



**MILPITAS PLANNING COMMISSION
STAFF REPORT
July 31, 2019**

APPLICATION: **TRUE LIFE CONDOMINIUMS – 2001 TAROB COURT – P-SD18-0014, P-UP19-0009, P-MT18-0004, P-EA19-0002.** An application for a Site Development Permit, Conditional Use Permit, and Vesting Tentative Map to allow a forty-unit residential condominium building (True Life Condos), up to 49 feet in height (four stories), with parking for up to 74 vehicles, on a 1.22-gross acre site located in the Multi-Family High Density Residential (R3) Zoning District at 2001 Tarob Court. The project is located within the Transit Area Specific Plan area.

RECOMMENDATION: **Staff recommends that the Planning Commission open and close the public hearing, consider the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP-EIR) (SCH #2006032091) and various CEQA exemptions, as applicable, and adopt Resolution 19-022, recommending approval of the above applications to the Milpitas City Council, subject to the Conditions of Approval.**

PROJECT LOCATION:
Addresses and Assessor's Parcel Number (APN): 2001 Tarob Court (086-36-034)
Area of City: Transit Area Specific Plan (TASP): Trade Zone/Montague Subdistrict

PEOPLE:
Project Applicant: Leah Beniston, Vice President of Entitlements
The True Life Companies, San Ramon, CA

Consultant(s): Architect: *SDG Architects, Brentwood, CA*
Civil Engineer: *Wood Rogers Engineering, Pleasanton, CA*
Landscape Architect: *R3 Studios, Oakland, CA*

Property/Business Owner: Karl Cortese, San Jose, CA 95148

Project Planner: Lillian Hua, Associate Planner

LAND USE:
General Plan Designation: High-Density Transit Oriented Residential (HD-TOR)
Specific Plan Designation: High-Density Transit Oriented Residential (HD-TOR)
Zoning District: Multiple-Family High Density with Transit Oriented Development Overlay (R3-TOD)

ENVIRONMENTAL: Addendum to Transit Area Specific Plan (TASP) Final Environmental Impact Report (FEIR), May 2008 (SCH #2006032091). As a separate and independent basis, exempt pursuant to CEQA Guidelines Section 15168 (Program EIR), Section 15182 (Residential Projects Pursuant to a Specific Plan), and Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning)

EXECUTIVE SUMMARY

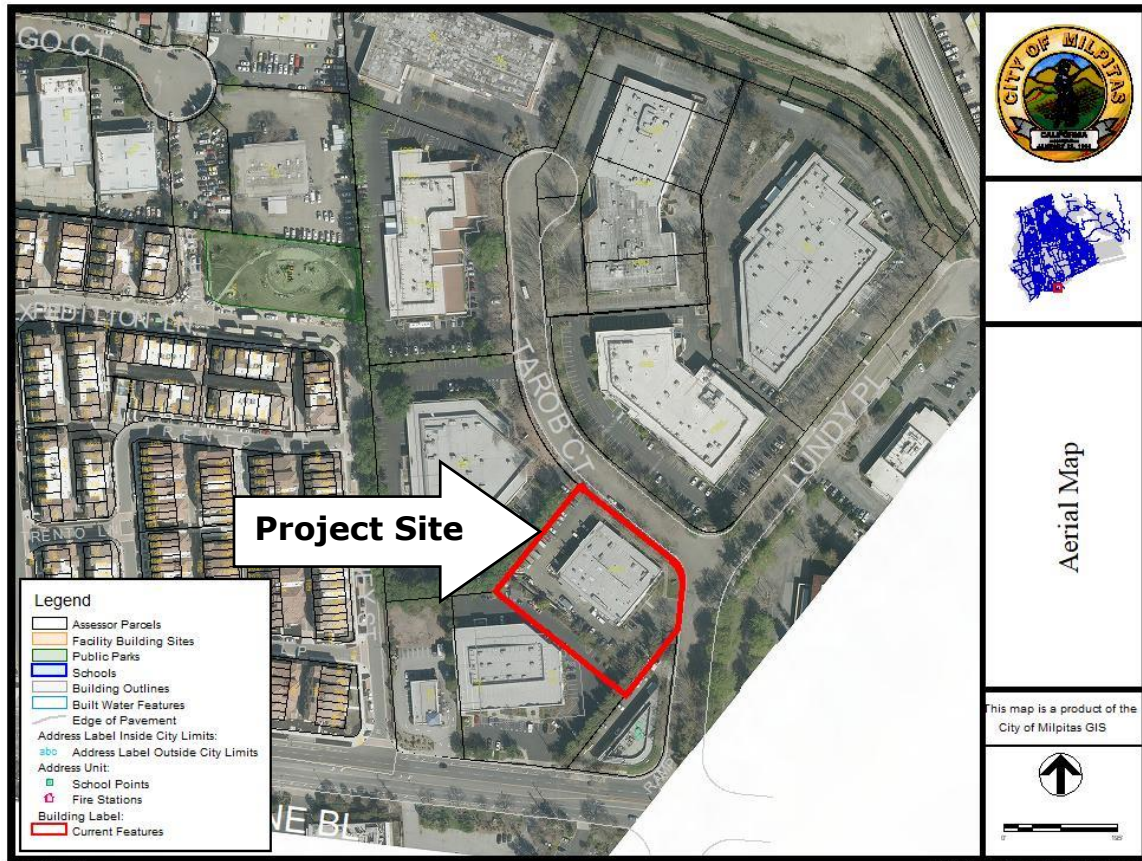
The application includes four entitlement requests to allow the future development of a multi-family residential building with up to 40 condominium units, as follows:

1. Site Development Permit SD18-0014: To allow the development of a four-story building with up to 40 residential units on the 1.22-acre site; and
2. Conditional Use Permit UP19-0009: To allow the condominium use; and
3. Vesting Tentative Map MT18-0004: To establish 40 residential condominium spaces and related common areas and to record site easements; and
4. Environmental Assessment EA19-0002: To review and assess all requested entitlements for consistency with the 2008 Transit Area Specific Plan EIR.

Staff reviewed the requests outlined above and found them to be in compliance with the policies, standards, and processes outlined in the City of Milpitas General Plan, Transit Area Specific Plan, Zoning Ordinance and Municipal Code. The balance of this report provides specific details regarding each of these requests.

Staff recommends that the Planning Commission open and close the public hearing, consider the Addendum to the TASP-EIR and various CEQA exemptions, and adopt Resolution No. 19-022, recommending approval of the above applications to the Milpitas City Council, subject to the conditions of approval included in at Exhibit 1 of the above-referenced resolution.

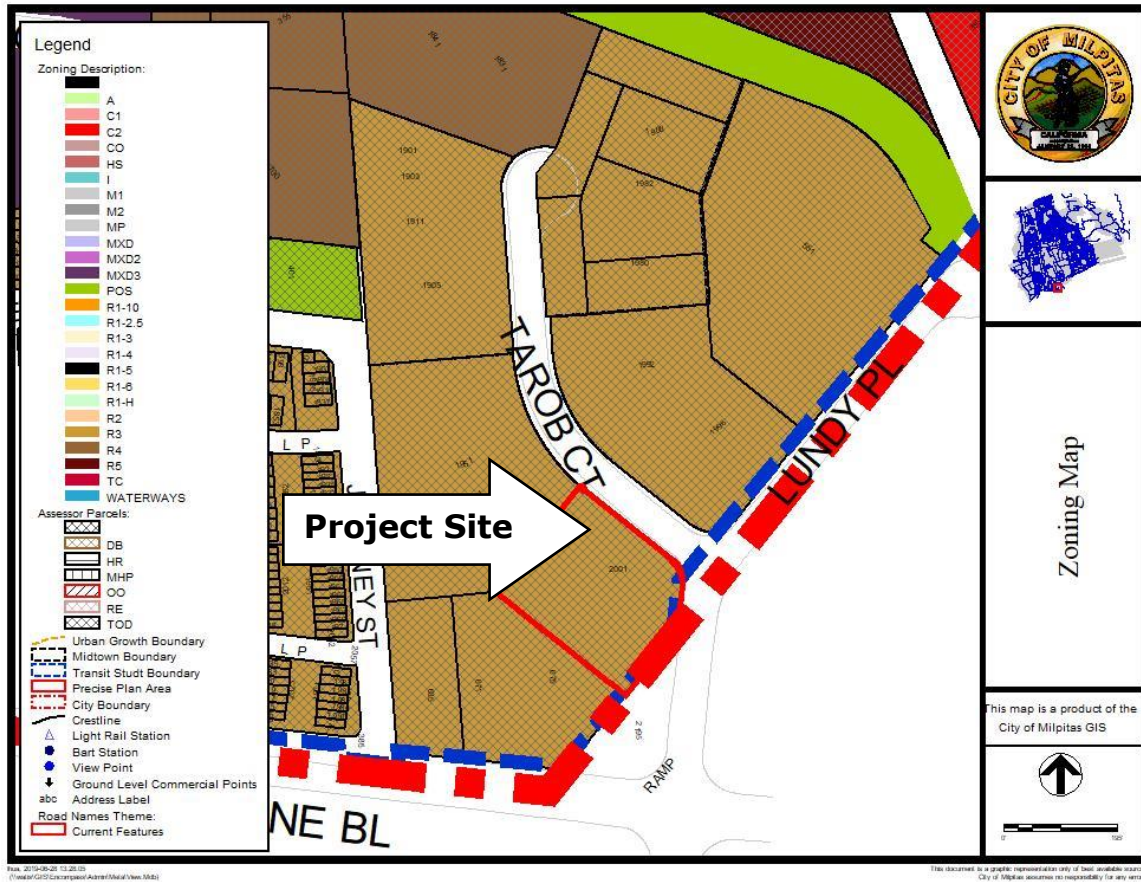
Map 1 Project Location



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City of Milpitas assumes no responsibility for any errors.

Map 2 Zoning Map



BACKGROUND

History

On June 3, 2008, the City Council adopted the Transit Area Specific Plan (TASP or Plan). The Plan encompasses 437 acres and envisions the development of 7,109 residential dwelling units, 287,075 square feet of retail space, 993,843 square feet of office and industrial park space, and 350 hotel rooms. The Plan includes development standards, goals and policies to guide development within the Plan area. Because of the unique physical characteristics of various portions of the TASP, the Plan also established seven sub-districts, each with specific goals and policies to accommodate those unique characteristics.

The project site is located within the Trade Zone/Montague Sub-District of the TASP. This sub-district is located east of Montague Expressway and south of Capitol Avenue, extending to the city limits on Trade Zone Boulevard and Lundy Place. On the Tarob Court side of the sub-district, the TASP envisions a moderate-to-high density residential area, with ample green space in the form of a large park and trails along Penitencia Creek. The Capitol Avenue and Montague

Expressway portions of the sub-district are intended to be lined by mid-rise and high-rise mixed use buildings that buffer the adjacent residential uses from noise and traffic.

In late 2015, representatives of The True Life Companies (TTLC) submitted a development application for a 59-unit residential townhome project at 1980 Tarob Court. This project was subsequently heard by the Planning Commission on August 10, 2016, and approved by City Council on September 20, 2016. TTLC was also interested in purchasing the adjacent property at 1992 Tarob Court for a similar type of townhome development, contingent on their ability to receive approval to rezone the site from an industrial to residential land use.

On November 18, 2015, staff brought the inquiry before the Planning Commission as a study session item. The Commissioners discussed various potential land use scenarios and were generally in favor of the possibility of a future land use modification for the site. Staff recommended that, should the land use designation for 1992 Tarob Court be converted for residential use, the same action should also be taken for the remaining three industrial parcels of 551 Lundy Place, 2001 Tarob Court, and 675 Trade Zone Boulevard. Consistency among the four sites would reduce any future conflicts between residential and industrial uses in this area of Milpitas.

In December 2016, TTLC submitted an application for the above-referenced land use designation changes for these four parcels as well as subsequent and related site development applications to develop the 1992 Tarob Court site with 53 townhome-style condominium units. The Planning Commission unanimously voted to recommend that the City Council approve the above applications on August 9, 2017. On October 3, 2017, City Council adopted Resolution No. 8701, approving the General Plan Amendment and the Transit Area Specific Plan Amendment for the four parcels. Subsequently, on October 17, 2017, the City Council adopted Ordinance No. 38.830, to rezone all 8.7 acres from the Industrial Park Zoning District with Transit-Oriented Development Overlay (MP-TOD) to Multiple-Family High Density with Transit-Oriented Development Overlay (R3-TOD) at 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard.

PROJECT DESCRIPTION

Overview

The project applicant is requesting approval of a Site Development Permit, Conditional Use Permit, and Vesting Tentative Map for the future development of a 40-unit residential condominium building, up to 49 feet in height (four stories), with on-site parking for up to 74 vehicles. The overall density of the proposed project will be 32.8 dwelling units/acre. The scope of work includes associated landscaping and open space, parking and circulation, and infrastructure improvements, as well as the demolition of an existing light industrial building.

Location and Context

The proposed project would be located on a 1.22-gross acre site on the west side of Tarob Court. The property is zoned Multi-Family High Density Residential (R3) with a Transit-Oriented Development (-TOD) overlay, and is within the Transit Area Specific Plan. The project site is currently occupied by an approximately 16,463-square foot light industrial/office building, and

this structure would be demolished to make way for the proposed new development. Table 1 below summarizes the project site’s land use designation and surrounding uses:

Table 1: Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Uses
Subject Site	Multifamily High-Density Residential (MFH)	Multi-family High-Density Residential (R3)	Light Industrial
North	Multifamily High-Density Residential (MFH)	Multi-family High-Density Residential (R3)	Light Industrial
South	City of San Jose	City of San Jose	Light Industrial
East	Multi-family High-Density Residential (MFH)	Multi-family High-Density Residential (R3)	Future Multi-family Residential
West	Multi-family High-Density Residential (MFH)	Multi-family High-Density Residential (R3)	Light Industrial

Please see Maps 1 and 2 for additional details.

PROJECT ANALYSIS

General Plan and Zoning Conformance

General Plan Conformance

The General Plan designation for the project site is High Density Transit-Oriented Residential. This designation allows a residential density range to accommodate a variety of housing types, including row houses, triplexes, four-plexes, stacked townhouses, and walk-up garden apartments.

The project is in conformance with the applicable policies and standards in the City’s General Plan, as outlined in Table 2:

Table 2: General Plan Consistency

Policy	Conformance
<p><i>2.a-I-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.</i></p>	<p>Consistent. The proposed project includes attractive four-story residential buildings in close proximity to the future Milpitas Transit Center, including the new BART Station. The project also includes significant streetscape improvements to encourage pedestrian and bicycle movement throughout the Trade Zone/Montague Sub-district. The proposed project will have connections to the BART and Light Rail transportation hubs.</p>
<p><i>2.a-I-32: Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.</i></p>	<p>Consistent. The proposed project conforms with the adopted design requirements contained in the Transit Area Plan. The project meets the requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.</p>

Zoning Conformance

The project site is zoned Multiple-Family High Density Residential (R3) with a Transit-Oriented Development (-TOD) Overlay. This zoning district and overlay provide for land uses densities and intensities, and design standards to enhance and support new mixed-use pedestrian-friendly development near transit stations. These provisions allow a mix of goods and services within a convenient walk of the transit stations, encourage the creation of stable, attractive residential, commercial and industrial environments within the District, and provide a desirable transition to the surrounding conventional areas. The proposed project meets all development standards of the Multiple-Family High Density Residential (R3) Zoning District. Adherence to other development standards, including density, is further discussed in the Transit Area Specific Plan section below.

Subdivision Ordinance

The project’s form, content and dedications of the proposed tract map are consistent with the provisions in Title XI, Chapter 1, Section 4 of the City’s Municipal Code, as set forth in the attached Resolution 19-022. Vesting Tentative Maps require approval of a Resolution by the Planning Commission recommending final approval by the City Council.

Transit Area Specific Plan

The land uses, street layout and street sections of the proposed project are consistent with the regulations for the Trade Zone/Montague Sub-district of the Transit Area Specific Plan as set

forth in the attached Resolution 19-022. The Transit Area Specific Plan land use designation applicable to the site (High Density, Transit- Oriented Residential – HD-TOR) allows residential densities of 21 to 40 dwelling units/acre. At 40 units, the proposed development falls in the middle of this range at 32.8 units/acre. The project is thus consistent with the Transit Area Specific Plan use and density requirements. As demonstrated in Table 3, the project complies with TASP development standards. The project also provides greenspace within the development and landscaping along the streets as prescribed by the TASP.

All projects in the TASP are required to pay a Transit Area Development Impact Fee (TADIF), which is currently set at \$32,781 per residential unit. The total TADIF payment generated by the proposed 40-unit project would be \$1,311,240 based on the current rate; however, the City may adjust this per-unit fee prior to the issuance of building permits for the proposed project, and the project would pay the adjusted amount.

Table 3: Summary of TASP R3-TOD Development Standards

Standard (R3-TOD)	Required	Proposed	Complies?
Height	Up to 75 feet	49 feet	Y
Setbacks	Front Yard: 8 foot-15 foot (max.) Side/Rear Yards: 15 foot (min.)	10 foot front yard setback; 8 foot to overhead projection; 40 foot side and 21 foot rear yard	Y
Projections	Up to 6 feet	2 feet	Y
Building Orientation	Buildings must face street	Building faces street	Y
Density	21-40 du/ac	32.8 du/ac	Y
Parking (Resident)	2-3 bedrooms require 1.6 to 2 covered spaces per unit 64 (min) - 80 (max) spaces	64 spaces	Y
Parking (Guest)	15 percent of required = 10 spaces	10 spaces	Y
Parking (Bicycle)	1 space per 4 housing units, exempting units with private garages; on-street guest racks equivalent to 5 percent of parking requirement = 10 spaces Short term bicycle parking: 5 percent of parking = 4 spaces	Residential: 10 spaces Guest: 4 spaces	Y
Parkland	0.35 ac/equivalent fee- in-lieu	Combination of acreage and fees (see parkland section)	Y

Proposed Project Details

The Planning Commission may use the following information in making a recommendation to the City Council:

Density

The project applicant will demolish the existing, approximately 16,463-square foot industrial building, landscaping, and associated parking on the 2001 Tarob Court site and construct a new four-story building with forty (40) residential condominium units at a density of 32.8 du/ac.

Parking Requirements

Automobile Parking – Under the TASP, a minimum of 64 and a maximum of 80 resident parking spaces are required for the proposed project, based on bedroom count (TASP Table 5-3: *Minimum Parking Requirements*). The applicant proposes to provide 64 resident spaces, the minimum required. Ten guest parking spaces are required, and the applicant proposes to provide that number. Per Section XI-10-53.07 of the City’s Municipal Code, no more than forty percent (40%) of the required and non-required stalls may be designated for compact vehicles. The project is compliant with the City’s Municipal Code, as only 29 parking spaces (39%) will be designated as compact parking spaces. The proposed resident and guest parking substantially complies with the TASP standards.

Parking for residents would primarily be provided in a parking garage oriented towards the internal driveway.

In addition, a total of 10 guest spaces will be provided as follows:

- Six (6) on along the private driveway;
- Two (2) ADA guest spots along the private driveway; and
- Two (2) inside the parking garage.

To maintain a consistent streetscape along Tarob Court, the project will be required to install decorative concrete paving to identify all on-street parking spaces.

Table 4 demonstrates the project's compliance with the parking standards for the R3 zoning district:

Table 4: Project Compliance with Parking

Number of Units	Number of Bedrooms/ Unit	Min/Max Ratio Permitted/Unit	Minimum # of Spaces Required	Maximum # Spaces Allowed	Total Spaces Provided	Conforms (Y/N)
LAND USE: RESIDENTIAL						
40	2-3	1.6/2.0 per unit	64	80	64	Y
<i>SUB-TOTAL:</i>			142	178	178	Y
Guest	--	15% of total spaces required	10	--	10	Y
<i>RESIDENTIAL PARKING TOTAL:</i>			74	90	74	Y

Bicycle Parking – For residential uses within the TASP, one space of long-term bicycle parking per every four housing units is required, exempting units with a private garage. For the proposed project, ten (10) long-term bicycle spaces would be required, and the site plan shows 16 long-term bicycle parking spaces.

For guests, the TASP requires short-term bicycle parking spaces equivalent to five percent (5%) of the total automobile spaces required. This equates to four (4) short-term bicycle spaces for guests, and the project will provide four bicycle spaces in compliance with the requirement.

Traffic and Access

Access to the project site is provided by a driveway located at the northern corner of the project site off Tarob Court. The driveway provides access to an internal twenty-six (26)-foot access drive lane and fire lane, which includes a fire engine/garbage truck turnaround that connects to the ground-level internal parking garage. The parking garage provides sixty (60) automobile parking spaces, including twenty-seven (27) compact spaces, and one (1) accessible parking space. Fourteen designated (14) automobile parking spaces will be located along the access drive lane, including two compact spaces, one accessible parking space, and one electric vehicle parking space. All traffic and access data has been reviewed by Transportation and Fire and is compliant with all applicable requirements.

Parks and Open Space

TASP requires all new developments to provide 3.5 acres of parkland for every 1,000 persons or payment of fees-in-lieu, as permitted by Article 3, Section 66477 of the Subdivision Map Act and as codified by the City of Milpitas at Milpitas Municipal Code Section XI-1-9 (*Improvements: Dedication of Land or Payment of Fee or Both, for Recreational Purposes*). The

Parkland Fee is based upon the estimated number of persons expected to inhabit the development (per U.S. Census definitions), and the estimated value of parkland in the City of Milpitas (currently \$2,787,840 per acre). The U.S. Census estimates that 2.49 persons on average will inhabit each unit. The project proposes 40 units, resulting in an estimated population of 97 persons. Based on this population estimate, the project is required to provide 0.35 acres of parkland, equivalent to approximately \$971,841.02.

Additionally, as mentioned above, all projects in the TASP area are required to pay a Transit Area Development Impact Fee (TADIF), a portion of which is used for park and recreation purposes within the TASP area. The park portion of the TASP fee for this project is valued at \$600,548, equivalent to 0.22 acres of parkland. This amount will be applied to the project's \$971,841.02 parkland requirement, leaving a delta to be satisfied of 0.13 acres, or an in-lieu fee of approximately \$371,293.02.

Applicants may receive credit against their parkland obligations through the provision of raw land, payment of fees-in-lieu, credit for turnkey park projects, or a combination thereof. Pursuant to MMC Section XI-1-9, projects may also receive credit for private recreation elements that are accessible only to project residents, at the sole discretion of the City. If approved, private recreation credit may be used to satisfy up to 1.5 acres of the 3.5 acre/1000 requirement (43%) of the overall parkland requirement. In no instance shall an excess of parkland contributions result in a credit from the City against any fees or other charges due to the City from the Applicant.

To satisfy the 0.13 acre delta, the applicant is proposing the use of 0.26 acres as private recreation space on-site, as allowed by MMC Section XI-1-9 referenced above. This space will include an open courtyard on the ground floor consisting of a fireplace, seat walls, tables and chairs, and an outdoor kitchen for use by residents, shown on Sheets L001 and L002 of the project plans (See Attachment B: Project Plans). Additionally, there is a terrace on the second floor consisting of tables and chairs, television, a counter with a barbeque and refrigerator for use by residents, shown on Sheet L003. Since the ground floor courtyard and second floor terrace provide viable recreation space for residents that will reduce the demand for public recreation space, staff is recommending that these areas be credited against the projects' parkland dedication requirements up to 43% of the required area (0.15 acres).

Through these means, the project meets the required parkland requirements. Table 5 outlines this information below:

Table 5: Summary of Adherence to Parkland Requirements

Project Unit Count	40
Project Population Estimate	97 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu. Currently \$2,787,840 per acre.
PARKLAND ACREAGE DUE/FEE EQUIVALENT	0.35 acres/\$971,841.02
Amount Satisfied Through TASP Fees (Acreage/Dollars)	0.22 acres/\$600,548
REMAINING DELTA TO BE SATISFIED (Acreage/Dollars)	0.13 acres/\$371,293.02
Private Recreation Acreage Credit (43% Max.)	0.13 acres
TOTAL ACREAGE/FEES PROVIDED	0.26 acres
REMAINING ACREAGE/FEE REQUIREMENT TO BE MET	0.0 acres/\$0

Landscape & Open Space Design

Common Open Space – The project includes a total of 0.44 acres of common open space and landscape areas comprised of soft and hardscape. Detailed landscape plans, plant palette, and site furnishings are shown on Sheets L001 through L010 of the Project Plans (See Attachment B).

Private Open Space – The project provides 0.3 acres of private open space, consisting of an interior courtyard on the ground level and a walking path and landscaping along the southern portion of the building. The interior courtyard includes seating areas and landscaping. A designated walkway connects the interior courtyard with the walking path and landscaping. The remaining 0.14 acres of open space consist of landscape areas generally located in the northern portion of the site.

Each residential unit will include a private deck of no less than 60 square feet. The private decks, in conjunction with private recreational space near all of the units, will provide 100% of the required open space.

Trees – Per Sheet L001--Overall Site Plan, the applicant proposes to remove thirty-four (34) existing trees from the project site. Eight (8) of the trees are protected trees, pursuant to MMC X-2-1.02, and therefore require two (2) replacement trees for every one (1) protected tree that is removed. Forty (40) new trees will replace the protected trees. Due to the TASP-required street realignment in this area and the requirement to raise the site out of the flood plain, existing on-site trees cannot be retained.

Table 6: Summary of Open Space Requirement

Standard (R3-TOD)	Code Requirement	Required Area	Provided Area	Complies? (Y/N)
Landscape and open Space Requirements	A minimum of twenty-five (25) percent of the total lot area (not including paved parking area) shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area and this shall be shown on site plan in detail for Planning Commission approval.	25% of 1.22 = 0.31 acres	0.44 acres (36.1%)	Y
	An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 ½ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit.	200 x 40 = 8,000 square feet = 0.18 acres	Private recreational area = 0.28 acres	Y
			Private open space (balconies & porches) = 60 SF/unit = 60 x 40 = 2,400 SF = 0.06 acres. 0.06/0.18 = 30% of the required contiguous open space	
Total private open space = 0.31 acres = 337.6 SF/unit				

Design Guidelines and Architecture

Design Guidelines – The design guidelines include both general design guidelines and specific standards to guide future development within the Transit Area. These design guidelines cover site planning, building design, landscaping, and lighting. Examples of how the project complies with the guidelines include:

- *Site Planning*
 - Buildings face streets
 - Site plan provides for attractive, comfortable and safe pedestrian environment
 - Site plan provides for adequate fire apparatus and solid waste pickup
 - Site plan recognizes and complements approved development plans for adjacent projects in the TASP Trade Zone/Montague sub-district
- *Building Design*
 - Complies with height, setback and zoning requirements
 - Quality architectural design
 - Recognizes and complements approved development plans for adjacent projects in the TASP Trade Zone/Montague sub-district
- *Landscaping*
 - Provision of interior landscaped open space and perimeter landscaping
 - Provision of street trees in accord with TASP standards
 - Recognizes and complements approved development plans for adjacent project in the TASP Trade Zone/Montague sub-district
- *Lighting*
 - Direct lighting to appropriate surfaces and minimize glare onto adjacent areas
 - Designed to reinforce pedestrian character

Architecture – The project’s design concept arranges three residential floors over ground floor parking in two parallel wings. The arrangement preserves ground floor open space and creates a thirty foot wide shared-use courtyard between the wings. The project’s contemporary architectural design uses stucco, siding, porcelain ceramic tile, metal siding, colored glass, and a variety of metal details. Variations in the building colors, materials and planes and protruding balconies provide architectural interest and avoid a boxy appearance. The architectural building massing is broken up through an alternating painted color blocking treatment of dark green, light grey, and steel blue. At the ground level, porcelain ceramic tile and laser cut metal panels frame the entry to the courtyard and building entrances. The ground level courtyards offer residents the opportunity for out-of-doors leisure, as well as community engagement. The ground floor garage is softly disguised with punched openings, artful screen panels, and stone-like cladding. The project conforms to the Transit Area design guidelines, which require orientation of the building to the street, well-articulated exterior walls with consistent style and materials, muted colors for primary building walls with richer accent colors and integrated parking.

Floodplain Management

Floodplain Management – The project site is located in Flood Zone AO. The applicant will place engineered fill across the site, raising the grade by approximately 4.5 feet to ensure that the project complies with the City of Milpitas Floodplain Ordinance (MMC Section XI-15-

4.3(a)(4)). This will allow the City's Floodplain Administrator to make a determination that the project will not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. (In this context, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.)

Grading

Development of the proposed project would result in the demolition of all existing structures and pavements. A total of 5,600 cubic yards of fill would be brought to the site to raise the elevation out of the floodplain.

Utilities

The project site is located in an urban area and is currently served by existing utilities, including: water, sanitary sewer, storm drainage, electricity, and telecommunications infrastructure. The majority of existing utilities within the boundary of the project site would be removed and replaced.

Water – The proposed project includes the removal of all existing utilities. New 8-inch water lines within the project site will connect to existing service connections and the existing 12-inch main located within Tarob Court.

Wastewater – The San José/Santa Clara Water Pollution Control Plant (WPCP) provides wastewater treatment for Milpitas. The City of Milpitas maintains existing sanitary sewer lines within the vicinity of the site, including an 8-inch line on Tarob Court. The proposed project includes the installation of a new on-site 8-inch wastewater line that will connect to the City's existing line.

Stormwater – Bioretention areas will be incorporated into the landscape design to provide appropriate vegetation and water quality treatment for impervious surfaces including roofs, driveways, streets, and sidewalks.

The project will connect to the existing 12-inch municipal storm drain located at the northwest corner of the project site. The project includes pervious pavers throughout the interior access driveway. Upon construction of the improvements, approximately 0.88 acres (72 percent) of the project site would be covered by impervious surfaces and approximately 0.40 acres (28 percent) would be covered by landscaped areas including lawns, shrubs, and trees. All walkways within these areas would be sloped to drain onto the surrounding landscaping for bio-retention and treatment.

Electricity and Natural Gas – Electricity and natural gas services to the site are provided by Pacific Gas and Electric Company (PG&E). Existing underground utility connections and gas mains provide electricity and gas to the project site. The project includes removal of all existing utilities and requires the construction of new electricity and gas connections to serve the project. New electrical lines (servicing the project only) will be installed underground and connect to the existing joint trench box in the northern corner of the project site.

Climate Action Plan

The City of Milpitas Climate Action Plan (CAP) was adopted in 2013 and includes Greenhouse Gas (GHG) reduction goals, policies and actions for new and existing development projects.

One of the key aims of the CAP is to encourage transit-oriented development as a means to reduce GHG emissions. The project would be in compliance with this goal, as it would locate future residents within walking distance of public transportation, jobs, restaurants, and services. To reduce energy usage, the project would incorporate green building measures in compliance with CALGreen standard building measures for residential buildings and Title 24 requirements. Additionally, the project includes a total of 0.44 acres of common open space and landscaped areas, following the City's standards, which would offset GHG emissions.

Implementation of the TASP includes policies that address transportation and land use that are consistent with the CAP. TASP Policy 3.21 would provide continuous pedestrian sidewalks and safe bike routes throughout this portion of the TASP planning area; Policy 3.22 encourages walking and biking routes to schools and major destinations; and Policy 3.33 requires new development within the TASP Area to provide incentives for alternative modes of transit, which support the CAP.

Implementation of the proposed project would not substantially increase population, vehicle trips, or vehicle miles traveled. Further, the project adheres to the building guidelines of the TASP with only modest deviations that would not impair achievement of CAP goals and promotes reductions in GHG emissions through high-density development in close proximity to transit. As such, the project is in conformance with the City's Climate Action Plan.

Development Fees

The project is subject to the following fees, payable at the time of building permit:

TASP Impact Fee

The TASP Impact fee is currently set at \$32,781/unit for residential uses. Based on approval for development of 40 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is \$1,311,240 (\$32,781/unit x 40 units). This fee is currently under review by the City and may change. The proposed project would pay the fee at the issuance of building permits.

Parkland Impact Fee

TASP requires all new development to provide 3.5 acres of parkland for every 1,000 persons or payment of fees-in-lieu. Per the parkland section, above, the project has satisfied this requirement. See Table 5 for more information.

Public Art Fee

The Project will comply with the City's Public Art Requirements for Private Development, as set forth in Milpitas Municipal Code Section XI-10-14. This fee is currently set at one-half of one percent of building development costs. The proposed project will pay the fee based on the construction valuation at the building permit issuance.

Affordable Housing Ordinance

Pursuant to MMC Section XII-1-3.00, all new residential development projects of ten units or more designed and intended for permanent occupancy are required to construct fifteen (15%) percent of the total number of dwelling units within the development as affordable units, unless subject to an exception set forth in XI-1-4.00. All exceptions require City Council approval.

The applicant may request exceptions that include payment of fees in-lieu of the provision of affordable units on the site. The applicant has requested to pay the affordable housing fee in-lieu of constructing on-site affordable units. The affordable housing fee is currently set at \$33 per square foot. With an average unit size of 1,420 square feet, the estimated affordable housing fee for this project is \$1,874,000. The applicant has provided a justification statement (Attachment C) outlining why the project should be granted the exception.

Prior to City Council approval to the requested exception, affirmative findings to the following must be made:

1. *The exception requested exceeds the minimum affordable requirements; and*

Applicant Justification: The applicant asserts that paying the affordable housing in-lieu fee should be an alternative, not an exception. The applicant also suggests that building new affordable housing units only provides a few new residents with the opportunity to live in Milpitas at an affordable rate compared to their neighbors in the same new development. The applicant claims that paying the fee will allow the City to subsidize affordable housing rents and allow residents to remain in their homes.

Staff Analysis: The exception requested does not exceed the minimum affordable requirements. The applicant is providing the minimum required fee-in-lieu, which does not exceed the minimum affordable requirements. The affordable housing fund is used to produce very-low, low-, and moderate-income ownership or rental housing in the City. If the applicant were to build six Below Market Rate (BMR) units on site, it would allow six low-income households the opportunity to have permanent housing in the City. Since the applicant has requested to pay the in-lieu fee, those contributions can only be used to assist future developers to build affordable units, and not to subsidize rents in existing low-income housing. Therefore, the exception would further delay the construction of new affordable units in the City and would not exceed the minimum affordable requirements.

2. *The project is better served with the exception; or*

Applicant Justification: The applicant proclaims that the project will be better served as market rate housing since the adjacent Tarob Court projects are also market rate. The applicant argues that the menu of social assistance program available in Santa Clara County and the City of Milpitas are not located within the TASP Trade Zone/Montague sub-district. The applicant suggests that paying the affordable fee allows the City the flexibility to have funds on hand to support the under-housed population through projects that may be more likely to be located near established social services in the future.

Staff Analysis: The project is not better served with the exception. The applicant argues that social assistance programs are not available within the TASP Trade Zone/Montague

Subdistrict. However, on June 12, 2018, City Council approved a 102-unit multifamily affordable housing development with community space and offices for supportive services located at 355 Sango Court. The TASP envisions a Tarob Court connection to Sango Court. This particular development is also located within the TASP Trade Zone/Montague Subdistrict. Therefore, the argument cannot be made that projects should be located near established social services, as the project site is located near a recently entitled project with supportive services.

3. *The community benefits exceed the project benefits.*

Applicant Justification: The applicant proposes that the community benefits of the project are inherently created by the project. The scope of work includes the demolition of a non-conforming building and the redevelopment and beautification of the site with high-density housing consistent with the TASP. Moreover, the applicant proclaims that they have committed to meeting the goals of the City by producing a conforming R3-TOD high-density residential project within the TASP.

Staff Analysis: The community benefits do not exceed the project benefits. The project is not providing any community benefit to the City. Example of community benefits include contributions to the school district, Fire Department, Recreation Department, etc. A compliant project that meets the development standards of the zoning code is not inherently considered a community benefit, and therefore does not exceed the potential benefit of providing on-site affordable units.

Based on the applicant's justification statement, the fee exception request does not meet the findings pursuant to MMC Section XI-1-4.00. Staff recommends the City Council deny the fee exception request. Draft findings are included in the resolution (Attachment A).

If the City Council is able to make affirmative findings for the requested exception, the developer will be allowed to pay an in-lieu fee (currently \$33.00 per square foot) rather than designating six affordable units on the site. The resolution will include a condition of approval to clarify this requirement.

If the City Council cannot make affirmative findings for the requested exception, the developer will be required to provide six affordable units on the site. The Council may also provide an alternative directive for meeting the affordable housing requirements for this project, as set forth in the Conditions of Approval (Attachment A).

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Vesting Tentative Map

To approve the Major Vesting Tentative Subdivision Map, the following findings must be made pursuant to Milpitas Municipal Code Section XI-1-20.01:

1. *The tentative subdivision map is consistent with the General Plan.*

The project site has a General Plan land use designation of High Density, Transit-Oriented Residential (HD-TOR). The intent of this designation is to provide high-density housing at a density range of 21-40 dwelling units/acre. As this project proposes 32.8 dwelling units/acre, it is consistent with both the intended land use of the General Plan and the relevant density requirement.

Further, the project is consistent with the following General Plan Guiding Principle and Implementing Policies:

- A. *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 project is consistent with this policy as it includes attractive four-story residential buildings in close proximity to the future Milpitas BART Station. The Project also includes significant streetscape improvements enabling and encouraging pedestrian and bicycle movement throughout the Trade Zone/Montague Subdistrict, with connections to the BART and Light Rail transportation hubs.

- B. *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 project is consistent with this policy as it has been designed per the adopted design requirements contained in the Transit Area Plan. As demonstrated in Section 2(B) below, the project meets the applicable requirements of the Transit Area Plan, including building setbacks and height, density, parking, open space, landscaping, access and circulation.

2. *None of the conditions identified in California Government Code Section 66474 exist, to wit:*

- A. *That the proposed map is not consistent with applicable general and specific plans as specified in Government Code Section 65451.*

As set forth in Finding 1 above, the map proposes the development of the site into 40 residential condominium units at a density of 32.8 dwelling units/acre. The General Plan and Transit Area Specific Plan land use designation applicable to the site (High Density, Transit-Oriented Residential (HD-TOR)) permits residential development at densities of 21 to 40 dwelling units/acre. The map is thus consistent with the General Plan and Transit Area Specific Plan.

- B. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The design and improvement of the subdivision is consistent with the density range of 21-40 dwelling units per acre as permitted by the General Plan and Transit Area Specific Plan. The proposed density is 32.8 dwelling units per acre. The proposed project is also consistent with the Transit Area Specific Plan development standards, including height (maximum of 49' proposed, where 75' is maximum allowed), number of vehicular parking spaces (74 vehicular spaces proposed, where a minimum of 74 is allowed), bicycle parking (14 spaces proposed, where 14 are required), building orientation (proposed buildings will face streets, where requirement provides building must face streets).

C. That the site is not physically suitable for the type of development.

The site is surrounded by property designated for high density, transit-oriented residential development under the City's General Plan and zoned for this type of development under the Transit Area Specific Plan. In addition, the developer has determined this site to be suitable for the higher density development based on the location, physical attributes, and proposed infrastructure improvements.

D. That the site is not physically suitable for the proposed density of development.

The City Council, through adoption of Resolution No. 8702, has determined that the site is physically suitable for development at the proposed density of 32.8 dwelling units per acre, inasmuch as it has amended the applicable general plan land use designation to High Density, Transit Oriented Residential (HD-TOR), which allows densities of 21-40 dwelling units per acre. The site is also flat and has direct access to adjacent streets (Tarob Court and Lundy Place) to accommodate the proposed density of the development.

E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an Environmental Assessment/Categorical Exemption Memo (Exhibit 2 to Exhibit A of Attachment A). The memo did not find that the project would be likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The project is also located in an urbanized area and previously developed as an industrial building, and therefore, will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

F. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

The project, including the subdivision and its associated improvements, has been subjected to environmental review under CEQA through the preparation of an

Environmental Assessment/Categorical Exemption Memo (Exhibit 2 to Exhibit A of Attachment A). The memo did not find that the design of the subdivision or type of improvements is likely to cause serious public health problems.

- G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

Upon review of the subdivision map, it has been determined that the design of the subdivision or the type of improvements will not conflict with any easements acquired by the public at large, for access through or use of, property within the proposed subdivision. The subdivision does not involve the vacation of easements, however, the existing right-of-way will be abandoned and portions of the area will be retained for a Public Services Utility Easement (PSUE).

Site Development Permit

To approve the Site Development Permit, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.03(F):

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

The project's site design is consistent with the TASP development standards for the Trade Zone/Montague Sub-district. The project consists of 40 condominium units and associated site amenities on a 1.22-acre site. The building's contemporary architectural design visually relates to and is compatible with the adjacent townhome projects along Tarob Court. The project also features exterior horizontal blue and green-hued siding. The project has a strong sense of identity, achieving compatibility and aesthetic harmony with surrounding developments.

- 2. The project is consistent with the Milpitas Zoning Ordinance.*

The project site is zoned R3 (Multiple-Family, High Density Residential with a Transit Oriented Development (-TOD) Overlay). Residential uses are permitted in the zoning district. As demonstrated in Tables 3 and 4, the project conforms to the zoning district and meets the intent for this type of project envisioned in this area.

The project also conforms to the TOD Overlay by providing a density of 32.8 units per acre, which is within the 21-40 units/acre range envisioned by the TOD Overlay when combined with the R3 Zoning District. The four-story height of the building is also within the standards of the TOD Overlay, which allows up to seven stories in height.

- 3. The project is consistent with the Milpitas General Plan.*

See General Plan consistency discussion set out above in support of issuing the Vesting Tentative Map.

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

The project proposes the development of the site in to one four-story building consisting of 40 residential condominium units at a density of 32.8 dwelling units/acre. The Transit Area Specific Plan land use designation applicable to the site (High Density, Transit-Oriented Residential (HD-TOR)) permits residential development at densities of 21 to 40 dwelling units/acre. The map is thus consistent with the Transit Area Specific Plan use and density requirements. As demonstrated above, the project also complies with TASP development standards. Landscaping along the streets and greenspace with the development is provided as envisioned by the TASP.

Conditional Use Permit

To approve the Conditional Use Permit, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.04(F):

1. *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 will not be detrimental or injurious to property or improvements in the vicinity, nor to the health, safety or general welfare. The project is consistent with other high density residential projects within the TASP. The condominium project creates housing opportunities and increases the diversity of housing types in the TASP area.

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

The project is consistent with the Zoning Ordinance, as the condominium use is conditionally permitted per MMC Table XI-10-4.02-1. The project conforms to all of the development standards set forth by the Zoning Ordinance, as discussed in the Zoning Ordinance consistency discussion set out in support of issuing a Site Development Permit.

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

See General Plan consistency discussion set out above in support of issuing the Vesting Tentative Map.

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

See Transit Area Specific Plan consistency set out above in support of issuing the Site Development Permit.

ENVIRONMENTAL REVIEW

This project is located within the area evaluated as part of the Transit Area Specific Plan Environmental Impact Report (TASP-EIR) (SCH#2006032091) certified by the City Council

June 3, 2008. An environmental assessment (EA19-0002) for this projects was conducted by LSA, on behalf of the City, in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended, and state and local guidelines implementing CEQA. The environmental assessment conducted by LSA concluded that none of the circumstances necessitating preparation of a subsequent or supplemental EIR are associated with the Project.

The environmental assessment conducted by LSA also concluded that an Addendum to the TASP EIR is the appropriate document to address these modifications rather than a subsequent or supplemental EIR. The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the TASP-EIR and will have no new or more severe significant effects and no new mitigation measures are required.

As a separate and independent basis, the project is exempt from further CEQA review pursuant to Section 15183 of the California Environmental Quality Act, which applies to projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. As a separate and independent basis, the project is also exempt from further CEQA review pursuant to CEQA Guidelines Section 15182, because the project is a residential project that is generally consistent with a Specific Plan. Lastly, the project is also exempt from further environmental review pursuant to CEQA Guidelines Section 15168, as the project is within the scope of the TASP program EIR. Moreover, the project complies with the City's existing zoning, specific plan, community plan, and general plan. Therefore, no further environmental review is required.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have been no public comments received. A notice was published in the Milpitas Post on July 19, 2019. In addition, notices were sent to all owners and occupants within 1000 feet of the project site. A public notice was also posted at the project site, on the City's Website, www.ci.milpitas.ca.gov, and at City Hall.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing;
3. Consider the Addendum to the Transit Area Specific Plan EIR and various exemptions in accordance with the CEQA Guidelines, as stated; and
4. Adopt Resolution 19-022 recommending that the Milpitas City Council approve the ENVIRONMENTAL ASSESSMENT P-EA19-0002, SITE DEVELOPMENT PERMIT SD18-0014, CONDITIONAL USE PERMIT UP19-0009, AND VESTING TENTATIVE MAP MT18-0004 TO ALLOW THE FUTURE DEVELOPMENT OF A 40-UNIT RESIDENTIAL CONDOMINIUM PROJECT AT 2001 TAROB COURT

ATTACHMENTS

A: Resolution 19-022

B: Project Plans

C: Affordable Housing Exception Request