

**RESOLUTION NO. 11-047**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. GP11-0001, ZONING AMENDMENT NO. ZA11-0001, SPECIFIC PLAN AMENDMENT NO. ST11-0001, ENVIRONMENTAL IMPACT ASSESSMENT NO. EA11-0001, MAJOR TENTATIVE MAP NO. MT11-0001, SITE DEVELOPMENT PERMIT NO. SD11-0007 AND CONDITIONAL USE PERMIT NO. UP11-0031, HARMONY & TRADE ZONE REZONE, TO AMEND THE CITY'S GENERAL PLAN, ZONING, AND TRANSIT AREA SPECIFIC PLAN FOR APPROXIMATELY 234 ACRES ALONG MONTAGUE EXPRESSWAY, TRADE ZONE BOULEVARD, AND MCCANDLESS DRIVE, AND MAJOR TENTATIVE MAP WITH SITE DEVELOPMENT PERMIT TO CONSTRUCT 276 SINGLE FAMILY ATTACHED HOMES AND CONDOS ON 12.3 ACRES LOCATED ON THE NORTHWEST CORNER OF MONTAGUE EXPRESSWAY AND MCCANDLESS DRIVE.**

**WHEREAS**, on July 15, 2011, an application was submitted by Dean Mills with D.R. Horton, 6630 Ownes Drive, Pleasanton, CA 94588, to allow for amendments to the City's General Plan, Zoning, and Transit Area Specific Plan to rezone approximately 24 acres located along Montague Expressway and Trade Zone Blvd. and a Major Tentative Map and Site Development Permit to construct 276 Single Family attached townhomes and condos on 12.3 acres at the northwest corner of Montague Expressway and McCandless Drive known as the Harmony project. General Plan, Zoning, and Specific Plan Amendments (APN's: 086-41-022, 86-41-016, 017) Major Tentative Map and Site Development Permits for Harmony project at 1765 McCandless Drive (APN's: 086-41-019, 020, 021, & 022).

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA) and in accordance with Section 15070(b), An Environmental Impact Assessment No. EA11-0001 was prepared and circulated between August 29, 2011 and October 25, 2011. Furthermore, Planning Division considered a possible exemption of the project pursuant to Section 15168(c) of the CEQA Guidelines due to consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council; and

**WHEREAS**, on September 28, 2011, the Planning Commission held a duly noticed public hearing on the subject application, then continued the item to the October 26, 2011 Planning Commission meeting; and

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

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

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

**Section 3:** The Harmony & Trade Zone Re-Zone project is consistent with the General Plan Policies 2.a-I-12 and 2.a-I-25 in that the change in zones will allow for a variety of housing types and a much larger park/school site to serve the new upcoming residential area and the rezone of properties maintains the purpose and intent of the Transit Area Specific Plan (TASP). The TASP allows for exceptions to development standards, such as property setbacks, through a conditional use permit. Harmony conforms to the design guidelines and requirements with the approval of a conditional use permit to allow for exceptions to the McCandless Drive and Montague Expressway setback, rear yard setback, trail width, and tandem parking restrictions and requirements, which are hereby recommended for approval.

**Section 4:** The Harmony & Trade Zone Re-Zone project is consistent with the Zoning Ordinance in that the proposed amendments maintain the goals, objectives, policies, and are internally consistent with the General plan. The amendments are also consistent with the intent of the TASP and will not create internal inconsistencies with the specific plan. The uses proposed in the specific plan amendment are compatible with adjacent uses and properties and will not adversely affect the public health, safety and welfare. The Harmony project is consistent with the Zoning Ordinance in that the TASP calls for High Density Residential within this project site, the layout of the site and design are compatible and aesthetically harmonious with adjacent and surrounding development, and if conditionally approved, meets all the development standards and guidelines.

**Section 5:** The Harmony & Trade Zone Re-Zone project is consistent with the Transit Area Specific Plan in that as conditionally approved; the project meets the policies and the intent of the Specific Plan.

**Section 6:** The deviation from the Transit Area Specific Plan standards allow for a public benefit not otherwise obtainable through the strict application of the zoning standard in that architecture incorporates elements of higher quality and is characteristic of the architectural styles proposed.

**Section 7:** The Planning Commission authorizes staff to make minor technical changes as needed to the Conditions of Approval recommended to the City Council to accommodate engineering and regulatory requirements.

**Section 8:** The Planning Commission of the City of Milpitas hereby recommends approval of **GP11-0001, ZA11-0001, ST11-0001, EA11-0001, MT11-0001, SD11-0007, UP11-0031, for** Harmony & Trade Zone Re-Zone, to the City Council, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on October 26, 2011.

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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 October 26, 2011, and carried by the following roll call vote:

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

**EXHIBIT 1****CONDITIONS OF APPROVAL****GP11-0001, ZA11-0001, ST11-0001, EA11-0001, MT11-0001, SD11-0007, UP11-0031**

A request for amendments to the City's General Plan, Zoning, and Transit Area Specific Plan to rezone approximately 24 acres located along Montague Expressway and Trade Zone Blvd. and a Major Tentative Map and Site Development Permit to construct 276 Single Family attached townhomes and condos on 12.3 acres at the northwest corner of Montague Expressway and McCandless Drive known as the Harmony project. General Plan, Zoning, and Specific Plan Amendments (APN's: 086-41-022, 86-41-016, 017) Major Tentative Map and Site Development Permits for Harmony project at 1765 McCandless Drive (APN's: 086-41-019, 020, 021, & 022).

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on **September 28, 2011**, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

2. **MAJOR TENTATIVE MAP NO. MT11-0001, SITE DEVELOPMENT PERMIT NO. SD11-0007 AND CONDITIONAL USE PERMIT NO. UP11-0031** shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of **MAJOR TENTATIVE MAP NO. MT11-0001, SITE DEVELOPMENT PERMIT NO. SD11-0007 AND CONDITIONAL USE PERMIT NO. UP11-0031** if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

4. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
5. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. The only credit that will apply to the park-in-lieu fee component of the Transit Area Impact Fee will be for the trail improvements and public landscape buffers as provided for in the TASP. The specific improvements and qualifying fee credits will be covered by the projects subdivision improvement agreement. (P)
7. Prior to issuance of building permits, the owner or designee shall provide an analysis of toxic air contaminants that includes primarily diesel particulate matter (DPM) as consistent the TASP Policy 5.25. If the results show that the carcinogenic human health risk exceeds 10 people in a million standard for carcinogenic human health impacts established by the BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents. (P)
8. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. Prior to any building permit issuance, Council's approval of the water Supply Assessment is required. (E)
9. Prior to issuance of building permits of each building, the developer shall pay the Transit Area Development Impact Fee. (P/E)
10. The project shall maintain the minimum setback as shown on the VTM from the Santa Clara County proposed 79' ROW from Montague Expressway Centerline for the future widening of Montague Expressway. (P/E)
11. Prior to building final inspection or building permit occupancy of any units, applicant/property owner shall construct a new trash enclosure to serve the project. The enclosure shall accommodate the required two self contained compactors at minimum to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. The area allocated for the solid waste enclosure may not be adequate to house two self contained compactors and developer shall modify area as deemed necessary to comply with this condition. The enclosure will be subject to the City's review/approval prior to construction of the enclosure. (E)

12. Prior to building permit issuance, developer must pay all applicable development fees, as determined by the City Engineer in accordance with the current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. These fees are part of the secured subdivision improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The fees will be vested for the life of the tentative map. (E)
13. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. 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 Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division. (E)
14. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to any building permit issuance, developer shall incorporate following solid waste services requirements to the satisfaction of the City Engineer:
  - a. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house self-contained compactor equipment. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to building permit issuance. The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
  - b. The property management shall be responsible for solid waste management, including transfer of material to the compactors. Developer shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall state how the residential waste will be conveyed to the collection compactor area for disposal. Show the path of travel for refuse. Demonstrate how recycling shall have a separately maintained process from garbage handling.
  - c. Prior to occupancy permit issuance, the property management shall provide evidence to the City that a sufficient level of trash and recycling service has been

secured using a Service Agreement with Allied Waste Services (formally BFI). After the applicant has full occupancy, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact Allied Waste Services at (408) 432-1234. (E)

15. Developer agrees and shall make any changes to the site and architectural plan as condition of project approval for the following items and shall be subject to the satisfaction of the City Engineer and Planning Director and developer shall comply with these conditions prior to final map approval and prior to building permit submittal:
  - a. The proposed private street access to McCandless Drive does not meet City standards and shall be revised to meet City of Milpitas Engineering design guideline and shall be design in accordance with highway design manual requirements.
  - b. Developer shall modify proposed street sections as deemed necessary to accommodate for any modifications needed to satisfy requirements for implementing any design changes recommended in the flood study requirements, storm water control plan, geotechnical engineer requirements, fire access, utility design, solid waste handling plan, or as deemed necessary by the City Engineer.
  - c. Developer shall submit a slope stability analysis of the proposed retaining wall along the Penitencia Creek Trail and implement any required design changes to the section to incorporate recommendations in the approved slope stability analysis report and SCVWD requirements. (E)
16. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
17. 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. (E)
18. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
19. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
20. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
  - a. Provide separate water meters for domestic water service & irrigation service. Developer is also required to provide separate domestic meters for each proposed use (Residential, Food Services, Commercial/Office).

- b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

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

- 21. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
- 22. Developer shall make changes as noted on Engineering Services Exhibit "T"(dated 9/19/2011) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the final map or improvement plans will be accepted until this condition is satisfied. (E)
- 23. To the fullest extent permitted by law, Applicant shall indemnify, defend with counsel acceptable to the City in its reasonable discretion, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against and due and payable by the City, if any, including costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant or, City or both. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. City shall promptly notify the Applicant of any claim, action, or proceeding. If City fails to so promptly notify the Applicant, then the Applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant. (CA)

Parking/Transportation:

- 24. The owner or designee shall revise the site plan to provide nine (9) additional parking spaces or reduce the number of four (4) bedroom units to comply with the parking ordinance. (P)

25. [Reserved]

26. Table 53.09-1 of the Zoning Ordinance requires new development to provide 5% of the total required parking (592 spaces x 5%) of bicycle parking. The project will supply 5%, a total of 30 parking stalls for bicycling parking. (P)

Landscaping:

27. The City of Milpitas has a Tree Ordinance that identifies a tree replacement program for the removal of trees. All City ordinances will be enforced on the project. As mentioned, the applicant is removing approximately 187 trees and planting new 685 new trees onsite (3.6:1 planting ratio onsite). To mitigate the loss of protected trees along McCandless, the developer will replace those trees with 36" and 48" box trees interspersed along McCandless Drive. (P)

28. Owner or designee shall Conduct a raptor study to determine the nesting period of any birds making habitat within the trees proposed for removal. The removal of the trees will not be permitted within the nesting period of the birds. (P)

29. Provide pedestrian access to the Penitencia Creek Trail through the paseos between buildings 24 and 25 and buildings 33 and 34 as deemed feasible. (P)

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

A. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines and California Department of Public Health (CDPH) separation requirements. Prior to building permit issuance the City will submit the plans to the CDPH for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and (CDPH) approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.

B. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas. (E)

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

Architecture:

32. Pursuant to the recommendations of the noise and vibration study, sound-rated residential assemblies at exterior building facades shall be incorporated within the buildings. See figure 2 and 3 of the Environmental Noise and Vibration Study conducted by Charles M. Salter Associates Inc. on May 11, 2011. (P)
33. Per the Noise and Vibration Study for STC ratings- If non-tested assemblies are to be used, an acoustical consultant must review the glazing and frame submittals, and the STC rating of the glass may need to be increased. A qualified acoustical engineer must review the design as it is developed to refine the specific STC ratings once building design and site layout has been refined. Rooms with higher than assumed percentage of window or door surface area will require higher STC ratings to meet the noise criteria. (P)
34. Pursuant to the recommendations of the toxic air contaminant study, vegetative barriers shall be implemented along the eastern, western, and southern perimeters of the project site. MERV-13 or equivalent filters on both the air intake and recirculation for affected residences shall be provided. See Cancer Risk Analysis for the Proposed Harmony Development in Milpitas, California conducted by ENVIRON International Corporation, dated October 19, 2011. (P)

Demolition/Construction:

35. The developer shall comply with Municipal Regional Permit (MRP) Order R2-2009-0074 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 Developer submits the NOI for the project for pre construction storm water treatment requirements. (E)
36. BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall be implemented during construction of the proposed project:
  - a) Water all active construction areas at least twice daily.
  - b) Cover all trucks hauling soil, sand, or other loose materials or require all trucks to maintain at least two feet of freeboard
  - c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction site.
  - d) Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
  - e) Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

- f) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
  - g) Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
  - h) Install sandbags or other effective erosion control measures to prevent silt runoff to public roadways.
  - i) Replant vegetation in disturbed areas as quickly as possible.
- (E)
37. As required by County ordinance, this project has incorporated the following guidelines. - Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. (E)
38. Prior to demolition of the structures, all ACM and suspect ACM (unless testing proves otherwise) should be removed by a licensed asbestos abatement contractor before demolition work disturbs the materials. The removed waste must be transported to a disposal site able to accept non-friable ACM. (E)
39. Prior to demolition of the structures, based on the paint chip sample results in the Phase I, the contractor completing the demolition work must comply with the OSHA Lead in Construction Standard, Title 40 of the Code of Federal Regulations (CFR), Part 1926.62. (E)
40. Prior to issuance of a grading permit, the applicant shall be required to submit copies of the NOI and Erosion Control Plan (if required) to the Department of Public Works. The applicant shall also be required to maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand. (E)
41. Prior to issuance of building permits, applicants shall demonstrate that noise exposure to sensitive receptors from construction activities has been mitigated to the extent of feasible pursuant to the City's Noise Abatement Ordinance. (E)

42. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove the related poles within the proposed development, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state the wire voltage. (E)
43. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. (E)
44. It is the responsibility of the developer to obtain any necessary approvals and or encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, County of Santa Clara Roads & Airports Department, Santa Clara Valley Water District and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
45. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)
46. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.
47. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these 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.
- Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.
- (E)
48. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. This work will need to be done on-site to avoid unnecessary truck traffic on City roads. (E)

### **Tentative Map**

49. Prior to final map approval, the Site Development and the Tentative Map shall be modified to meet the Milpitas Fire Department Site Apparatus access requirements. (F)
50. Prior to final map approval or building permit submittal, Owner or designee shall revise the Flood Study, 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 and flood carrying capacity of the area. The study should include discussion of the most current flood studies on the cumulative impacts of existing and proposed developments (Centria, Integral, Turmark, Citation, and the BART Project) demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one/tenth of a foot at any point. Flood Study shall be updated to reflect most current BART Flood Study at time of building permit issuance. Additionally, for the AO Flood Zone, the flood study is required in order to establish the BFE and development requirements. 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. (E)
51. Prior to final map approval, the developer shall submit a final grading plan and hydrologic/hydraulic study prepared by a registered Civil Engineer, consistent with the approved CLOMR. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study. (E)
52. Prior to final map approval, or building permit submittal, developer shall submit a Storm Water Control plan that incorporates best management practices (BMPs) for treatments

of stormwater run off from all parcels within the project. The Storm Water Control plan shall incorporate source control, site design and stormwater treatment requirements consistent with MRP requirements with BMPs such as the use of bio-treatment areas into the landscape design elements and the use of permeable pavement BMPs compliant with the current California Stormwater 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. Developer 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 developer 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. Developer shall include in the approved CC&R, language in regard to providing the City with an annual inspection report of the Storm Water Control Plan post construction compliance with the National Pollutant Discharge Elimination System (NPDES) requirements. If the City does receive the report, City will conduct the field inspection and report, and the developer and its successor shall be responsible to pay all associated costs.
- e. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
- f. Developer shall comply with all "Model Conditions Of Approval For Stormwater Quality" as shown in the Stormwater Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.
- g. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's final Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Any

changes to the final Storm Water Control Plan shall require Site & Architectural (“S” Zone) Amendment application review.

- h. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and accepted by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.
- (E)
53. Prior to final map recordation, the developer shall obtain approval from the City Engineer of water, sewer, and storm drain studies to be able to serve this project. 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 study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage to the satisfaction of the City Engineer. (E)
  54. Prior to final map approval or building permit plans submittal for review, developer/applicant shall submit a solid waste handling plan for review and approval to the satisfaction of the City Engineer. (E)
  55. The final map shall be recorded prior to issuance of any building permit. Provide a current title report with your final map submittal, not more than 90 days old. (E)
  56. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. (E)
  57. Prior to final map approval, the developer shall establish necessary homeowner association (HOA). Membership of the HOA shall include all owners of the residential, commercial and office spaces. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets and shall have assessment power. The HOA shall manage the onsite water and sewer system and implement the Solid Waste handling plan. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. In addition to the CC&R document, developer shall record a deed restriction or other recordable document subject to the approval of the City Engineer, at its sole discretion, concurrent with the recordation of the final map that memorializes ownership, repair, replacement and access rights to private utilities within the project site. (E)

58. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
59. The developer shall dedicate on the final map necessary public service utility easements, street easements, public access easement (over private streets and walkways) and easements for water and sanitary sewer purposes. (E)
60. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along McCandless Drive and Montague Expressway, including but not limited to the following:
- a. Removal and installation of new curb, gutter, and sidewalk, new median installation, signage and striping, street lights, fire hydrants, bus stop, along the McCandless project frontage
  - b. Penitencia Creek Trail improvements,
  - c. Storm, water and sewer service installation within the public right-of-way.
  - d. Storm, water and sewer service installation within the public right-of-way.
  - e. The existing sanitary sewer collection system is at full capacity. This project will not receive any Certificate of Occupancy until Projects 11A, 11B, and 11C as identified in the 2009 Sewer Master Plan have been completed. All projects being served by this collection system have all the same conditions or approvals and comments. The costs for these improvements are estimated to cost over \$3.6 Million. Some of which will be paid as TASP Impact Fees and some by City's sewer fund. The City and Developer will work cooperatively to develop a plan in how these improvements will be completed.
    - i. Sewer project known as 11A, as specified in the City of Milpitas Sewer Master Plan, in its entirety includes replacement of 560 linear feet of 18 inch pipe with 21 inch pipe; replace 992 linear feet of 18 inch pipe with 27 inch pipe; and replace 369 feet of 12 inch pipe with 27 inch pipe, as identified on the sewer master plan.
    - ii. Sewer project known as 11B, as specified in the City of Milpitas Sewer Master Plan includes replacement of 360 linear feet of 15 inch diameter pipe with 18 inch diameter pipe; and replacement of 924 linear feet of 10 inch diameter pipe with 18 inch diameter pipe.
  - f. Developer shall be responsible for the design and construction for improvements to McCandless Drive shown on the Tentative Map and any related exhibits and conditions. Said improvements shall include a landscaped median, a minimum of two (2) inch AC overlay over the entire street, and replacement striping. Developer shall work cooperatively with the City regarding the existing and future design of the east side of McCandless Drive and the City will credit as part of the TASP impact fee construction costs undertaken on the east side of McCandless including half of the construction costs of the landscaped median, AC overlay and striping.
  - g. Developer shall be responsible for the design of a new traffic signal on McCandless drive at the main entry to the project and the construction of all or portions of the traffic signal. The City will credit as part of the TASP impact fee the design and any construction costs of the signal. The need for the signal is not generated from the project but from the future park/school development across McCandless Drive.

- h. Developer agrees to cooperate with the City, where feasible to implement stormwater run-off treatment along the City's existing landscape easement along McCandless frontages as part of the project condition of approval.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. *All public improvements shall be constructed per the City's Standards and to the City Engineer's satisfaction and accepted by the City prior to issuance of any final certificate of occupancy of any unit.* (E)

60. Prior to any final map approval or as directed by the Public Works Director, the developer shall process and obtain approval of a joint use agreement between the City and Santa Clara valley Water District (SCVWD) for the proposed Penitencia Creek Trail improvements and their maintenance within the districts right-of-way to the satisfaction of City Engineer. Developer is responsible for upfront occurred costs associated with joint use agreement and trail improvements, subject to fee credits. (E)
61. Prior to final map approval, the developer shall submit plans for the Penitencia Creek Trail improvements to Santa Clara Valley Water District for review. Provide their comments to the City. The trail improvements shall be completed prior to occupancy of the 200<sup>th</sup> residential unit to the satisfaction of Santa Clara Valley Water District and City of Milpitas. Any improvements on the SCVWD right of way require districts approval and permit. (E)
62. The fees outlined below are estimated fees and shall be finalized prior to final map approval and will be incorporated in the subdivision improvement agreement. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
  - A. Storm water connection fee of **\$243,680** (based on 93 units at \$1100/units and 8.43 acre @ \$16,771/acre).
  - B. Water connection fee of **\$214,408** (based on 93 units at \$1910/U, 183U @ \$1164/U and \$14328/AC credit for previous use).
  - C. Sewer connection fee of **\$183,232** (based on 93 units at \$1908/U, 183U @ \$1406/U, and \$20448/AC credit for previous use).
  - D. Water Service Agreement(s) for water meter(s) and detector check(s).
  - E. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). (E)

63. Prior to final map approval, the developer shall submit plans for land dedication, sidewalk and landscape & irrigation improvements to Santa Clara County Road and Airport Services for review and approval of the proposed work along Montague Expressway frontages. Provide their comments to the City. (E)
64. Prior to final map approval developer shall:
  - A. Submit an operational traffic study for trip assignments and to determine adequacy of the on and off site street geometry with the future signal to the approval of the City Engineer.
  - B. Maintain the existing lane configurations on McCandless Dr to ensure compliance with the approved plans. (E)

**Site Development Permit**

65. All trim around doors and windows shall be smooth stucco finish or utilize a material that simulates the natural smooth look. (P)
66. The owner or designee shall use concrete for the colored and stamped main drive entryways and the portion in front of the common area park as indicated on the site plans. (P)

- (P) = Planning
- (B) = Building
- (E) = Engineering
- (F) = Fire Prevention
- (CA) = City Attorney