



MILPITAS PLANNING COMMISSION STAFF REPORT

March 26, 2014

APPLICATION: Transit Area Specific Plan Amendment No. ST14-0001 - A City-initiated request to consider a specific plan amendment to remove Density Averaging Policy 3.8 and related text.

RECOMMENDATION: **Staff recommends that the Planning Commission:**
Adopt Resolution No. 14-012 recommending the City Council adopt an amendment to the Transit Area Specific Plan to remove Density Averaging Policy 3.8 and related text (Specific Plan Amendment No. ST14-0001).

LOCATION:
Area of City: Transit Area

PEOPLE:
Project Applicant: City of Milpitas
Project Planner: Sheldon S. Ah Sing, Senior Planner

LAND USE:
General Plan Designation: Parks and Open Space, General Commercial, Mixed Use High Density, Mixed Use Very High Density, Urban Residential, Multi-Family Very High Density, Multi-Family High Density, and Industrial Park – Within TASP area
Zoning District: POS, C2, MXD2, MXD3, R5, R4, R3, and MP – Within TASP area
Overlay District: Transit Oriented Development (-TOD) and Site and Architectural (-S)

ENVIRONMENTAL: Categorically exempt from further environmental review pursuant to Section 15061(b)(3) in that CEQA only applies to projects that have the potential for causing a significant effect on the environment and Section 15168(c)(2) in that the project is consistent with the certified Environmental Impact Report (EIR) for the TASP adopted on June 3, 2008 by the City Council.

EXECUTIVE SUMMARY

The City of Milpitas adopted the Transit Area Specific Plan (TASP) in 2008. The Plan sets forth land use policies which allow for the intensification of development in the 437-acre Transit Area—which is currently transitioning from low-intensity industrial uses to new multi-family housing, office, mixed-use and retail development. Recent inquiries and related entitlement

applications for density averaging across various residential land use designations have caused the potential to trigger numerous amendments to the Specific Plan, Zoning Ordinance, and General Plan. This report summarizes these concerns and analyzes a recommended remedy removing Policy 3.8 regarding “density averaging” and related text.

Map 1
Project Location



BACKGROUND

History

The Transit Area Specific Plan (TASP) was adopted in 2008 and envisioned nearly 7,000 dwelling units at build-out. Since the adoption of the Plan over 3,000 dwelling units have been entitled and several hundred are currently under construction. The TASP (Figure 3-1 and Table 5-1) includes land use classifications depicting densities ranging from as low as 12 dwelling units per acre to as high as 75 dwelling units per acre. The highest densities are expected nearest the Light Rail Stations and the BART station. There are several TASP policies that direct the highest residential land use densities and commercial development in these locations. However, there is one policy, Density Averaging Policy 3.8 that allows contiguous developments to build at higher or lower residential densities, so long as their average density falls between the designated minimum and maximum.

Based upon the four specific density averaging approvals since 2008 and the two pending density averaging proposals, it has become evident that density averaging is serving as a loop hole, allowing development proposals to replace higher residential density and mixed-use commercial zones with lower density townhome development. Such proposals claim that Policy 3.8 allows a wholesale “transfer” of density to a much smaller concentrated area of future project buildings containing extremely high residential density and extremely high commercial square footage. Such a practice is inconsistent with the TASP land use plan and General Plan Policies 2.a I-31 and 2.a I-32 regarding the implementation of the Plan.

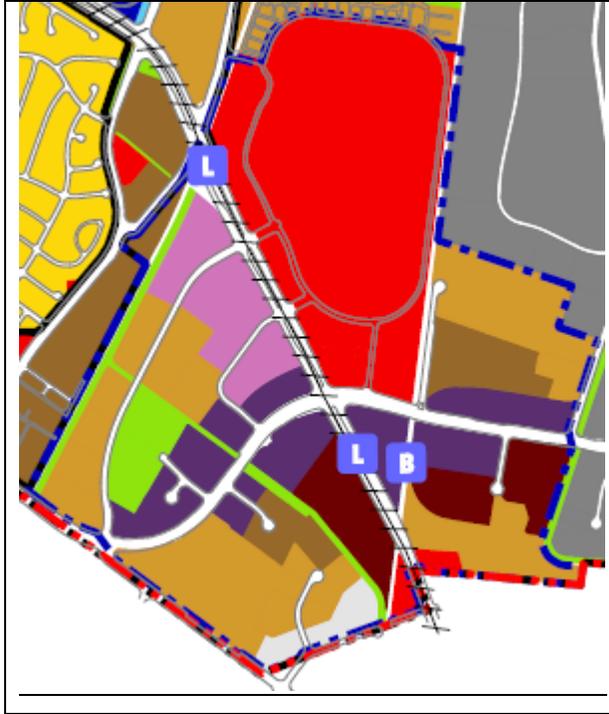
The Application

The following is a summary of the request:

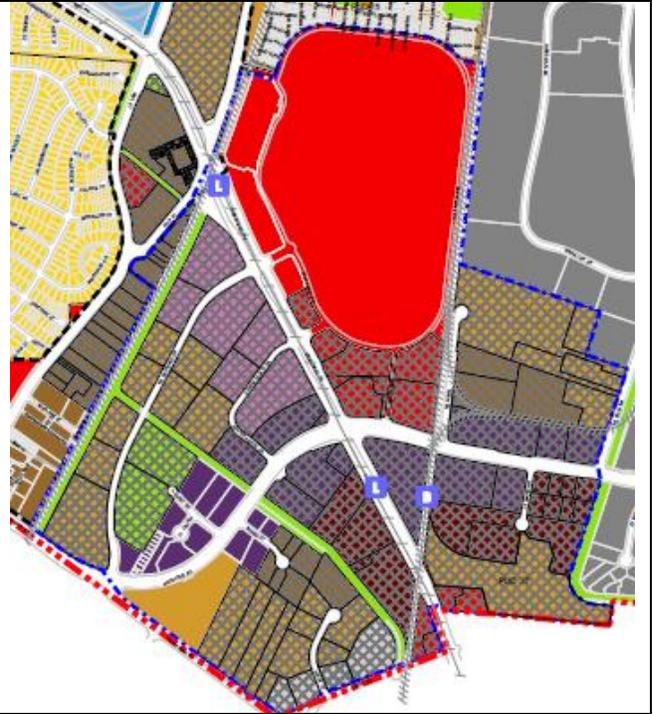
- *Specific Plan Amendment:* Amend exhibits and sections of the Transit Area Specific Plan to remove Policy 3.8 and references to “density averaging”.

Consequences of Density Averaging

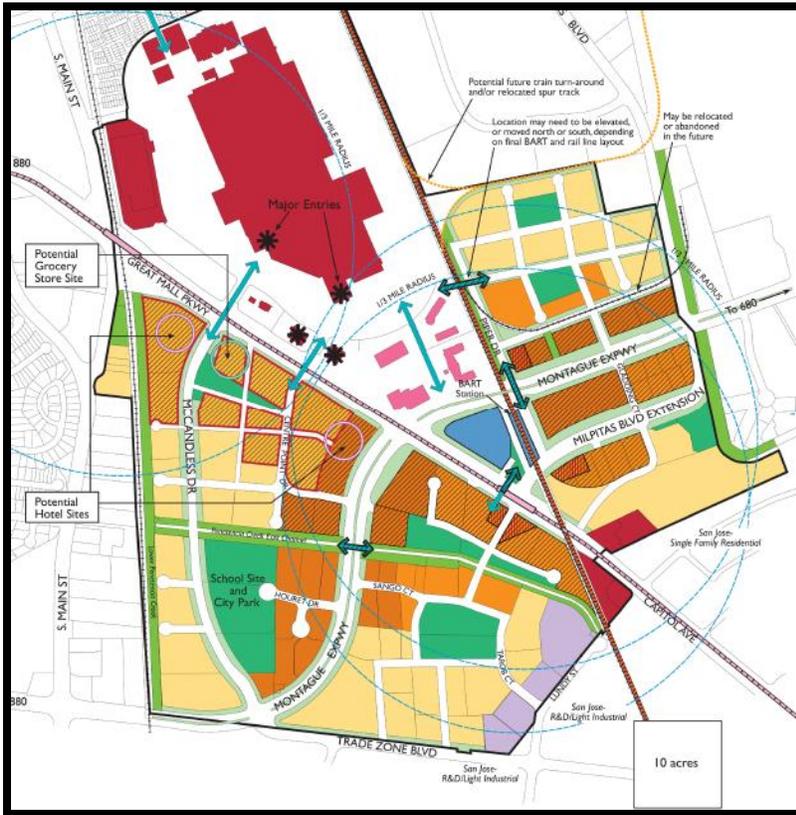
The TASP includes a clear vision of the residential density and areas of shared residential/commercial mixed use. The plan identifies and characterizes the location of higher versus lower density residential and commercial mixed uses to meet both the projected population build-out in support of Milpitas BART Station and to provide a variety of residential products and living environments and pedestrian/transit focused amenity. A key method of communicating these objectives is based upon the TASP land use map which clearly identifies locations for a variety of residential densities and areas specifically designated for mixed-use commercial. The TASP land use designations are reinforced by the City’s official Zoning Map and the City’s General Plan Land Use Diagram.



General Plan Land Use Diagram



Zoning Map

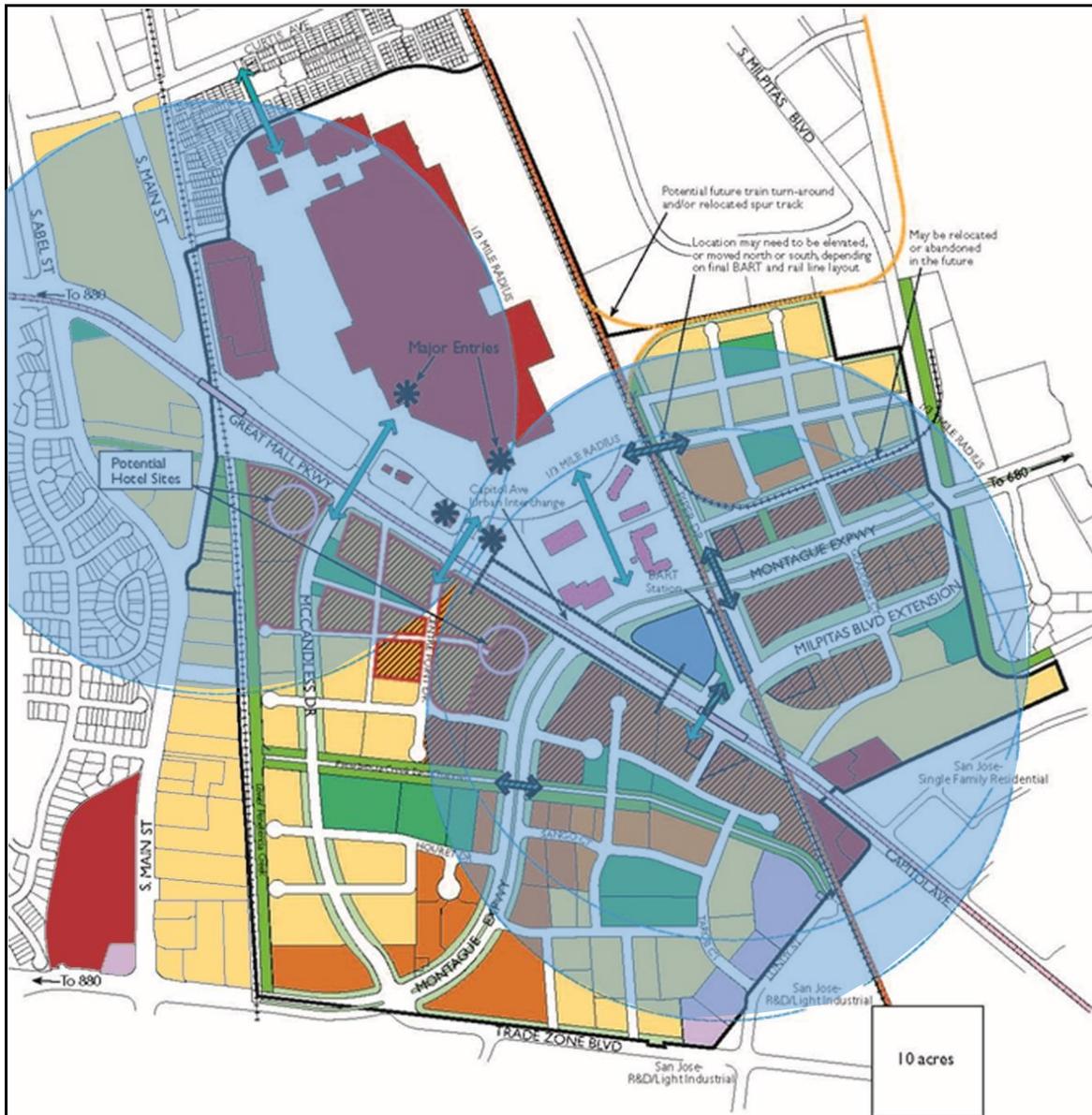


TASP Land use Map

Please note that each of the TASP land uses match the City of Milpitas General Plan and Zoning Maps. All maps are required to be consistent with the City's General Plan.

Overall Density Assumptions

The original intent of Policy 3.8 was to provide the City the discretion to consider some transfer of density that did not impact the planned overall TASP build-out or the TASP objectives of development and infrastructure program, TASP impact fee program, adequate parkland area and consistency with the TASP development standards and design guidelines. TASP residential densities are located with the highest density closest to the Light Rail Stations and BART station as well as along Great Mall Parkway and Centre Pointe Drive. Much of this area is within 1/3 mile walking distance of Milpitas light rail and BART station locations. In addition, commercial mixed-use is envisioned along the Great Mall Parkway and Montague Expressway, and at strategic locations near the transit stations. Lower density townhome type development is envisioned further away from these areas.



Sub-Districts and Character of the Plan

As a planning and development strategy, the TASP identifies sub-districts in Chapter 4 that carefully identify land use, local street pattern, and open space to generate a transit-oriented character designed to facilitate walking and transit usage.

The Montague Corridor (MXD3 zone) is an example where high-density residential is planned along a high-volume transportation corridor. The infill development of the corridor provides the opportunity to establish a distinct identity to the City of Milpitas and the Transit Area creating a “Grand Boulevard” with higher profile buildings. Some illustrative examples from the TASP are included below.



Shifting Density Patterns

In areas, such as the MXD3 zone described above, there are development discussions and proposals to allow lower density development by way of citing Density Averaging Policy 3.8. By using density averaging, development proposals are seeking to replace many of the carefully planned higher density residential land use areas with lower density town home development. The “averaged” density is theoretically transferred to a few select locations where “future buildings” are proposed to contain very high residential density. Similarly, where commercial uses are required, that too is requested to be “transferred” to a few select locations. In some cases, the proposals are resulting in very high concentrations of residential and commercial development in a few select “future” building sites. In numerous discussions with TASP area developers, these super high density buildings with super high concentrations of commercial use are difficult to finance, difficult to design, difficult to construct, and not likely to be constructed. The end result with such proposals is likely to be a significant expansion of lower density town home development, little to no commercial mixed use development, significantly reduced residential units, thus leading to significant financial impact to the TASP impact fee program. It is also likely that the Community Facilities District will be significantly impacted for maintenance of the infrastructure constructed to maintain a much higher residential and commercial density.

Proposing development densities in locations inconsistent with the TASP land use map requires an amendment to the TASP, the City’s General Plan, and zoning map.

Policy 3.8 was not intended to allow wholesale changes to the TASP land use plan. However, based on numerous discussions with TASP developers, it has become apparent that this policy is being utilized as a loop hole to circumvent the General Plan and Zoning amendment process.

PROJECT DESCRIPTION

Overview

Policy 3.8 of the Plan reads as follows:

Allow contiguous developments to build at higher or lower residential densities, so long as their average density falls between the designated minimum and maximum.

The Plan encourages individual property owners and developers to work together on projects, and supports the calculation of density across multiple proposals. However, City approval of a higher or lower density is binding on all of the property involved. To ensure that area-wide densities do not end up above or below the minimum and maximum densities, density averaging across multiple parcels will be enforced by conditions of approval recorded on the property title, simultaneous approval of projects, merging parcels, and/or deed restrictions.

There are various references to Policy 3.8 throughout the TASP between Pages 3-4 and 3-11, Pages 3-17 and 3-18, Pages 5-50 and 5-53.

The proposed amendment will remove Policy 3.8 and associated references.

Location and Context

This proposed amendment only affects areas within the TASP. Vicinity and location maps of the subject site location are included on Page 2.

PROJECT ANALYSIS

General Plan, Zoning, and Specific Plan Conformance

The proposed amendment is consistent with the General Plan to develop the Transit Area and require development to conform to the adopted design guidelines/requirements in the TASP. The elimination of Policy 3.8 will focus densities consistent with the General Plan Land Use Diagram, as implemented through the TASP land use designations and Milpitas Zoning Map.

The proposed amendment to the TASP will remove the identified conflicts and strengthen internal consistency with other sections of the plan. The proposed amendment will facilitate the TASP as envisioned and supported by General Plan Policies 2.a I-31, and 2.a I-32, and TASP Policy 3.1 regarding development targets.

The proposed amendment will not adversely affect the public health, safety and welfare since the Transit Area Specific Plan was created to promote the orderly and safe development of the City, including appropriate intensity of development near Light Rail Stations and the BART Station; as well as near high traffic corridors such as Montague Expressway and Great Mall Parkway/Capitol Avenue.

FINDINGS FOR APPROVAL

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

Specific Plan Amendment (Section XI-10-57-02(G)(2))

- 1. The proposed specific plan amendment is consistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan.*

The project is consistent with this finding because the elimination of Policy 3.8 for “density averaging” requires development to conform to the adopted design guidelines/requirements in the Transit Area Specific Plan. The elimination of Policy 3.8 will help to focus the appropriate densities that were envisioned by the General Plan Land Use Map, and implemented through the Transit Area Specific Plan Land Use Classifications and Milpitas Zoning Map in the appropriate areas.

Supporting Implementation Policies of the General Plan include:

2.a I-31: Develop the Transit Area, as shown on the Transit Area Plan, as attractive, high density, urban neighborhoods with a mix of land uses around the light rail stations and the future BART station. Create pedestrian connections so that residents, visitors, and workers will walk, bike and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.

2.a I-32: Require development in the Transit Area to conform to the adopted design guidelines/requirements contained in the Transit Area Plan.

As discussed above, eliminating Policy 3.8 and references to “density averaging” will help require developments to meet the adopted density and other requirements of the Plan and support the above General Plan policies.

- 2. The uses proposed in the specific plan amendment are compatible with adjacent uses and properties.*

The project is consistent with this finding because the proposed amendment does not contemplate any new or additional proposed uses. Eliminating Policy 3.8 for “density averaging”, and related amendments for consistency provides for the focusing and placement of the appropriate densities that were previously approved in 2008 and envisioned in the Transit Area Specific Plan Land Use Classifications.

- 3. The proposed specific plan amendment will not adversely affect the public health, safety and welfare.*

The project is consistent with this finding because the Transit Area Specific Plan was created to promote the orderly and safe development of the City, including appropriate intensity of development near Light Rail Stations and the BART Station; as well as near high traffic corridors such as Montague Expressway and Great Mall Parkway/Capitol Avenue. The proposed amendment does not change the proposed uses or land use designations approved in 2008 and will therefore, not adversely affect the public health, safety and welfare.

4. *The proposed specific plan amendment will not create internal inconsistencies within the specific plan.*

The proposed amendment to the Plan has been checked for internal consistency with other sections of the Plan. The elimination of Policy 3.8 for “density averaging” and related amendments for consistency will conform to other sections not being amended.

ENVIRONMENTAL REVIEW

The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines in that the project has no potential to cause a significant effect on the environment. Staff has determined that by eliminating Policy 3.8 for “density averaging” and related amendments for consistency has no potential to cause a significant effect on the environment since the amendment is a policy amendment has no direct connection on physical changes to the environment.

The Planning Division also recommends that the Planning Commission determine this project additionally exempt under CEQA Guidelines Section 15168(c)(2) because staff determined that the project is consistent with the certified Environmental Impact Report (EIR) for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council.

The land use classifications and density have already been established within the adopted Plan as set forth in the Environmental Impact Report (EIR) certified by the City Council on June 3, 2008.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on March 14, 2014. In accordance with Government Code Section 65091(4), because the notice would affect greater than 1,000 owners/occupants, an individual mailed notice was not sent. A public notice was also provided on the project site, on the City’s Website, www.ci.milpitas.ca.gov, and posted at City Hall.

CITY COUNCIL REVIEW

This project requires review by the City Council and is tentatively scheduled on the April 15, 2014 Council agenda.

CONCLUSION

Policy 3.8 was not intended to allow wholesale changes to the TASP land use plan. However, based on numerous discussions with TASP developers, it has become apparent that this policy is being utilized as a loop hole to circumvent the General Plan and Zoning amendment process. In summary, the proposed elimination of Policy 3.8 for “density averaging” and related amendments for consistency will allow for the better implementation of the Transit Area Specific Plan.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing; and
2. Adopt Resolution No. 14-012 recommending the City Council adopt an amendment to the Transit Area Specific Plan eliminating Policy 3.8 and other text changes related to “density averaging” for consistency (Specific Plan Amendment No. ST14-0001).

ATTACHMENTS

A: Resolution No. 14-012

B: Redline Specific Plan Exhibits