AGENDA ITEM: IX-1

MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

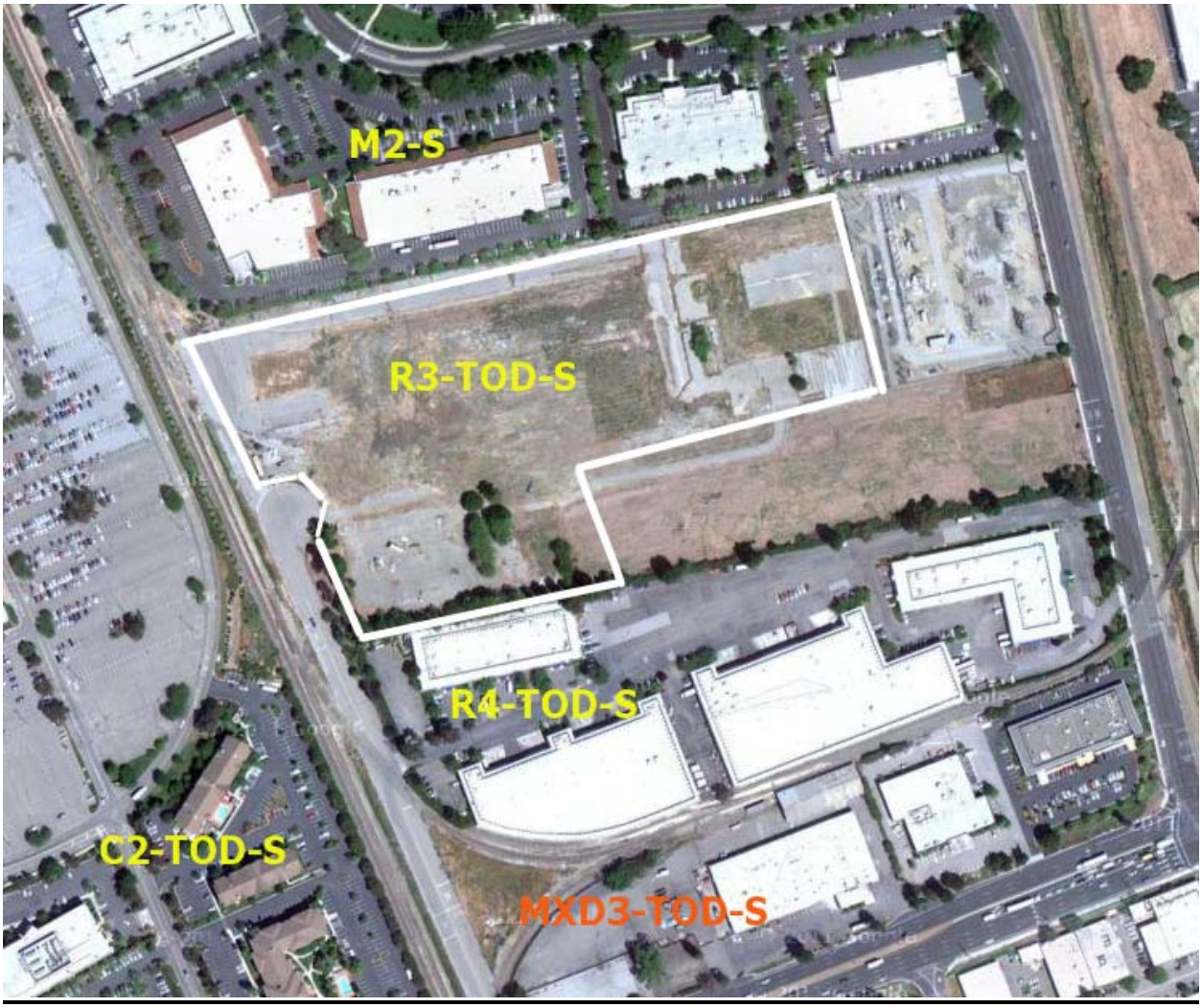
Meeting Date: October 12, 2011

APPLICATION:	**Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008, Citation Residential Project**
APPLICATION SUMMARY:	A request to amend the previously approved project to allow a fifth story and to replace a "wrap" condominium unit building with townhomes. The project site would accommodate up to 732 dwelling units with density averaging. The proposal includes a vesting tentative map for condominium purposes. This proposal includes development plans and architectural review for the project.
LOCATION:	1200 Piper Drive (APN: 086-32-037 and 086-32-040)
APPLICANT:	Michael Sullivan, 404 Saratoga Ave., Suite 100, Santa Clara, CA 95050
OWNER:	SCS Development, 404 Saratoga Ave., Suite 100, Santa Clara, CA 95050
RECOMMENDATION:	**Staff recommends that the Planning Commission:** **Adopt Resolution No. 11-048 recommending the City Council approve the project subject to conditions of approval.**
PROJECT DATA:	
General Plan/ Zoning Designation:	Multi-family High Density/High Density Residential (R3)
Overlay District:	Site and Architectural (-S) and Transit Oriented Development (-TOD)
Specific Plan:	Transit Area Specific Plan (TASP)
Site Area:	16 acres
CEQA Determination:	Exempt pursuant to Sections 15168(c)(2) of the CEQA Guidelines
PLANNER:	Sheldon S. Ah Sing, Senior Planner
PJ:	2527

ATTACHMENTS:

A. Resolution No. 11-048
B. TASP street sections
C. Applicant letter
D. Plans
E. Union Pacific letter
F. Richard Drury letter
G. Regional Water Quality Board letter 2005
H. Deed Restriction for 1200 Piper

LOCATION MAP



No scale

BACKGROUND

On June 3, 2008, the City Council adopted the Transit Area Specific Plan. The Plan encompasses 437 acres and promotes the development of 7,109 dwelling units, 287,075 square feet of retail space, 993,843 square feet of office space and industrial. The plan includes development standards, goals and policies guiding development within the plan area. Because of the physical characteristics of the area, including major streets, railroads and creeks, the plan also established sub-districts with specific goals and policies to accommodate those unique characteristics.

The proposed project is within the Piper-Montague Sub-District of the Transit Area Specific Plan. The sub-district is located near the future BART station and the Great Mall, although separated by Montague Expressway and rail tracks respectively. For the sub-district, the TASP envisioned high density residential neighborhoods near transit and shopping. In addition, the plan proposed two smaller urban parks for the sub-district, a public street to connect Piper Drive and Milpitas Boulevard and a street to link the new public road and Montague.

On February 17, 2009, the City Council approved the original project including a vesting tentative map and Site Development Permit for the purposes of developing 639 dwelling units in three "wrap" buildings.

On July 1, 2011, Michael Sullivan of SCS Development submitted an application to amend the previously approved project to include a fifth story on two buildings and to replace one of the condominium buildings with townhomes pursuant to the Milpitas Municipal Code for amendments or modifications to projects. Other changes to the project are considered substantially conforming to the previous approval.

On September 28, 2011, the matter was continued at the request of the Planning Commission so as to provide City staff with an opportunity to review and analyze last minute comment submissions.

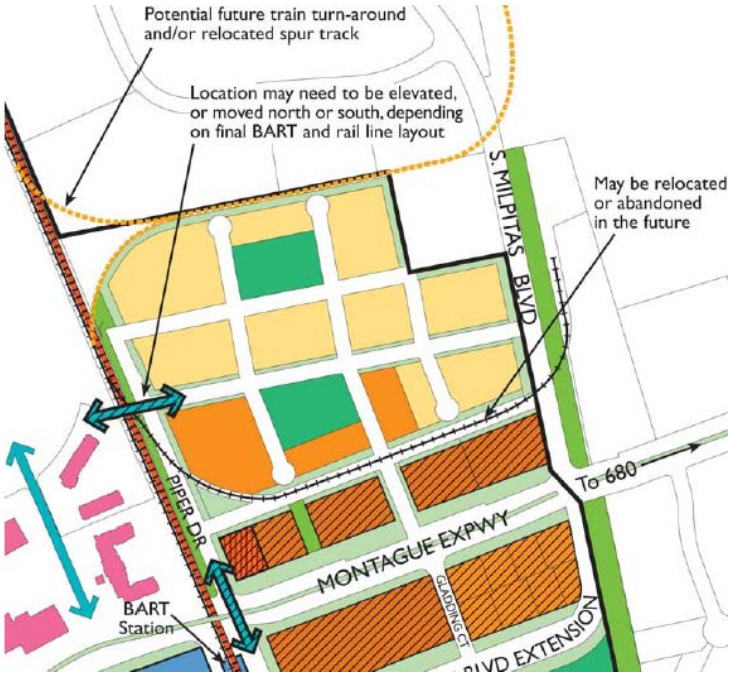
PROJECT DESCRIPTION

Site and surrounding uses

The site contains 16 acres and is located near the intersection of Montague Expressway and Piper Drive. The project site is zoned High Density Residential (R3). The entire project site has Site and Architectural (-S) and Transit Oriented Development Overlays (-TOD) focusing on design and treatment of projects near transit nodes. Surrounding the subject property are developed parcels. East of the subject site includes a PG&E electrical substation and Milpitas Boulevard beyond. To the north of the project site are buildings on industrially zoned properties. To the south of the project site include industrial buildings on high density residentially zoned properties. To the west of the subject site includes Piper Drive, the future BART alignment and the Great Mall. A vicinity map of the subject site location is included on page 2 for reference.

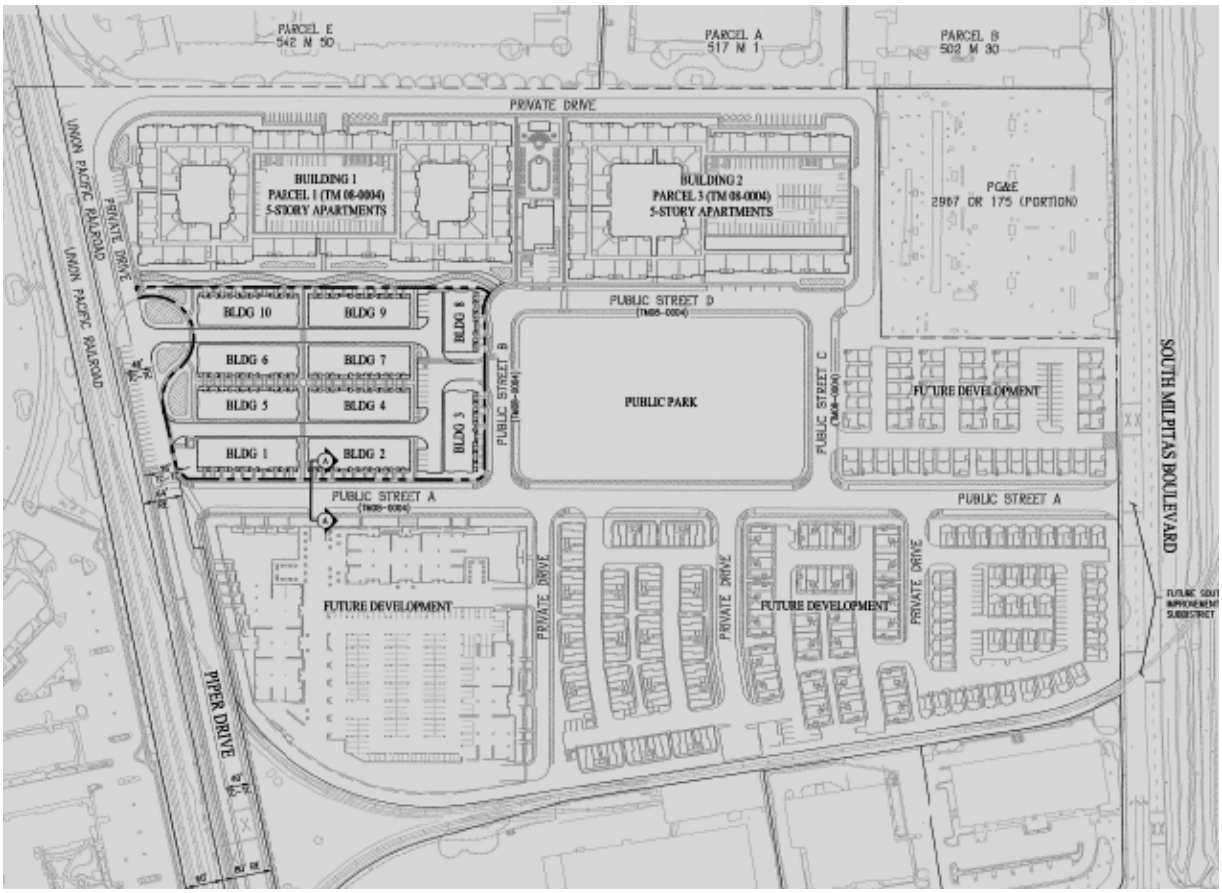
Because of the project's proximity to BART and railroad tracks, the project is required to submit an acoustical and vibration study. The findings of the study are to be integrated into the design of the project.

Figure 1
Piper-Montague Sub-district in TASP



The overall development concept included in the Transit Area Specific Plan is illustrated above in Figure 1. Two developers submitted applications that included a single three-acre park located in the middle of the sub-district along the proposed east-west public street. The proposed park is surrounded by a public road loop connecting to the east-west road. The proposed park is commensurate in size with the original two-park concept. This consolidation was reviewed and endorsed by the Parks, Recreation and Cultural Resources Commission and approved by the City Council with their approval of the master tentative map for the Milpitas Station project located in the southeast portion of the sub-district on October 21, 2008. The concept is included as Figure 2 below.

Figure 2
Piper/Montague Sub-district layout as previously approved and proposed



Tract map

The project proposes to amend its previously approved tentative map to accommodate the changes to the site layout, the additional floor and the introduction of the townhomes. A vesting condominium map proposes the subdivision of airspace of the project for 732 units, and an increase of 93 units from what was previously approved (45.5 du/gross acre versus 40 du/gross acre). The project also includes the dedication of right-of-way for new public roads and 1.4 acres for the proposed public park. Private lots include private streets to service the development. The plans also include rough grading and utility locations. The majority of the scope of the project remains intact, with the most significant change being the townhome component. The table below demonstrates the parcel size and number of dwelling units that could be developed on each parcel.

Table 1
Parcel Statistics

Parcel	Acreage	Number of units
1	3.52	378
2 (10 lots)	3.06	94
3	3.48	260
Total	10.06	732

The remaining six acres of the project site includes emergency vehicle access, private drives, landscaping, a clubhouse, public park, private pocket park, public streets and 0.54 acres will be transferred to the adjacent Milpitas Station development.

Off site improvements
The project includes interim improvements to Piper Drive, which is the project's main entry. However, it is expected that construction on the BART project will commence next year and the condition of Piper Drive may be in an interim state until completion of that project.

Site Development Permit
The property includes a Site and Architectural Overlay as a part of its land use designation. All proposed development in the overlay district is considered in Section 57.03, Site Development and Minor Site Development Permits, of the City's Zoning Ordinance. The Site Development Permit considers the site layout, the compliance with various development standards and the architecture of the buildings.

Site Layout
The project site is accessible from Piper Drive, an existing north-south street that begins one block south where it intersects with Montague Expressway and terminates at the subject site as a cul-de-sac. A new private loop road begins at the cul-de-sac of Piper Drive and provides access to Building 1 (via the north side) and Building 2 (via the east side) and terminates at the new public road adjacent to the park on the east side of the project site. The site would also be accessible from Milpitas Boulevard via a new east-west public street.

A three-party agreement is necessary for the timely development of streets, utilities and park areas, since the sub-district includes three developers. That agreement is recorded against the properties and in effect. Each developer has possession of areas that would ultimately become public right-of-way with utilities, and a park. It is unrealistic that all three projects would develop within the same timeframe. It is expected that the developers would have an arrangement were the utilities, streets and parks would be constructed while the first development is under construction. The details of reimbursement and contributions are within the agreement.

Parcels 1 and 3 remain unchanged from the previous approval, except the project proposes the re-location of the clubhouse amenity from Parcel 2, to the area between Parcels 1 and 3. Buildings 1 and 2 as proposed are five stories tall, wrapped around a six story parking garage. The proposal adds an additional story to the building height. It is also envisioned that pedestrian

access is made to the industrial properties to the north via a gate at a location where the north-south corridor crosses the private road.

Parcel 2 as approved includes another wrap building; however, the subject proposal includes the development of 94 townhomes with private vehicular alleys and pedestrian paseos, which are typical for this type of development.

Development Standards
Table 2 summarizes the key development standards for the project.

Table 2
Citation Project Development Summary

	Street Setback (back of sidewalk)	**Other Street Setbacks**	**Distance between buildings**	**Height**	**Block Dimension**
Building 1	NA	10’	40’ min	70’6”*	480’
Townhomes	8’ min-12’ avg.	10’	15’’ min	41’1”	480’
Building 2	8’ min	10’	40’ min	70’6”*	550’

*The tower element is the tallest feature. The garages are 63’5” and the roofs are 57’2”.

Street Setbacks
The Transit Area Specific Plan includes specific design criteria for existing and new streets within the development, which include the width of the street, width of sidewalks, parking lane dimensions, street trees and landscaping and minimum setbacks to the buildings from the back of the sidewalk or curb. Any major modifications to the street sections as proposed by the specific plan may be modified by the Planning Commission. Specifically, the pertinent sections in the specific plan are Figures 5-6, 5-7, and 5-9. See Attachment B (TASP street sections) for reference. While the other parcels are not changing from what was previously approved, the townhome component setbacks as proposed substantially conform to the street section dimensions.

Other Street Setbacks
When a street section is not provided, the Transit Area Specific Plan indicates an 8-15 foot setback from the back of the sidewalk to the proposed building for elevations along a street. The project includes a private street or drive along the western, northern and eastern boundary. The project as proposed substantially conforms to the minimum setback.

Height
The maximum building height in the zone is 75 feet. The project proposes approximately 70 feet for the tower element, which conforms to the height limit.

Block Dimension
The Transit Area Specific Plan indicates a 500 foot maximum distance between publicly accessible paths of travel for a block. The block dimensions are not changing from the previous approval, where an exception was previously granted.

Parking

Table 3 demonstrates the project's compliance with the parking standards for the zoning district.

Table 3
Project Compliance with Parking

	Number of Units	Minimum Parking Required	Spaces Required
Building 1			
1BR	190	1.2 per unit	228
2BR	188	1.6 per unit	301
Guest		15% of required	79
Subtotal required			***608***
Subtotal provided			***610***
Townhomes			
3BR	94	1.6 per unit	150
Guest		20% of required	30
Subtotal required			***180***
Subtotal provided			***227***
Building 3			
1BR	130	1.2 per unit	156
2BR	130	1.6 per unit	208
Guest		15% of required	55
Subtotal required			***419***
Subtotal provided			***423***
GRAND TOTAL REQUIRED			**1,207**
GRAND TOTAL PROVIDED			**1,260**

Townhomes

Parking spaces within the private garages provide the required residential parking for the townhomes. Tandem parking represents fifty percent of the required residential parking, which meets the maximum allowed. Tandem parking can be considered through the approval of a Conditional Use Permit. All of the required guest parking spaces are provided within the development or along Piper Drive. Each dwelling unit includes two covered parking spaces, which is the maximum allowed by the TASP.

Wrap buildings

Parking spaces within the garage structure provide the required residential parking for the wrap buildings and parking spaces on the first floor of the garage structure and surface parking along

the private drive provide the required guest parking. The project as proposed demonstrates compliance with the Transit Area Specific Plan for parking.

Bicycle Parking
For the wrap buildings, the project provides 160 bicycle spaces for residents within a bicycle room on the first level of the parking structures, and will provide 51 bicycle spaces for guests near the street. The townhome project will need to demonstrate an area or areas to accommodate nine bicycle spaces for guests. The project as proposed and conditioned complies with the requirement for bicycle parking.

Architecture and Massing
A component of the project incorporates high density in multiple buildings with its units "wrapped" around either a courtyard or a multi-level parking structure. Sheets A2-01 through A2-06 illustrates the typical layout of each floor in the buildings and the relationship of the units to the common areas of the project within each building envelope. One of the advantages of the "wrap" design high density projects is that the lower level has habitable space instead of a garage as "podium" projects and also allows for more efficiency during construction.

With the additional story, the project exhibits Mediterranean style architecture with a mixture of arches, squared towers at the corners and barrel tile roofing. The elevations include a stucco finish, with a fairly uniform fenestration. Stone veneer adds variety to the architecture, while in keeping with the character of the building. The upper floor includes windows with awnings as decorative features. In addition, some of the upper levels include balconies. The Specific Plan includes design guidelines for development within the Transit Area. The elevations are enhanced since the previous approval and are consistent with the guidelines.

The townhome component includes Italian and Spanish styles, which will complement the style of the larger adjacent buildings. The elevations include a stucco finish. Each style includes features and elements that are consistent with Italian or Spanish architecture.

Floor plans
The townhome floor plans include a bonus room on the first floor. It is not the intent of the builder to create additional bedrooms (which require additional parking); however, the rooms' designs meet the definition of a bedroom pursuant to the Zoning Ordinance. While the functionality of the rooms as bedrooms is limited, a condition of approval will include the further evaluation of these spaces to ensure compliance and consistency with the intent of the ordinance.

Landscaping and lighting
The project provides a combination of soft and hardscape in both public and private areas. See sheets L-01 through L-07 of the plans for more detail.

Public areas
The project proposes to dedicate a portion of the sub-district park and proposes to provide walking paseos through the project. In addition, landscape strips along certain streets may receive 20% credit towards public spaces. The exact credit against any impact fees and determination of these areas will be evaluated later.

Private areas
Private areas include paseos, the private loop road, and a pocket park. The courtyards in the middle of the buildings are not publicly accessible. Balconies are provided for units. To be in compliance with the Zoning Ordinance [Section 10.4.05 (C)], a minimum 60 square foot balcony is required for each unit. The Unit B3 floor plan of the wrap buildings include a sub-standard size balcony and will need to increase the balcony size to be compliant.

Lighting
Sheet L-07 demonstrates the lighting plan for the project. Each of the public and private areas will be adequately lit for safety and yet not overly so much to disturb the residents.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan
The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 4
General Plan Consistency

Policy	Consistency Finding
2.a.1-25: Require development in the Transit Area to conform to the adopted design guidelines and requirements contained in the Transit Area Plan.	**Consistent.** The project as proposed and conditioned conforms to the street layout, street sections, density and land use.

Zoning Ordinance
The site includes 16 acres of High Density Residential-Transit Oriented Development (R3-TOD) (21 min/40 max units per acre). The project is consistent with the City's Zoning Map. As mentioned previously, the private open space for each unit will need to be addressed. Other development standards, including density, are described in the Transit Area Specific Plan section below.

Subdivision Ordinance
The project is consistent with the provisions in Title XI, Chapter 1, Section 4, Tentative Maps of the City's Municipal Code regarding the form, content and dedications of the tract map. The amendment includes some changes to the lots and the amount of condominium units. Tentative Tract Maps require a recommendation from the Planning Commission in the form of a resolution to the City Council for their ultimate approval.

Transit Area Specific Plan

Overall compliance

The proposed project's land use, street layout and street sections are consistent with the Transit Area Specific Plan's Piper-Montague sub-district. The addition of the townhomes does not significantly alter the design of the project.

Density

On all sites throughout the Transit Area, densities can be averaged over an individual project which covers multiple parcels or over separate projects; provided that legal instruments are recorded for individual parcels to ensure that the minimum and maximum densities established by the plan are met.

The underlying zoning allows for 639 dwelling units. The tentative map provides for the eventual development up to 732 dwelling units for the project site. Based on the maximum density requirements, the project requires an additional 93 dwelling units from an adjacent site to meet the density range for the sub-district. The project proponent proposes taking this density from 737 Montague Expressway, which is also owned by the same company developing the subject parcel. A density transfer agreement would need to be drafted and recorded against the properties to achieve the correct density for both the project site and the transferring parcel.

Design Guidelines

The design guidelines include both general design guidelines and specific standards to guide future development within the Transit Area. These design guidelines cover site planning, building design and landscaping and lighting. The project substantially conforms to the guidelines.

Parks and open space

Within the Transit Area, parks are required at a ratio of 3.5 acres per 1,000 people, with at least two of those acres being publicly accessible. Land dedicated for public parks or trails will substantially fulfill the park land requirements. In addition, 20 percent of a landscape buffer area along certain streets or public right-of-way count towards the public park requirements (consistent with Policy 3.38 of the TASP), when it includes trails or wide sidewalks connected to an overall pedestrian/bike circulation network. The balance of the required park area can be privately accessible open space under certain conditions. A Transit Area Impact Fee is levied for all projects within the Transit Area Specific Plan to pay for the necessary physical improvements to implement the goals of the plan. This fee includes the park in-lieu fee. A credit against the fee can be given to the developer when a project dedicates land or improves park areas.

Based on the open space ratio, the project is required to provide 3.82 acres of publicly accessible park land and 2.84 acres of private open space for a total of 6.66 acres of park land. The following table demonstrates the amount of park land provided by the project.

Table 5
Park Land Provided by Project

Public/Publicly Accessible Open Space	**Acreage**
Public Park	1.4
Landscape Buffer (20%)	0.3
Subtotal	***1.7***
Private Open Space	
Balconies	1
Pedestrian corridors	1.1
Pocket park	0.1
Courtyards	0.8
Private recreational area	0.6
Subtotal	***3.6***

As a recommended condition of approval, sheet C-01 of the plans will be revised to reflect the table above. The exact credits will be evaluated at a later date.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is exempt from further environmental review pursuant to Section 15168(c)(2) of the CEQA Guidelines because of its consistency with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council. Furthermore, although the project location is on a list of state hazardous waste sites, the site has already been declared completely remediated for purposes of removing hazardous waste and hazardous constituents and qualification for residential use. The project will not result in significant human health impacts from hazardous substances releases on the Cortese list site because the project site has been listed as "closed" by the Department of Toxic Substances Control. Soil vapor from groundwater is present only in diluted or negligible levels that can be assuaged through deed restrictions and physical vapor barriers to prevent the possibility of any harmful exposure. As condition, therefore, the project is also not subject to environmental review under Section 15061(b)(3) of the CEQA Guidelines.

A number of comments were submitted by letter on September 28, 2011, on behalf of Carpenters Local Union No. 405 (See Attachment F). None of the issues raised therein bear any merit or prevent consideration of this project at this time. Each issue is addressed below:

Cortese List

The 1200 Piper Drive site is listed on the California state list of contaminated sites, sometimes called the "Cortese List," due to its historical use by the North American Transformer manufacturing site and its location near the Jones Chemical, Inc., site. However, the project site is currently listed as a "closed case" that has had all required remediation and conditions implemented and/or approved by the California Regional Water Quality Control Board. The conditions of approval for the project implement all remaining required remediation: the placement of deed restrictions prohibiting the installation of wells or the use of groundwater

under the property and the installation of vapor barriers to protect residential users from vapors possibly emanating from the water table. (See August 18, 2005 Letter, Attachment G).

Once a site or activity has been remediated to levels below levels of environmental significance, a proposed activity may be exempted from further CEQA review by way of statutory exemptions, additional environmental document such as negative declarations or environmental impact reports, or qualification for the "common sense" exemption of Section 15061(b)(3) of the CEQA Guidelines. *See* Order in Matter of Petition of Ken Berry and California Citizens for Environmental Justice, Order No. WQ 2009-0010 (California Regional Water Quality Control Board 2010); *see also* Notice of Exemption for Class 1 Permit Modification to amend the Closure Plan for Area II Groundwater Treatment Units (approving removal of groundwater treatment units under Section 15061(b)(3) notwithstanding listing of site on Cortese list), available at http://www.dtsc ssfl.com/files/lib_permit_active/permit_appeal/ permit_mods/65093_SSFL_GWTU_Closure_Class_1_Area_II_NOE_Final_7-14-11_signed_scanned.pdfD.

In this case, the possible environmental impacts of residential development and use of the project site were carefully considered in the Transit Area Specific Plan Environmental Impact Report (TASP EIR). The Draft EIR for the 1200 Piper Drive site noted that as to possible petroleum and polychlorinated biphenols (PCBs) in the groundwater, remediation might be required by the Department of Toxic Substances Control in response to case activity in April 2005. Such remediation has been implemented as a result of the activity cited in the TASP EIR. Environmental documentation for the site states that as a result of state agency directives, a total of 5,064 tons of soil impacted with chemicals of concern consisting of PCBs, petroleum hydrocarbons, and other materials were removed from the site. (See Attachment G). In addition, in order to address the release and possible migration of volatile organic compounds (VOCs) from the Jones Chemical, Inc. site, the State Regional Water Quality Control Board noted that studies indicated a "negligible risk…to future residential development" and that the installation of a vapor barrier would be more than sufficient to prevent any harm to future residents. These remaining measures have been imposed as conditions of approval for the project. No further physical remediation (e.g.,. removal of soils) is required.

All concerns raised by the listing of the site on the closed case list of Cortese hazardous waste site have been addressed.

Significant Air Quality Impacts

The Transit Area Specific Plan assumed at build out a minimum and maximum amount of development density. A reasonable worst case scenario (RWCS) was calculated for residential and commercial development to be used as the basis for analysis of the TASP EIR. The RWCS is calculated as 90 percent of the midpoint between the minimum and maximum densities allowed—including the 25 percent increase allowed with a density overlay—with assumption that up to 90 percent of the opportunity sites will actually redevelop during the 20 year timeframe of the Plan.

The TASP and its EIR assumed 7,109 units of residential development. Thus far, 2,181 units have been entitled, with a further 503 units currently being processed for entitlements. Any

impacts with respect to CEQA were based on the RWCS, which to date has not been exceeded. The project is subject to the Policies of the TASP, which reduce impacts.

Toxic Air Contaminants

The ambient background of toxic air contaminants (TACs) is the combined result of many diverse human activities, including gasoline stations, automobiles, dry cleaners, industrial operations, and painting operations. In general, mobile sources contribute more significantly to health risks than do stationary sources. As part of the EIR process for the TASP, the Bay Area Air Quality Management District commented that a TAC study should be done in certain circumstances and that if certain thresholds are exceeded that the city may require upgraded ventilation systems for the projects impacted. Policy 5.25 of the TASP incorporates that comments and requires that this study be done by the project's owner or applicant. As part of the conditions of approval for the project, this study will be done:

> "*Condition Number 62:* Pursuant to Policy 5.25 of the Transit Area Specific Plan, the developer shall perform an analysis of toxic air contaminants (which includes primarily diesel particulate matter DPM). If the results show that the carcinogenic human health risk exceeds the 10 people in a million standard established by BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents."

Vibration Impacts

Likewise, there are no potential environmental impacts regarding vibrations that require further environmental analysis at this time. The project, as conditioned, requires the conduct of an acoustical and vibration study and compliance with the City's Municipal Code, General Plan and Transit Area Specific Plan standards and to incorporate any recommendations required thereunder to achieve compliance.

Under California law, a condition requiring an analysis or study of possible future impacts and the implementation of any recommendations therein (a so-called "deferred mitigation") is appropriate where a city has a reasonable expectation of enforcement and compliance, such as through the existence of clear regulations or performance standards. *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1395-1396 (finding no improper "deferred mitigation" where approved maps and plans were "subject to a host of specific performance criteria imposed by various ordinances, codes, and standards, as well as other mitigation conditions").

Here, the owner or applicant will have to comply with a number of noise and vibration standards: (1) General Plan Guidelines regarding noise levels (TASP Policy 5.10 and Noise Element of the Milpitas General Plan); (2) compliance with FTA groundborne vibration criteria (TASP Policy 5.13); (4) Milpitas Municipal Code § V-213-3 for construction noise; and (5) other applicable health & safety noise criteria .

When faced with such a comprehensive set of expectations and performance measures, "a condition requiring compliance with regulations is a common and reasonable mitigation

measure." *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906. No further environmental review on the issue of vibration impacts is therefore required or merited.

Parkland Impacts

On similar grounds, the requirement on the developer to provide required parkland and open space in compliance with applicable development standards does not require any further environmental clearance. As currently conditioned, the developer is required to revise design plans to reflect allowable open space areas for the purpose of being consistent with the Transit Area Specific Plan and any allowable credits towards open space requirements. Such a condition does not constitute an improper "deferred mitigation" and is otherwise allowed under CEQA.

Government Code Section Subdivision 66477(e) specifically allows developers to receive a separate credit for private open space with is usable for active recreational uses. The Milpitas Municipal Code sets up specific standard for the required provision of parkland and private open space and complies with standards such as assurances of reasonable adaptability 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. MMC § XI-1-9.08. All developments, including the Citation Residential Project, must individually meet the private open space requirements on a project-by-project basis. (TASP Policy 3.45). Based on these requirements, the project is required to provide 3.82 acres of publicly accessible park land and 2.84 acres of private open space.

Under the deferred mitigation case law and rules set forth above, the condition requiring the dedication of open space in compliance with development requirements is permissible under CEQA. No further environmental clearance is required.

Traffic Impacts

The proposed project does not change the permitted uses in the High Density Residential (R3) zone with the allowed Transit Oriented Development Overlays (-TOD). By design, these zoning designations are focused on facilitating the use of alternate transportation near transit nodes. The project, even with the new proposed townhouse component, complies with trip counts and traffic impacts previously cleared in the TASP EIR.

Applicant is required to prepare a focused Traffic Impact Analysis (TIA) pursuant to Condition of Approval 52 in order to address any project specific mitigation that may be required as identified by the TIA. This report updates a TIA that was completed for the project with its previous approval. Furthermore, the project provides 160 bicycle spaces for residents and an additional 60 street level bicycle spaces for guests, thereby further reducing the need for vehicular travel. The project is therefore not a substantial change to the project analyzed in the prior TASP EIR and does not require a supplemental EIR.

Greenhouse Gas Impacts

The request for the preparation of a supplemental EIR because of the creation of new BAAQMD thresholds for greenhouse gases is also unfounded. In 2008, the City Council approved an EIR for the Transit Area Specific Plan. The Draft EIR extensively considered greenhouse gas emissions and the potential climate change impacts of projects within the Transit Area, including

developments like the Citation Residential Project. (DRAFT EIR, Section 3.12.) In view of this preexisting environmental documentation and the content of the commenter's request, no further action under CEQA is required.

After a city has approved an EIR, it cannot require a supplemental EIR unless amongst other things "[n]ew information, which was not known and could not have been known at the time the [EIR] report was certified as complete, becomes available." Pub. Resources Code § 21166.

Under this standard, the mere adoption of new BAAWMD thresholds for greenhouse gases does not constitute "new information" that requires the preparation of a supplemental EIR. The adoption is not a change in a change in circumstances for the purposes of applying CEQA's subsequent review provisions, nor did the passage of the new air standards result in new information under those provisions.

The current CEQA "project" is a residential development that was previously considered in the TASP EIR. There has been no change to the physical environmental conditions or improvements and facilities that were previously contemplated in the TASP EIR. Greenhouse gas and climate change impacts were considered in the TASP EIR and do not constitute "new information" that was not known or could not have been known at the time of the TASP EIR's certification in 2008. The United Nations Framework Convention on Climate Change was established in 1992. The regulation of greenhouse gas emissions to reduce climate change impacts was being extensively debated and analyzed since at least the 1970's. The studies and analysis of this issue resulted in many climate change initiatives, including the Kyoto Protocol in 1997. Therefore, the impact of greenhouse gases on climate change was known at the time of certification of the TASP EIR in 2008.

Accordingly, the new BAAQMD standard on greenhouse gases is not "new information" that requires analysis in a supplement EIR. This matter therefore does not merit further consideration.

Higher Density

The Transit Area Specific Plan assumed at build out a minimum and maximum amount of development density. A reasonable worst case scenario (RWCS) was calculated for residential and commercial development to be used as the basis for analysis of the TASP EIR. The RWCS is calculated as 90 percent of the midpoint between the minimum and maximum densities allowed—including the 25 percent increase allowed with a density overlay—with assumption that up to 90 percent of the opportunity sites will actually redevelop during the 20 year timeframe of the Plan.

The TASP and its EIR assumed 7,109 units of residential development. Thus far, 2,181 units have been entitled, with a further 503 units currently being processed for entitlements. Any impacts with respect to CEQA were based on the RWCS, which to date has not been exceeded.

As stated previously in this report, the TASP allows density averaging over adjacent parcels. This does not constitute additional density, but moving existing density allowances over the

same geographic area. The impacts of this same density as described in the previous paragraph have already been analyzed.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. Staff received a letter from Union Pacific (attached), which reminded us that the railroad is active and that the appropriate measures should be taken when developing residences next to the railroad. In addition, staff received a letter from Richard Drury representing the Carpenters Union Local 405 regarding CEQA. The analysis of that letter is described in the preceding section.

CONCLUSION

The proposed amendment is consistent with the previous approval with respect to the street layout and is also consistent with Transit Area Specific Plan in terms of land use, density, and design guidelines.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 11-048 recommending approval of Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008 to the City Council, subject to the attached Conditions of Approval.

Attachments:

A. Resolution No. 11-048
B. TASP street sections
C. Applicant letter
D. Plans
E. Union Pacific letter
F. Richard Drury letter
G. Regional Water Quality Board letter 2005
H. Regional Water Quality Board letter 2007
I. Deed Restriction for 1200 Piper