



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Approving a Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment to allow development of a 32-unit townhome condominium subdivision, comprised of two multi-family buildings up to 50 feet in height (three to four stories), with tandem garages accessed from a central drive aisle, and associated site improvements on a 1.22-gross acre site located in the Multi-Family High Density Residential (R3) Zoning District at 2001 Tarob Court, in the Transit Area Specific Plan (TASP) planning area.
Category:	Public Hearings-Community Development
Meeting Date:	1/18/2022
Staff Contact:	Ned Thomas, Planning Director, 408-586-3273
<u>Recommendation:</u>	<ol style="list-style-type: none">1) Conduct a public hearing, receive public comment, and move to close the hearing.2) Consider the consistency memorandums to the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR) and the exemptions in accordance with CEQA.3) Adopt a Resolution approving Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001, and Environmental Assessment No. EA21-0002 to allow development of a 32-unit townhome condominium subdivision, comprised of two multi-family buildings up to 50 feet in height (three to four stories), with tandem garages accessed from a central drive aisle, and associated site improvements, subject to the findings and Conditions of Approval.

Background:

In June 2008, the City of Milpitas adopted the Transit Area Specific Plan (TASP) to facilitate the transformation of older industrial properties surrounding the future Milpitas Transit Center into high intensity, transit-oriented, mixed-use neighborhoods. 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 to be lined by mid-rise and high-rise mixed-use buildings that buffer the adjacent residential uses from noise and traffic.

On November 2, 2018, The True Life Companies (TTLIC) submitted an application for a Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment to develop a 40-unit condominium residential project at the project site. The Planning Commission recommended the City Council approve the above applications on July 31, 2019. On August 20, 2019, the City Council adopted Resolution No. 8899, approving the development application.

In March 2020, the City initiated an update to the TASP and rebranded this effort as the Milpitas Metro Specific Plan. The updated Plan will shape the continued transformation of neighborhoods surrounding the Milpitas Transit Center, which opened in June 2020, to create a vibrant transit-oriented community with a mix of housing, retail, entertainment, and employment uses and a safe and attractive network of parks and trails. Future

development within the Tarob Court area is a primary component of the Milpitas Metro Specific Plan, with a vision for higher-density mixed-use development based on a future direct connection to the Milpitas Transit Center via an extension of South Milpitas Blvd into the neighborhood.

On March 24, 2021, TTLC submitted a new preliminary application pursuant to California Senate Bill 330 (SB 330) for a 32-unit townhome subdivision at the project site. On April 30, 2021, TTLC submitted a formal application for the revised townhome project, which is at the lower end of the density range for residential development in the R3-TOD zoning district.

On October 27, 2021, the Planning Commission reviewed the proposed Project and held a public hearing to receive public comment. Prior to the public hearing, staff received one comment letter, submitted by John Doll, a Milpitas resident, critiquing the proposed color scheme for buildings within the project. The Planning Commission received no other public comments during the public hearing.

The Planning Commission approved staff's recommendation for approval of the Project and forwarded the item to the City Council. The final vote was six "Ayes" votes and one absence (Chair Tao).

California Senate Bill 330 (Housing Crisis Act)

As noted above, TTLC submitted the proposed project pursuant to California Senate Bill 330 (SB 330), the Housing Crisis Act of 2019. This law went into effect on January 1, 2020 and declared a statewide housing emergency through January 1, 2030. The Housing Crisis Act allows an applicant to submit a preliminary application for any housing development project, as defined in Government Code Section 65589.5(h)(2). A housing development project includes the following: residential units only; mixed-use development consisting of residential and non-residential uses with at least two-thirds of the square footage of the project designated for residential use; transitional housing or supportive housing.

Under SB 330, eligible housing development projects are eligible for enhanced streamlining and vesting opportunities through a process initiated by the filing of a preliminary application. Once the preliminary application is deemed complete by the local jurisdiction, the housing development project is subject only to the ordinances, policies, and standards adopted and in effect at the time the preliminary application was submitted. In addition, housing development projects that meet all applicable objective general plan and zoning standards may only be subject to a total of five public hearings, including continuances and most appeal hearings.

Once a preliminary application is deemed complete, a complete project application must be submitted and accepted by the Planning Department within 180 days of submission of the preliminary application. The project must also commence construction within 30 months after the date of final approval. The preliminary application from TTLC met the qualifications for streamlined review by the City under SB 330, and they submitted a formal application on April 30, 2021.

Project Description:

The Project site at 2001 Tarob Court is currently occupied by a 16,200-square foot light industrial office building. The site was originally developed in the 1980s as part of the Tarob Court industrial park.

The Project includes a total of 32 townhome units, comprised of two multi-family buildings up to 50 feet in height, with tandem garages accessed from a central aisle. The scope of work includes associated landscaping and open space, parking and circulation, and infrastructure improvements.

The 32 townhome condominium units consist of four two-bedroom units and 28 three-bedroom units. The units will range in size from 1,854 to 2,354 square feet and all units will have a tandem two-car garage. The Project also provides nine guest parking spaces, ten public bicycle parking spaces, two electric vehicle charging spaces, and two ADA parking spaces. The Project will gain ingress and egress from both Tarob Court and Lundy Place via both existing driveway curb cuts.

Five of the 32 units, or fifteen percent (15%) of the base units, will be affordable to moderate-income households in conformance with the City's Affordable Housing Ordinance. By providing the required on-site affordable units, the Project is also eligible for certain waivers under the affordability provisions of the State Density Bonus Law (Gov. Code § 65915 et seq.) even though the Project is not asking for an increase in units or density. Specifically, Government Code Section 65915(p)(5) permits eligible housing projects under the State Density Bonus Law to provide onsite parking through tandem parking or uncovered parking. The analysis section of this staff report includes a full discussion of the State Density Bonus provisions related to this Project.

Location and Context:

The Project is located on a 1.22-acre site on the west side of Tarob Court, as shown in Figure 1 below.

Figure 1: 2001 Tarob Ct. (Aerial Image)

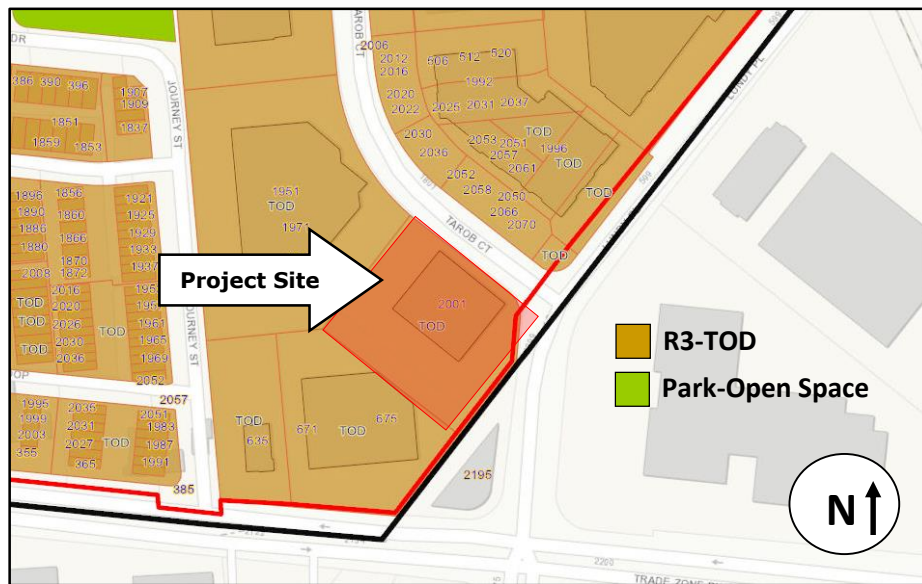


The property located within the Transit Area Specific Plan (Milpitas Metro Specific Plan) area and zoned R3 Multi-Family High Density Residential with a Transit-Oriented Development (-TOD) overlay. Table 1 summarizes the Project site's General Plan land use designation, zoning, and surrounding uses. Figure 2 shows the proposed location and surrounding zoning.

Table 1: Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Uses
Subject Site	Milpitas Metro Specific Plan (MMSP)	Multi-family High-Density Residential (R3-TOD)	Vacant Light Industrial
West	Milpitas Metro Specific Plan (MMSP)	Multi-family High-Density Residential (R3-TOD)	Light Industrial
East	Milpitas Metro Specific Plan (MMSP)	Multi-family High-Density Residential (R3-TOD)	Future Multi-Family Residential
North	Milpitas Metro Specific Plan (MMSP)	Multi-family High-Density Residential (R3-TOD)	Light Industrial
South	City of San Jose	City of San Jose	Light Industrial

Figure 2: 2001 Tarob Ct. (Zoning Map)



Analysis:

The proposed Project requires approval of three entitlements and the environmental assessment, as follows:

1. Site Development Permit SD21-0004: To allow of two multi-family buildings, ranging from three to four stories in height, with up to 32 residential units on the 1.22-acre site; and
2. Conditional Use Permit UP21-0005: To allow the condominium use; and
3. Vesting Tentative Map MT21-0001: To establish 32 residential condominium spaces and related common areas and to record site easements; and
4. Environmental Assessment EA21-0002: To review and verify an exemption from further environmental review under CEQA.

Staff reviewed the entitlement applications listed above and found them to be in compliance with the policies, standards, and processes outlined in the City of Milpitas 2040 General Plan, Transit Area Specific Plan (Milpitas Metro Specific Plan), Zoning Ordinance, Milpitas Municipal Code (MMC), and the State Density Bonus Law. The remainder of this agenda report provides specific details regarding each of the requested entitlements.

General Plan Conformance

The General Plan designation for the project site is Milpitas Metro Specific Plan (MMSP), but since the City Council has not formally adopted the MMSP, the TASP development standards currently apply. The intent of both the MMSP and TASP standards is to facilitate development of higher intensity, mixed-use neighborhoods near the Milpitas Transit Center and to encourage walking, biking, and the use of alternative modes of transportation.

As proposed, the Project is consistent with the goals, policies, and standards in the City's General Plan, as set forth in Table 2 below.

Table 2: General Plan Consistency

Policy	Conformance
<i>Policy LU 1-4:</i> Continue to provide for a variety of housing types and densities that meet the needs of individuals and families and offers residents of all income levels, age groups and special needs sufficient housing opportunities and choices for locating in Milpitas.	Consistent. The Project provides an additional housing type to meet the needs of various families and residents of all income levels. The Project, as proposed, consists of 32 townhome residential units, ranging from two to three bedrooms. Five of the residential units will be reserved for moderate-income households. The City would prefer to see higher density development at this location.
<i>Policy LU 5-1:</i> Require new development and redevelopment to be compatible, complementary and, where appropriate, well integrated with existing residential areas. Integrate new large-scale development projects into the fabric of the existing community rather than allowing projects to be insular and self-contained, walled off, or physically divided from surrounding uses. Improve connectivity between neighborhoods and services with new development. Tie circulation systems and open spaces into existing streets and open spaces. Reduce unnecessary barriers and improve connections between neighborhoods and services by retrofitting existing development over time as area improvements or redevelopment occurs.	Consistent. The Project, as proposed, is well integrated with the existing residential developments along Lundy Place and Tarob Court, as the project has a similar architectural style, building height, multi-family product, and site layout. Additionally, the project will gain ingress and egress from both Tarob Court and Lundy Place via existing driveway curb cuts, and as a result, the Project will blend seamlessly into the fabric of the existing community. The Project will also be compatible and complementary to future high-density residential development planned for other parcels on Tarob Court which are currently developed with light industrial uses but are zoned for redevelopment as similar high-density residential uses.
<i>Policy LU 5-3:</i> Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance as applied through the zoning district for all properties within the City.	Consistent. The Project meets the height standards by proposing two three to four-story buildings, up to 50 feet in height, in a zoning district that allows a maximum height of 75 feet.

Transit Area / Metro Milpitas Specific Plan Conformance

The TASP/MMSP land use designation for the project site is High Density, Transit-Oriented Residential. This designation provides for medium-density residential uses within the Trade Zone/Montague Sub-District. As shown in Table 3 below, the Project is consistent with applicable TASP/MMSP land use policies.

Table 3: TASP/MMSP Consistency

Policy	Conformance
<i>Policy 3.4:</i> Provide a variety of housing types for different types of households, different income levels, different age groups, and different life-styles.	Consistent. The proposed Project will provide various housing types, including two and three-bedroom units for sale at market-rate and five of the 32 units will be for sale to moderate-income individuals or households, consistent with the City's goal of providing housing for various households and income levels. The City would prefer to see higher density development at this location.
<i>Policy 3.17:</i> New streets shall be located as generally shown on the Street System Map, Figure 3-2 within the TASP	Consistent. A portion of the Project's TASP fees will contribute to the new Tarob Court configuration, designed to replace the cul-de-sac with a local street and connection to Sango Court.
<i>Policy 3.2:</i> Affordable housing units should be provided with new housing developments. Determine affordable unit requirements on a project-by project basis, considering the size of the project, the location of the site, and the mix of affordable units in the Midtown Area. Allow housing developments of 12 units or less to pay a fee in lieu of providing affordable units.	Consistent. The Project conforms to the City's Affordable Housing Ordinance and will designate five out of the 32 units, or fifteen percent (15%) of the base number of units, for moderate-income level individuals or households.
<i>Policy 3.3:</i> Affordable housing should be integrated into all residential projects.	Consistent. The Project will designate five residential units for sale to moderate-income individuals or households and the units will be dispersed throughout the project site.

Zoning Conformance

The zoning designation for the project site is Multiple-Family High Density Residential (R3) with a Transit-Oriented Development (-TOD) Overlay. As demonstrated in Tables 4 and 5 below, the Project is consistent with the development standards for the R3-TOD Zoning District and TASP/MMSP area. The affordability provisions of the State Density Bonus Law allow the project to deviate from certain standards. A detailed discussion of the State Density Bonus Law and a summary of the deviations are provided later in this report.

Table 4: Development Standards for the R3-TOD Zoning District

R3-TOD	Standard	Conformance
Density	21-40 dwelling unit/gross acre	Compliant: 25 du/acre
MXD3	Standard	Conformance
Setbacks		Compliant
Front (min / max)	8-15 ft. from the back of sidewalk	15 ft.
Right (South) Side	15 ft. / 20 ft. for over three stories when abutting residential	26 ft.
Left (North) Side	15 ft. / 20 ft. for over three stories when abutting residential	43 ft
Rear	15 ft. / 20 ft. for over three stories when abutting residential	20 ft.
Building Height	Up to 75 ft.	Compliant: 49 ft, 11 in.
Private Open Space	<p>An average of 200 SF of usable open space shall be provided for each dwelling unit. 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.</p> <p>200 x 32 = 6,400 SF = 0.15 acres</p> <p>Each dwelling unit shall be provided with private open space as follows:</p> <ul style="list-style-type: none"> - Balconies and porches (above ground level): minimum 60 SF; or - Patios (at ground level): minimum one hundred square feet. 	<p>Compliant:</p> <p>Private recreational area: 0.14 acres</p> <p>Private open space (balconies) = 1784 SF/building = 1784 x 2 = 3,568 SF = 0.08 acres</p> <p>Total private open space = 0.22 acres = 299.5 SF/unit</p> <p>Private balconies provided for every unit</p>
Landscaping	<p>A minimum of twenty-five percent (25%) of the total lot area shall be landscaped or recreational open space, exclusive of parking and vehicular traffic area.</p> <p>25% x 1.22 = 0.31 acres</p>	Compliant: 0.46 acres (37.7%)

In addition, projects located in the TASP/MMSP area must comply with the additional development and design standards outlined in Table 5 below.

Table 5: Additional Development Standards Applicable in the TASP/MMSP

	Standard	Conformance
Projections into Required Yards	Porches, stairs, balconies, bay windows, and awnings may project up to six feet into setback.	Compliant: None proposed.
Building Orientation and Entrances	Building must face the street; and primary building entrances must be oriented toward the street.	Compliant: Buildings face Tarob Court, which is the project's primary street frontage.
Vehicle Parking	Two to Three Bedrooms: 1.6 covered (min), two (2) covered (max).	Compliant: 64 tandem spaces in 32 garages (two/unit)
Bicycle Parking	One space per four housing units, exempting those with private garages; on-street guest racks equivalent to five percent (5%) of parking requirement.	Compliant: 10 public spaces provided plus Project has 32 private garages.
Parking Structure and Parking Lot Location	Parking must be located so that it is not visible from the street.	Compliant: 32 private garage entrances face interior drive aisle.
Parking Access and Curb Cuts	Maximum two curb cuts per lot per street frontage	Compliant: One curb cut along each street frontage.
Tandem Parking	May be allowed with a Conditional Use Permit pursuant to MMC Section 53; maximum 50% of parking required for residential uses may be tandem parking in projects with private individual garages.	Compliant (Under Gov. Code, § 65915(p)(5) under State Density Bonus Law): All residential unit parking is tandem (64 spaces).
Park Acreage Requirements	0.03 acres (after payment of TASP/MMSP fee)	Compliant: 0.14 acres proposed, which includes private recreation areas along the southern end of the site

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 Resolution. Vesting Tentative Maps require approval by the City Council.

Architectural Design

The Project's design concept arranges two multi-family buildings, three to four stories in height, that mirror one another across a central drive aisle. The arrangement preserves ground floor open space and creates a 26-foot wide drive aisle between the buildings. The Project's contemporary architectural design uses stucco, siding, stone tile veneer, 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 building massing is broken up through an alternating painted color blocking treatment of dark green (SW "Dried Thyme"), light grey (SW "Natural Choice"), and steel blue (SW "Needlepoint Navy"). At the ground level, stone tile veneer and metal awnings frame the entry to the units. The garage doors are face the interior drive aisle, while the grand raised entrances face Tarob Court to enhance the public realm of Tarob Court's streetscape. The ground level entrances and private open space areas on the southern end of the property also offers residents the opportunity for out-of-doors leisure, as well as community engagement.

The Project has a similar architectural style to the Parkside project and visually relates to the previously approved three-story townhouses across Tarob Court. Moreover, 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.

Figure 3 is a perspective view of the north and west building elevations.

Figure 3: Proposed Project Looking Southeast from Tarob Court



Landscaping (including Tree Removal and Replacement)

The Project includes removal of 34 existing trees, including 21 protected trees, from the project site. Pursuant to MMC Title X, Chapter 2 (*Tree Maintenance and Protection*), the Project will plant two replacement trees for every protected tree that is removed, or 128 new trees planted on the site. Tree species include Chinese Pistache, Magnolias, Lavender Crape Myrtle, and Crabapple. New perimeter landscaping will include various shrubs (Australian Fuchsia, Candy Stripe Bamboo, Fortnight Lily, Lavender, New Zealand Flax), grasses (Reed Grass, Deer Grass, Fountain Grass) and groundcovers (Peach Drift, California Fuchsia, Pink Groundcover Rose) as demonstrated in Figure 4. Vines will also be welded on a wire mesh fence on the southern end of the site.

Figure 4: Landscape Plan



Parkland and Open Space Requirements

TASP requires all new residential developments to provide 3.5 acres of parkland for every 1,000 persons or payment of fees-in-lieu, as required per MMC Section XI-10-6.04 (G) (Park and Open Space Requirements for Residential Uses). Based on the proposed 32 units at the site, the Project would be required to provide 0.28 acres of parkland, or the equivalent to approximately \$777,472.82 in in-lieu fees.

All projects in the TASP are required to pay a Transit Area Development Impact Fee (TADIF), and portion of the TADIF is used for public park and recreation facilities within the TASP area. By paying the TADIF, the applicant receives a credit of \$690,061.12, equivalent to 0.25 acres of parkland. The applicant is obligated to either provide an additional 0.03 acres of public or private recreational space or pay an additional \$87,411.70.

To satisfy this requirement, the applicant proposes to provide 0.12 acres of on-site private recreation space. Each individual unit has a private balcony, totaling 3,568 square feet. The private recreation areas also include a bench, mailbox station, concrete paving and various landscaping, as shown on Sheet L002 of the Project plans (See Attachment 6: Project Plans). By designing these elements into the project, the parkland requirement is met without additional fees. Table 6 outlines this information.

Table 6: Summary of Adherence to Parkland Requirements

2001 Tarob Court Unit Count	32 units
2001 Tarob Court Population Estimate	80 persons
TASP Parkland Requirement	3.5 acres/1,000 people or equivalent fees-in-lieu
Total Parkland Acreage or In-lieu Fee Required	0.28 acres / \$777,472.82
Amount include in Payment of TASP Fees (Acreage/Dollars)	0.25 acres / \$690,061.12
Remaining Parkland Acreage or In-lieu Fee Required	0.03 acres / \$87,441.70
Private Recreation/Open Space Included in the Project	0.12 acres
Balance of Parkland Acreage or In-lieu Fees Due	0.00 acres / \$0

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 percent (15%) 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 Project will reserve five units (or fifteen percent (15%)) as affordable to moderate income households. The Project has been conditioned to execute an agreement imposing appropriate ownership controls on the affordable units.

State Density Bonus Law

To encourage the production of affordable housing, the State Density Bonus Law (Gov. Code § 65915 et seq.) allows developers to receive a density bonus of up to a 50% increase for most projects, depending on the amount of affordable housing provided, and an 80% increase in density for projects that are 100% affordable. The Density Bonus is a state mandate, and any developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. The City's local Density Bonus Ordinance (MMC Section XI-10-54.15 (F)) mirrors the State requirements.

By providing the required on-site affordable units pursuant to MMC Section XII-I-3.00, the Project is eligible to receive certain waivers under the affordability provisions of the State Density Bonus Law. While the Project is not requesting additional density, it is entitled to up to one concession, unlimited waivers of development standards, and parking standard reductions.

Parking Requirements

Under the TASP, a minimum of 51 and a maximum of 64 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 maximum required. Parking for residents would primarily be provided in individual tandem parking garages oriented towards the internal drive aisle. As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5) permits all onsite parking to be provided through tandem parking or uncovered parking.

The Project also requires ten guest parking spaces, and the applicant proposes to provide nine spaces. Under Government Code Section 65915(p)(1) and MMC Section XI-10-54.15(F)(5), the applicant may request reduced parking standards for the entire development. The reduced parking standards are inclusive of guest parking and handicapped parking and may be tandem or uncovered. The nine guest spaces will be provided as follows:

- Seven (7) along the private driveway;
- One (1) ADA guest spot along the private driveway; and
- One (1) electric vehicle charging spot along the private driveway.

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 7 demonstrates the Project's compliance with the parking standards for the R3-TOD Zoning District:

Table 7: Parking Requirements

Number of Units	Number of Bedrooms/Unit	Min/Max Ratio Permitted/Unit	Min/Max No. of Spaces Req'd/Allowed	Spaces Provided	Conforms (Y/N)
32	2-3	1.6/2.0 per unit	51/64	64	Y
Guest	--	20% of total spaces required	10	9	Permitted under State Density Bonus Law
Total:			<i>61</i>	<i>73</i>	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. As the Project has 32 private garages, no long-term bicycle parking spaces are required.

For guests, the TASP requires short-term bicycle parking spaces equivalent to five percent (5%) of the total automobile spaces required. This equates to three (3) short-term bicycle spaces for guests, and the Project will provide ten 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 off Tarob Court and at the southern corner off Lundy Place. The driveways provide access to an internal twenty-six (26)-foot access drive lane and fire lane, which includes a fire engine/garbage truck remote control gate along the southern corner of the site. There are 32 private residential garages along the central drive aisle. Nine guest parking spaces will

be located along the access drive lane, including 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.

Development Fees

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

TASP Impact Fee

The TASP/MMSP Impact fee is currently set at \$44,009/unit for residential uses for Fiscal Year 2021-2022. Based on approval for development of 32 units, the estimated Transit Area Specific Plan Development Impact Fee for this project is \$1,408,288 (\$44,009/unit x 32 units). This fee is automatically adjusted each fiscal year in conjunction with the City's annual budget process. The proposed Project will 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 6 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.

Findings for Vesting Tentative Map, Site Development Permit and Conditional Use Permit

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

Vesting Tentative Map (Section XI-1-20.01)

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 General Plan designation for the project site is Milpitas Metro Specific Plan (MMSP), but since the City Council has not formally adopted the MMSP, the TASP development standards currently apply. The intent of both the MMSP and TASP standards is to facilitate development of higher intensity, mixed-use neighborhoods near the Milpitas Transit Center and to encourage walking, biking, and the use of alternative modes of transportation.

The TASP designates this project site as 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 25 dwelling units/acre, it is consistent with both the intended land use of the General Plan and the relevant density requirement. The Project site was not identified as a potential site for yielding affordable housing units in the City's Housing Element, as the site was zoned for industrial uses prior to October 2017. Therefore, there is no net loss of affordable housing units.

Further, the tentative subdivision map is consistent with the Milpitas General Plan, as demonstrated and outlined in Table 2.

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 32 residential condominium units at a density of 25 dwelling units/acre. The General Plan and Milpitas Metro Specific Plan/Transit Area Specific Plan land use designation applicable to the site (Milpitas Metro Specific Plan (MMSP), and High Density, Transit-Oriented Residential (HD-TOR)) permits residential development at densities of 21 to 40 dwelling units/acre. The map is therefore consistent with the General Plan and Milpitas Metro Specific Plan/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 Milpitas Metro Specific Plan/Transit Area Specific Plan. The proposed density is 25 dwelling units per acre. The proposed Project is also consistent with the Milpitas Metro Specific Plan/Transit Area Specific Plan development standards, including height (maximum of 50 feet proposed, where 75 feet is the maximum allowed), number of vehicular parking spaces (64 vehicular spaces proposed, where a maximum of 64 is allowed), bicycle parking (10 spaces proposed, where 3 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 Milpitas Metro Specific Plan/Transit Area Specific Plan. In addition, this site is 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 25 dwelling units per acre, insomuch as it has amended the applicable general plan land use designation to High Density, Transit Oriented Residential (HD-TOR), and subsequently Milpitas Metro Specific Plan (MMSP), which currently 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/Peer Review Memos (Attachments 2 and 3). 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/Peer Review Memorandums (Attachment 2). The memorandums 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 (Section XI-10-57.03 (F))

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 MMSP/TASP development standards for the Trade Zone/Montague Sub-district. The project consists of 32 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 4, 5 and 7, the Project substantially conforms to the zoning district and meets the intent for this type of project envisioned in this area.

The Project also conforms to MMC Section XI-10-54.015 (Density Bonus for Affordable Housing Developments) and XI-10-57.05 (Density Bonus Permits). As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard.

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

The proposed Project and associated use are consistent with the Milpitas General Plan, as demonstrated and outlined in Table 2.

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

The proposed Project is consistent with the applicable policies and design guidelines of the TASP/MMSP, as demonstrated and outlined in Tables 3 and 5. As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced

parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard.

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

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 substantially conforms to most 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.

Moreover, the Project also conforms to MMC Section XI-10-54.015 (Density Bonus for Affordable Housing Developments) and XI-10-57.05 (Density Bonus Permits). As the Project is an eligible housing project under the State Density Bonus Law, Government Code Section 65915(p)(5), the Project is entitled to reduced parking requirements. The requested deviations will support the development of affordable housing units on a site where it would not otherwise be possible through a strict application of the specified standard.

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.

Density Bonus (Section XI-10.54.15(D), (F))

1. *Determination of Maximum Allowable Densities. The maximum allowable base density specified in the General Plan, including any other permitted increases to density.*

Based on 15% affordability, with 5 units (15%) reserved for moderate-income households, the proposed Project is eligible for a 5% density bonus. The maximum allowable density in the R3-TOD Zoning District is 40 du/ac, which would yield 42 units on the subject 1.22-acre parcel. The proposed 32-unit development is less than the allowable 5% density bonus. Under the State Density Bonus Law, the applicant is entitled to receive the 5% density bonus as a matter of right.

2. *Unit Type and Location. All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council and/or Housing Authority modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.*

This standard is satisfied, as the Project proposes five units to be reserved for moderate-income households. These five three-bedroom units will be dispersed throughout the two multi-family buildings.

3. *Agreement. Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.*

The Project will be conditioned to execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property.

4. *Retaining Affordability. A developer shall agree to, and the City shall insure continued affordability of, all lower- or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Section XI-10-54.15(E), Density Bonus Conditions, of this Chapter, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low-income housing units receiving a density bonus.*

The designated affordable units will be required to remain in place for a minimum of 50 years as stated in the Conditions of Approval and will require a Regulatory Agreement to be recorded over the Project site.

5. *Affordable Rents. Those units targeted for lower-income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low-income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income.*

This finding does not apply to the Project. The Project provides five for-sale units, or fifteen percent of the 32 units, to moderate-income households.

6. *Relation to State. Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code Section 65915, et seq.*

Any density bonus requirements not specified in the City's Municipal Code shall be governed by the State Density Bonus Law, Government Code Section 65915, et seq.

Waivers and Modifications of Development Standards

Pursuant to MMC Section XI-10.54.15(F)(6), the City must grant waivers of development standards if the applicant demonstrates the waiver is necessary to make the affordable housing units economically feasible and can only deny such waiver request if the City makes the findings specified in MMC Section XI-10.54.15(F)(3):

- a. *The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety Section 50052.2 or for rents for the affordable units pursuant to Section XI-10-54.15(D)(5), Standards, of Chapter 10 (Zoning) of the Milpitas Municipal Code.*
- b. *The concession would have a specific adverse impact as defined in State Government Code Section 65589.5(d) (2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*

If findings cannot be made, the proposed waivers must be granted, based on the requirements of the City's Municipal Code and California Government Code Sections 65915.

The proposed deviations for this project (one less guest parking space and tandem parking in all residential garages) would result in actual and identifiable cost savings, and these savings are necessary to provide the level of affordability proposed. Further, none of the deviations would result in any specific, adverse impacts to

public health, safety, the physical environment, or historical resources, so the City has no justification to deny the requested waivers.

Policy Alternatives:

Alternative 1: Deny the applicant's request for a Site Development Permit, Conditional Use Permit, Vesting Tentative Map, and Environmental Assessment.

Pros: Denial of the proposed Project would allow the site to be developed with a different project that meets the City's minimum parking and open space standards without the need for deviations from development standards. A higher density project with adequate parking would generate more impact fees to pay for needed infrastructure.

Cons: Denial of the proposed Project would deprive the City of a housing project and the opportunity to further support affordable housing needs within the region, including the City's Regional Housing Needs Allocation (RHNA). Denial of the Project would also be contrary to the goals and objectives of the State Density Bonus Law and applicable sections of the Milpitas Municipal Code, as well as Senate Bill 330.

Reason not recommended: The City Council has expressed strong support for the development of inclusionary housing. The Project meets most of the City's development regulations and complies with the affordability provisions of the State Density Bonus Law for the deviations requested by the applicant.

Fiscal Impact:

If approved, the applicant will pay the standard TADIF fee, which equals to \$1,461,802.94 (\$1,408,288 + 3.8% Permit Automation Fee). The applicant will be required to pay all building permit fees. The applicant will also pay the Public Art In-lieu fee set at one-half of one percent of building development costs.

California Environmental Quality Act:

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 on June 3, 2008. An earlier environmental assessment (EA19-0002) for a higher density version of the Project was conducted by LSA, on behalf of the City, in accordance with the California Environmental Quality Act (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 was 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 confirmed that the modified project was within the scope of the TASP-EIR and would have no new or more severe significant effects and no new mitigation measures were required.

As a part of this Project application, the applicant submitted a peer reviewed memorandum, dated April 28, 2021, conducted by First Carbon Solutions. The memorandum confirms that the proposed Project is still within the scope of the TASP EIR and will have no new significant or more severe impacts beyond those identified in the 2019 Environmental Checklist and the TASP EIR.

The City conducted an environmental assessment (in the form of a memorandum, dated August 4, 2021) for the proposed Project. LSA prepared a peer review memorandum on behalf of the City. The memorandum found that the Consistency Analysis generally meets the requirements of CEQA and employs sound methods and analysis to develop its conclusions. The proposed Project is still within the scope of the TASP FEIR and the subsequently prepared Categorical Exemptions prepared for a previous version of the Project in 2019 and would not have any new significant or more severe environmental impacts beyond those that have been previously identified. Both memorandums acknowledging the entitlements and consistency with CEQA are attached as Attachments 2 and 3 to the Resolution.

As a separate and independent basis, the Project is exempt from further CEQA review pursuant to CEQA Guidelines Section 15183, 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. 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 consistent with the Transit Area 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.

Recommendation:

1. Conduct a public hearing, receive public comment, and move to close the hearing;
2. Consider the consistency memorandums to the Addendum to the Transit Area Specific Plan Environmental Impact Report (TASP EIR) and the exemptions in accordance with CEQA; and
3. Adopt a Resolution approving Site Development Permit No. SD21-0004, Conditional Use Permit No. UP21-0005, Vesting Tentative Map No. MT21-0001, and Environmental Assessment No. EA21-0002 to allow the development of a 32-unit townhome condominium subdivision, comprised of two multi-family buildings up to 50 feet in height (three to four stories), with tandem garages accessed from a central drive aisle, and associated site improvements, subject to the findings and Conditions of Approval.

Attachments:

- : 1. City Council Resolution
2. Addendum to the Transit Area Specific Plan Environmental Impact Report
 3. Consistency Memorandums by First Carbon Solutions, TJKM, and LAS
 4. Planning Commission Staff report (dated October 27, 2021)
 5. Planning Commission Meeting Minutes for October 27, 2021
 6. Project Plans
 7. Applicant Response to CEQA Memorandums
 8. Public Comment Correspondence