

**RESOLUTION NO. 14-012**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
RECOMMENDING THE CITY COUNCIL ADOPTS SPECIFIC PLAN AMENDMENT  
NO. ST14-0001 TO THE TRANSIT AREA SPECIFIC PLAN ELIMINATING POLICY  
3.8 AND REFERENCES TO “DENSITY AVERAGING”**

**WHEREAS**, on February 27, 2014, the Planning Division initiated a process to amend the Milpitas Transit Area Specific Plan to eliminate Policy 3.8 and references to “density averaging”.

**WHEREAS**, the Transit Area Specific Plan (Plan) was adopted in 2008 and envisioned nearly 7,000 dwelling units at build-out.

**WHEREAS**, on March 4, 2014, the City approved the adjustment of the Transit Area Impact Fee and adjusted the residential density at built-out to 6,500 dwelling units.

**WHEREAS**, since the adoption of the Plan over 3,000 dwelling units have been entitled and a hundreds are currently under construction.

**WHEREAS**, the Plan (Figure 3-1 and Table 5-1) includes land use classifications depicting residential densities ranging from as low as 12 dwelling units per acre to as high as 75 dwelling units per acre, with the highest densities nearest the Light Rail Stations and the BART station.

**WHEREAS**, Policy 3.8 in the Plan allows for contiguous developments to build at higher or lower residential densities than what is permitted under the Plan for each project site, provided the average density for the project sites are between the minimum and maximum under the Plan.

**WHEREAS**, Density averaging between projects have led to various concerns including conformance to density requirements under the General Plan, and Zoning Ordinance.

**WHEREAS**, the Planning Division proposes an amendment to the Plan to eliminate the Policy 3.8 and references “density averaging”.

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA and consistent with the certified Final Environmental Impact Report (EIR) for the Transit Area Specific Plan (State Clearinghouse No. 2006032091).

**WHEREAS**, on March 26, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** the Planning Division completed an environmental assessment for the project in accordance with the CEQA, and recommends that the Planning Commission determine this project exempt under CEQA Guidelines Section 15601(b)(3) in that there is no potential for this project to cause a significant effect on the environment.

The elimination of Policy 3.8 for “density averaging” and related amendments for consistency have no potential to cause a significant effect on the environment since the amendment is a policy amendment has no direct connection on the environment. The land use classifications and density have already been established within the adopted Plan and these amendments do not change that.

The Planning Division also recommends that the Planning Commission determine this project additionally exempt under CEQA Guidelines Section 15168(c)(20 because staff determined that the project is consistent with the certified 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 EIR certified by the City Council on June 3, 2008.

**Section 3:** Specific Plan Amendment [Section XI-10-57-02(G)(2)] - The Planning Commission makes the following findings based on the evidence in the public record in support of Specific Plan Amendment No. ST14-0001:

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

*b) 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.

*c) 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.

*d) 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.

***Section 4: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-012 recommending the City Council adopts*** Specific Plan Amendment No. ST14-0001 to the Transit Area Specific Plan eliminating Policy 3.8 and references to “density averaging” on pages 3-4, 3-10, 3-11, 3-17, 3-18, 5-50 and 5-53 as set forth in the attached ***Exhibit A*** and ***based on the above findings incorporated herein.***

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on March 26, 2014.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on March 26, 2014, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

**EXHIBIT A**

**Redline of Changes**

LEGEND

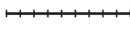
-  **General Commercial**
-  **Retail Transit Oriented**  
Community and Regional Retail; Hotels, Office. Maximum FAR of 2.5.
-  **Boulevard Very High Density Mixed Use**  
Permitted uses include Residential, Office, Commercial and Medical uses up to 1.5 maximum gross FAR, an FAR of 2.5 may be permitted on individual sites. 4-12 stories (20 stories with CUP). Residential use shall have 41 un/ac minimum ~~average~~ gross density; 60 un/ac maximum ~~average~~ gross density.
-  **Residential - Retail High Density Mixed Use**  
Residential, office, and/or hotel uses above ground floor retail and restaurants, 200 sq. ft of retail or restaurant use required for every residential unit. Residential density: 31 du/ac minimum ~~average~~ gross density; 50 un/ac maximum ~~average~~ gross density. 4-12 stories. (20 stories with CUP) Maximum FAR of 1.5; up to 2.5 FAR may be permitted on individual sites.
-  **Very High Density Transit Oriented Residential**  
41 un/ac minimum ~~average~~ gross density; 60 un/ac maximum ~~average~~ gross density; 4-6 stories; (12 stories on arterials, 20 stories with CUP) ~~gross densities of individual projects may be <41 or >60, provided that area development complies with average gross density~~; small local-serving retail, office, and live/work permitted at ground floor.
-  **High Density Transit Oriented Residential**  
21 un/ac minimum ~~average~~ gross density; 40 un/ac maximum ~~average~~ gross density; 3-5 stories; ~~gross densities of individual projects may be <21 or >40, provided that area development complies with average gross density~~; residential uses only.
-  **Transit Facilities**  
Underlying zoning to be Boulevard Very High Density Mixed Use if transit facilities are not built on this site.
-  **Industrial Park**
-  **Parks/Plazas/Community Facilities**
-  **Linear Park and Trails**
-  **Landscaped Front Yards and Buffers**
-  **Neighborhood Retail Locations**  
5000 sq. ft. of local serving retail required on the ground floor.
-  **Density Bonus**  
Increased density permitted on sites closest to BART and light rail. See table for detail about TOD Overlay District and TOD Density Bonus allowed with a CUP.
-  **Potential Hotel Sites**
-  **Potential Grocery Store Site**
-  **Proposed BART Line**
-  **VTA Light Rail Transit**
-  **Union Pacific Railroad and Railroad Spur**
-  **Potential Future Train Turn-around and/or Relocated Spur Track**
-  **Study Area**
-  **Pedestrian Connection**
-  **Pedestrian Bridge**

Figure 3-1  
Transit Area Plan

- ***Create landscape setbacks along Great Mall Parkway, Capitol Avenue, and Milpitas Boulevard.*** These are needed to buffer uses from heavy traffic.
- ***Create a landscape buffer along Piper Drive.*** This is needed to buffer residential development from the BART line and heavy rail trains.

## 3.2 LAND USE

Individual land use designations are established in order to achieve an overall mix and intensity of land uses that achieves the Plan’s primary objectives: support public investment in the BART extension; create a walkable community with jobs, stores, and recreation options near residences; avoid a negative impact on the City’s revenues; and meet market demand for new development over the next 20 years. Existing uses have a right to remain. Land use requirements only apply to changes of use and new development.

### LAND USE CLASSIFICATIONS

The Plan designates six new land use categories, two of which are mixed-use, two residential, and two commercial. These categories are similar to many existing land use designations used by the City, but these new ones allow and at times require higher densities. In addition, the Plan (Figure 3-1) applies a density bonus to allow greater density for the properties closest to the BART station. Some existing land uses are maintained with their current designations.

The new land use classifications and their basic development regulations (density, height, uses) are shown in Table 3-1. Densities for residential development are expressed in units per gross acre (see definitions later in this chapter). Densities for non-residential development are expressed in terms of floor area ratio (FAR).

~~On all sites throughout the Transit Area, densities can be averaged over an individual project which covers multiple parcels. Densities may also be averaged over separate projects, if so requested by developers and approved by the Planning Department, provided that legal instruments are recorded for individual parcels to ensure that the minimum and maximum densities established by the Plan are met.~~

#### **Boulevard Very High Density Mixed Use**

This classification is intended to provide high-density housing, retail, and employment along Montague Expressway with a landscaped boulevard character. Projects may include a wholly residential or non-residential concept or a project that integrates residential and non-residential uses vertically or horizontally.

Permitted uses include residential, office, commercial, and medical uses. Sites developed with a mix of uses, or non-residential uses, must adhere to the FAR maximum which ranges from 1.5 to 2.25. Residential projects shall have a minimum ~~average~~ gross density of 41 units per acre and can be built up to between 60 to 90 units per acre.

An FAR of 2.5 may be permitted on individual sites with approval of a conditional use permit by the Planning Commission. Special criteria would need to be met, including the following: (1) the proposed uses include a hotel or office uses that create substantial new jobs, and do not include residential uses; (2) the design of the project is of extremely high quality and is compatible with the scale of surrounding buildings; (3) there are no adverse traffic impacts beyond those studied in the Transit Area Plan EIR or the project will be required to mitigate such impacts individually; and (4) buildings do not shade public parks or plazas more than 30% between 10 AM and 3 PM as measured on March 15.

### **Residential - Retail High Density Mixed Use**

This district is intended to be a true mixed use area with retail, restaurants, and services on the ground floor, and residential or office uses on floors above. The residential density is a minimum ~~average~~ gross density of 31 units per acre and a maximum of between 40 to 60 units per gross acre. In addition, 200 square feet of retail or restaurant space is required per unit, using the minimum density (i.e. the requirement is based on the number of units required to meet the minimum density). Sites may be developed for office and hotel uses without residential development, although ground floor retail or restaurant square footage will still be required. For nonresidential projects, the maximum FAR ranges from 1.5 to 2.25. However there is no FAR limit for hotels. An FAR of 2.5 may be permitted on individual sites with approval of a conditional use permit by the Planning Commission.

### **Very High Density Transit-Oriented Residential**

Intended to create residential districts near BART and light rail stations, this designation requires housing to be built at an ~~average~~ density of at least 41 units per gross acre, up to a maximum of between 60 and 90 units per gross acre. Small local-serving commercial uses are permitted at the ground floor level, including retail, restaurants, and personal services uses.

### **High Density Transit-Oriented Residential**

A classification similar to the Midtown Plan's "Multifamily Very High Density" designation, these properties are intended for medium-density residential neighborhoods further from BART, at the interior of subdistrict neighborhoods. A minimum ~~average~~ gross density of 21 units per acre is required, up to a maximum of 40 units per acre. Residential and related uses are allowed, but not commercial uses.

***Policy 3.6: Encourage creativity in high-density residential design. Allow housing types, such as live/work lofts, that are not currently developed in the city.***

This guideline also exists in the Midtown Plan as Policy 3.8, and the Transit Area Plan strongly supports its enforcement by the City.

### Calculation of Minimum and Maximum Density

***Policy 3.7: Maintain the City’s policy of calculating residential density by dwelling units per gross acre, and floor area ratio (FAR) by gross floor area divided by gross site area. However, do not count land required to be dedicated for regional roadways as part of the total site area.***

The City calculates residential density and floor area ratio (FAR) of land use by using gross acreage. Section XI-10-2.41-1.1 of the Municipal Code defines gross acreage as:

*“The total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage.”*

The implication for the Transit Area is that properties that have new roadways, parks, or other public facilities designated on part of their land must include that acreage when calculating the resulting density or FAR of their proposed project. For example, a five (5) acre parcel of land is designated High Density Transit Oriented Residential with a minimum residential density of 21 units per acre and a maximum of 40 units per acre, but has one (1) acre designated as new roads and parkland. The number of allowed housing units is based on the original parcel size of 5 acres. As a result, between 105 and 200 housing units need to be built on the remaining 4 acres of land.

Three regional roadways that traverse the Transit Area will be widened (Montague Expressway and Capitol Avenue) or extended (Milpitas Boulevard), requiring land dedication. It is not appropriate to count this land area as part of a development site, because the roadways serve the region rather than the adjoining property.

Developers should consult the zoning map for the Transit Area, in Chapter 5, to see the underlying density designation for all properties. This will allow calculation of the gross density for private land designated for new roads, parks, and other public facilities on the Land Use Map.

~~***Policy 3.8: 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 areawide 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.~~

***Policy 3.9: Maintain the Midtown Plan’s gross floor area policy, which excludes all areas of a building devoted to parking from FAR calculations.***

This is in contrast to policy in the rest of the city, which excludes structured parking from FAR calculation only if it is located wholly underground.

### 3.3 CIRCULATION

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With its transformation from a low density industrial area to an urban residential and mixed-use district, the Transit Area will need an enhanced circulation network that accommodates the new land uses, smaller block sizes, pedestrian-oriented streets, and higher density development types. Streets will follow a hierarchy to ensure that regional traffic can reach destinations within and beyond the Transit Area, and at the same time residential areas will be safe and reasonably quiet places. With an emphasis on walkability and bicycling, connections will be multi-modal in their perspective. The future street system is shown in Figure 3-2.

#### AUTO CIRCULATION AND STREET CLASSIFICATIONS

The Transit Area is intended to be a series of walkable neighborhoods, as well as a major destination for workers and shoppers. While many trips to and from the Transit Area will be made by BART, VTA light rail, and bus, regional expressways will also move many people. In addition, the area is already crossed by several major thoroughfares which Milpitas residents and workers use to access destinations throughout the South Bay.

To successfully balance these different transportation objectives this Specific Plan recognizes three street classifications within the Transit Area: arterials, minor collectors, and local streets. These are shown in Figure 3-2, along with existing and proposed traffic signals. Detailed street sections and design requirements are provided in Chapter 5, and shall govern the design of streets within the Transit Area.

TABLE 5-1: DEVELOPMENT STANDARDS - Residential and Mixed Use Zones

Land Use Category	Boulevard Very High Density Mixed Use	Residential - Retail High Density Mixed Use	Very High Density Transit Oriented Residential	High Density Transit Oriented Residential	High Density Residential
<b>Proposed Zoning District</b>	<b>MXD3 and MXD3-TOD</b>	<b>MXD2 - TOD</b>	<b>R4-TOD and R5-TOD</b>	<b>R3-TOD</b>	<b>R3</b>
<b>Special Land Use Requirements</b>					
<b>Required Commercial</b>	None	200 square feet of retail, restaurant, or pedestrian-oriented commercial required per unit, using the minimum density.			
<b>Depth for Ground Floor Commercial Space</b>	75' Typical; 60' Minimum; 1-2 small tenant spaces with 25' depth permitted.				
<b>Density + Block Size<sup>1,2,&amp; 3</sup></b>					
<b>Density</b>	Maximum FAR: 2.5 with CUP.  MXD3 41-60 du/gross acre  MXD3-TOD 41-75 du/gross acre Max. FAR: 1.88	31-50 du/gross acre (minimum number of du may be reduced for existing parcels less than 20,000 s.f. with approval).  Max. FAR: 1.88	R4-TOD 41-60 du/gross acre  R5-TOD 41-75 du/gross acre	21-40 du/gross acre	12-20 du/gross acre
<b>Transit-Oriented Density Bonus</b>	MXD3-TOD Up to 25% additional density increase with Use Permit.	Up to 25% additional density increase with Use Permit.	R5-TOD Up to 25% additional density increase with Use Permit.	None	
<b>Block Size</b>	min 2.0 acres max 4 acres				
<b>Block Dimension</b>	Maximum 500 feet between publicly accessible paths of travel.				
<b>Building Height (See Figure 5-22)</b>					
<b>Maximum Building Height</b>	12 Stories on sites with frontage on Montague Expressway and Great Mall Parkway. Greater height up to 20 stories allowed with a Use Permit.	75 feet. 12 stories on sites with frontage on Great Mall Parkway. Greater heights up to 20 stories allowed with a Use Permit.	75 feet. 12 stories on sites with frontage on Capitol Avenue, Montague, Piper Drive, and Milpitas Boulevard Extension. Greater heights up to 20 stories allowed with a Use Permit.	75 feet.	60 feet. Up to 75 feet with a Conditional Use Permit.

TABLE 5-1: DEVELOPMENT STANDARDS - Residential and Mixed Use Zones

Land Use Category	Boulevard Very High Density Mixed Use	Residential - Retail High Density Mixed Use	Very High Density Transit Oriented Residential	High Density Transit Oriented Residential	High Density Residential
<b>Proposed Zoning District</b>	<i>MXD3 and MXD3 -TOD</i>	<i>MXD2 - TOD</i>	<i>R4-TOD and R5-TOD</i>	<i>R3-TOD</i>	<i>R3</i>
<b>Parks and Open Space</b>					
<b>Park Acreage Requirements (same as Midtown Specific Plan requirements)</b>	3.5 acres of parkland per 1000 population. Up to 1.5 of each 3.5 park acres may be satisfied by the provision of private recreational areas. The remaining 2.0 acres per 1,000 requirement must be satisfied by either dedication of land to the City for public parks and open space or payment of an in-lieu fee.				
<b>Additional Transit Area Plan Requirements</b>	Provide parks and trails in locations and acreage amounts as shown in Transit Area Plan. In addition, 20 percent of landscape buffers count towards park requirements, if they include trails or wide sidewalks connected to the Citywide Trail System.				
<b>Design of Buildings with Ground Floor Commercial Space</b>					
<b>Floor to Ceiling Height</b>	Minimum 18 ft. for Retail; 15 ft. for office				
<b>Ground Floor Windows</b>	Minimum 60 percent of Ground Floor Wall Area, between 3' and 8' above sidewalk.				
<b>Limits on Blank Walls</b>	Maximum 30 percent of Linear Frontage per Street; Maximum 25 feet in length				
<b>Building Entrances</b>	Minimum one entrance per 100 feet of frontage; Building Entrances must face the street.				
<b>Ground Floor Exterior Materials</b>	Must be tile, stone, brick, glass and other durable quality materials.				
<b>Wall Plane Articulation</b>	Wall Plane Recesses minimum 6-18 inches.				
<b>Ground Floor Elevations Relative to the Public Sidewalk</b>	Floor elevations no more than two feet from sidewalk level.				

Notes for Tables 5-1 and 5-2:

- ~~Policy 3.8, allows contiguous developments to building at higher or lower residential densities, so long as their average density falls between the designated minimum and maximum and provided that legal instruments are executed for individual parcels.~~
- An FAR of 2.5 may be permitted on individual sites (where noted in Table 5-1) with approval of a Use Permit by the Planning Commission. Special criteria would need to be met, including the following: (1) the proposed uses include a hotel or office uses that create substantial new jobs, and do not include residential uses; (2) the design of the project is of extremely high quality and is compatible with the scale of surrounding buildings; (3) there are no adverse traffic impacts beyond those studied in the Transit Area Plan EIR or the project will be required to mitigate such impacts individually; and (4) buildings do not shade public parks or plazas more than 30% between 10AM and 3PM as measured on March 15.
- For commercial projects, FAR shall be used as the measure of density. The density of residential projects shall be measured in units per gross acre. Ground floor retail, restaurant, and service uses do not count when calculating FAR.

When office, residential, and retail are combined in a single project, density shall be measured using FAR.