.
Policy 4.69 (MC-C): Create a mixed use area with retail, restaurant, and personal service uses in the area closest to Great Mall Parkway.	**No.** The proposed project over concentrates retail on Lot 1 and eliminate retail from Lots 2, 3 and 4.
Policy 4.70 (MC-C): Create a high-density residential neighborhood at the interior of the subdistrict, centered along McCandless Drive.	**No.** Although the proposed developments on Lots 2 and 4 meet the minimum density they do not create a high density residential neighborhood.
Policy 4.71 (MC-C): Provide a grocery store within the Residential-Retail High Density Mixed Use district that serves neighborhood residents and provides a range of fresh produce as well as meat, poultry, and fish.	**Yes.** The proposed Project does not involve any changes to the proposed grocery store on Lot 1, although the building has not been constructed as of yet.
Policy 4.73 (MC-C): Create a plaza or other type of public space in the retail mixed use district, located as shown in the Plan Map.	**Yes.**
Policy 4.74 (MC-C): Create a trail along the Penitencia Creek East Channel.	**Yes.**

FINDINGS FOR DENIAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. The project is not consistent with the following findings:

Major Tentative Map Findings (Section XI-1-20.01)

1. *The tentative subdivision map is inconsistent with the Milpitas General Plan and Transit Area Specific Plan.*

As discussed in detail above, the project site has a General Plan and Transit Area Specific Plan land use designation of Residential – Retail High Density Mixed Use. The intent of this designation is to provide high-density housing, retail and employment in the McCandless Centre Pointe subdistrict along at a minimum density range of 31 units per acre, and a maximum density of 50 units per acre. In addition, this land use designation required ground floor retail and the Project area should be providing a minimum of 60,000 square feet of retail. The proposed Project only includes 52,000 square feet of retail, which is deficient 8,000 square feet and is inconsistent with both the Milpitas General Plan and Transit Area Specific Plan.

- ***2.a.1-25:*** *Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.*

As discussed in detail above, he proposed Project fails to implement the required commercial-retail space for Lots 1, 2 and 4. The TASP requires a minimum of 200 square feet of ground floor retail based on the units required for the minimum density, which would require approximately 60,000 square feet of ground floor retail and the proposed Project only provides 52,000 square feet. In addition, the TASP requires retail throughout the designated area instead of concentrating all commercial-retail in Lot 1 as in the current proposal.

- ***2.a-G-2*** *Maintain a relatively compact urban form. Emphasize mixed-use development to the extent feasible, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.*

As discussed in detail above, the proposed Project is not consistent with this Principle because it includes replacing two mixed-use buildings with 108 townhouse units. The development will eliminate potential neighborhood serving commercial space in the TASP.

- ***2.a 1-31*** *Develop the Transit area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.*

As discussed in detail above, the proposed Project is not consistent with this policy because the proposal is further removing the original urban forms from the original 2010 entitlements approval and the residential density is below the minimum required.

- ***2.a 1-32*** *Require development in the Transit area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.*

As discussed in detail above, the proposed Project is not consistent with this policy because the proposed changes result in a variety of incompatible architectural styles which detract from the neighborhood and overall feel of the area.

Site Development Permit Findings (Section XI-10-57-03(F)(1))

1. *The layout of the site and design of the proposed buildings, structures and landscaping are incompatible and aesthetically not harmonious with adjacent and surrounding development.*

   As discussed in detail above, the proposed architecture is not consistent with the existing District 2 neighborhood. In addition, the proposed architecture for Lots 2 and 4 is a stark contrast to the homes in District 2 and the remaining Art Deco building on Lot 1. Furthermore, the elimination of Lot 3 and retail on Lots 2 and 4 imposes stress on the remaining commercial on Lot 1 in that it is all concentrated on one lot and not spread out throughout the subdistirct.

2. *The project is inconsistent with the Milpitas Zoning Ordinance.*

   The subject site (District 1) is zoned High Density Residential (MXD2) with site and Architectural and Transit Oriented Development Overlays focusing on design and treatment of projects near transit nodes.

   Density
   The TASP allows for a residential range between 31 and 50 units per gross acre. The project previously received a density bonus as part of an OPA which allowed an increase of 25% allowing up to 62.5 dwelling units per acre (over District 1 and 2). The original OPA also resulted in higher density of units per acre (71.4) in District 1, resulting from averaging the residential density over the entire project area. In 2012, the applicant requested an amendment to the original plan, which reduced the original density for District 2 to allow townhouse development. The proposed Project results in an additional reduction in the proposed density for District 1 for Lots 2 and 4 and does not meet the minimum residential density required under TASP with Lot 2 required to construct 80 units and Lots 4 required to construct 69 units. While the proposed townhouse development meets the minimum required density, it further chips away at the original approved 2010 entitlements and promise to the City to implement the vision of the TASP.

   Retail/Commercial Space
   As discussed in detail above, the MXD2 Zoning also requires 200 square feet of retail/commercial space based on the number of dwelling units allowed under the minimum zoning. The proposed Project does not include any commercial/retail space in the development. The applicant has indicated that they may transfer commercial-retail density from one lot to another. The TASP does not authorized such transfer. The intent and requirement of the MXD2 designation is to provide neighborhood retail space for the new TASP area and to spread the retail area along main streets. The proposed Project results in a deficiency of 8,000 square feet and all the retail area is concentrated on Lot 1 in violation of the TASP.

Development Standards
The following table indicates the project conformance to the development standards required in the MXD2 and TOD Overlay Districts.

Table 1:
Summary of Development Standards

MXD2-TOD	Standard	Proposed	Complies?
Setbacks (Minimum)			
Front			
o Lot 2	8-15 feet	19 feet	Yes
o Lot 4	8-15 feet	19 feet	Yes
Interior (North)			
o Lot 2	10 feet	28 feet	Yes
o Lot 4	10 feet	8 feet	**No**
Interior (South)			
o Lot 2	10 feet	7.2 feet	**No**
o Lot 4	10 feet	8 feet	**No**
Rear			
o Lot 2	10 feet	25 feet	Yes
o Lot 4 (Bond)	10 feet	6 feet	**No**
Creek Setback	25 Feet	25 feet	Yes
Floor Area Ratio (Maximum)	Up to 1.88	1.03	Yes
Density (Units/Acre)	31-50 Unit/Acre	23 Units/Acre	**No**
Building Height (Maximum)	Up to 12 stories	3 Stories	Yes
Ground Floor Retail	60,574 sf	52,400	**No**

The proposed Project is not consistent with required setbacks for interior side and rear as indicated in the table above. The applicant may request a Conditional Use Permit to allow exceptions to the requirements of the TASP; however, due to the larger inconsistency issues regarding density and retail space, staff does not recommend proposed exceptions.

In addition, the proposed Project is also below the minimum density for the MXD2 area, which requires a minimum of 31 units per acre and the project is at 23 units per acre. The applicant may request a density transfer through the submittal of a Transfer of Density Agreement, which has not been submitted. Based on the current proposal and past changes to District 1 and 2 outlined above, staff does not recommend any additional transfer of residential densities.

Architecture

The proposed architectural styles are two distinct styles for each lot. Lot 2 is a contemporary style, using varied roof forms including arched, metal awnings, stucco reveals and complimentary colors. Lot 4 is a modern style using varied massing's of rectangular forms and contrasting colors. Lot 2 is proposed to have a cool color palate with soft blues and white and Lot 4 is proposed to have earth tones at the base and lighter earth tones and whites for the upper floors. The proposed architecture departs from the architecture proposed for the Taylor Morrison development in District 2 and a stark contrast to the Art Deco building proposed on Lot 1. Staff has compiled the elevations for the development on McCandless for reference and illustration of the issue. Based on this, staff is not in support of the proposed Project due to the incompatibility of the architectural styles. The proposed architecture would result in architectural style inconsistency along McCandless.

View of Lot 1 from Great Mall Pkwy down McCandless

View of Lot 2 frontage on McCandless

View of District 2 frontage on McCandless

The proposed Project does not provide the minimum guest parking spaces required.

Table 2
Proposed and Required Parking

Site	Garage		Guest	
	Required	**Proposed**	**Required**	**Proposed**
Lot 2	68	110	14	17
Lot 4	99	106	20	*16**
** Deficient 4 parking Spaces*				

3. *The project is inconsistent with the Milpitas General Plan.*

   As discussed in detail above, the proposed Project is not consistent with the Milpitas General Plan.

4. *The project is inconsistent with the Transit Area Specific Plan.*

   In addition to what was discussed above, the proposed Project fails to comply with the TASP as follows:

Transit Area Specific Plan	
Policy	**Compliance**
Policy 3.4: Provide a variety of housing types for different types of households, different income levels, different age groups, and different lifestyles.	**No.** The proposed Project is eliminating condo/apartment flats and replacing with Townhouse (3-story) units.
Policy 3.6: Encourage creativity in high-density residential design. Allow housing types, such as live/work lofts, that are not currently developed in the city.	**No.** The proposed Project only includes townhouse style units.
Policy 4.66 (MC-C): Create new streets between McCandless Drive and Lower Penitencia Creek which will provide access to parking garages, and will also provide on-street parking.	**No.** None are proposed. Pedestrian paseos are provided.

Policy 4.67 (MC-C): Do not create new curb cuts along McCandless Drive or Centre Pointe Drive, in order to preserve the existing trees and to create a pedestrian environment along the street.	**No.** New curb cuts are proposed and no street trees are preserved along McCandless.
Policy 4.69 (MC-C): Create a mixed use area with retail, restaurant, and personal service uses in the area closest to Great Mall Parkway.	**No.** The proposed Project over concentrates retail on Lot 1 and eliminate retail from Lot 2.
Policy 4.70 (MC-C): Create a high-density residential neighborhood at the interior of the subdistrict, centered along McCandless Drive.	**No.** Although the proposed developments on Lots 2 and 4 meet the minimum density they do not create a high density residential neighborhood.

As stated above, the proposed development is not consistent with the TASP policies identified for the McCandless subdistrict area in that the project does not meet the required retail square footage, the architecture is not compatible and the proposed residential density does not meet the minimum required for Lots 2 and 4.

Conditional Use Permit Findings (Section XI-10-57.04(F))

1. *The proposed use, at the proposed location will be detrimental or injurious to property or improvements in the vicinity and impact public health, safety, and general welfare;*

   Based on the details provided above, the proposed Project will be detrimental to public health, safety and general welfare. In addition, the proposed townhouses will result in a footprint that is difficult to accommodate on both lots resulting in needed exceptions from the required setback as noted in the Zoning Conformance discussion noted above. In addition, the proposed tandem garages will result in underutilized parking in the area, which may be problematic due to the housing product type. In addition, the proposed Project is deficient in guest parking spaces for the site, which can exacerbate future parking issues. In addition, the proposed design has not demonstrated that it will be of a high quality and it is not compatible with the neighborhood.

2. *The project is inconsistent with the Milpitas General Plan.*

   As discussed in detail above, the proposed Project is not consistent with the Milpitas General Plan.

3. *The project is inconsistent with the Milpitas Zoning Ordinance.*

   As discussed in detail above, the proposed Project is not consistent with the Milpitas Zoning Ordinance.

4. *The project is inconsistent with the Transit Area Specific Plan.*

   As discussed in detail above, the proposed Project is not consistent with the Milpitas Transit Area Specific Plan.

5. *The deviation from the Transit Area Specific Plan Standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development.*

   As discussed in detail above, the proposed Project is not consistent with this finding because the deviations from the code will result in a project that is not consistent with the TASP and General Plan and will not implement the vision for the McCandless Centre Pointe subdistrict.

6. *The deviation from the Transit Area Specific Plan Standard allows for a public benefit not otherwise obtainable through the strict application of the Zoning Standard.*

   As discussed in detail above, the proposed project is not consistent with this finding because the proposed project will not result in implementation of the TASP and it will result in less than required retail space for the subdistrict. More importantly, the proposed TASP will not provide any public benefits to the City.

ENVIRONMENTAL REVIEW

As analyzed in this Report, the proposed Project is inconsistent with the City's General Plan, Zoning and Transit Area Specific Plan. Additional environmental review, study and analysis will be required if the City Council wishes to approve the proposed Project to determine whether the proposed Project is consistent with the Transit Area Specific Plan EIR (State Clearinghouse No. 2006032091) certified by the City Council on June 3, 2008 (Resolution No. 7759). Additional technical studies include a traffic impact analysis, parking study, and noise study.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. Staff did not receive public comments as of the date of writing this report.

CITY COUNCIL REVIEW

This project requires review by the City Council and is tentatively scheduled on the December 16th City Council agenda.

CONCLUSION

In conclusion, staff recommends the Planning Commission recommend the City Council deny the proposed Project. The project is inconsistent with the City's General Plan, Zoning and TASP Policies, Land Use Designation and Zoning Ordinance. The proposed Project is inconsistent with these plans in four major areas:

1. Failure to comply with the overall vision, goals, and policies of the TASP;
2. Failure to meet the minimum residential density requirements;
3. Failure to meet the minimum commercial-retail requirements;
4. Failure to meet the required location for commercial-retail space;
5. Failure to provide the required high quality architecture.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct a Public Hearing; and
   Adopt Resolution No. 14-036 recommending the City Council deny the Major Tentative Map, Site Development Permit and Conditional Use Permit amendments to eliminate Lot 3 (mixed-use building with approximately 169 dwelling units and 27,187 of retail square footage) from District 1 Project, and replace two approximately 400,000 square foot mixed-use buildings on Lots 2 and 4 totaling 392 residential units and approximately 6,000 square feet of commercial-retail space with 108 townhouse dwelling units on 4.79 acres.

ATTACHMENTS

A: Resolution 14-036
B: Project Plans – Site Development Permit
C: Project Plans – Major Vesting Tentative Map
D: Incompleteness Letters
   D-1 – 8/14/13 Incomplete Letter
   D-2 – 12/11/13 Incomplete Letter
   D-3 – 5/7/14 Incomplete Letter
   D-4 – 9/9/14 Incomplete Letter

WEB LINKS

1. August 25, 2010 - Planning Commission Staff Report
   http://www.ci.milpitas.ca.gov/_pdfs/commissions/pc/2010/082510/attachments.asp
2. August 25, 2010 - Planning Commission Minutes
   http://www.ci.milpitas.ca.gov/_pdfs/commissions/pc/2010/082510/minutes.pdf
3. September 7, 2010 - City Council Staff Report
   http://www.ci.milpitas.ca.gov/_pdfs/council/2010/090710/item_01.pdf
4. September 7, 2010 - City Council Minutes
   http://www.ci.milpitas.ca.gov/_pdfs/council/2010/090710/minutes.pdf
5. September 7, 2010 - City Council Meeting Video
   http://www.ci.milpitas.ca.gov/government/council/archives/meeting_docs_2010.asp
6. February 22, 2012 - Planning Commission Staff Report
   http://www.ci.milpitas.ca.gov/_pdfs/commissions/pc/2012/022212/attachments.asp
7. February 22, 2012 - Planning Commission Minutes
   http://www.ci.milpitas.ca.gov/_pdfs/commissions/pc/2012/022212/minutes.pdf
8. March 20, 2012 - City Council Staff Report
   http://www.ci.milpitas.ca.gov/_pdfs/council/2012/032012/attachments.asp
9. March 20, 2012 - City Council Minutes
   http://www.ci.milpitas.ca.gov/_pdfs/council/2012/032012/minutes.pdf
10. March 20, 2012 - City Council Meeting Video

http://www.ci.milpitas.ca.gov/government/council/archives/meeting_docs_2012.asp