

Planning Commission Date: May 23, 2007

Item No.

7.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Felix Reliford

Public Hearing: Yes: No:

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TITLE: ESTRELLA PROJECT - GENERAL PLAN AMENDMENT NO. GM2006-1, MIDTOWN SPECIFIC PLAN AMENDMENT, ZONE CHANGE NO. ZC2006-1, SITE PLAN AND ARCHITECTURAL APPROVAL NO. SZ2006-5, MAJOR TENTATIVE MAP NO. MA2006-2 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2006-4

Proposal: A request for a General Plan Amendment, Midtown Specific Plan Amendment, Rezoning, Site Plan and Architectural Review, Major Tentative Map and Environmental Impact Assessment to allow for the demolition of an existing industrial park and the construction of 368 podium and townhouse style residential condominium units, on-site surface and podium parking, recreational and open space facilities on 11.17 acres. The properties are proposed to be redesignated from Industrial Park to Multi-Family, Very High Density (31 to 40 dwelling units per acre) and rezoned from Industrial Park with "S" Zone Overlay District "MP-S" to Multi-Family, Very High Density with "S" Zone Overlay District "R4-S."

Location: 1601~1765 South Main Street

APN: 086 21 073

RECOMMENDATION: **Close Public Hearing. Adopt Resolution Recommending Approval of General Plan Amendment No. GM2006-1, Midtown Specific Plan Amendment and Zone Change No. ZC2006-1 to City Council. Recommend Approval of Major Tentative Map No. MA2006-2 based on the Findings and Recommended Special Conditions below. Adopt a Resolution Recommending the Certification of the Supplemental Environmental Impact Report (Environmental Impact Assessment) No. EA2006-4 to City Council. Approve Site Plan and Architectural Approval No. SZ2006-5 based on the Findings and Recommended Special Conditions below.**

Applicant: Donna Vingo, Warmington Homes, 2010 Crow Canyon Place, Suite 450, San Ramon, CA 94583

Property Owner: SB Tech Center LLC, 17320 Red Hill Avenue, Irvine, CA 92614

Previous Action(s): “S” Zone Approval and Amendments, Conditional Use Permit

Environmental Info: A Supplemental Environmental Impact Report has been prepared and circulated for this project.

General Plan Designation: Industrial Park

Present Zoning: MP-S, Industrial Park with an “S” Zone Overlay

Existing Land Use: Industrial office building (South Bay Tech Center)

Agenda Sent To: Applicant and owner as noted above

Attachments: *Attachment A* – Resolution for Recommending Approval of General Plan Amendment and Midtown Specific Plan Amendment & Map Exhibits
Attachment B – Resolution for Recommending Approval of Zoning Change & Map Exhibit
Attachment C – Resolution for Recommending Certification of the Supplemental Environmental Impact Report
Attachment D – Project Plans & Tentative Maps
Attachment E – Applicant Project Description
Attachment F – Draft Supplemental Environmental Impact Report
Attachment G – Final Supplemental Environmental Impact Report
Attachment H – Storm Water Control Plan (April 2, 2007)
Attachment I – Tree Report (March, 2007)
May 16, 2007 Letter from Warmington Homes and Attachments

PJ #3205

BACKGROUND

At its meeting of April 11, 2007, the Planning Commission at the request of the applicant continued this matter in order to allow the applicant to address three specific issues as they related to the project:

- 1) Consider incorporating mixed-use development into the project;
- 2) Addressing the adjacent neighbor’s privacy issues; and
- 3) Addressing the issue of the existing jobs and businesses located on the site.

The applicant has provided a letter in the Planning Commission’s agenda packet addressing each one of these issues in detail. Staff has provided a summary of the letter addressing the issues.

Mixed Use Development

The Planning Commission has requested that Warmington Homes consider adding a mixed-use development (commercial retail) component to their project. Warmington has reviewed three different scenarios as they pertain to the mixed-use development incorporated in the project.

- 1) The applicant states that it would be infeasible to add mixed-use development to the project based on no access from Montague Expressway. The County of Santa Clara maintains Montague Expressway and would not grant permission to allow access from the site. The only access that would be permitted would be for emergency vehicles. Also, the applicant states that to incorporate mixed-use into the project at this site location would necessitate the loss of 18 townhomes which would make the project economically infeasible.
- 2) Parking Problems would exist based on the City's proposed Main Street Plan Line Study which calls for irrigated and landscaping street median island improvements to create a pedestrian friendly sidewalk and installing a stop light to connect the planned grid pattern on the east and west side of S. Main Street from Montague Expressway to Cedar Street. The proposed street and sidewalk improvements to be installed by Warmington could not allow the street parking in front of the commercial areas. The commercial would only be accessible to people going south bound on S. Main Street without making a u-turn at Cedar Street.
- 3) Consideration of a 10,800 sq. ft. commercial retail building on-site with parking and separate access on the north end of the site would create the same parking and accessibility along with taking up .93 acres and making the residential project economically infeasible.

The Midtown Specific Plan specifically designates a mixed-use development area between Abel Street and Main Street from Curtis north to Calaveras Blvd.

Furthermore the Midtown Plan policies states:

- Concentrate limited retail demand in one central business district.
- Encourage "smart growth" practices and discourage the bad planning of numerous small scattered "strip malls".
- Center mixed-use by already built very high-density residential developments.
- Improve walk ability and encourage transit use.

Neighbor's Privacy Issues:

Over the past several months, Warmington Homes had a series of meetings with the property owners of the Starlite Pines that live adjacent to the proposed project to address their neighbor privacy issues. Warmington Homes has provided a visual simulation of the project at four key locations to demonstrate the small visual impact the project would have on the neighbors. Their engineers, as well as an arborist to mitigate impact the visual impacts also provide line of sight studies were. The applicant has attempted to address the various options as they pertaining to the neighbor's privacy:

- 1) Opaque Windows-Neighbor felt that this proposal was not acceptable because the window could be removed.
- 2) Removing the large bedroom windows and replacing them with smaller bathroom size windows. The Building Division has concerns about health and safety issues as it relates to ventilation.
- 3) Removing the windows in the bedroom facing the west (neighbor's properties). Planning Staff has some concerns about this proposal not being aesthetically pleasing and express concerns about the Fire Dept. may find this proposal acceptable.
- 4) Removal of the third story of the units. This would reduce the square footage of 28 town homes to approximately 888-900 sq. ft., which would impact their marketing of the units.
- 5) Raising the height of the perimeter wall. The applicant concerns about this proposal would be getting all of the neighbors to agree on the raising the height of the wall. The existing wall would have to be removed and the footing re-engineered to increase the height. This would impact the proposal landscaping and maintenance easement that gives the neighbors 2-4 feet times the length of the wall extra backyard area that is Warmington property.
- 6) Planting of landscaping and installation of large trees to private privacy to the neighbors. The applicant has stated a position of their willingness to plant the large trees 18 months in advance of their occupancy to allow the trees to mature. They have also stated that prior to occupancy they would walk the site with the neighbors and install more trees as warranted to provide additional screening and privacy.

The proposed development does not exceed the height limitation (4 stories or 60 feet) of the proposed zoning designation. Potentially, the developer could develop or sale the site and if the general plan and zoning designations were approved, the new construction would potentially exceed 35 feet (proposed height of the town home units) adjacent to the neighbors property.

The height of the existing buildings on the site is approximately 30 feet. The current MP zoning would allow 3 stories and 35 feet in height. The Zoning Ordinance further states that:

There shall be no height limitation in the MP District; provide that, however, that before the construction of any structure which exceeds three (3) stories or thirty-five (35) feet in height shall be authorized, the Commission must make the findings that any such excess

in height will not be detrimental to the light, air, or privacy of any other structure or use currently existing or anticipated.

The Commission should also be advised that the developments approved across the street (east side of S. Main Street) would be approximately 50 feet in height. The proposed townhomes adjacent to the Starlite Pines neighbors will be 34 feet 8 inches.

Land Use Compatibility- This parcel of land is the only Industrial Park (MP) designation in the Midtown Specific. The site is surrounded by residential land use within the City of Milpitas. Paragon and Aspen Apartments projects to the east, Starlite Pines residential; neighborhood to the west and north and City of San Jose to the south.

It is staff's understanding that the previous property owner did not want to be included in the Midtown Specific Plan designated area and requested to retain the site existing MP zoning. Subsequently, the new property has requested to rezone the property to residential. From a land use compatibility standpoint and based on the surrounding land use, the general plan and rezone designations are logical choices for land use compatibility and to meet the intent of the Midtown Specific Plan.

Business and Job Retention

Warmington has presented their project before the Economic Development Commission (EDC) and has agreed to the following suggestions as it relates to business and job retention for the existing business:

- 1) Try to find locations in Milpitas for the businesses. Contract with commercial brokers to identify Milpitas locations. Provide a recap to the City prior to demolition permit issuance on what actions were taken to assist each business.
- 2) Provide businesses with relocation services and business guidance for moving.
- 3) Provide adequate notice to all businesses to give them time for planning their move.
- 4) Provide for an announcement in the Milpitas post of the new locations for the businesses.

If the Planning Commission decides to approve the project, staff recommends that these business and job retention assistance become part of the special conditions of approval.

The Planning Commission should be advised that the applicant could develop the site or sell the site under the existing MP zoning designations with no legal obligation or requirement from the City to assist the existing businesses located on the site.

Based on the land use capability, meeting the guidelines of the Midtown Specific Plan and the applicant's ability to attempt to address the Planning Commission issues stated above, staff continues to support the proposed development request.

Previous Background Information

On December 20, 1983, the City Council approved a General Plan Amendment and Rezoning of an 11+ acre vacant site from Single Family, Low Density (up to 5 dwelling units per acre) and Neighborhood Commercial to Industrial Park. Approximately six (6) acres of the site was redesignated and rezoned from Single Family, Low Density (up to 5 dwelling units per acre) to Industrial Park. Approximately five (5) acres of the site, fronting South Main Street, was redesignated and rezoned from Neighborhood Commercial to Industrial Park.

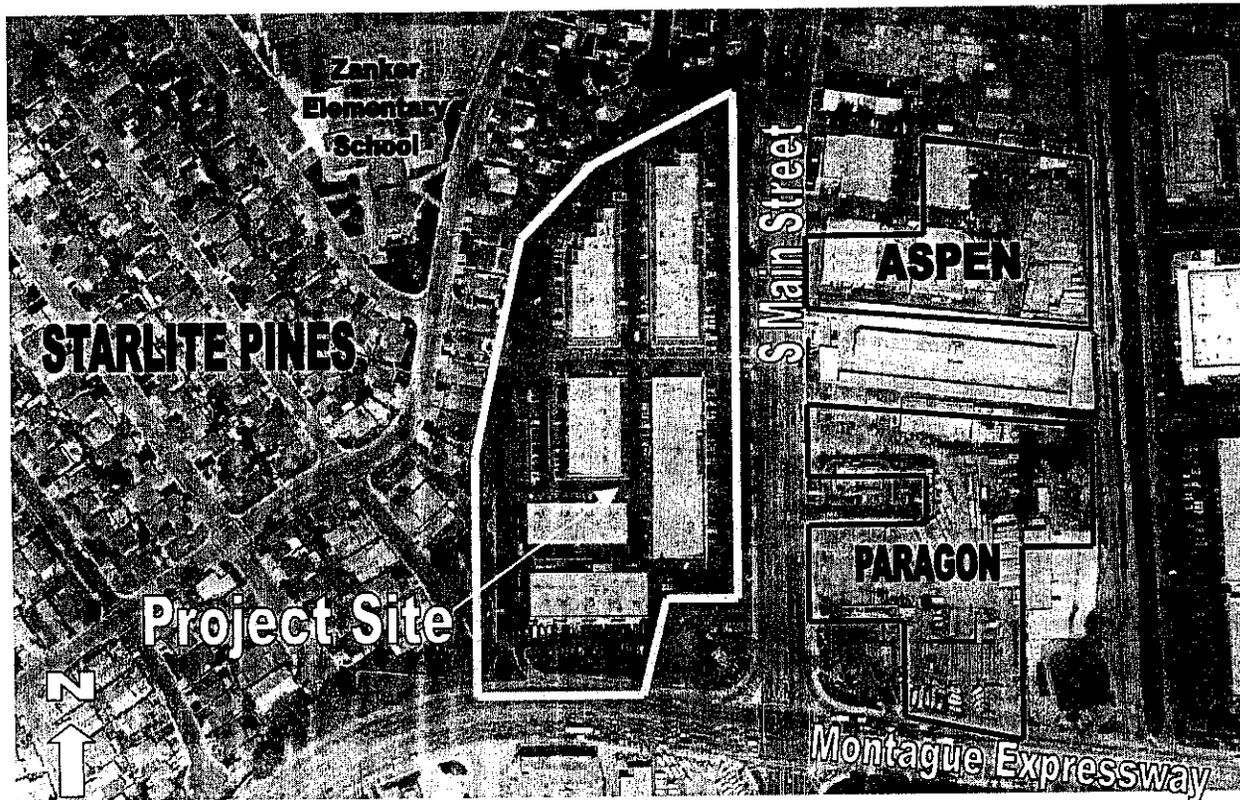
On March 7, 1985, the Planning Commission approved “S” Zone (Site and Architectural Review) Approval for the construction of two (2) two-story multi-tenant industrial office buildings, totaling 79,872 square feet in floor area. The industrial office complex was named “Capital Tech Center.” On November 7, 1989, the City Council approved “S” Zone Approval Amendment and Variance No. 460 for the construction of four (4) additional single-story multi-tenant industrial office buildings, totaling 81,780 square feet in floor area. Subsequent “S” Zone Approval Amendments include approvals for a sign program, building additions and Conditional Use Permit approvals for a technical college, deli and gymnastics club. The industrial complex is currently named “South Bay Tech Center.”

Site Description

The project site is located on an 11.17-acre parcel at the northwest corner of the intersection of South Main Street and Montague Expressway. There are six (6) multi-tenant industrial office buildings totaling 161,652 square feet in floor area.

North and west of the project site is the Starlite Pines single-family residential district. East of the project site, across South Main Street, are Global Premier’s Aspen affordable housing development (101 apartment units) and D.R. Horton’s Paragon condominium development (147 condominium units) as well as existing auto repair businesses, a self-storage facility, and Jack-in-the-Box drive-thru restaurant. There are two gas stations at the intersection of South Main Street and Montague Expressway: a Shell gas station on the northeast corner of the intersection and a Union 76 gas station on the northwest corner, adjacent to the Warmington Homes project site. South of the project site, across Montague Expressway and in the City of San Jose, are the Sleep Inn Hotel and U-Haul Moving and Storage on the southwest corner of the intersection and the Montague Technology Center industrial park on the southeast corner of the intersection. The Union Pacific Railroad line runs parallel to South Main Street, in a north-south direction, a quarter of a mile to the east of the project site.

The project site is located within the Midtown Specific Plan Area. The project site is located in the Redevelopment Area Amendment 8 District.



THE APPLICATION

The applicant is requesting a General Plan Amendment, Midtown Specific Plan Amendment, Rezoning, Site Plan and Architectural Review, Major Tentative Map and Environmental Impact Assessment. The applicant is requesting approval of a Major Tentative Tract Map, pursuant to Section XI-1-4.00 (Tentative Map) of the Subdivision Ordinance. The applicant is requesting approval for a Site Plan and Architectural (“S” Zone”) Approval pursuant to Section 42 of the Zoning Ordinance.

Project Description

The approval of the project will allow for the demolition of an existing industrial park and the construction of 368 podium and townhouse style residential condominium units, on-site surface and podium parking, recreational and open space facilities on 11.17 acres.

Three podium style residential buildings are proposed along the South Main Street frontage with a total of 257 units. The podium buildings will have a partially subterranean garage and four stories of residential flats and townhouses of 1, 2 and 3 bedrooms that range in size from 809 square feet to 1,562 square feet. Seventeen townhouse style residential buildings are proposed along the northern, western and southern property lines with a total of 111 units. The townhouses will have a garage on the first floor and living areas on the second and third floors. The townhouse units will have 2 to 3 bedrooms that range in size from 1,192 square feet to 1,634 square feet.

Table 1: Proposed Residential Units

Podium/Townhouse	# of Units	Bedrooms	Living Area (SQ)
Podium (Unit 1)	5	1	809
Podium (Unit 2)	125	2	1,195
Podium (Unit 3)	28	2	1,195
Podium (Unit 4)	11	3	1,536
Podium (Unit 5)	16	3	1,386
Podium (TH1)	4	3	1,562
Podium (TH2)	68	2	1,326
Townhouse (Unit B)	32	2	1,214
Townhouse (Unit D)	15	3	1,345
Townhouse (Unit G)	32	3	1,634
Townhouse (Unit H)	32	2	1,192

The project proposes recreational amenities, such as a pool, fitness rooms and a recreation building. The project offers generous open space and new landscaping. The existing tree canopy along the northern and western property lines, which separates the development from the existing residential neighborhood, will be preserved and enhanced with new tree planting and the addition of a meandering path. Each of the residential buildings will have either a private courtyard space or landscaped paseos between the buildings for open space amenity. The streetscape design along South Main Street will incorporate the City's recently adopted South Main Street and South Abel Street Plan Line Study.

General Plan Amendment

The applicant is requesting a General Plan Amendment for the project site. The existing land use designation is Industrial Park. The proposed land use designation is Multi-Family, Very High Density (31 to 40 dwelling units per acre.) There are 368 residential units proposed on 11.17 acres. The project meets the density requirement for the proposed land use designation at 33 dwelling units per acre. The applicant has stated in their project description how the General Plan Amendment would implement the Midtown Specific Plan vision "for a higher density transit oriented and pedestrian friendly Gateway to Milpitas."¹

The project site is mainly surrounded by properties with a residential land use designation. The Starlite Pines neighborhood to the north and west is an established residential neighborhood with a land use designation of Single Family, Low Density (3 to 5 dwelling units per acre.) The properties to the east of the project site were redesignated Multi-Family, Very High Density (31 to 40 dwelling units per acre) with the adoption of the Midtown Specific Plan in 2002. The

¹ Project Description, Warmington Homes

project site is the single industrial land use designation in the immediate vicinity, along South Main Street in the City of Milpitas. The applicant has stated in their project description that Warmington Capital Partners (SB Tech Center, LLC) acquired the project site in 2005 and has experienced “declining occupancy.” The site “is a lone industrial area that is geared toward industrial and not residential serving businesses.”²

Midtown Specific Plan Amendment

The Midtown Specific Plan was adopted by the City Council on March 19, 2002 to guide the development and further evolution of the Milpitas Midtown Planning Area and encourage “development that responds to City and regional objectives, such as a compatible mixture of residential, retail and commercial uses.”³ With the adoption of the Midtown Specific Plan, the land use designation of a majority of the industrial and commercial properties along South Main Street and South Abel Street were redesignated to Mixed Use and Multi-Family, Very High Density. The density requirements were changed to 31 to 40 dwelling units per acre and up to 60 dwelling units per acre within the Transit Oriented Development Overlay.

The project site is located at the southern end of the Midtown Specific Plan Area. The land use designation of the South Main Street and South Abel Street corridor, between Great Mall Parkway and Montague Expressway, were redesignated to Multi-Family, Very High Density with the adoption of the Midtown Specific Plan and this area has experienced interest by many private investors to develop Multi-Family housing projects. Starting from the north, there is the “Centria” development by D.R. Horton, “South Main Street” development by Matteson, “Bay Stone” development by Bay Stone, “Aspen” development by Global Premier and “Paragon” development by D.R. Horton. The Midtown Specific Plan retained the Industrial Park land use designation for the project site, however, the applicant is proposing to redesignate the land use to Multi-Family, Very High Density. The proposed Midtown Specific Plan Amendment would allow this parcel to be consistent with the existing surrounding residential land use designations within the area. (See Attachment A, Exhibit B)

Rezoning

The applicant is requesting a rezoning for the project site for conformance with the proposed General Plan and Midtown Specific Plan land use designation changes. The existing zoning designation is MP-S - Industrial Park with “S” Zone Overlay District. The proposed zoning designation is R4-S - Multi-Family Very High Density with “S” Zone Overlay District.

Analysis for General Plan Amendment, Midtown Specific Plan Amendment and Rezoning:

As stated above, the project site is surrounded by residential land uses. Given the presence of surrounding single-family and multi-family residential land uses, proximity to schools, major arterial streets and transit hubs and availability of public service capacity in the area, the proposed project and change in land use designation would result in a more compatible land use. If approved, the proposed General Plan Amendment, Midtown Specific Plan Amendment and Zone Change would be considered a logical land use designation, consistent with existing General Plan Guiding Principles and Implementing Policies.

² Ibid

³ Midtown Specific Plan, City of Milpitas

- Guiding Principle 2.a-G-2 Maintain a relatively compact urban form.
- Guiding Principle 2.a-G-3 Provide for a variety of housing types and densities that meet the needs of individuals and families.
- Implementing Policy 2.a-I-2 Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.
- Implementing Policy 2.b-I-3 Provide housing opportunities in Milpitas by meeting the City's regional fair-share housing obligations.

Analysis: The proposed General Plan Amendment is compatible with the Guiding Principles and Implementing Policies listed above because the development encourages a compact development with the use of higher densities, provides for a variety of housing types and densities to meet the demands of varying families, promotes in-fill development and provides housing opportunities in Milpitas by contributing to the City's regional fair-share housing obligations.

If approved, the proposed General Plan Amendment, Midtown Specific Plan Amendment and Zone Change would be consistent with existing Midtown Specific Plan Goals and Policies.

- Goal 1 Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown area.
- Goal 2 Provide for a significant component of new housing within the area in order to: improve the vitality of the Midtown Area; address local and regional housing needs; and reinforce the use of transit.
- Goal 3 Promote the intensity of development in the Midtown area that is appropriate to its central location.
- Goal 4 Provide for a land use mix that supports major transit facilities.
- Policy 3.1 Allow for up to 4,860 new housing units in Milpitas Midtown.
- Policy 3.4 Establish a minimum density of 21 units per gross acre in the Mixed-Use District, 31 units per gross acre in the multifamily, very high density area and a minimum of 41 units per gross acre around the transit stations.

Analysis: The proposed Midtown Specific Plan Amendment is compatible with the Goals and Policies listed above because the proposed project would ensure compatibility with residential land uses to the north, east and west, improve the vitality of the Midtown Area, addresses local and regional housing needs, contributes to new housing units in the Milpitas Midtown, increase use of transit and meets the minimum density requirement of the Multi-Family, Very High Density land use designation.

Major Tentative Tract Map

The applicant is requesting a major tentative tract map for the subdivision of the existing 11.17-acre parcel to 20 condominium parcels totaling 368 residential condominium units. The open

space parcels, private streets and private courts will be common parcels. The three podium buildings and the seventeen townhouse buildings will be located on individual parcels. The open space area will be subdivided into 27 parcels, the private street will be subdivided into four parcels and there will be eight private court parcels. These will all be considered as common parcels. The tentative map also includes proposed grading, utility and on/off-site improvements.

Conformance with the State Subdivision Map Act & Subdivision Ordinance

The State Subdivision Map act defers to the local ordinance with respect to the approval of a tentative tract map. The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. As previously analyzed in the Conformance with the General Plan section, the proposed project and tentative tract map are in conformance with the General Plan.

“S” Zone Application

A. Site and Architectural Compatibility with Surrounding Development

1) Site Layout

As mentioned earlier in the staff report, the project proposes three podium style residential buildings along the South Main Street frontage with a total of 257 units. The podium buildings will have a partially subterranean garage and four stories of residential flats and townhouses. Each podium building will have an inner courtyard space and inter-connectivity between the buildings via paseos between Podium Building A and B. Podium C is separated by a private street (Street B) with access to South Main Street.

Seventeen townhouse style residential buildings are proposed along the northern, western and southern property lines with a total of 111 units. The townhouses will have a garage on the first floor and living areas on the second and third floors. The townhouse buildings range from 5-plex to 8-plex buildings. Most of the buildings are separated by a paseo with common open space area or by a private court with vehicle access to each of the townhouse garages. The typical separation between face of garage to face of garage is 28 feet with a 20-foot drive aisle.

The recreation building and the pool will be located to the west of Podium Building C.

The project site will be served by a private street system with two accesses from South Main Street, two emergency vehicle accesses (EVA's) and a private street/court system within the project. The private streets have a typical drive aisle width of 22 to 28 feet. The northern access on South Main Street will be a new four-way signalized intersection with the Aspen development on the east side of South Main Street. The southern most access on South Main Street will be a 35-foot EVA only access. The existing right turn lane into the project site on Montague Expressway will be modified to be an EVA only access. A new six-foot high pre-cast sound wall will be installed along the southern property line within the street side setback, approximately 15 feet from the townhouse buildings.

The project will be served by a pedestrian pathway system (sidewalks, crosswalks and paseos) that links the buildings to the public streets, transit, recreational amenities and private open space areas. A meandering path will be implemented along the northern and western perimeter with

linkage to the paseos between the buildings and recreational area. There is a pre-existing six-foot high perimeter wall along the northern and western property lines. The applicant proposes a pedestrian connection through a controlled access gate to Greenwood Way for quick access to the Starlite Pines Neighborhood and Zanker Elementary School for residents.

The proposed layout maximizes density, provides for adequate access for emergency service vehicles, provides pedestrian access and walk-ability throughout the site, and provides for building variety and interest along South Main Street.

2) Building Architecture

The project has been designed in the Spanish Colonial Revival style that characterizes older towns throughout California, many examples of which exist in the San Francisco Bay Area. This style evolved from the more simplistic Mission Revival style. The podium buildings are four stories and incorporate various architectural treatments reflecting the Spanish Colonial Revival and Mission Revival styles such as low-pitched tile roofs, stucco walls, multi-paned windows, paired windows, tower elements, dormers and arcaded porches. The elevation of the podium buildings along South Main Street is over 200 feet long. However, the building design is well articulated with a consistent style, changes in roof heights and vertical planes to reduce mass, use of balconies and varied building silhouettes, which are all consistent with the Midtown Specific Plan Design Guidelines.

Estrella's townhouse buildings, which tend toward the more rustic end of the range, co-exist comfortably with the community's more formal and ornate podium and recreation buildings.

3) Landscaping

The project offers generous new landscaping throughout the development. Most of the landscaping is in the setback areas along the perimeter of the project site and around each of the podium buildings, townhouse buildings and recreation building. The existing tree canopy along the northern and western property lines, which separates the development from the existing residential neighborhood, will be preserved and enhanced with new tree planting and the addition of a meandering path.

A Tree Report, prepared by HortScience, Inc., revealed that there are 343 trees existing onsite. Almost 75% of the trees were surveyed to be in good condition. However, based on the potential impacts of the construction of which “the most significant impacts to the trees would occur as a result of the excavation and grading of the central portion of the site for road, building and underground garage construction,”⁴ HortScience, Inc., recommends the preservation of 107 trees around the perimeter of the site, including 54 “Protected” trees and the removal of 236 trees, including 103 “Protected” trees with a mitigation measure to replace the removed trees with 252 new trees. *Staff recommends* that all tree removals, mitigation and preservation shall adhere to the recommendations of the Tree Report prepared by HortScience, Inc., dated March 2007.

4) Streetscape

⁴ Tree Report, HortScience, Inc.

The streetscape design along South Main Street will incorporate the City's recently adopted South Main Street and South Abel Street Plan Line Study. The improvements will include the removal and replacement of existing sidewalks, trees and lighting in front of the development and the installation of a new raised median island with lighting, landscaping and irrigation. Special paving treatments are proposed at vehicular entry points into the development.

5) Parking

The project proposes a partially subterranean garage for the podium buildings with a total of 538 parking spaces for the 257 condominium units and guest parking. There will be a mix of tandem-type spaces and standard parking spaces.

The project proposes 222 parking spaces for the 111-townhouse units. All of the resident parking is provided on the first floor with a mix of tandem-type garages and conventional two-car garages depending on the unit type.

In addition to the guest parking spaces provided in the podium structure, there will be 85 surface guest parking spaces provided in front of the recreation building and on the private streets. The total parking spaces required for the project is 843 parking spaces (733 residential parking + 110 guest parking.) The project provides 845 total parking spaces (733 residential + 112 guest parking spaces.) The project also proposes 43 bicycle parking spaces in podium building garages and surface locations.

6) Park & Open Space

The applicant is proposing a total of 0 acres of public park space and 3.42 acres of private open space. The total balcony space for 368 units is 0.67 acres. The total courtyard space in the podium buildings is 0.89 acres. The remainder, 1.86 acres, is made up of the recreation area, paseos, private park space along the northern and western property line. The Midtown Specific Plan requires 200 square feet of usable open space per unit. The project proposes approximately 400 square feet of usable open space per unit.

The proposed development is located in the Midtown Specific Plan Area and is required to provide public and private park space at a ratio of 3.5 acres per 1,000 population. Based on the park fee calculation, the total required park space to be dedicated is 3.25 acres of which 1.86 acres should be public park space and 1.39 acres should be private park space.

Section XI-1-9.08 of the Subdivision Ordinance allows for "private open space for park and recreational purposes ~ privately owned and maintained by the future residents of the subdivision" to be credited against the requirement of dedication for park and recreation purposes or the payment of fees in lieu provided that the City Council "finds it in the public interest to do so" and the following standards are met:

- 9.08-1 That yards, court areas, setbacks and other open areas required to be maintained by the zoning and building regulations shall not be included in the computation of such private open space; and
- 9.08-2 That the private ownership and maintenance of the open space is adequately provided for by written agreement; and

- 9.08-3 That the use of the private open space is restricted for park and recreational purposes by recorded covenants which run with the land in favor of the future owners of property within the tract and which cannot be defeated or eliminated without the consent of the City Council; and
- 9.08-4 That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location of the private open space land; and
- 9.08-5 That facilities proposed for the open space are in substantial accordance with the provisions of the recreational element of the general plan, and are approved by the City Council.

Based on these standards, the open space areas designated for recreation purposes and park like area along the northern and western property lines, totaling 1.52 acres, can be credited for private open space. *Staff recommends* that prior to building permit issuance, the applicant shall pay a park-in-lieu fee in the amount of \$747,925.

7) Solid Waste

The project proposes a private trash and recycle collection program identical to the programs used at the existing Parc Metro and Parc Place residential projects. Each podium building has two trash chute rooms on each floor and the trash is collected by the contractor in the garage floor and moved to the trash compactor. For the townhouse units, a storage area to accommodate recycle and trash bins would be located within each private garage. The residents would place the bins in front of the garage on the designated collection day and the contractor would collect the bags from the bins and place in the trash compactor within the trash enclosure. A trash enclosure is proposed to be located adjacent to the EVA and between Podium Building A and the Union 76 Gas Station. The trash enclosure will be designed to tie in to the existing sound wall and screened with landscaping so as not to call attention to the enclosure.

8) Stormwater Runoff

The new C.3 Stormwater requirements require developments over 10,000 square feet in size to treat stormwater runoff before it discharges into City storm drains or creeks. Surface runoff is required to be reduced and treated for pollutants. Consistent with this, the applicant has submitted a Stormwater C.3 Report prepared by Ruggeri-Jensen-Azar & Associates, dated April 2, 2007. The project proposes to use the following BMP applications: “self-retaining areas, diverting roof water to infiltration areas, biofilter/swale areas, and the introduction of mechanical treatment devices for those areas within specific project constraints.”⁵

B. Conformance with Zoning Ordinance

⁵ Stormwater C.3 Report, RJA

Pursuant to Section XI-10-8.05 of the Zoning Ordinance, the project conforms with the land use and development standards of the “R4” – Multi-Family Very High Density zoning district as shown on Table 2 below:

Table 2: Zoning District Compliance

Zoning Code Development Standards	Proposed Project	Complies?
Residential Density = 31 to 40 dwelling units / acre	33 dwelling units / acre	Yes
Building Height <ul style="list-style-type: none"> ▪ 4 stories ▪ 60 feet (including towers) 	<ul style="list-style-type: none"> ▪ Podium: 55' 7 ¾" with towers (4 stories + subterranean garage) ▪ Townhouse: 34' 8 ½" (3 stories) ▪ Recreation Building: 23' (1 story) 	Yes
Parking Requirement = 843 <ul style="list-style-type: none"> ▪ Residential = 733 ▪ Guest = 110 	Parking Provided = 845 <ul style="list-style-type: none"> ▪ Residential = 733 ▪ Guest = 112 	Yes
Front & Street Side Setbacks = 8 to 15 feet from back of 10 foot sidewalk	<ul style="list-style-type: none"> ▪ Front Setback – varies 15 feet ~ 22 feet due to building design and articulation to break up massing ▪ Street Side Setback – varies 15 feet ~ 22 feet due to building design and articulation to break up massing 	Yes
Interior & Rear Setbacks = 10 feet	14 feet ~ 40 feet	Yes
Park & Open Space = 3.25 acres required <ul style="list-style-type: none"> ▪ Public = 1.86 acres ▪ Private = 1.39 acres Other open space requirements <ul style="list-style-type: none"> ▪ 200 SF per unit ▪ 25% of net acres = 2.79 acres 	<ul style="list-style-type: none"> ▪ Public = 0 acres ▪ Private = 3.42 acres <ul style="list-style-type: none"> ○ 0.67 acres of balcony space for 368 units ○ 0.89 acres of courtyard space for the podium buildings ○ 1.86 acres of common open space (recreation area, paseos, private park space along the northern and western property line) 	Yes, see analysis on P.10
Utilities: Setback from street, screened with landscape or other material, located in a single	Staff will ensure conformance upon review of Site Improvement Plans for Building Permit.	TBD

area, in wells, underground, etc.		
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C. Conformance with Midtown Specific Plan

All proposed projects in the Midtown Area subject to an “S” Zone Approval require compliance with the Midtown Specific Plan Development Standards and Design Guidelines. No S-Zone approval shall be issued by the City without the decision making body making the following findings:

“The proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines.”⁶

As analyzed in the “S” Zone Application section of this report which included Site and Architectural Compatibility as well as Conformance with the Zoning Ordinance, the proposed project complies with the “R4” zoning district development standards and requirements as well as with the Development Standards and Design Guidelines of the Midtown Specific Plan.

Conformance with Affordable Housing Policy

The City of Milpitas General Plan Housing Element and Midtown Specific Plan Policy requires 20% affordable housing within each residential development project. For the proposed 368 unit project, a total 74 affordable housing units are required. The applicant is proposing a joint partnership with Global Premier’s Aspen Apartments (100 affordable housing units with 100% affordability), which has been previously approved by the Planning Commission on March 14, 2007 (Use Permit No.UP2006-22 and “S” Zone Approval No.SZ2007-1). The 74 affordable units will be allocated from Aspen Apartments to Warmington Homes project to comply with the City affordable housing policy.

The total number of 94 affordable housing units required would be required by both projects (20 units by Aspen Apartments and 74 units by Warmington Homes), whereas Aspen Apartments is providing 100 affordable units. In return for the affordable housing allocation by Aspen Apartments, Warmington Homes has agreed to build Aspen Apartments’ required sidewalk frontage and street improvements consistent with the City’s South Main Street & South Abel Street Plan Line Study (including the installation of sidewalks, streetlights, trees & planting materials, median islands, irrigation and electrical enhancements and streetscape furniture installation).

If the Aspen Apartments development is not constructed, Warmington Homes will be required to provide the 74 affordable housing units on their site or provide the Milpitas Redevelopment Agency with an in-lieu housing fee of \$5,920,000 (74 units x \$80,000 average level of affordable housing subsidy/per unit). The legal agreements and obligations of both parties will be through the Owner Participation Agreement that will be required to be approval by the City Council/Redevelopment Agency.

⁶ Milpitas Midtown Specific Plan, March 19, 2002.

Conformance with CEQA

A Supplemental Environmental Impact Report (SEIR) for the Estrella proposal has been prepared to disclose environmental impacts to meet the requirements of the California Environmental Quality Act (CEQA). A Draft SEIR (DSEIR) must be circulated for public review and comment for a minimum of 45 days prior to any action being taken on the project. The review/comment period began on November 2, 2006 and ended December 16, 2006. A public comments meeting was also held on December 15, 2006 to receive testimony and comments regarding the DSEIR. All written and oral comments received during the comment period have been responded to in the Final Supplemental Environmental Impact Report (Final SEIR). The Final SEIR was published on March 30, 2007. The Final SEIR and the DSEIR together constitute the complete Environmental Impact Report.

An EIR is an objective informational document to inform the public agency decision makers and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. A public agency shall consider the information in the EIR along with other information that may be presented to the agency regarding the proposed project. An EIR regarding a proposed amendment of the General Plan will focus on the secondary effects that can be expected to follow from the amendment. However, the EIR may not be as detailed as an EIR on a specific construction project. An EIR should include a sufficient degree of analysis to provide decision makers enough information to consider the environmental consequences of the proposed project. The Estrella SEIR identified potentially significant environmental impacts to transportation and circulation, air quality, noise and vibration, utilities, and public services; however most impacts could be mitigated to a less than significant level through conformance with the identified City policies. More specific mitigation measures conforming to the policies would be incorporated into or required of a development/construction proposal as a condition of approval.

A more detailed description of the above potential impacts and mitigation measures are described in the DSEIR and the Final EIR previously sent to Planning Commission.

The EIR has identified the following project impacts as significant unavoidable impacts that cannot be mitigated to a less than significant level:

Supplemental Impact UTL-1: Water supply. The proposed project would require additional sources of domestic water not presently anticipated in the City's Water Master Plan. DSEIR p.29.

Supplemental Impact UTL-2: Wastewater treatment and sewage pumping capacity. The proposed project could exceed wastewater treatment capacity not presently anticipated in the City's Water Master Plan and exceed the pumping capacity of the City's Main sewer pump station. DSEIR p. 30.

Supplemental Impact PARK-1: Provision of public parks. The proposed project should provide approximately 3.62 acres of public parkland based on the standard of 3.5 acres of parks per 1,000 residents established in the Midtown Specific Plan, which would be reduced based on credit for on-site facilities as allowed by the City of Milpitas Parks Department. DSEIR p.33.

Supplemental Impact TRA-1: Future roadway segment impacts. In the year 2030, traffic generated by the proposed project along with other buildout traffic, would cause the roadway segments of Montague Expressway between South Main Street and I-880 (westbound) and South Main Street between Montague Expressway and South Abel Street (northbound and southbound) to exceed traffic thresholds of significance during the AM peak hour. This impact would include segments of Montague Expressway between McCarthy Boulevard and I-880 (eastbound) and South Main Street between South Abel Street to Montague Expressway (northbound and southbound) in the PM peak. DSEIR p.47.

Supplemental Impact AIR-1: Building demolition. Demolition of existing structures on the site would generate fugitive particulate matter emissions that would temporarily affect local air quality. DSEIR p. 60.

Supplemental Impact AIR-2: Regional air emissions. The project would result in a small increase in the regional emissions associated with development of the Midtown Specific Plan. The increase in emissions would be less than the BAAQMD significance thresholds, but the impacts of the Midtown EIR would be significant and unavoidable. DSEIR p. 61.

Supplemental Impact AIR-3: Cumulative air emissions. The project would result in a small increase in the regional emissions associated with development of the Midtown Specific Plan. The increase in emissions would be less than the BAAQMD significance thresholds, but the cumulative impacts of the Midtown Specific Plan would be significant and unavoidable. DSEIR p.62.

Supplemental Impact NOISE-1: construction noise impacts. Activities required to demolish existing improvements on the project site and construct townhouses and condominiums would result in significant noise generation for adjacent sensitive receptors. DSEIR p. 68.

Supplemental Impact NOISE-2: Land use compatibility impacts. Many of the buildings in the proposed Estrella complex would be exposed to exterior noise levels of between 60 and 75 DNL dBA. Two of the proposed buildings would be exposed to an exterior noise level greater than 75 DNL dBA. Balconies on the townhome and podium buildings fronting on South Main Street, as well as other balconies in buildings along Montague Expressway may also be exposed to noise levels greater than acceptable (DNL of 65 dBA) under the Noise Element. Excessive noise may also result if air conditioning equipment is placed on balconies. DSEIR p.70.

Supplemental Impact NOISE-3: Stationary noise impacts. Noise generated by exterior equipment, including pool equipment, would be audible to properties off of the project site. DSEIR p 71.

Pursuant to Public Resources Code Section 15093, a Statement of Overriding Considerations must be adopted for each of the above significant unavoidable impacts before approval of the proposed General Plan amendment. The Statement of Overriding Considerations must include findings that there are specific overriding economic, legal, social, technological or other benefits

of the project which outweigh the significant effects on the environment. This is in addition to the required findings regarding significant effects that can be mitigated.

Neighborhood Compatibility

The project site is situated in an area consisting of an established residential neighborhood to the north and west and new residences under development to the east. There are also existing commercial businesses across South Main Street to the east and south and existing industrial businesses inside the project site, South Bay Tech Center.

The applicant conducted six community engagement meetings to provide information about the developer and proposed project, gather neighborhood input and create a dialogue with the existing community. The following is a list of the meetings that were conducted:

- o June 5, 2006 – Community Center - Meeting with Starlite Pines HOA Board
- o October 9, 2006 – Community Center - Meeting with Starlite Pines HOA Board
- o November 7, 2006 - Zanker Elementary School - Neighborhood Meeting
- o December 15, 2006 - City Hall Committee Room - EIR Public Comment Meeting
- o January 5, 2007 – City Hall Building Conference Room - Meeting with Specific Neighbors (Philip & Helen Tuet, Don Clendenin)
- o February 5, 2007 – Community Center - Meeting with Specific Neighbors (Philip & Helen Tuet, Robert & Debbie Armstrong, others.)

The residents raised many concerns throughout this engagement process. Concerns ranged from proposed building heights, loss of privacy, increase in traffic that may occur in the neighborhood, density, parking, need for commercial services and school impact.

Since the proposed development would require the demolition of the existing industrial buildings on the site, the applicant has stated a desire to replant the trees along the exterior rear property line (adjacent to the homes at Starlite Pines) in order to start allowing the trees to mature in advance of the homes being built to attempt to address the privacy issues stated by several residents at the community meetings.

Based on the analysis and conclusions of this report, the proposed project is not anticipated to have adverse impacts on the parking, traffic, noise or be detrimental to the health and safety of the public. In addition, as conditioned, the project will not have adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction or loss of privacy that are not mitigated to acceptable levels.

RECOMMENDATION

Close the Public Hearing. Based on the Findings and subject to Recommended Special Conditions below, approve and adopt the following: Resolution No. 501 recommending approval of General Plan Amendment No. GM2006-1 and Midtown Specific Plan Amendment to City Council, Resolution No. 502 recommending approval of Zone Change No. ZC2006-1 to City Council, Resolution No. 503 recommending the certification of the Supplemental Environmental Impact Report (Environmental Impact Assessment) No. EA2006-4 to City Council, recommend approval of Major Tentative Map No. MA2006-2 to City Council, and Site Plan and Architectural Approval No. SZ2006-5.

FINDINGS FOR SITE AND ARCHITECTURAL REVIEW APPROVAL (SZ2006-5)

1. As described in this staff report and in Resolution 503 and the findings attached thereto, a Supplemental Environmental Impact Report has been prepared for this project in accordance with the provisions of CEQA.
2. As conditioned, the project development is consistent with the City of Milpitas General Plan in terms of land use and density because the proposed project is a multi-family residential project with a proposed density of 33 dwelling units per acre.
3. As conditioned, the proposed development is consistent with the City of Milpitas Zoning Ordinance in terms of land use and development standards for Multi-Family, Very High Density zoning with an “S” Zone Overlay District because the proposed development is a very high density residential development that promotes a pedestrian friendly environment.
4. As conditioned, the proposed development is consistent with the intent and specific requirements of the Midtown Specific Plan in that it complies with the development standards of the “R4” zoning district, the Midtown Specific Plan’s Land Use Goals and is in conformance with the specific requirements of the Development Standards and Design Guidelines.
5. As conditioned, the proposed residential development will not be detrimental or injurious to the public health, safety, and general welfare to future residents and to the surrounding community because the project includes the construction of a high quality, high density use in a residentially designated neighborhood.

SPECIAL CONDITIONS

1. “S” ZONE APPROVAL: This “S” Zone Approval No.SZ2006-5 is for a multi-family residential development for 368 condominium units and associated site improvements in accordance with the plans approved on April 11, 2007, and as amended by the conditions below. Any modification to the project as proposed will require an “S” Zone Approval Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42 of the Milpitas Municipal Code. (P)
2. GENERAL: This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
3. ENVIRONMENTAL: Supplemental Impact UTL-1: Water supply. The proposed project would require additional sources of domestic water not presently anticipated in the City’s Water Master Plan. (DSEIR p.29.)

Mitigation: The project developer shall purchase additional water supplies to support the proposed development, including costs of capacity and storage needs above Water Master Plan capacities, as determined by the City. (P)

4. ENVIRONMENTAL: Supplemental Impact UTL-2: Wastewater treatment and sewage pumping capacity. The proposed project could exceed wastewater treatment capacity not presently anticipated in the City's Water Master Plan and exceed the pumping capacity of the City's Main sewer pump station. (DSEIR p. 30.)

Mitigation: The developer shall purchase adequate public system wastewater treatment capacity to serve the proposed project, as well as fair share fees to replace or upgrade the Main sewer pump station, as determined by the City. The project developer shall provide the City of Milpitas with documentary evidence that adequate facilities for wastewater treatment and collection are available to serve the project prior to planning permit approval. (P)

5. ENVIRONMENTAL: Supplemental Impact PARK-1: Provision of public parks. The proposed project should provide approximately 3.62 acres of public parkland based on the standard of 3.5 acres of parks per 1,000 residents established in the Midtown Specific Plan, which would be reduced based on credit for on-site facilities as allowed by the City of Milpitas Parks Department. (DSEIR p.33.)

Mitigation: The Project developer shall pay park dedication in-lieu fees to the City of Milpitas for the required on-site dedication of public parks. (P)

6. ENVIRONMENTAL: Supplemental Impact TRA-1: Future roadway segment impacts. In the year 2030, traffic generated by the proposed project along with other buildout traffic, would cause the roadway segments of Montague Expressway between South Main Street and I-880 (westbound) and South Main Street between Montague Expressway and South Abel Street (northbound and southbound) to exceed traffic thresholds of significance during the AM peak hour. This impact would include segments of Montague Expressway between McCarthy Boulevard and I-880 (eastbound) and South Main Street between South Abel Street to Montague Expressway (northbound and southbound) in the PM peak. (DSEIR p.47.)

Mitigation: The proposed project shall to pay a "fair share" fee toward the Montague Expressway Widening project for the roadway segment impacted along Montague Expressway and a "fair share" fee toward the Midtown Specific Plan for the South Main Street roadway segment. (P)

7. ENVIRONMENTAL: Supplemental Impact AIR-1: Building demolition. Demolition of existing structures on the site would generate fugitive particulate matter emissions that would temporarily affect local air quality. (DSEIR p. 60.)

Mitigation: The following dust control measures shall be included on demolition plans and specifications by contractors during demolition of existing structures:

- a) Watering should be used to control dust generation during demolition of structures and break-up of pavement.
- b) Cover all trucks hauling demolition debris from the site.
- c) Use dust-proof chutes to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials. (P)

8. ENVIRONMENTAL: Supplemental Impact AIR-2: Regional air emissions. The project would result in a small increase in the regional emissions associated with development of the Midtown Specific Plan. The increase in emissions would be less than the BAAQMD significance thresholds, but the impacts of the Midtown EIR would be significant and unavoidable. (DSEIR p. 61.)

Mitigation: The BAAQMD has identified mitigation measures for reducing vehicle emissions from residential projects. Measures to assist in reducing vehicle and other emissions include:

- a) Consider providing a satellite telecommuting center within or near the proposed development.
 - b) Provide secure and conveniently placed bicycle parking and storage facilities.
 - c) Allow only natural gas fireplaces.
 - d) Provide direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development.
 - e) Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.
 - f) Provide physical improvements, such as sidewalk improvements (if needed), landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel. (P)
9. ENVIRONMENTAL: Supplemental Impact AIR-3: Cumulative air emissions. The project would result in a small increase in the regional emissions associated with development of the Midtown Specific Plan. The increase in emissions would be less than the BAAQMD significance thresholds, but the cumulative impacts of the Midtown Specific Plan would be significant and unavoidable. (DSEIR p.62.)

Mitigation: The BAAQMD has identified mitigation measures for reducing vehicle emissions from residential projects. Measures to assist in reducing vehicle and other emissions include:

- a) Consider providing a satellite telecommuting center within or near the proposed development.
- b) Provide secure and conveniently placed bicycle parking and storage facilities.
- c) Allow only natural gas fireplaces.
- d) Provide direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development.
- e) Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.

- f) Provide physical improvements, such as sidewalk improvements (if needed), landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel. (P)

10. ENVIRONMENTAL: Supplemental Impact NOISE-1: construction noise impacts. Activities required to demolish existing improvements on the project site and construct townhouses and condominiums would result in significant noise generation for adjacent sensitive receptors. (DSEIR p. 68.)

Mitigation: To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- c) Monitor the effectiveness of any noise attenuation measures by taking noise measurements to the extent there are persistent and on-going complaints.

Prior to the issuance of building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- d) A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem;
- e) A listing of telephone numbers (during regular construction hours and off-hours);
- f) The designation of an on-site construction complaint manager for the project;
- g) Notification of neighbors at least 30 days in advance of pile-driving and/or other extreme noise-generating activities about the estimated duration of the activity; and
- h) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed. (P)

11. ENVIRONMENTAL: Supplemental Impact NOISE-2: Land use compatibility impacts. Many of the buildings in the proposed Estrella complex would be exposed to exterior noise levels of between 60 and 75 DNL dBA. Two of the proposed buildings would be exposed to an exterior noise level greater than 75 DNL dBA. Balconies on the townhome and podium buildings fronting on South Main Street, as well as other balconies in buildings along Montague Expressway may also be exposed to noise levels greater than acceptable (DNL of

65 dBA) under the Noise Element. Excessive noise may also result if air conditioning equipment is placed on balconies. (DSEIR p.70.)

Mitigation: The following shall be incorporated into construction plans and specifications to ensure that City and State noise exposure levels are met:

- a) Sound rated windows and mechanical ventilation systems shall be required for residences that exceed City and State noise levels.
- b) For small balconies and decks in buildings near the adjacent roadways, solid balcony railings or partial enclosures may be needed to meet acceptable levels if the outdoor standard is applied to these areas. In some dwellings that are close to adjacent roadways, decks may need to be enclosed or solid railings of up to seven feet in height may need to be installed to meet the standard. If acceptable noise levels cannot be met, balconies shall be removed.
- c) Air conditioning equipment shall be placed in side yards of dwellings and shielded so as not to exceed a DNL of 65 dBA or otherwise increase the Ldn by more than 3 dBA, whichever is more restrictive.
- d) A follow-up acoustical analysis shall be prepared during the architectural design phase and submitted to the City of Milpitas Building Division demonstrating show how the City exterior and interior standards are met. (P)

12. ENVIRONMENTAL: Supplemental Impact NOISE-3: Stationary noise impacts. Noise generated by exterior equipment, including pool equipment, would be audible to properties off of the project site. (DSEIR p 71.)

Mitigation: Mechanical equipment associated with the pool shall be designed so as to not exceed a DNL of 58 dBA at the adjacent property line. This would limit any increase in the DNL to less than 3 dBA and be consistent with the City standard. Specific measures to limit stationary sources could include muffling equipment, selecting low noise generating equipment and shielding significant noise sources.

In addition, air-conditioners shall be designed so as to not exceed a DNL of 65 dBA or increase existing ambient noise levels by more than 3 dBA at adjacent units. This may require that air-conditioners not be allowed on certain balconies. Possible solutions include selection of quiet air-conditioners, placement of air conditioning units on the roof of buildings or placement of the air conditioners at ground level next to buildings. In some cases air conditioning units may need to have acoustical screening (e.g. noise barriers) to allow the units to operate and not significantly increase ambient noise levels. (P)

13. PARK FEES: Prior to building permit issuance, the applicant shall pay a park-in-lieu fee in the amount of \$747,925. (P)

14. PJ ACCOUNT: If at the time of application for building permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)

15. PJ ACCOUNT: If at the time of application for certificate of occupancy, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
16. PAVERS & ACCENT TILES: Prior to building permit issuance, the applicant shall submit details of the decorative paving material for the sidewalks, crosswalks, vehicular entry, paseos and details of the tile accents to be used on the paseo pedestrian entry structure. (P)
17. NOISE: Prior to building permit issuance, a detailed noise analysis will be required to determine the building upgrades necessary to keep the interior noise levels below 45 dB Ldn. The analysis shall include, noise sources between residential units as well as between mechanical/utility rooms. (P)
18. LIGHTING: Prior to building permit issuance, the applicant shall submit details and elevations of all site lighting fixtures to the Planning Division for review and approval. (P)
19. SIGNAGE: Prior to approval of any signage for the multi-family development, proper applications, depending on signage type will need to be submitted to the Planning Division. (P)
20. LANDSCAPE: All planter areas (including containerized planters) shall be serviced by a sprinkler or drip system. (P)
21. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
22. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place. (P)
23. LANDSCAPE: All landscape planters adjacent to vehicle parking areas or travel lanes shall be contained by a full depth (6" above AC to bottom of structural section of adjacent paving) concrete curb. Where landscape planters abut a public street, a 24-inch deep water barrier shall be installed behind the curb. (P)
24. TREE REMOVAL: Prior to the removal of any trees with a Diameter Breast Height of 12" or greater, the applicant shall obtain tree removal permits from the Trees and Landscape Section of the City of Milpitas Public Works Department. All tree removals, mitigation and preservation shall adhere to the recommendations of the Tree Report prepared by HortScience, Inc., dated March 2007. (P)
25. STREETSCAPE PLAN: Prior to building permit issuance, the applicant shall submit streetscape plans reflecting the recently adopted South Main Street and South Abel Street Plan Line Study.

26. AFFORDABLE HOUSING: Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 74 affordable housing units (20% of total number of units: 368) will be available at a housing cost affordable to very low-income households. (P)

27. AFFORDABLE HOUSING: If the Aspen Apartments Project is not constructed (in which 74 affordable housing units from the project will be allocated to Warmington Homes to meet its required 20% affordable housing obligation), Warmington Homes shall be required to provide the 74 affordable housing units on their site or pay the City of Milpitas a in-lieu housing fee in the amount of \$5,920,000 (74 units x \$80,000 average level of subsidy from the Milpitas Redevelopment Agency). (P)

28. AFFORDABLE HOUSING: The applicant shall provide the following information as it relates to the number of affordable housing units, types of units (two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (P)

Income Level	No. of Units	Type
Very Low (*)	74	2 & 3 bedrooms (*)

(*) Per Aspen Apartments Project Approval

29. AFFORDABLE HOUSING: As part of the identified public benefit for this project, prior to issuance of building permits, the following conditions shall be met:

The applicant shall provide to the City of Milpitas Housing Division documentation that the 74 affordable housing units have been provided on or off-site. If the affordable housing units are provided on the Warmington Homes site, the affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities as the fair market rate units in the development. (P)

30. AFFORDABLE HOUSING: Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for that income category. (P)

31. AFFORDABLE HOUSING: The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable rental units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. (P)

32. AFFORDABLE HOUSING: The Restriction Agreements shall require that the long-term affordability of the rental housing units shall remain in effect for 55 years. Any change to this requirement is subject to review and approval by the Milpitas City Council.

33. AFFORDABLE HOUSING: The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (P)
34. AFFORDABLE HOUSING: The established affordable rents for the rental apartment shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable rents established for the apartment units shall not exceed the maximum allowable rents for "very low" households as defined in the above code sections. Said rents shall be approved for consistency with the definitions by the Housing Division staff. (P)
35. MECHANICAL EQUIPMENT: All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts. (P)
36. ROOFTOP EQUIPMENT: Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets. (P)
37. STORMWATER: Implement standard best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils with fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system. (P)
38. STORMWATER: During all construction activities onsite, the project applicant/developer shall adhere to the following Best Management Practices as suggested by the Bay Area Air Quality Management Board:
- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2-foot freeboard level within their truckbeds;
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
 - f. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
 - h. Limit traffic speeds on unpaved areas to 15 mph;

- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
 - j. Plant vegetation in disturbed areas as quickly as possible; and
 - k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes. (P)
39. TRASH MAINTENANCE: The trash bins, compactors and trash/recycling enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. Refuse and recycling containers shall not be visible from a public or private street. Such containers shall be stored either within the parking facility of the building or within a vehicular accessway. (P)
40. TRASH ENCLOSURE: Trash enclosure walls shall incorporate building materials and colors that match the architecture of the building, and be well landscaped. (P)
41. UTILITIES: Public utility distribution meters, vaults and similar installations shall be consolidated in a single area whenever possible and located away from highly visible areas such as street corners and public open spaces. (P)
42. STREET NAMES: Prior to Final Map Approval, the applicant shall submit a “City Streets, Parks, and Facilities Naming Suggestion Form” to staff. Recommendations shall be brought to the Facilities Naming Subcommittee first for new developments and the Subcommittee shall make recommendations to the City Council for naming City streets. (P)
43. ADDRESSES: Prior to building permit issuance, the applicant shall submit a request for new addresses to be assigned to the development. (P)

ENGINEERING DEPT SPECIAL CONDITIONS

44. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
45. Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)

46. At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (E)
47. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along Montague Expressway and Main Street, including but not limited to curb and gutter, pavement, sidewalks, signage and striping, bus stops and bus pads, signal installation at South Main Street and Project main entrance, median installation along Main Street, median and street decorative lighting, median landscaping, street lights, Street trees and tree wells, street furniture installation, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. *All improvements along Main street frontage must be in accordance with the 2007 South Main Street & South Abel Street Plan Line Study, and all public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit.* (E)
48. Prior to final map approval, the developer shall acquire from Santa Clara County that piece of property fronting Montague Expressway currently being used as in-only access from Montague. (E)
49. Prior to any building permit issuance developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
50. The tentative map shall show the proposed phasing diagram of multiple final maps. (E)
51. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. (E)
52. Drainage facilities outletting sump conditions shall be designed to convey the flows and protect all buildings. (E)

53. Prior to final map approval, the developer shall establish a homeowner association. The homeowner association shall be responsible for the maintenance of the landscaping, walls, private street lights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
54. Prior to final map approval submit a report from a structural and soil engineer stating the condition of the existing wall and its remaining useful life. The CC&R document shall state the maintenance responsibility of the wall maintenance. At Planning Director's option, the developer may be required to reconstruct the existing wall. (E)
55. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove the related poles within the proposed subdivision, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. (E)
56. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3. (E)
57. The final map shall be recorded prior to issuance of any building permit. (E)
58. The developer shall dedicate on the final map necessary easements for public service utilities, water, and sanitary sewer purposes. (E)
59. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
60. Prior to occupancy permit issuance developer shall construct solid waste enclosures to house the necessary compactors. The enclosure shall be designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. (E)
61. Per Chapter 200, Solid Waste Management, V-200-3.10, General Requirement, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 Owner or HOA Responsible for Solid Waste, Recyclables, and Yard Waste, shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the applicant shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an

adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

62. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
63. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
64. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - A. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - B. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - C. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (E)
65. Prior to building site improvement or landscape permit issuance, the building permit application shall be consistent with the applicant's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's

Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural (“S” Zone) Amendment application review. (E)

66. Prior to issuance of Certificate of Occupancy, the applicant shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant’s signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
67. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas. (E)
68. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
69. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (E)
70. Access rights and improvements along Montague Expressway are under the jurisdiction of Santa Clara County Roads and Airports Department. Prior to building permit issuance the developer shall:
 - A. Submit improvement plans for all the works, including the landscaping, along Montague Expressway and have the improvement plans reviewed and approved by the Santa Clara County Roads and Airports Department.
 - B. Obtain any necessary permits from Santa Clara County Roads and Airports Department prior to start of any work along Montague Expressway.
 - C. Enter into a landscape maintenance agreement with the County of Santa Clara to maintain the proposed temporary landscaping improvement along Montague Expressway. (E)
71. It is the responsibility of the developer to obtain any necessary encroachment permits and approvals from affected agencies or private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, and Santa Clara County Road & Airport Department. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)

72. The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
- A. Storm water connection fee of **\$188,372**, based on 11.232 acres @ \$16,771 per acre. The water, sewer and treatment plant fees will be calculated at the time building plan check submittal.
 - B. Water Service Agreement(s) for water meter(s) and detector check(s).
 - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
73. Prior to building permit issuance, the developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the development. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be **\$665,712**, as of October 2006, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E)
74. Prior to any building permit issuance, the developer shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of **\$202,377** to the City for this purpose. This amount is as of October 2006, and to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E)
75. Prior to building permit issuance; the developer shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be **\$158,500**, as of October 2006, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee. (E)
76. Prior to building permit issuance, the applicant shall contribute a “fair share” traffic impact fee in the amount of **\$302,977** (based on a Midtown impact fee of \$113 per peak hour trip, assuming 164 trips and Montague Expressway impact fee of \$903 per peak hour trip, assuming 315 trips). (E)
77. Prior to final map approval, the developer shall obtain design approval and bond for the South Main Street median improvement. The subject improvements shall be constructed and accepted by the City prior to building occupancy permit issuance of the first production unit, in lieu of South Main Street Median Island contribution fee. (E)
78. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, sewer, storm and water connection fees, sewer treatment plant fees, plan check and inspection deposit, and 2.5% building permit automation fee. (E)

79. If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 942-3233. (E)
80. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The Applicant shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
81. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
 - A. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

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

82. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system **when available**. The developer is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)
83. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)
84. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review. (E)
85. All utilities shall be properly disconnected before the existing building can be demolished. Show/state how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter for future use, if it is not to be used during the construction. If the existing water services will not be used for the proposed development, the service laterals shall be removed and capped at the main water line. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to

be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)

86. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". (E)

87. At the time of building plan check submittal, the developer shall address and incorporate the changes shown on Engineering Services Exhibit "T", dated 3/30/2007. (E)

FIRE DEPARTMENT SPECIAL CONDITIONS

88. Prior to Final Map Approval, the Developer shall ensure that all private streets and associated public streets comply with Fire Department ladder truck access and turning requirements. (F)

Planning Division = (P)

Engineering Division = (E)

Fire Department = (F)

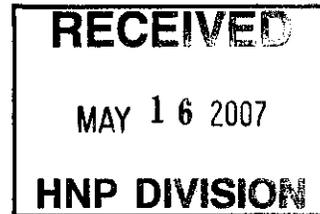
WARMINGTON HOMES

CALIFORNIA

7.

Pursuant to the April 11, 2007 Planning Commission meeting, Warmington Homes was directed to address 3 issues:

1. Land use-Mixed use
2. Neighbor's Privacy concerns
3. Business Retention



MIDTOWN SPECIFIC PLAN (MSP) HISTORY

There seems to be some misunderstanding of the Midtown Specific Plan's history and intent. The site owner in 2000 did not want to be included in the Midtown Specific Plan planning process; he opted to retain the industrial park designation as a "use by right" designation. The Midtown Specific Plan was approved in 2002. The site is located in Redevelopment Area Amendment 8, which consists of the S. Main St. area from Great Mall Parkway to Montague Expressway. By adopting the MSP zoning in Amendment Area 8 changed from Industrial and Commercial to Multi-Family Very High Density, with a Transit Oriented Overlay in the portion close to the transit station by the Great Mall Parkway.

MSP Goals - The Project meets all the Goals of the MSP

- a. Maintain compact urban form- promote intensity of development. The project meets this by providing 368 homes designed to transition from lower density to the west to multifamily very high density along S. Main St. The multi-family very high density is compatible with the ongoing developments on the east side of S. Main St.
- b. Provide a variety of housing types and densities. The project consists of attached town homes along the north and west perimeter at 19du/acre densities. Adjacent to S. Main St. there are three podium buildings that will include a combination of stacked flats, town homes and penthouses over half submerged underground parking.
- c. Provide for regional fair share housing. The Warmington Global Premier partnership will provide 21% affordable units. The total number of units of both projects is 469 with 101 units being affordable to very low-income rentals.
- d. Promote a land use mix that supports major transit facilities. The project encourages high density residential around the transit areas, Great Mall LRT, Calaveras LRT and the future BART station. The project site is within 1/3 mile of both the light rail and the proposed BART station. There are also 2 VTA bus stops on the project site.

- e. As stated in the MSP a minimum of 2,000 homes in a 1.5-mile radius is necessary to provide a customer base to attract a grocery store. The project will assist in providing the dwelling units needed to facilitate the creation of the mixed use planned for the Transit Oriented Overlay. The Transit Oriented Overlay includes a planned grocery store.

MIXED USE

Warmington developed three different scenarios for creating a mixed-use development on the site as required.

- a. Locating a small commercial /retail building on the south end of the site by the gas station.
- b. Redesigning podium A, by the gas station and or podium C, on the north end of the site to include ground floor commercial.
- c. Design a small free standing commercial building on the north end of the site.

ANALYSES

Scenario 1: The commercial/retail would be infeasible given that there is to be no access from Montague Expwy. One of the conditions from the Santa Clara Roads and Airports is that the right in off of Montague is to be an emergency vehicle access only; the present right in off of Montague will go away. The only access to the commercial will be at the north end of the site with no street or pedestrian visibility from S. Main St., which is a necessity for small commercial/retail establishments. The need for on site parking and the commercial building site would necessitate the loss of at least 18 town homes and make the project economically infeasible. The City would also have to agree to make the internal streets public and accept the maintenance.

Scenario 2: The main problem is parking. Street level commercial would need diagonal head in parking to be able to park at the ratio the MSP stipulates. Warmington has been working with the City Traffic and Engineering departments in the City S. Main St. Plan Line Study. The Plan calls for an irrigated and landscaped street median island, improvements to the, creating pedestrian friendly sidewalks and installing a stop light to connect the planned grid pattern on the east and west side of S. Main St. from Montague Expwy to Cedar St. The planned improvements that will be installed by Warmington at the City's request will not allow for street parking in front of the commercial areas. The commercial would only be accessible to people going south on S. Main St. without making a u-turn at Cedar St.

Scenario 3: To put a 10,800 sq. ft. building with parking and separate access on the North end of the site would have the same parking and access problems along with taking up .93 acres and making the residential project economically infeasible.

Warmington Homes did not previously look at doing mixed use on the site as The Midtown Specific Plan has designated the mixed-use area to be the area between Able St. and Main St. from Curtis St. north to Calaveras St. The mixed use was grouped in one area of the downtown area to:

1. Concentrate limited retail demand in one central business district
2. Encourage "smart growth" practices and discourage the bad planning of numerous small scattered "strip malls"
3. Center mixed use by the already built very high density residential.
4. Improve walk ability and encourage transit use.

The Midtown Specific Plan, on p2-11, states, "Milpitas is home to two large regional shopping centers in the area, the Great Mall and McCarthy Ranch. These centers have contributed to Milpitas becoming a net attractor of retail sales. With these large regional malls and several community and neighborhood shopping centers nearby, the Midtown Area lies in an intensely competitive shopping environment. With 2.0 million square feet of convenience shopping facilities in the area and roughly 2,500 (est.) people living in the Milpitas Midtown (Montevista and Parc Metropolitan), new retail development along Main Street will not likely occur unless fueled by new housing development."

NEIGHBOR ISSUES

1. PRIVACY - Warmington Homes has made it a point to meet with the neighbors in the approximately 400 home Starlight Pines neighborhood since the initial planning phase to address their comments and concerns. We have met with the Pines HOA since the beginning of the process and have been very well received and encouraged by their support for our project. We have had some concerns expressed from 2 of the adjacent homes, Phillip and Helen Tuet, Deborah Norling and Robert Armstrong. Warmington has done before and after visual simulations of the project at 4 key locations to demonstrate the small visual impact the project will have on the neighbors. We have done line of sight engineering studies for the Tuets and the Armstrong-Norling homes and we have worked with the arborist to mitigate any impact. We have met with them a total of 5 times with City Staff and have looked at numerous proposals as follows:

Three (3) different window treatments:

- a) Opaque windows - Helen Tuet said that was not acceptable as the homeowners could remove the window
- b) Removing the large bedroom windows and replacing them with smaller bathroom sized windows - Staff believes this is a health and safety issue.
- c) Removing the windows in the bedroom facing the West on the end units - Planning Staff replied that this was not an aesthetically pleasing option and believed it would not be acceptable to the Fire Dept due to access issues.

- d) The Tuets asked Warmington to remove the third story of the town homes facing the perimeter wall. Removing the third story would reduce the square footage of 28 town homes to approximately 888-900sq. ft. This would make the 28 town homes unsaleable and the project economically unfeasible.
- e) Warmington looked at raising the perimeter wall height. It has been my experience that getting all the neighbors to agree to raising the wall height would be a near impossibility. The wall would have to be removed and the footing re-engineered to increase the height. Removing the wall would nullify the landscaping and maintenance easement that presently gives the neighbors 2-4feet times the length of the wall extra backyard area that is Warmington property. Due to the short distance from the wall to the homes on the Pines side would create a canyon like effect, which we believe the adjoining neighbors, would be very displeased with this.
- f) Remove the trees specified by the arborist for good management practices and construction purposes. Before construction begins, plant large box trees, which will, then have time to grow-see phasing schedule-before build out. Before certificate of occupancy Warmington, City Planning Director, Tuets, Armstrong-Norling, and the HOA representative and any other interested neighbor will walk the perimeter and if any "gaps" are visible in the trees which might impact the 2 neighbors privacy Warmington will plant additional large boxed evergreen trees to mitigate the possible loss of privacy. This was the alternative that was agreed upon at our last meeting in January 2007.

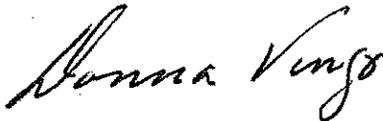
2. TRAFFIC - The Midtown Specific Plan states "The Midtown Planning area is within an area that experiences severe congestion during peak hours as thousands of commuters drive to and from jobs in Santa Clara County. Current projections for growth indicate that the growing imbalance between jobs and housing (7 jobs to 1 Dwelling unit) will continue to worsen and commuters will face still longer delays in the decades to come. One of the clear opportunities to address the problems of regional congestion is to provide more housing opportunities in urban areas and focus housing and jobs around rail transit systems. Recent studies have found that residents living within $\frac{3}{4}$ of a mile of a transit station are five times more likely to commute by mass transit than typical commuters in other areas." The Warmington project is within $\frac{1}{2}$ mile of two light rail stations and the proposed BART station to encourage transit use, relieve congestion and provide needed housing. The MSP calls for over 4000 new homes of which Warmingtons 368 will add very few additional trips above the present industrial park use. Warmington has been working closely with the City on the S. Main St. Plan Line Study. Warmington will be implementing the Plan Line Study between Montague and Cedar St. This will include installing a stoplight which will connect the planned street grid work system on the east and west side of Main St. Warmington will be installing a landscaped median, pedestrian friendly sidewalks, upgraded bus stop and traffic calming measures called for in the Plan Line Study and the MSP. Warmington will be creating a beautiful Gateway to Milpitas.

3. VIEW - The present buildings are approximately 30 feet in height. The present zoning allows for 3 story and 45 feet in height. The Gateway overlay allows for 6 stories and 85 feet with a conditional use permit that can be increased to 8 stories and 115 feet in height. The town homes adjacent to the neighbors will be only 34 feet 8 inches. The buildings fronting S. Main will be approximately 50 feet in height as will be the buildings directly across S. Main that are being constructed now.

4. BUSINESS RETENTION - Warmington understands that business retention is very important to the City of Milpitas and especially the Economic Development Commission. Warmington will be happy to assist in this and has agreed to all the Economic Development Commission suggestions as listed below:

- a. Try to find locations in Milpitas for business. Contract with commercial brokers to identify Milpitas locations. Provide a recap to the City prior to demolition permit issuance on what actions were taken to assist each business.
- b. Provide business relocation services-Business guidance for moving.
- c. Provide adequate notice to all businesses to give them time for planning their move.
- d. Provide for an announcement in The Milpitas Post of the new locations for the businesses.

Thank you for your time.

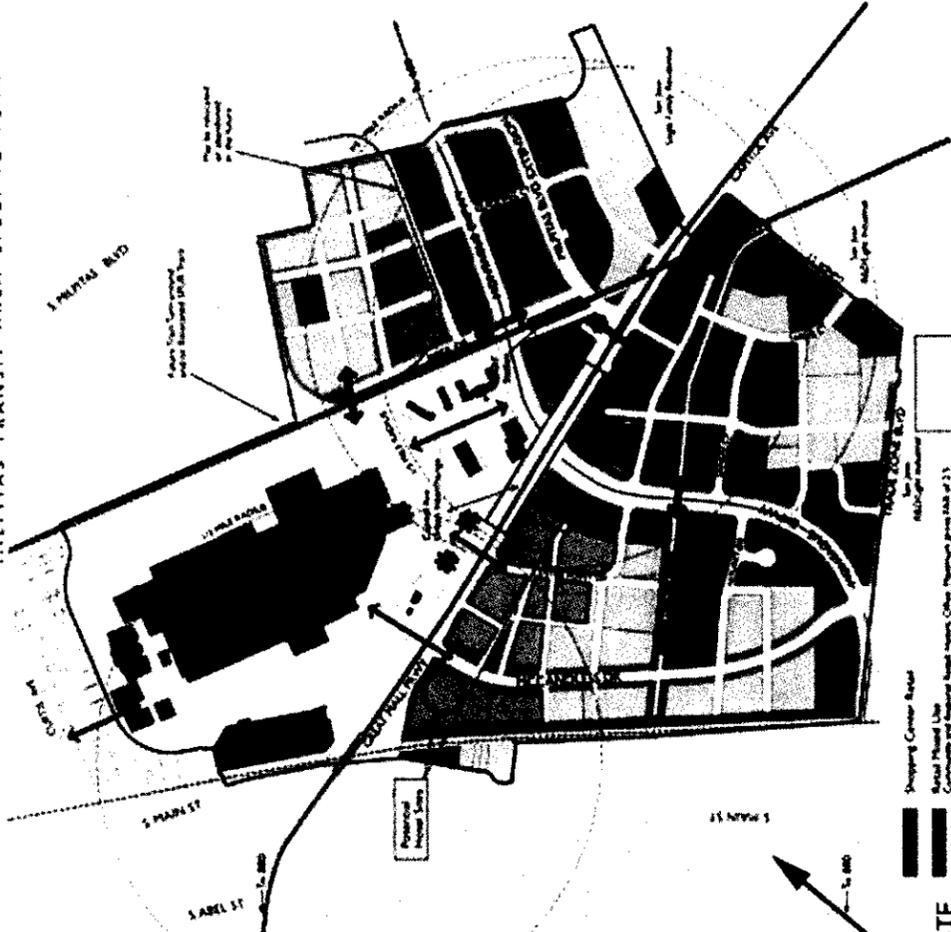


Donna Vingo
Project Manager - Warmington Homes California

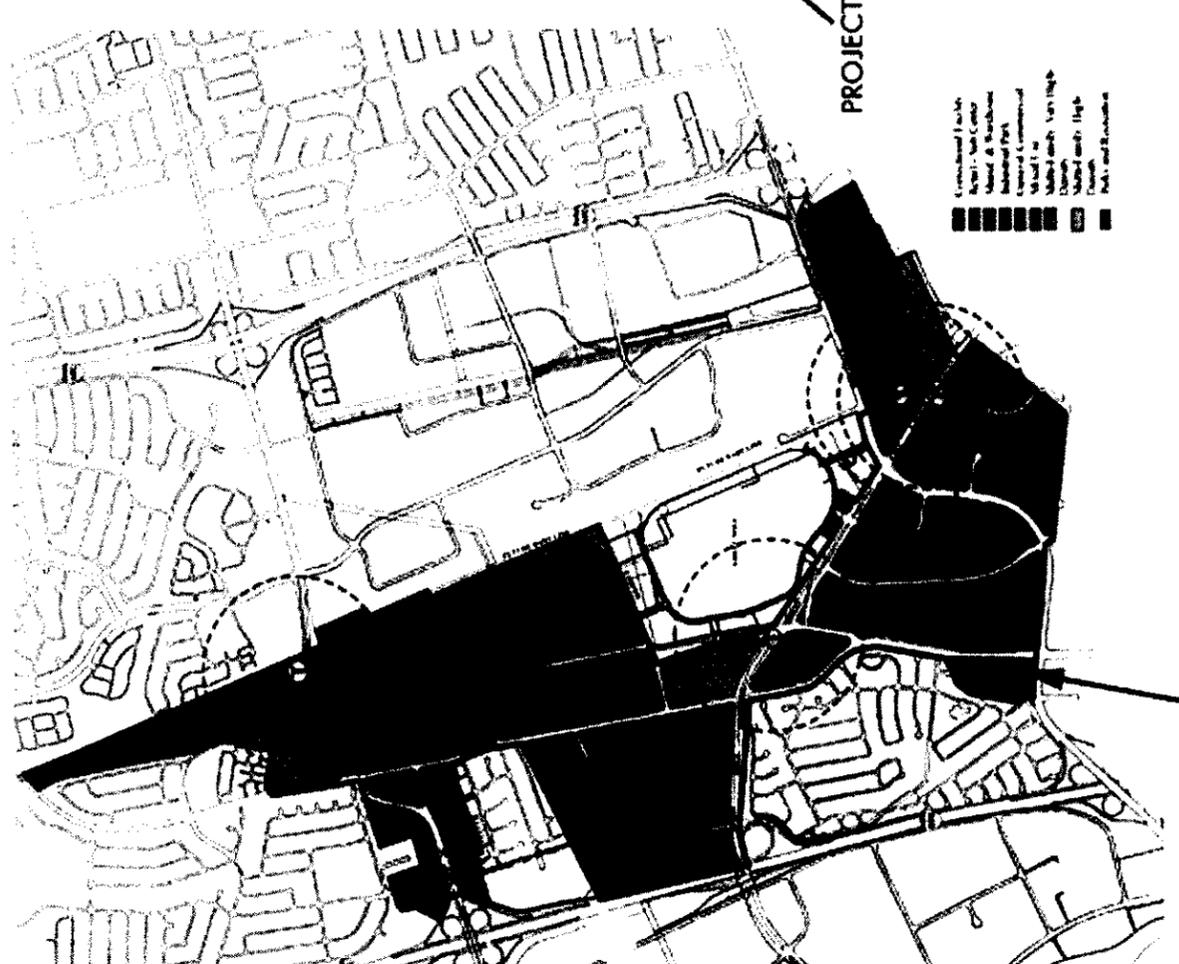
GENERAL PLAN		
GUIDING PRINCIPALS	IMPLEMENTING POLICY	COMPLIES?
Maintain a relatively compact form	Promote in-fill development	Yes provides higher density housing in compact form
Provide a variety of housing types and densities to meet needs of families and individuals	Provide for regional fair share housing needs	Yes: Warmington Global provides 21% overall affordable housing to very low income

MIDTOWN SPECIFIC PLAN GOALS	COMPLIES?
<p align="center">GOAL 1</p> <p>Encourage a compatible mix of services oriented commercials, retail office, and industrial uses within the Midtown area.</p>	Yes Estrella is compatible with the residential land use. To the north, east and west helps create the higher density "transit village" around LRT stations
<p align="center">GOAL 2</p> <p>Provide for a significant component of new housing within the area in order to improve the vitality of the Midtown area; address local and regional housing needs; and reinforce the use of transit</p>	Yes Estrella will enhance the residential housing necessary for the development of mixed use, commercial and retail in the Calaveras Transit oriented overly 2 blocks to the east
<p align="center">GOAL 3</p> <p>Promote intensity of development in the Midtown area that is appropriate to its central location</p>	Yes Estrella is a transition residential project. Estrella transitions from Low Density residential in the Pines 6 - 8 units/acre to 19 units/acre along the north and west perimeter to 42 units/acre fronting
<p align="center">GOAL 4</p> <p>Provide for a land use mix that supports major transit facilities</p>	Yes Estrella provides higher density residential within 1/3 mile of a LRT stations and the proposed BART Station. There are 2 VTA bus stops on site
<p align="center">POLICY 3.1</p> <p>Allow for up to 4,860 new housing units in Milpitas Midtown.</p>	Yes Estrella provides 368 high density residential units
<p align="center">POLICY 3.4</p> <p>Establish a minimum density of 21 units per gross acre in the mixed use district, 31 units per gross acre in the multifamily, Very high density area and a minimum of 41 units per gross acre around the transit area</p>	Yes Estrella provides 32 units per gross area

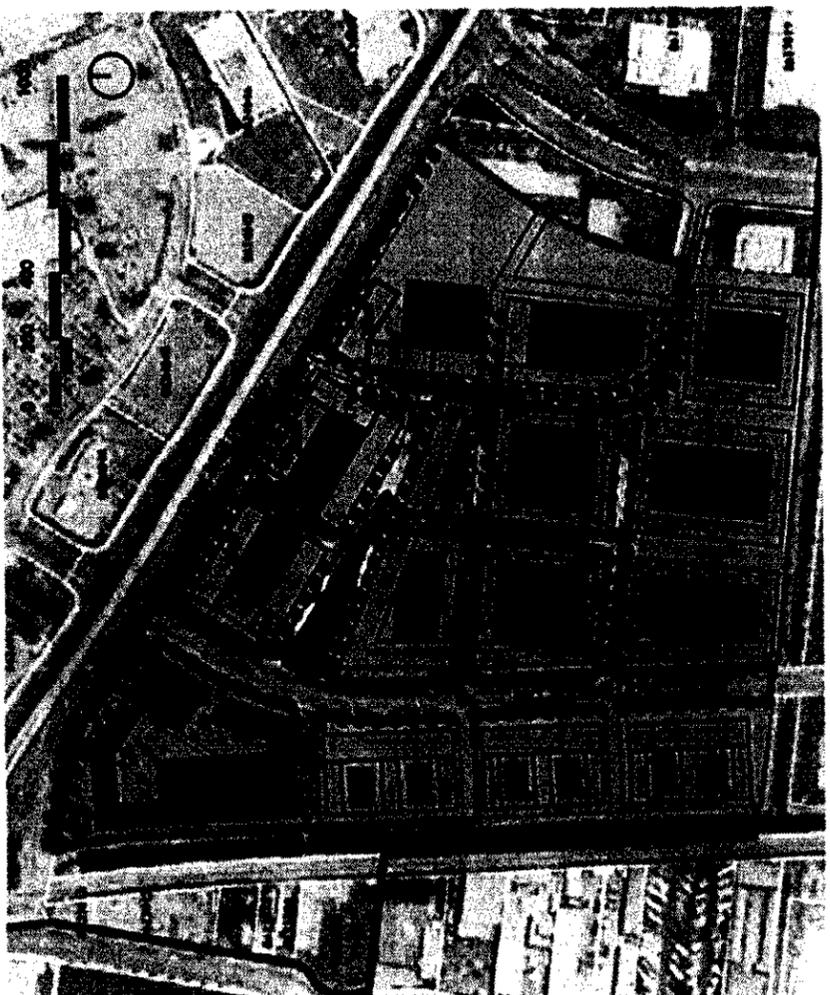
MILPITAS TRANSIT AREA SPECIFIC PLAN



- Shopping Center Retail
- Neighborhood Retail
- Neighborhood Retail (also permitted)
- Residential
- Residential (Office or Residential also permitted)
- Residential
- Retail, Restaurants, and Personal Services
- Mixed Use Residential or Office above Retail
- Parking
- Parks/Courtyards
- Residential Retail High Density
- Mixed Use Area



- Shopping Center Retail
- Neighborhood Retail
- Neighborhood Retail (also permitted)
- Residential
- Residential (Office or Residential also permitted)
- Residential
- Retail, Restaurants, and Personal Services
- Mixed Use Residential or Office above Retail
- Parking
- Parks/Courtyards
- Residential Retail High Density
- Mixed Use Area



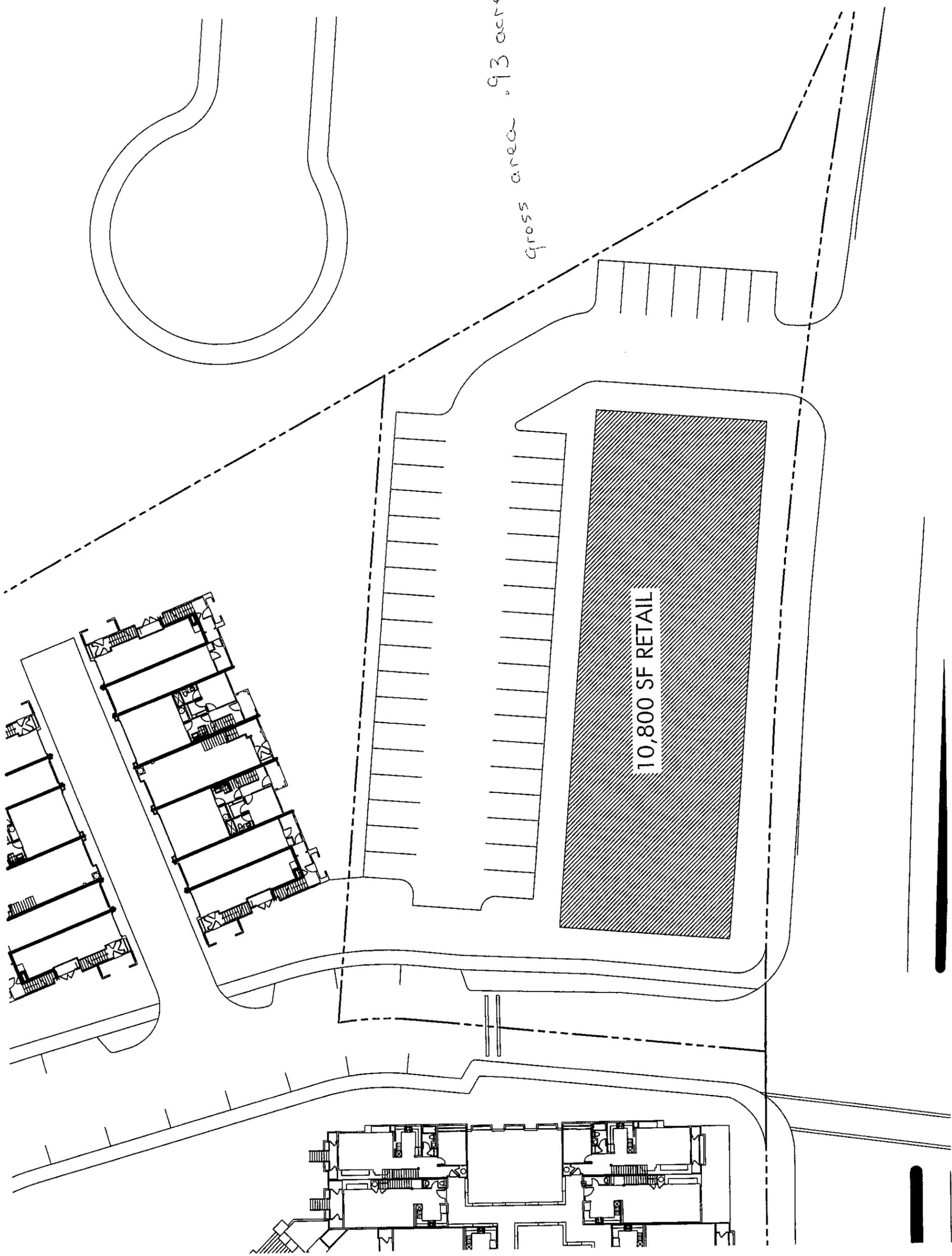
Illustrative Plan

Great Mall / Montague Subarea
Milpitas Transit Area Specific Plan

DYETT & BHATIA
Urban and Regional Planners
12-04-06

PROJECT SITE

Preferred Plan
December 4, 2004



gross area .93 acres

10,800 SF RETAIL



OVERFLOW/VISITOR PARKING:

110 SPACES REQUIRED

111 SPACES PROVIDED (26 IN PODIUM, 85 SURFACE)

PARKING IN TOWNHOUSE BUILDINGS:

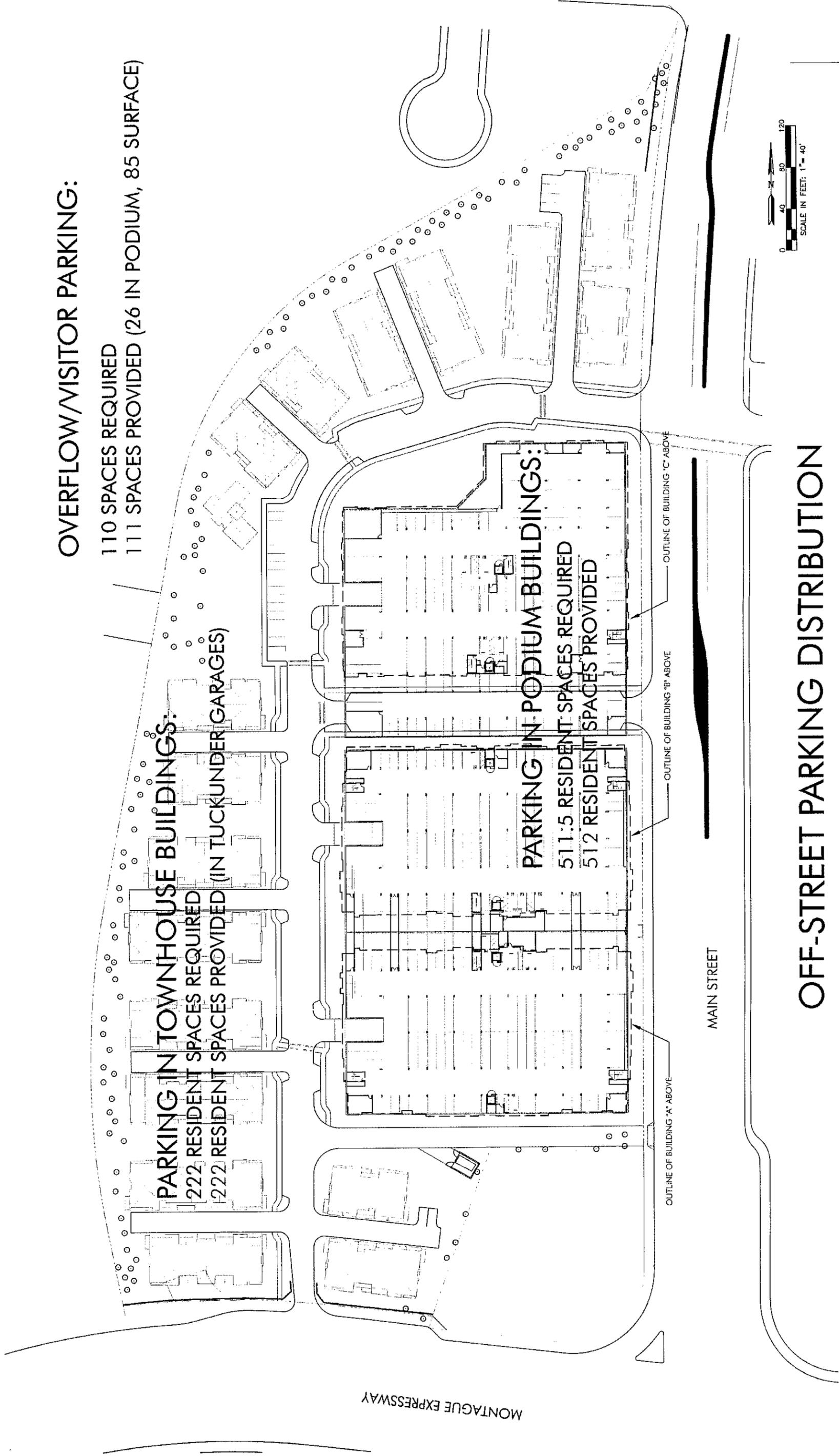
222 RESIDENT SPACES REQUIRED

222 RESIDENT SPACES PROVIDED (IN TUCKER GARAGES)

PARKING IN PODIUM BUILDINGS:

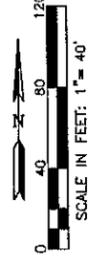
511.5 RESIDENT SPACES REQUIRED

512 RESIDENT SPACES PROVIDED



MAIN STREET

OFF-STREET PARKING DISTRIBUTION



APRIL 4, 2007 PROJECT NO: 400.007

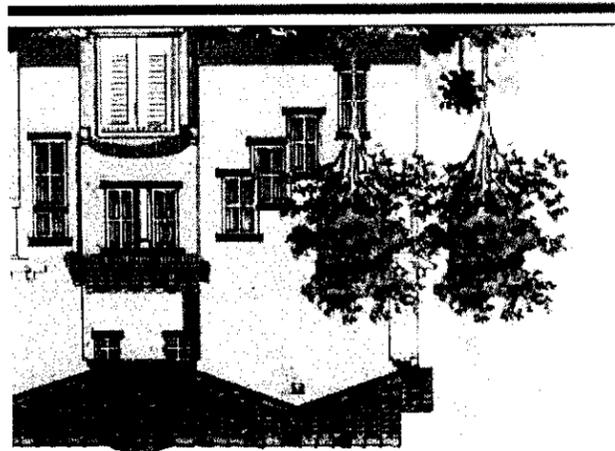


ESTRELLA MILPITAS, CALIFORNIA
WARMINGTON HOMES CALIFORNIA

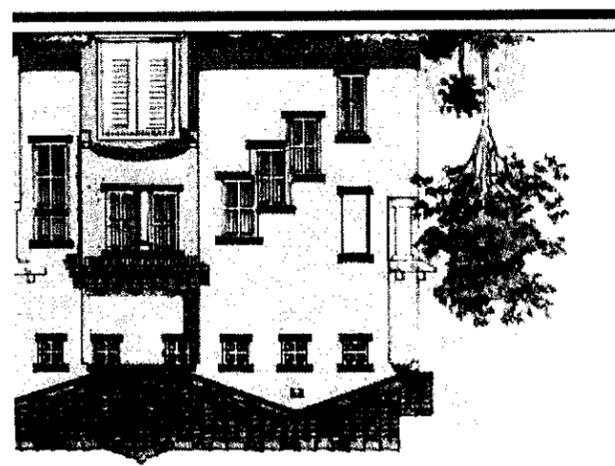
5865 Owens Drive
Pleasanton, CA 94538
925.251.7200
925.251.7201 Fax

ESTRELLA MILPITAS, CALIFORNIA
WARMINGTON HOMES CALIFORNIA

TOWNHOUSE END ELEVATION ALTERNATIVES

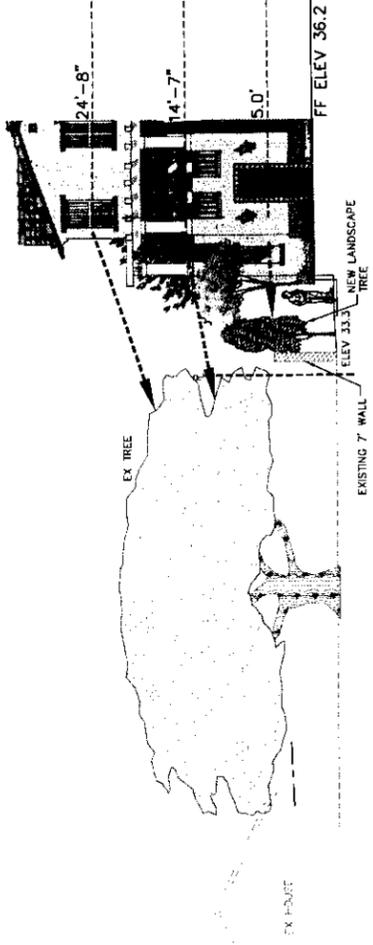


PROPOSED END ELEVATION



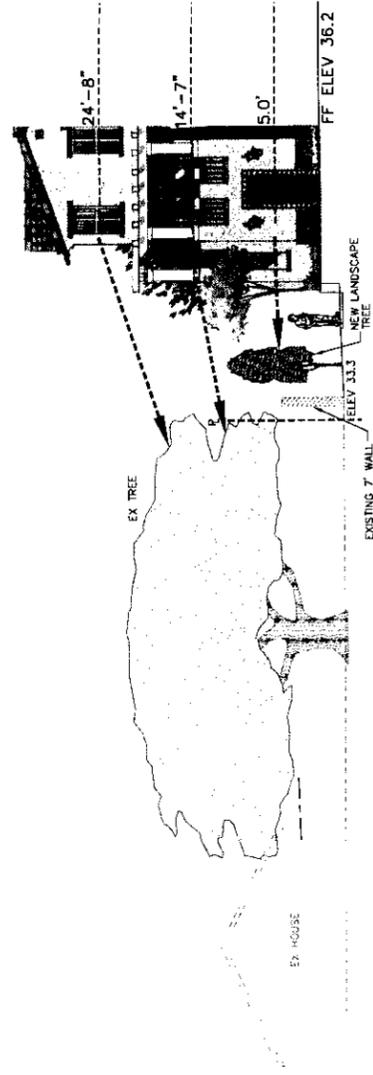
SCALE IN FEET: 1" = 6'

LINE OF SIGHT STUDY
ESTRELLA PROJECT
 MILPITAS, CALIFORNIA
 WASHINGTON HOMES
 APRIL, 2007



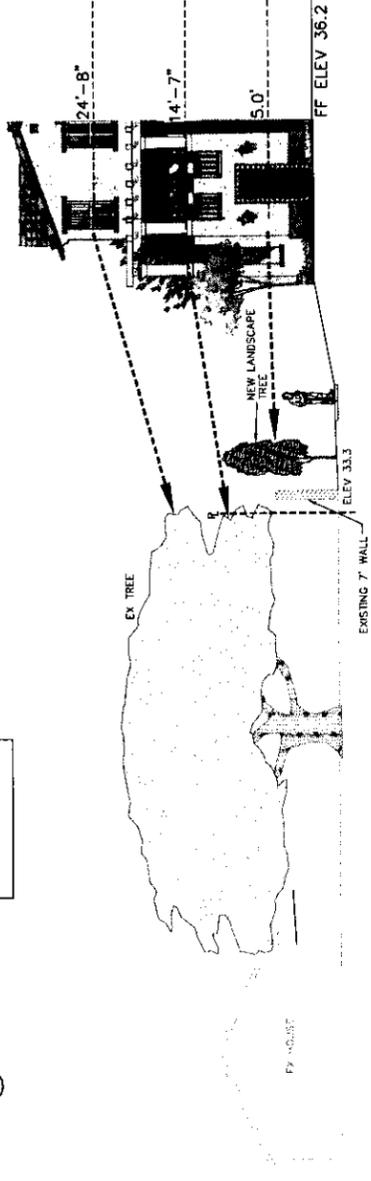
(A) LINE OF SIGHT A

ALL INFORMATION TO
 ACTUAL SCALE 1"=6'



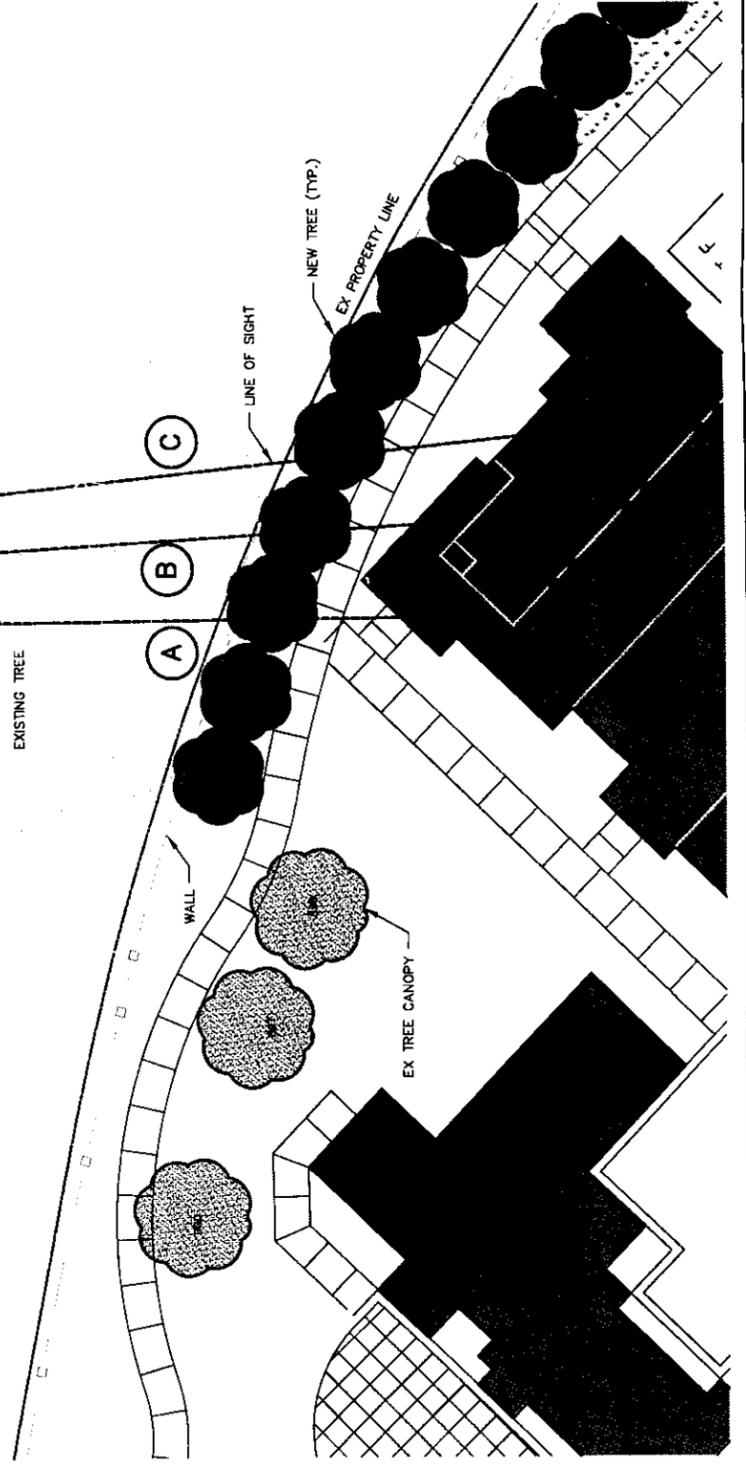
(B) LINE OF SIGHT B

ALL INFORMATION TO
 ACTUAL SCALE 1"=6'



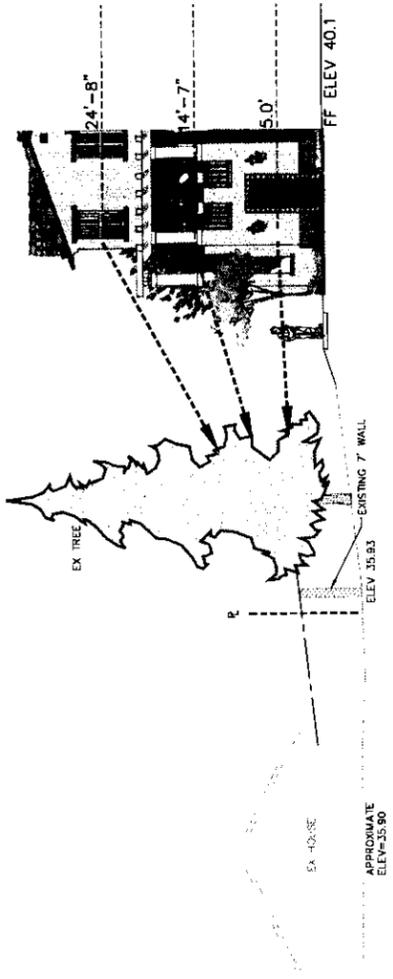
(C) LINE OF SIGHT C

ALL INFORMATION TO
 ACTUAL SCALE 1"=6'

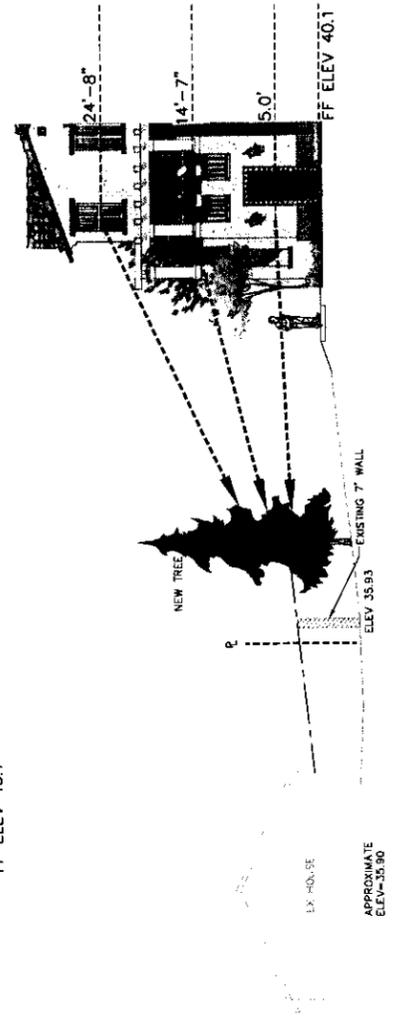


KEY MAP

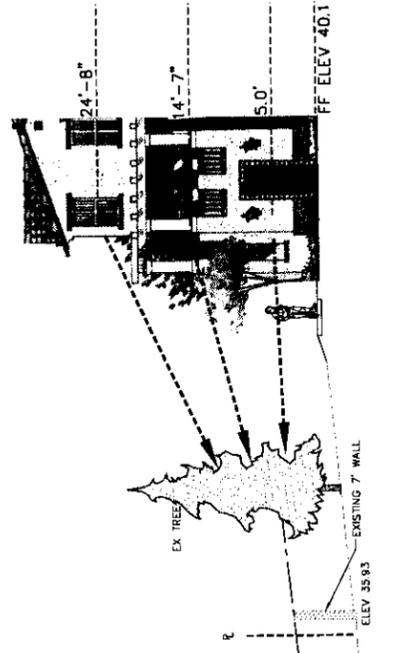
LINE OF SIGHT STUDY



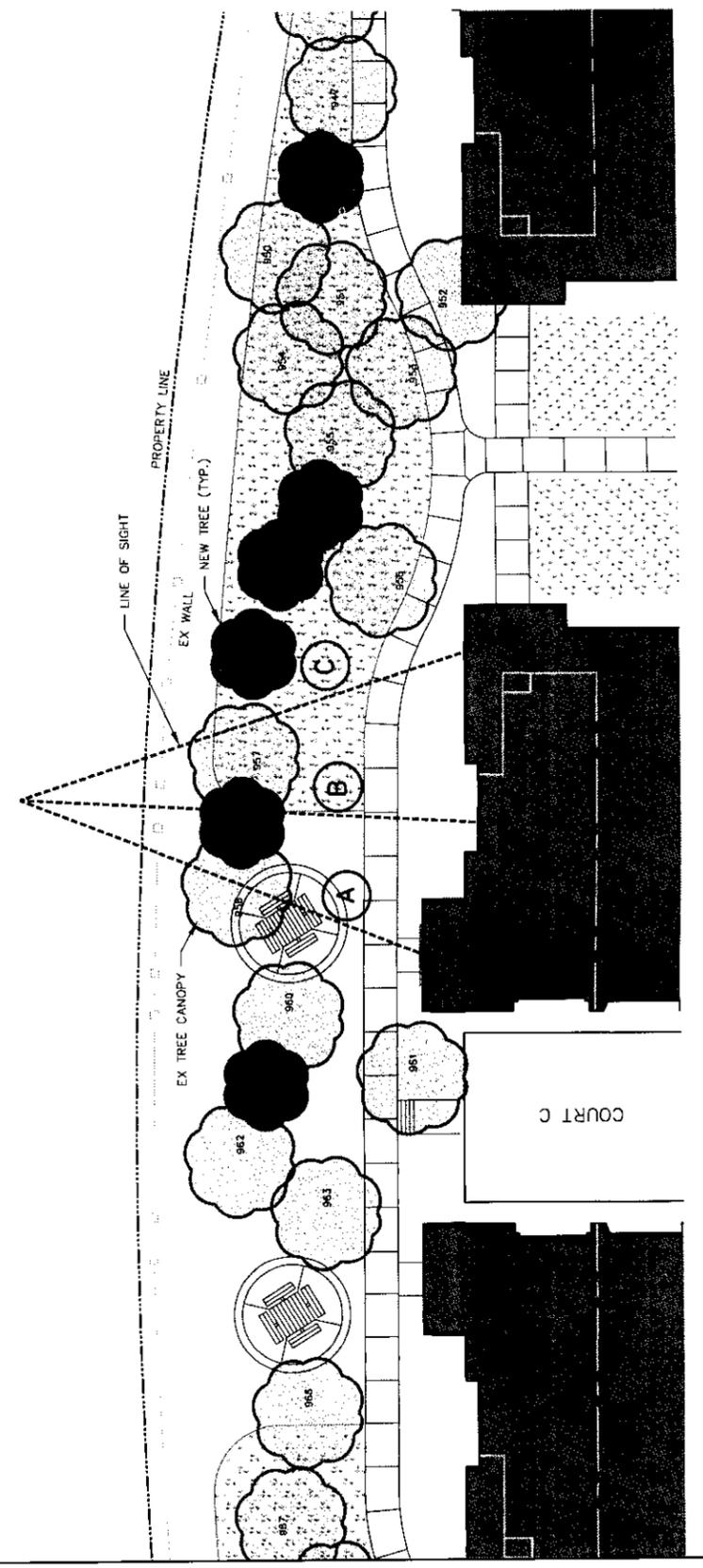
(A) LINE OF SIGHT A
 ALL INFORMATION TO ACTUAL SCALE 1"=6'



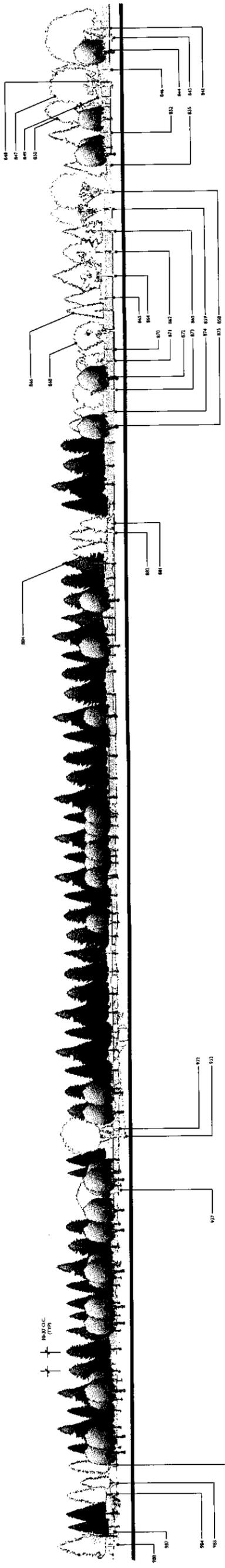
(B) LINE OF SIGHT B
 ALL INFORMATION TO ACTUAL SCALE 1"=6'



(C) LINE OF SIGHT C
 ALL INFORMATION TO ACTUAL SCALE 1"=6'

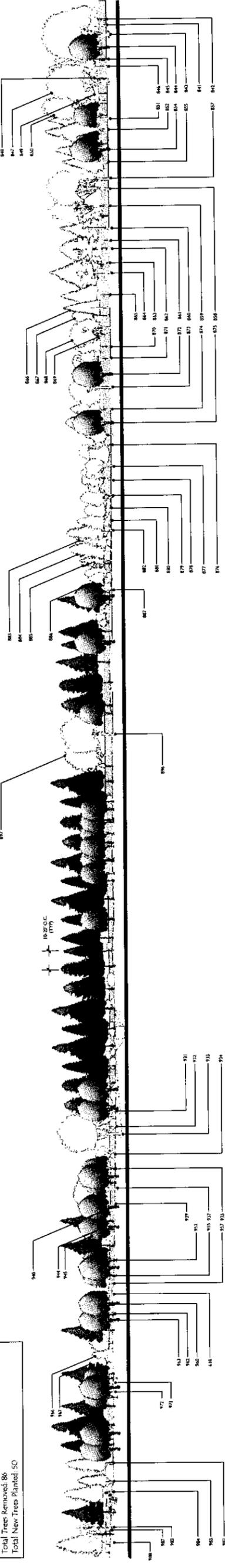


KEY MAP



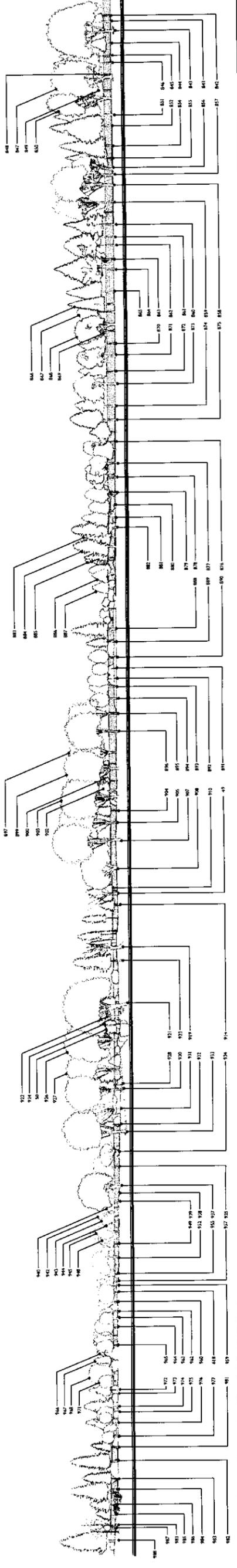
③ ALTERNATIVE B: SELECTIVE THINNING & REPLANTING
NOT TO SCALE

Alt. B - Approximate Tree Count* (Perimeter Soundwall Only)
Total Existing Trees Surveyed: 121
Total Trees Removed: 86
Total New Trees Planted: 50



② ALTERNATIVE A: SELECTIVE REMOVAL
NOT TO SCALE

Alt. A - Approximate Tree Count* (Perimeter Soundwall Only)
Total Existing Trees Surveyed: 121
Total Trees Removed: 47
Total New Trees Planted: 52



① SOUNDWALL SECTION: EXISTING CONDITIONS
NOT TO SCALE

Approximate Tree Count* (Perimeter Soundwall Only)
Total Existing Trees Surveyed: 121
Total New Trees Planted: 0

TREE ANALYSIS DIAGRAM

ESTRELLA

Milpitas, California

NOTE:
The Intent to the Tree Analysis Diagram is to represent design opportunities by providing screening alternatives to the perimeter Sound Wall.
This Diagram is an illustrative representation only and does not reflect approved, or engineered solutions to the site.

DATE: MARCH 15, 2007

