

**RESOLUTION NO. 16-037**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA RECOMMENDING APPROVAL OF A SITE DEVELOPMENT PERMIT (P-SD14-0021) CONDITIONAL USE PERMIT (P-UP14-0022) TENTATIVE TRACT MAP (P-MT14-0005), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0007) FOR THE CONSTRUCTION OF 18 RESIDENTIAL CONDOMINIUM UNITS ON 0.4 ACRES LOCATED AT 1316 SOUTH MAIN STREET, APN 086-23-006.**

**WHEREAS**, an application for a Site Development Permit (P-SD14-0021) Conditional Use Permit (P-UP14-0022), Tentative Tract Map (P-MT14-0005), and Environmental Assessment (P-EA16-0007) was filed by George Zhang, on November 3, 2014 to allow the demolition of two existing, vacant structures and for the development of one, four-story, structure containing 18 residential condominiums and 31 parking spaces and associated landscaping and site improvements. Maximum building height would be 42 feet and four stories, not including the rooftop stairwell. Site improvements include access from South Main Street, pedestrian walkways and landscaping 1316 South Main Street (APN 086-23-006); and

**WHEREAS**, on June 3, 2008, the City Council of the City of Milpitas approved the Transit Area Specific Plan to guide development in the Transit Area of the City near the future Milpitas BART Station; and

**WHEREAS**, Milpitas City Staff conducted a full analysis of the Project to ensure compliance with the City's General Plan, Transit Area Specific Plan, Municipal Code, Engineering Design Requirements and all other applicable laws, regulations and standards, as all further explained in detail in the City staff's report to the Planning Commission; and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and the Planning Commission recommends that the City Council determine this Project is covered under the program of activities identified in the Transit Area Specific Plan Environmental Impact Report (EIR), SCH#2006032091, certified by the City Council on June 3, 2008, based on the CEQA finding included in this Resolution; and

**WHEREAS**, on November 9, 2016, the Planning Commission held a duly-noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties and adopted a resolution recommending to the City Council approval of the Vesting Tentative Map, Conditional Use Permit, Site Development Permit, and Environmental Assessment for the Project; and

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

**SECTION 1. Recitals.** The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2: Record.** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

**SECTION 3. CEQA.** The proposed Project is covered under the scope of activities approved under the Transit Area Specific Plan EIR, SCH#2006032091, which was certified by the Milpitas City Council on June 3, 2008. The EIR included a program of activities including construction of up to 7,109 residential units within the Transit Area Specific Plan (TASP) area. The proposed 18 residential units and residential amenity space fall within this scope of development activity contemplated in the TASP EIR. Lamphier-Gregory completed an environmental assessment of the proposed Project is within the scope of the TASP EIR. The analysis found that the Project is consistent with the TASP EIR and confirmed that the Project is within the scope of development density considered under the TASP EIR. No new impacts were identified and no new mitigation measures are required. Policies and/or mitigation measures required of projects covered under the TASP EIR are included as Conditions of Approval. Pursuant to Public Resources Code section 21155.4 and CEQA Guidelines section 15183 and 15332, the Project is except from further review under CEQA.

**SECTION 4. Tentative Tract Map Findings (Section XI-1-20).** *The Planning Commission makes the following findings based on the evidence in the administrative record in support of Tentative Tract Map No. MT14-0005:*

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

The Project site has a General Plan land use designation of Very High Density Transit Oriented Residential. The intent of this designation is to provide high-density housing a minimum density range of 41 units per acre, and a maximum density of 60 units per acre.

The Project is consistent with this finding because the proposed Project meets the intent of the designation by providing a residential project within the district with 45 dwelling units per acre. Furthermore, the Project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- *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.*

The proposed Project is consistent with this policy because it includes an attractive four-story building with 18 residential units in proximity to the future Milpitas BART Station and existing Great Mall / Main Street light rail account. The Project also includes significant streetscape improvements enabling and encouraging connections to the BART and Light Rail transportation hubs.

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

The proposed Project is consistent with this policy because it has been designed per the adopted design guidelines/requirements contained in the Transit Area Plan. The Project meets all guidelines and requirements of the Transit Area Plan.

2. *None of the findings set forth in Government Code Section 66474 apply to the proposed Project:*

- *The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451.*

The proposed map is consistent with the Milpitas General Plan and the Transit Area Specific Plan as described in finding 1 above.

- *The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

The design and improvement of the proposed subdivision is consistent with Milpitas General Plan and the Transit Area Specific Plan as described in finding 1 above.

- *The site is physically suitable for the type of development.*

The site is physically suitable for the proposed residential development because it is located within walking distance of both the new BART Station and the VTA Light Rail Station, and is located in an area that supports similar and compatible development types that is presently served by necessary infrastructure and services.

- *The site is physically suitable for the proposed density of development.*

The site is physically suitable for the proposed density of development because of its proximity to transit and recreation facilities and the availability of infrastructure and services.

- *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The proposed subdivision and improvements have been evaluated for environmental impacts as discussed in the Environmental Quality Act (CEQA) Analysis prepared by Lamphier–Gregory for the Zhang Condominium Project. This analysis found that the project would result in no environmental impacts that had not already been identified as part of the Final Environmental Impact Report prepared for the City’s Transit Area Specific Plan (TASP).

- *The design of the subdivision or type of improvements is not likely to cause serious public health problems.*

As described in the CEQA analysis described above, the design of the subdivision or type of improvements is not likely to cause serious public health problems, and no public health problems are anticipated to arise.

- *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Access easements which are proposed for this subdivision will not conflict with access through or use of property within the proposed neighborhood.

**SECTION 5. Site Development Permit Findings (Section XI-10-57.03(F)(1))** - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD14-0021.*

- The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Project is consistent with this finding because the design of the building, including the mass, scale and height of the structures, is typical of transit-oriented development and includes additional landscaping along the streets. The building complements other approved and pending projects in the area, which all contribute to a vibrant urban transit district consistent with the vision of the Transit Area Specific Plan.

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

The Project site is zoned R-4 (Multiple Family - High Density). The proposed residential uses are permitted in the zoning district. The Project conforms to the zoning district and meets the intent for this type of project envisioned in this area.

The Project conforms to the development standards required in the R-4 District, with modest exceptions requested to the setback and parking requirements, as permitted by TASP through approval of a CUP.

Per TASP Section 5-2: *Zoning Regulations*, “Exceptions to the standards may be approved by the Planning Commission upon review of a use permit, in accordance with the requirements of Chapter 57 of the Zoning Code”. The applicant is requesting a CUP to allow for a reduction in the side and rear yard setbacks as well as for the use of tandem parking spaces. These requests are outlined in further detail, below.

#### *Setback Reduction*

The building is designed to generally meet the building setback requirements with allowed encroachments (stairwells, balconies, etc.) located within the required yard area, but first floor carport improvements would be located within 7.5 feet of the side property line and within 5 feet of the rear property line where 10 foot setbacks are required. Per Milpitas Municipal Code Table XI-10.57.04-1, the Planning Commission finds that the exceptions are appropriate because

- i. The project site is relatively small and the exceptions is necessary to allow high-density residential development consistent with the design intent of the Specific Plan without detracting from the overall architectural, landscaping and site planning integrity of the proposed development;
- ii. The proposed improvements are ground floor improvements that will not interfere with the use and enjoyment of neighboring properties including reasonable enjoyment of light and air; and
- iii. The exceptions is necessary to allow residential development in close proximity to transit in an area of the City intended for that purpose, a public benefit that is not obtainable on a comparatively small lot through the strict application of the setback requirements.

#### *Tandem Spaces*

Per TASP Table 5-1: *Development Standards*, the use of tandem and compact parking may also be allowed through the approval of a CUP. The project proposes to provide 31 spaces for 18 units, 16 of which are tandem parking spaces that serve 8 (44%) of the proposed units. The TASP is specifically designed to reduce the need for automobile trips. This condition renders tandem parking to be a viable option for residents of one unit to store their vehicles without detracting from the health, safety or welfare of the neighborhood.

#### *c. The Project is consistent with the Milpitas General Plan.*

The Project is consistent with the Milpitas General Plan in that the Project, as proposed and conditioned, conforms to the density and land use envisioned by the Plan. In particular, the project implements the following General Plan Policies:

- i. *2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.*  
The project creates new residential housing opportunities which supports existing and future retail and commercial development.
- ii. *2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.*

The proposed residential use represents a small increase in employee stock to the surrounding businesses and employees.

#### *d. The Project is consistent with the Transit Area Specific Plan.*

The Project is consistent with the Transit Area Specific Plan in that the Project, as proposed and conditioned, conforms to the street layout, street section, density and land use envisioned by the Plan which was approved in Resolution 7760, approved by City Council in June 2008, inasmuch as providing residents the option of many different types of housing, with variations in unit size, degree of privacy, distance from the ground, materials, design, amount of parking, image and cost.

**SECTION 6. Conditional Use Permit Findings (Section XI-10-57.04(F)).** *The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0022:*

*a. The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare.*

The Project is consistent with this finding because the proposed condominium project, modification to setbacks, and compact parking will not be detrimental or injurious to property or improvements in the vicinity, nor to the health, safety or welfare the general public. Rather, building setback and parking designs allow the project type to be of an appropriate density within the TASP sub-district while promoting the TASP vision of encouraging residents and visitors to walk, bike and take transit (TASP Vision Statement, Page 1-4). The proposed condominium project will create housing opportunities and increase the diversity of housing types in the area.

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

The condominium use, application of tandem parking and a reduction in setback are permitted by the Zoning Ordinance, subject to a Conditional Use Permit in order to analyze potential impacts to the public. Further, Per TASP Section 5-2: *Zoning Regulations*, “Exceptions to the standards may be approved by the Planning Commission upon review of a use permit, in accordance with the requirements of Chapter 57 of the Zoning Code.”

*c. The Project is consistent with the Milpitas General Plan.*

The condominium use, application of tandem parking and a reduction in setback allows this Project to meet General Plan Land Use criteria because it allows the Project to attain a higher density as envisioned by the General Plan Land Use Element.

*d. The Project is consistent with the Transit Area Specific Plan.*

The Project is consistent with this finding because the land use, density and street designs are within the parameters set forth in the Transit Area Specific Plan (TASP). The use of tandem and compact parking, as well as a reduction in setbacks, are permitted by the TASP subject to a Conditional Use Permit in order to analyze potential impacts to the public.

The TASP also requires that the following two findings be made as a part of the CUP approval process:

*1. 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.*

The reduction in side and rear yard setbacks, the use of compact and tandem spaces, and the creation of condominium units has no negative impact on site architecture, landscaping or site planning integrity, as permitting these uses actually has the beneficial impact of creating more space on-site for open space with landscaping that would otherwise be deleted in order to create additional guest parking spaces. Permitting these revised parking standards also adheres to the

TASP vision of encouraging residents and visitors to walk, bike and take transit (TASP Vision Statement, Page 1-4)

2. *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.*

The Project is consistent with this finding because the reduction in setback, creation of condominium units, and use of tandem and compact parking, in this instance, will allow increase the diversity of housing types in the City of Milpitas and the Use Permit is necessary to allow residential development in close proximity to transit in an area of the City intended for that purpose, a public benefit that is not obtainable on a comparatively small lot through the strict application of the setback requirements.

**SECTION 7.** The Planning Commission of the City of Milpitas hereby adopts Resolution No. 16-037 recommending the City Council approve Site Development Permit (P-SD14-0021) Conditional use permit (P-UP14-0022) Tentative Tract Map (P-MT14-0005) and Environmental Assessment (P-EA16-0007), based on the above findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2016.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on November 9, 2016, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Ray Maglalang				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Hon Lien				
Zeya Mohsin (Alternate)				

**EXHIBIT 1****CONDITIONS OF APPROVAL****1316 SOUTH MAIN STREET, (APN 086-23-006)****SITE DEVELOPMENT PERMIT (P-SD14-0021), CONDITIONAL USE PERMIT (P-UP14-0022), TENTATIVE TRACT MAP (P-MT14-0005), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0007):****GENERAL CONDITIONS**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Development Permit NO. P-SD14-0021 Conditional Use Permit NO. P-UP 14-0022 and Tentative Subdivision Map NO. P-MT 14-0005; and Environmental Assessment NO. P-EA16-0007 (collectively “Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Department. (P)
2. Approved Plans. The Permittee shall develop the approved project in conformance with the approved plans (dated April of 2016), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. (P)
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
4. Mitigation Monitoring. The project shall comply with the applicable mitigation measures from the certified Transit Area Specific Plan EIR. The mitigation measures are compiled in the Mitigation Monitoring and Reporting Program as adopted with the Final EIR
5. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project, including a copy of the Mitigation Monitoring and Reporting Program. (P)
6. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. (ALL)

7. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
8. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
9. Project Job Account. If the Permittee's project job account is at any time delinquent or below the required deposit amount, the City will not continue to review or process the application until the Permittee's project job account is paid in full and the required deposit has been paid. At the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(E)**.
10. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by any court of competent jurisdiction, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.
11. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).
12. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies.
13. Certificate of Insurance. Permittee shall provide certificate of insurance and name the City of Milpitas as an additional insured in its insurance policies.
14. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction

of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

15. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
16. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution.
17. Indemnification. The project applicant, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021 TENTATIVE TRACT MAP (P-MT13-0008) AND ENVIRONMENTAL ASSESSMENT (P-EA16-0007). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to TENTATIVE TRACT MAP (P-MT14-0005), and the balance of the Permit shall be unaffected by said Government Code section. (CA)

## **PROJECT MODIFICATIONS**

18. Landscape. Prior to issuance of a Building Permit, the landscape plans shall be revised to incorporate jacaranda trees at the entry to the project site. The final number and location of jacaranda trees shall be established in consultation with City staff. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive, and effective appearance.
19. Parking. Prior to issuance of a building permit, the Permittee shall modify the parking plan to incorporate electric vehicle charging station in the parking garage. The final number and location of charging stations shall be established in consultation with City staff.

Required parking, including bicycle parking and electric vehicle charging stations shall be installed prior to occupancy of residences.

## **FIRE**

20. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code ('CFC') as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
21. Fire Department access. Fire Department apparatus and staff access shall be provided to all buildings and site. CFC Section 503.
22. A Minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m<sup>2</sup>) shall be provided with at least two means of fire apparatus access for each structure. 2012 International Fire Code, Section D104.1, adopted and amended by MMC Section V-300-2.154.

## **PUBLIC BENEFIT**

53. Prior to the issuance of a building permit, Permittee shall make a payment of no less than \$100,000 to be applied to the City's Affordable Housing and Public Art funds.

## **ARCHITECTURAL COMMENTS**

54. Applicable codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and 2014 Milpitas Municipal Code.
55. An Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.
56. Permittee shall apply for new building addresses prior to submitting for building permit.
57. All proposed future building/construction and site upgrades shall be reviewed and approved by the Planning Department to ensure building elements, siting and site improvements complement approved style of architecture.

## **ENGINEERING**

### **PRIOR TO CONSTRUCTION PLAN SUBMITTALS**

The following conditions shall be met prior to any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved

by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. (E)

78. Modifications: The Site Development Plan dated March 25, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
79. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.
80. Stormwater Control Plan: Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
81. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along South Main Street that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines.
82. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
83. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer.

#### PRIOR TO FINAL MAP APPROVAL/RECORDATION

84. The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. (E)
85. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.
86. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.

87. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map.
88. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
89. Utility Company Approval: Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements.
90. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines.
91. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).
92. Annexation to the Community Facilities District: Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is non-severable from the Permit and invalidation or limitation of this condition invalids the Permit. **(E)**
93. Property Management Association/Homeowners Association. Prior to final map approval, the Permittee shall establish the necessary Property Management Association (PMA) and/or Homeowners Association (HOA). The PMA/HOA shall be responsible for the maintenance of any and all landscaping, walls, buildings, private street lights, common area and the local and private streets within the project. The PMA/HOA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the CC&Rs and recorded documents. The CC&Rs document shall be submitted for review and approval by the City Engineer. **(E)**

#### PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

94. Public Improvement Design Standards: All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications,

(<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/>) and Americans with Disabilities Act (ADA) requirements where applicable.

95. Sanitary Sewer Calculations: Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral.
96. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.
97. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 1.
98. Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
  - a) Installation of separate water meter for each of the following services: domestic, irrigation, and fire
  - b) Relocate existing street light at the location as approved by the City.
  - c) Installation of Type II slurry seal along the South Main Street frontage to the median islands.
  - d) Remove and replace existing curb, gutter and sidewalk on South Main Street along the frontage of the project site.
  - e) Install full-width 10’ wide (including the street curb) sidewalk with 4’x4’ tree wells per Transit Area Specific Plan.
  - f) Remove existing 12” storm drain line on the project property as well as the one on adjacent property to the north, and install new 12” storm drain line in the street right-of-way with hydraulic calculations to be approved by the City. Coordination with the adjacent property owner to the north will be required for a portion of the storm drain line to be removed and replaced. Installation of a manhole is required.
  - g) Install a sanitary sewer manhole right behind the street right-of-way.
  - h) Install a new fire hydrant as required by the Department of Public Safety.
99. Abandonment of Existing City Utilities: Permittee shall cap, abandon or remove any unused existing public utilities based upon City’s Abandonment Notes and to the City’s satisfaction.
100. Maintenance Agreement: Permittee shall record a Maintenance Agreement for perpetual maintenance of certain public improvements mutually agreed between the City and the Permittee.
101. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service.

102. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, Permittee shall obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

103. Final Map Recordation: Permittee shall record the final map.
104. Stormwater Facility Operation & Maintenance Plan: Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).
105. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.
106. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
107. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
108. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc.
109. Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
- a) What materials will be salvaged.
  - b) How materials will be processed during demolition.
  - c) Intended locations or businesses for reuse or recycling.
  - d) Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.

110. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.
111. Flood Plain Management: This project is in the Flood Zone "AO" with 1' average flood depth, therefore, Permittee shall comply with all applicable flood protection criterion required by the Federal Emergency Management Agency (FEMA) and MMC Title XI, Chapter 15. Permittee shall also submit a Flood Study for the Project demonstrating, to the satisfaction of the City Engineer, that the proposed development has no adverse impact to the surrounding flood plain within the Special Flood Hazard Area (SFHA) and to the flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood Elevation (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. The study shall clearly identify the lowest floor elevation as being either the bottom of garage, bottom of first floor residential units, bottom of elevator pit, etc. and shall be completely elevated out of the SFHA.
112. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "g" are based upon current fee rates; however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.
  - a) Transit Area Specific Plan fee at \$32,781/unit for residential.
  - b) Storm water connection fee at \$16,771/acre for residential.
  - c) Water connection fee at \$1,164/unit for residential, based upon increased water usage.
  - d) Sewer connection fee at \$1,406/unit for residential, based upon increased average wastewater flow.
  - e) 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
  - f) FEMA Flood Zone Designation Letter fee in the amount of \$100.00 each.

#### DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

113. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.

114. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

#### PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

115. Completion of Public Improvements: Permittee shall complete all public improvements, including but not limited to South Main Street frontage improvements, as shown on City approved plans.
116. Stormwater Management Facilities O&M Agreement: Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.
117. LOMR-F: Permittee shall submit the FEMA approved LOMR-F for each unit/building associated with the requested occupancy, if project is located in the SFHA.
118. Elevation and/or Flood Proofing Certificate: Permittee's civil engineer shall submit Elevation and/or Flood Proofing Certificate for the lowest finished floor elevation of each building for City record.
119. Landscape Certificate of Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
120. Record Drawings: Permittee shall submit record drawings in pdf format for City records.
121. Private Job (PJ) Balance: Permittee shall pay for any remaining balance from the Private Job deposit.

#### ELECTRICAL

122. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02.
123. Grounding system shall comply with 2014 MMC sec.II-6-2.04.

#### PLUMBING

124. Construction Storm Water Quality. Permittee shall comply with the requirements of the National Pollution Elimination Discharge System (NPDES) permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board). Prior to the issuance of any building, demolition, or grading permit, Permittee shall submit an Erosion and Sediment Control Plan (Erosion Control Plan) as a part of the improvement plan submittal. The erosion control plan

shall show all construction best management practices (BMPs) and shall comply with the requirements of the NPDES, the Municipal Regional Permit Order R2-2009-0074 (MRP), and the City's storm water and urban runoff pollution control standards and guidelines (City's Clean Water Program). Permittee shall ensure that all contractors and subcontractors install and regularly maintain all construction BMPs as required by the approved erosion control plan, the Milpitas Municipal Code (MMC), and the City's Clean Water Program. (E)

125. Construction General Permit Compliance. Permittee shall comply with the requirements of the Construction General Permit as administered by the State and Regional Boards. Permittee shall obtain a Construction Activities Storm Water General Permit (State Permit) from the State Board. Prior to any construction activities and prior to the issuance of any building, demolition, or grading permit, Permittee shall submit:
  - A. a complete Storm Water Pollution Prevention Plan (SWPPP) with the project Waste Discharge Identification Number (WDID) displayed on the cover,
  - B. a copy of the approved Notice of Intent (NOI) from the State Board, and
  - C. an erosion control plan and a site monitoring plan meeting the satisfaction of the City Engineer.

Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all storm water quality control measures as required by the approved SWPPP, the approved erosion control plan, the MMC, and the City's Clean Water Program.

Prior to final occupancy, Permittee shall submit an approved Notice of Termination (NOT). For phased occupancy, Permittee shall submit a Change of Information (COI) or an NOT approved by the State Board that removes each phase of occupancy from the boundaries of the State Permit prior to the issuance of occupancy for that phase. Contact the State and Regional Boards for questions regarding your specific project. For general information, contact the City of Milpitas Engineering Division at (408) 586-3325. (E)

126. The Permittee shall comply with Municipal Regional Permit (MRP) Order R2-2009-0074 and successor orders for post construction C3 provisions for new development and redevelopment regulated projects storm water treatment requirements, and National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009—0009 NPDES No. CAS000002 or as required by the Regional Board at the time Permittee submits the NOI for the project for pre-construction storm water treatment requirements. (E)
127. Prior to final map approval, Permittee shall submit a Storm Water Control plan that incorporates best management practices (BMPs) for treatments of storm water run-off from all parcels. The Storm Water Control plan shall incorporate source control, site design and storm water treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the current California Storm water Quality Association (CASQA) BMP handbooks. The site plan shall be consistent with the final Storm Water Control plan to the satisfaction of the City Engineer.

- a. Permittee shall submit a final Storm Water Control Plan package for review and approval with the building permit submittal.
  - b. The Plan shall be prepared by a licensed Civil Engineer qualified and trained professional with storm water treatment process and certifies that measures specified in the report meet the MRP requirements.
  - c. Prior to issuance of Certificate of Occupancy, the Permittee shall submit a Storm Water Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
  - d. Permittee shall include in the approved covenants, conditions, and restrictions (CC&Rs) the requirement to provide the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination System (NPDES) requirements.
  - e. Prior to final occupancy, the Permittee shall execute and record an Operations and Maintenance Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
  - f. Permittee shall comply with all "Model Conditions Of Approval For Storm water Quality" and are hereby incorporated as conditions of project approval. **(E)**
128. Water Supply and Force Majeure The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land development project. The City reserves the right to suspend the issuance of building permits to implement this land use development, if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development in the event the City's ability to deliver water and sewer treatment is affected by force majeure pursuant to the criteria set forth above. This condition of approval applies in case of an emergency declaration of water supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity. **(E)**
129. Water, Sewer and Storm Drain Studies. Prior to recordation of each final map, the Permittee shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for the final map subdivision. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the Permittee will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, as determined by the City Engineer. **(E)**

## UTILITY

130. The project shall be served by SC Zone 1 water supply. Separate services are required for domestic, irrigation, and fire uses. The Applicant is alerted that on-site pumping to upper floors may be required.
131. All design and construction of public and private improvements shall be in compliance with City guidelines.
132. The Applicant shall authorize any necessary hydraulic modelling to confirm sufficient water pressure at the point of connection and sufficient capacity in the sanitary sewer collection system.
133. Landscaping Ordinance 238: In accordance with the provisions of Chapter 5, Title VIII (Ordinance 238) of the MMC for new or rehabilitated landscaping areas equaling 500 square feet or greater, the applicant shall:
  - a. Provide separate water meters for domestic water service & irrigation service.
  - b. Landscape shall comply with Ordinance 238 requirements in effect at the time of building permit issuance.
  - c. Submit two sets of landscape and irrigation improvement plans to the Building Division with the building permit plan check package.

Prior to any building permit issuance, approval from the Land Development Section of the Engineering Division is required prior to any building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

134. Adjacent building and retaining wall foundations shall be designed to insure that no building loads are transferred to the water pipe or other underground utilities and that maintenance and/or excavation work on the water pipe and other underground utilities will not undermine these adjacent structures.
135. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. If any permanent structures are located on our Public Service Utility Easements, the City, in the event of servicing and disruption permanent structures, will only restore to standard asphalt pavement. (E)
136. The Permittee shall coordinate utility improvements with other surface improvements, such as landscaping and paved surfaces, to insure that conflicts do not exist.
137. Storm water management shall be in compliance with Municipal Regional Permit (MRP) in effect at time of building permit submittal. Submit a Storm Water Control Plan to verify sufficient treatment capacity. Include Low Impact Development (LID) Section C3.c.i.(2)(b) measures of harvesting and reuse, infiltration, or evapo-transpiration.

- 138. The Permittee is required to install a radio antenna on top of the building to transmit the Project’s water meter readings to the City. The Permittee is also required to install any repeaters or transmitters as needed to insure that the antennae can receive the meter readings. Easement and access must be provided for maintenance.
- 139. The Permittee is responsible for on-site handling of trash and recyclables, and transport and placement of these materials into the collection bins. All solid waste collection facilities shall comply with City guidelines.

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney
- (MM) = Mitigation Measure
- (PC) = Planning Commission

**NOTICE OF RIGHT TO PROTEST**

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

**AGREEMENT**

*Permittee/Property Owner*

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the Project property on the terms and conditions set forth in this resolution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_