

## **FINDINGS AND RECOMMENDED SPECIAL CONDITIONS**

### **TIME EXTENSION NO. TE2006-2 for “S” ZONE APPROVAL AMENDMENT NO. SA2005-33, USE PERMIT AMENDMENT NO. UA2005-10 AND MAJOR TENTATIVE TRACT MAP NO. MA2005-3**

Apton Plaza Mixed Use Development  
230 North Main Street (APN 028-24-017 and -018)

**Planning Commission Recommended Approval:** January 24, 2007

#### **FINDINGS**

1. The amendments to the approved project will not create any environmental impacts not already considered in the Negative Declaration (EIA No. EA2003-1) adopted by the City Council on July 1, 2003.
2. The proposed project, as conditioned, is consistent with the General Plan and in compliance with policies 2.1-I-2 (Growth and expansion) and 2.a-I-12 (Residential Development) in that it is proposing a range of residential rental units in terms of size and cost and would be located within the already built environment.
3. The proposed project, as conditioned, continues to be consistent with the Mixed Use “MXD” and Transit-Oriented-Development “TOD” overlay district of the Milpitas Zoning Ordinance. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding development, both existing and future.
4. The proposed Use Permit for the exceedance of the setbacks, drive aisle width and a parking reduction for 28 spaces are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public and therefore, will not negatively impact the surrounding community.
5. The proposed Use Permit for exceedance of setbacks, drive aisle width and a parking reduction for 28 spaces provide public benefits of a more uniform building and greater landscape and street opportunities and utilization of smart growth trends while providing

#### **SPECIAL CONDITIONS**

1. TIME EXTENSION APPROVAL FOR: “S” Zone Approval Amendment No. SA2005-33 is for the final design of a 4-story, mixed use residential and retail development consisting of 93 residential units and approximately 3,000 square feet of retail lease space in accordance with the plans approved on July 13, 2005, and as amended by the conditions below. Any major 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 42.10 of the zoning code. (P)

2. **TIME EXTENSION APPROVAL FOR:** This Use Permit Amendment No. UA2005-10 is for exceedance of building setbacks along the portion of the north property to range from 6 to 30 feet, reduction in drive aisle width to 24 feet and for a parking reduction of 28 spaces (2 retail and 26 guest). Any modification to these development standard deviations will require a Use Permit Amendment by the Planning Commission. (P)
3. **TIME EXTENSION APPROVAL FOR:** This Major Tentative Parcel Tract Map No. MA2005-3 is to create 1 commercial and 93 residential condominiums within the proposed building located on parcel 28-24-017 and 018, as depicted on the approved Tentative Tract Map dated July 13, 2005, and as amended by the conditions of approval. (P)
4. **ENVIRONMENTAL ASSESSMENT.** Prior to building permit issuance, the applicant shall submit a Phase II Environmental Assessment to the Planning Division and abide by any appropriate regulatory agency requirements. No building permit of any type shall be issued until a “Case Closure” or completion of site remediation letter from the appropriate regulatory agency is submitted to the Planning Division. (P)
5. **RETAIL.** No tallow generating businesses shall be permitted to occupy the retail tenant spaces. (P)
6. **PARK FEES.** Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee in the amount of \$297,357. (P)
7. **TRAFFIC IMPACT FEE.** Prior to building permit issuance, the applicant shall contribute a “fair share” traffic impact fee in the amount of \$17,844 (based on a Midtown impact fee of \$113 per peak hour trip and a Montague Expressway impact fee of \$903 per peak hour trip). (P, T)
8. **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)
9. **PJ ACCOUNT.** If at the time of application for certificate of occupancy there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
10. **DENSITY BONUS.** The City shall implement Section 54.20-3 (A-2) (Density Bonus) with respect to affordable housing incentives which shall include a bonus of 4 dwelling units above the 89 units allowed in “MXD-TOD” district and concessions involving a setback deviation of the building along Railroad Court and a reduction in drive aisle width. The total number of 93 “for-sale” condominium units shall be provided in the residential development. (P)
11. **AFFORDABILITY.** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 19 affordable housing units (at least 20% of allowed units without a density bonus) will be available at a housing cost affordable to very low and moderate-income households:

Very Low	9	7-one bedroom units 2-two bedroom units
Moderate	10	5-one bedroom units 5-two bedroom units
<b>TOTAL</b>	<b>19</b>	

12. **AFFORDABILITY.** Prior to building permit issuance, the applicant shall provide to the City of Milpitas Redevelopment Agency, Executive Director for review and approval, a dispersement plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features and design and amenities as the fair market rate units in the development. (P)
13. **AFFORDABILITY.** 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 “for-sale” condominium units. The Restriction Agreements shall be approved as to form by the Milpitas City Attorney’s Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the “for-sale” condominium units shall remain in effect for fifty-five (55) years of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (P)
14. **AFFORDABILITY.** 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)
15. **AFFORDABILITY.** The established affordable purchase price for the “for-sale” condominium units 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 purchase price established for the “for-sale” condominium units shall not exceed the maximum allowable purchase price for “very low” households as defined in the above code sections. Said sale price shall be approved for consistency with the definitions by the Housing Division staff. (P)
16. **GENERAL.** The applicant shall comply with Planning Commission Resolution No. 168, a resolution of standard conditions for commercial development. (Items #1-4, 9, 11 (P))
17. **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)
18. **BUILDING ELEVATIONS.** Prior to building permit issuance, the applicant shall revise the elevations in order to address the following:
  - a) East elevation: indicate how far vertical elements project from building; redesign the change roof height created by the odd roofline; center windows on the two towers or add a second column of windows to balance; plane windows should match multi-paned windows used throughout the project; and incorporate stone veneer to projections.
  - b) North elevation: relocate garage vents at northwest corner further west closer to garage entrance and use stone veneer at this corner; enhance the garage exit feature by possibly adding a projection rather than flush, recess or adorn it; show trash enclosure on elevation; windows and balconies shown above and to the right of the garage are unbalanced; clarify what vertical vent-like elements are left of the corner tower balconies and provide details.
  - c) South elevation: windows with balconies are unbalanced; clarify if garage vents are going to remain along this elevation; single-paned windows shown to the right of the commercial units shall match multi-paned windows used throughout the project.
  - d) West elevation: enhance the garage entry feature by possibly adding a projection rather than flush, recess or adorn it.

- e) All elevations: reduce height of all towers to 60 feet or less; all windows must be recessed (minimum 4-6 inches); along the building's base, use veneer treatment in areas without garage vents and around garage entrance and exit and work with staff with vent placement; modify all elevations to be consistent with the floor plans of levels, especially at the southwest corner near the retail tower (planters are not shown on elevations); use of canopies is inconsistent especially on the south facing windows and on the projecting elements; provide details or typical catalogue examples of all canopies, decorative metal bracing, railings, windows, and doors proposed in order to see how these elements meet the building, their thickness, material, color, etc.; and provide material samples of stone veneer and pavers and details of all light fixtures. (P)
19. FLOOR PLAN. Prior to building permit issuance, the applicant shall submit a revised floor plan of the garage showing the following:
- a) Relocate the parking space in the southeast corner above the utility storage room and closest to the trash area and service elevator and stairs elsewhere in the garage. This space must be relocated and no loss of parking (no less than 173 spaces) may result.
  - b) Clearly marking the directionality of each driveway with appropriate signage and striping.
  - c) Stripe the 15-foot long area south of the garage entrance on North Main Street as "No Parking" to allow an adequate right turn radius off of northbound N. Main Street into the garage.
  - d) Deepen the throat of the garage entrance and show the security gate and card reader placement on the plans in a location that allows queuing for 2 vehicles off of the street, approximately 40 feet.
  - e) Incorporate some of the 10 required bicycle spaces into the parking garage for the residents.
  - f) Clearly mark each parking space for the assigned unit (including the handicap space).
  - g) For retail space 2 provide a rear exit door into the garage for trash enclosure access purposes. All trash must be taken through the garage and not out the front door along the sidewalk. (P)
20. LIGHTING. Prior to building permit issuance, the applicant shall submit a lighting plan for the building, site and streetscape pedestrian fixtures and details for light poles and other light fixtures to the Planning Division for review and approval. (P)
21. ROOFTOP EQUIPMENT. Prior to building permit issuance the plans shall show the locations of all HVAC units, skylights, sky tunnels and other rooftop equipment and details and include a cross section to ensure all equipment is screened. (P)
22. SIGNAGE. Prior to the approval of any signage for the multi-tenant, mixed-use development, a sign program application shall be submitted for Planning Commission approval. (P)
23. IRRIGATION. Prior to building permit issuance, the applicant shall submit a revised irrigation plan for all landscape areas (podium courtyard, building perimeter planters and streetscape) and include details of irrigation system for each planter (i.e. show all sprinkler head/bubbler locations). (P)
24. LANDSCAPE. Prior to building permit issuance, the applicant shall submit a revised landscape plan that includes the following:
- a) Reduce the number of canopy trees in the courtyard and replace with equal number, if not more, trees of a species with a smaller canopy.

- b) Provide more shade accommodating tree species in both the northern and southern courtyard locations since these areas will be in shade most of the year.
  - c) Clarify if real (grass) turf is proposed and if not remove turf areas altogether.
  - d) If driveway width can accommodate, add a narrow landscape area along west side of trash enclosure next to garage exit and plant a vine or other climbing species to screen the solid bare wall.
  - e) The numerous shrubs listed on the landscape plans need to be individually indicated in the planters to demonstrate a tiered landscape with taller shrubs in the back that adequately screen the vents and “ground” the building and increasingly shorter shrubs towards the front of the planter.
  - f) Provide additional or better screening shrubs around locations of utilities in planters along building frontages to reduce visual impacts of utilities and garage vents, which have increased in size. (P)
25. **GRAFFITI.** The property owner shall continue to comply with the City’s Neighborhood Preservation Ordinance regarding the public nuisance issue of graffiti on the site. Should graffiti become an issue again in the future, prior to demolition of the abandoned buildings, the property owner shall comply with City’s standards of removal or the City shall take action to obtain a court order to enter the property and abate the graffiti. Legal costs, staff time and all other costs associated with resolving this matter will be passed on to the property owner. Contact Chris Schaller at (408) 586-3078. (P, NP)
26. **EROSION CONTROL.** 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)
27. **EROSION CONTROL.** During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD:
- 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 feet freeboard level within their truck beds.
  - 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.

- 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)
28. **STORMWATER.** Prior to any permit issuance, the applicant shall submit a storm water control plan for the entire site including the courtyard that to the extent feasible, designs the project facilities to incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999), including, but not limited to fossil filters, grading of impervious areas to landscaping and roofs draining to landscaped areas. (P)
  29. **PARKING.** Per Building Department Notes to Applicant, provide accessible (handicap) parking for guests and retail onsite if occupancy of Apton Plaza is achieved before the public parking facility is constructed near the library. This may require an interim plan to allow public access to the garage with signage indicating handicap spaces available inside the garage. This also may prevent some units from being occupied in order to free up the accessible parking spaces. (P)
  30. **COURTYARD.** Prior to building permit issuance the plans shall include details of benches, tables, fountains and other amenities in the courtyard area. (P)
  31. **SOUNDWALL.** Prior to building permit issuance the plans shall include an elevation and details (material and colors) of the soundwall along the eastern property line. (P)
  32. **STREETSCAPE.** Prior to building permit issuance, the applicant shall submit a revised streetscape plan that includes all of the streetscape amenities including the following revisions:
    - a) Clarify streetscape trees and trees in planter along building on Weller are Bradford Pear (*Pyrus Calleriana* "New Bradford") not the Aristocrat and all other streetscape trees are European Hackberry (*Celtis Australis*) not Chinese Hackberry; as noted on plans.
    - b) Include pedestrian lights along all street frontages, interspaced with street trees with a spacing to achieve an average of 1-foot candle (approximately between every two trees).
    - c) Final streetscape design and materials along Weller Lane must compliment and match the final design of the Library side. (P)
  33. **TRASH ENCLOSURE.** Prior to building permit issuance, the applicant shall submit elevations for the exterior trash enclosure. (P)
  34. **TRASH MAINTENANCE.** The trash bins and trash/recycling enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
  35. **TREE REMOVAL.** Prior to any protected tree (36-inch circumference or larger) removal, the applicant shall obtain a tree removal permit from the Trees and Landscape section of Public Works Department. (P)
  36. **BUILDING COLOR.** Prior to building permit issuance the applicant must submit actual samples of the colors proposed and colored renderings of the other elevations. The final color schemes for the elevations shall be to the approval of the Planning Staff. (P)
  37. **ROOF MATERIAL.** Prior to building permit issuance the plans shall indicate a slate or concrete tile or other high quality roof material (not asphalt composition) that complements the building in terms of style and color. (P)

38. UTILITIES. 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)
39. LAND SWAP. Prior to final map recordation, the properties which are subject to the land exchange agreement between the City and developer for the portion of Railroad Court, N. Main Street, Weller Lane, Winsor Street and the Southerly portion of the project site shall be conveyed in fee to each party. Alternatively, the developer shall acquire the necessary land not currently owned by the developer, to make up the proposed subdivision distinctive boundary. (E)
40. HOMEOWNERS ASSOCIATION. Prior to final map recordation, the developer shall establish a homeowner association to define responsibilities, regulations and restrictions that apply to both residential and commercial entities. The homeowners association shall be responsible for the maintenance of the landscaping, walls, private streetlights, 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)
41. COMMUNITY FACILITIES DISTRICT. Prior to final map recordation developer shall submit an executed petition to annex into, with respect to the property, the special taxes levied by a Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. No map will be recorded without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. 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)
42. COMMUNITY FACILITIES DISTRICT. Prior to issuance of any building permit, all submitted petitions to annex into the CFD shall be finalized. The developer/property owner shall comply with all rules, regulations, policies, and practices established by the City with respect to CFD including, without limitation, requirements for notices and disclosure to future owners or residents. (E)
43. CONDOMINIUM PLAN. Prior to condominium plans recordation, the developer shall prepare and submit condominium plans for City review. (E)
44. TENTATIVE MAP. Make changes as noted on Engineering Services Exhibit "T"(dated 7/5/2005) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)
45. FINAL MAP. Prior to final map recordation developer shall submit to the City a digital format of the final map (AutoCAD format). To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83 (zone 3), and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. (E)
46. FINAL MAP. Prior to issuance of any building permit, the final map shall be recorded. (E)

47. FINAL MAP. The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes, as shown on the Engineering Services Exhibit "T", dated 7/5/2005. (E)
48. DEVELOPMENT FEES. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
49. LAND SWAP. This approval is conditioned upon:
- a) The developer executing the land exchange agreement with the City to exchange properties as shown on Engineering Services Exhibit "S" dated 6/22/04 and conveying the properties pursuant to the land exchange agreement.
  - b) No later than concurrently with the conveyance of land to applicant pursuant to the land exchange agreement with the City to exchange the properties, as shown on Engineering Services Exhibit "S" dated 6/22/04, the applicant shall compensate the City for the amount by which the fair market value of land conveyed to applicant exceeds the fair market value of land the applicant conveys to City, taking into consideration the acreage of the land.
  - c) The City Council adopted a Resolution of Vacation of portions of Weller Lane, North Main Street and Railroad Avenue since this land is proposed to be incorporated into the project, as shown on Engineering Services Exhibit "S" dated 6/22/04. Prior to building permit issuance, the Resolution of the partial vacations of Weller Lane, North Main Street and Railroad Court as public roadway and public utility easement shall be recorded. (E)
50. FLOOD ZONE. Prior to any building permit issuance, the developer shall obtain a Letter of Map Amendment (LOMA) from FEMA to remove that portion of the project site that will become part of the property as part of the land-exchange with the City, from Special Flood Hazard Zone area. The underground parking structure as proposed is not permitted within the existing Special Flood Hazard Zone AH (elevation 12). (E)
51. PARKING. No on-street parking will be permitted on Weller Lane between Winsor and N. Main Street. Applicant shall install necessary no parking signs along that portion of Weller lane. (E)
52. PUBLIC IMPROVEMENTS. As provided for in the Land Exchange Agreement, the developer shall pay an in-lieu fee for the cost of the relocation of the wet Public Utilities (storm, water, sewer) at Weller Lane and a portion of the Main/Weller intersection signal modifications. The developer's obligation for payment in-lieu of designing and constructing the required improvements is set at \$144,910. In addition to the foregoing, developer shall design and construct any lateral connections to Public Utilities, which are necessary to provide services to the subject property. The developer shall design and install all improvements north of the curb and gutter along Weller, including the north curb and gutter, to the satisfaction of the City Engineer. All the streetscape improvements on the North side of Weller, including but not limited to street trees, decorative sidewalk paving, and street furniture such as benches, pedestrian lighting, bike shelters/racks, tree well grates and garbage receptacles, shall be consistent with the south-side improvements. The developer shall coordinate the design and construction of these improvements with the library Project. The in-lieu fee does not cover the cost of the removal of the abandoned public utility pipelines. The developer is responsible for the cost of the removal if deemed necessary for the development of the project. (E)
53. PUBLIC IMPROVEMENTS. Prior to any building permit issuance, the developer shall obtain design approval and provide a bond for all necessary public improvements along N. Main Street and Railroad Court, including but not limited to curb and gutter, pavement, sidewalk, undergrounding of existing overhead utilities, street tree planting,

- signage and striping, bus stops, street lights, fire hydrants, storm drain, sewer and water services, and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, and garbage receptacles along N. Main Street, and Railroad Avenue, as further shown on Engineering Services Exhibit "S", dated 6/22/2004. The developer shall also design and construct all improvements north of the curb and gutter along Weller, including the Weller Lane north curb and Gutter. The applicant shall construct subject improvements prior to building occupancy permit issuance. These required improvements shall comply with the City's Development standards and Design guidelines and Streetscape plans approved for Milpitas Midtown Specific Plan. 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. To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83, and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. The developer shall also execute a public improvement agreement, the performance of which shall be secured in an amount equal to 100% of the City Engineer's estimate of the construction cost for faithful performance and 100% of the City Engineer's estimate of the construction cost for labor & materials. (E)
54. **CONSTRUCTION STAGING.** The developer shall coordinate its construction schedule and activities with the City's Library project. No portion of City's property within the proposed library site will be available for construction staging without City's prior written approval. (E)
55. **UTILITIES.** Prior to building permit issuance, developer shall design all above ground utilities on Weller Lane (except for fire equipment which will remain in the landscape planter again south façade) to be relocated to a common area near the southeast corner tower. The plans shall include details of proper screening of the equipment without precluding rear building access. (E)
56. **UTILITIES.** Prior to building occupancy permit issuance the developer shall underground all existing wires on the utility poles number 2 to 5, and remove poles number 3, 4 and 5, as shown on the Engineering Services Exhibit "S", dated 6/22/2004. All proposed utilities within the proposed development shall also be undergrounded. Within 60 days of City Council approval of this project, the developer shall make an application with PG&E for its service connections to this site. The applicant is also required to design, construct and coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E. If mutually agreed, the City may underground the overhead wires between poles 2 and 5 and the developer is required to reimburse the City for the actual cost of this undergrounding. The undergrounding of overhead utilities is not covered by the fees described in Condition No. 52. (E)
57. **GRADING PLAN.** At the time of building permit plan check submittal 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 including overland flow as shown on the existing federal flood map. 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 any building permit issuance. (E)
58. **STORMWATER.** 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 that disturb one acre 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)

59. UTILITIES. 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)
60. UTILITIES. 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)
61. UTILITIES. 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) Water Service Agreement(s) for water meter(s) and detector check(s).
  - b) 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)

62. SITE DISTANCE. 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)
63. UTILITIES. In accordance with Chapter 5, Title VIII (Ord. No. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
  - a) 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 submittal. 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. (E)

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

64. UTILITIES. All existing on-site 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. (E)
65. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall construct trash enclosure(s), for Solid Waste Services. City Engineer's review and approval is

required prior to construction of the trash enclosure. The proposed trash enclosure must meet the BFI criteria to support self-contained, roll-off compaction equipment for separate recycle and trash services, as listed below. Applicant advised that the following special conditions to support self-contained, roll-off compaction equipment for separate recycle and trash services shall be required due to limitations of enclosure location and mixed-use development:

- a) Use of two, 25 cubic yard capacity, self-contained, roll-off compactors shall be used; one for trash and one for recyclables.
- b) Enclosure construction to include the following:
  - i. Interior dimensions of 23-feet X 24-feet.
  - ii. Walls and ceiling no lower than 10-feet in height.
  - iii. Conduit to support compactor hydraulics.
  - iv. Beam at inside enclosure median to support 2 sets of 12-foot length gates (doors at 6-feet each).
  - v. J-hooks with receiving holes at opened and closed positions for each gate.
  - vi. Compactor-compatible ground rails installed and extending 2-feet beyond and under the gates.
  - vii. Compactor-compatible 3 cubic yard, "pushable/trainable" front load bins.
- c) Reinforced concrete pad for enclosure and service access shall:
  - i. Be minimum of 8-inch thick and accommodate not less than 60,000 pounds.
  - ii. Provide no greater than 2% slope at walkway between curb-cut and enclosure wall.
- d) All other enclosure standards shall be required per the Development Guidelines for Solid Waste Services.
- e) Service Frequency: Recycle and trash compactors may be placed on "on call" service during first occupancy phase. Estimated service frequency for recycle compactor at full occupancy is twice a week. Estimated service frequency for trash compactor at full occupancy is once a week. Scheduled once-a-week frequency shall apply for trash compactor upon achievement of 90% occupancy.
- f) Effective Recycling Program Participation: Recycling compactor shall be charged at the higher, trash rate should "contaminates" (materials not accepted in City of Milpitas/BFI Residential Recycling Program), exceed 20% of each collection.
- g) On-site Recycling Program Management: Adequate space for recycling shall be maintained within the residential "Trash Rooms" and commercial waste area, including effective separation from trash and liquids.
- h) On-site Recycling Program Promotions: Residents and commercial tenants shall be advised of effective recycling program participation on a move-in and annual basis by the property manager.
- i) Location of trash chutes and rooms is acceptable. Trash rooms shall not be less than 6-feet x 9-feet INTERIOR dimensions. (E)

66. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for both commercial and residential use:

- a) Maintain an adequate level of service for trash collection.

- b) Maintain recycling services including separate services for beverage containers.

After the applicant has started its business and building is occupied, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found 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)

- 67. ENCROACHMENT PERMITS. Prior to any work within public right of way or City easement, the developer shall obtain necessary encroachment permit(s) from City of Milpitas Engineering Division. (E)
- 68. VACATION. Prior to any permit issuance, the developer shall successfully process an application through the City to vacate that excess portion of the existing Public Service Utility Easements along vacated Weller Lane, N. Main Street and Railroad Avenue. (E)
- 69. TIME EXTENSION. The executed agreements and conditions of approval associated with this project are based on the current cost sharing and coordination of all parcels proposed for development in this immediate area. Therefore, any future request for a time extension will necessitate re-review of the agreements and conditions of approval for possible modification to address changed circumstances. (P) "S" Zone Approval Amendment No. SA2005-22 for various modification to a previously approved 4-story, mixed use residential and retail development consisting of 93 residential units and approximately 2,633 square feet of retail lease space in accordance with the plans approved on May 23, 2007, and as amended by the conditions below. Any major 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 42.10 of the zoning code. (P)
- 70. Prior to building permit issuance, the applicant shall paint and texture the parapet wall located at the south and north elevation to match the roof material.
- 71. The applicant shall utilize a lower profile vent for the proposed trash chute vents shown on the south elevation. (P)
- 72. Prior to building permit issuance, the applicant shall include decorative scoring on the southeast and northeast towers to be consistent with the treatment on the other three towers located at the west elevation and the northwest and southwest corner elevations. (P)
- 73. Prior to building permit issuance, the applicant shall redesign the chimney exhaust stacks so that they are equal in size and height. (P)
- 74. Prior to building permit issuance, the applicant shall maintain solid rails at the four sections where there are a group of three chimney exhausts to provide architectural relief from the lineal lines and maintain good visual interest. (P)
- 75. The applicant shall submit samples of the alternative colors schemes with construction drawing for Planning Division review and approval. Color schemes shall be in keeping with earth tones palette. (P)
- 76. Prior to building permit issuance, the applicant shall provide two service rooms for the trash and recycling chutes per floor and show the locations on the construction drawings. Applicant may submit a written statement demonstrating that the project could be accommodated with one service room per floor. The statement must include specifications for the maintenance and operations of the trash and recycling chutes. Specifications must demonstrate sufficient service capacity to accommodate the trash flow, frequency of pick-ups, and housekeeping of the service rooms and chutes. Applicant is advised that submission of said statement does not guarantee approval. Service rooms and chutes shall be

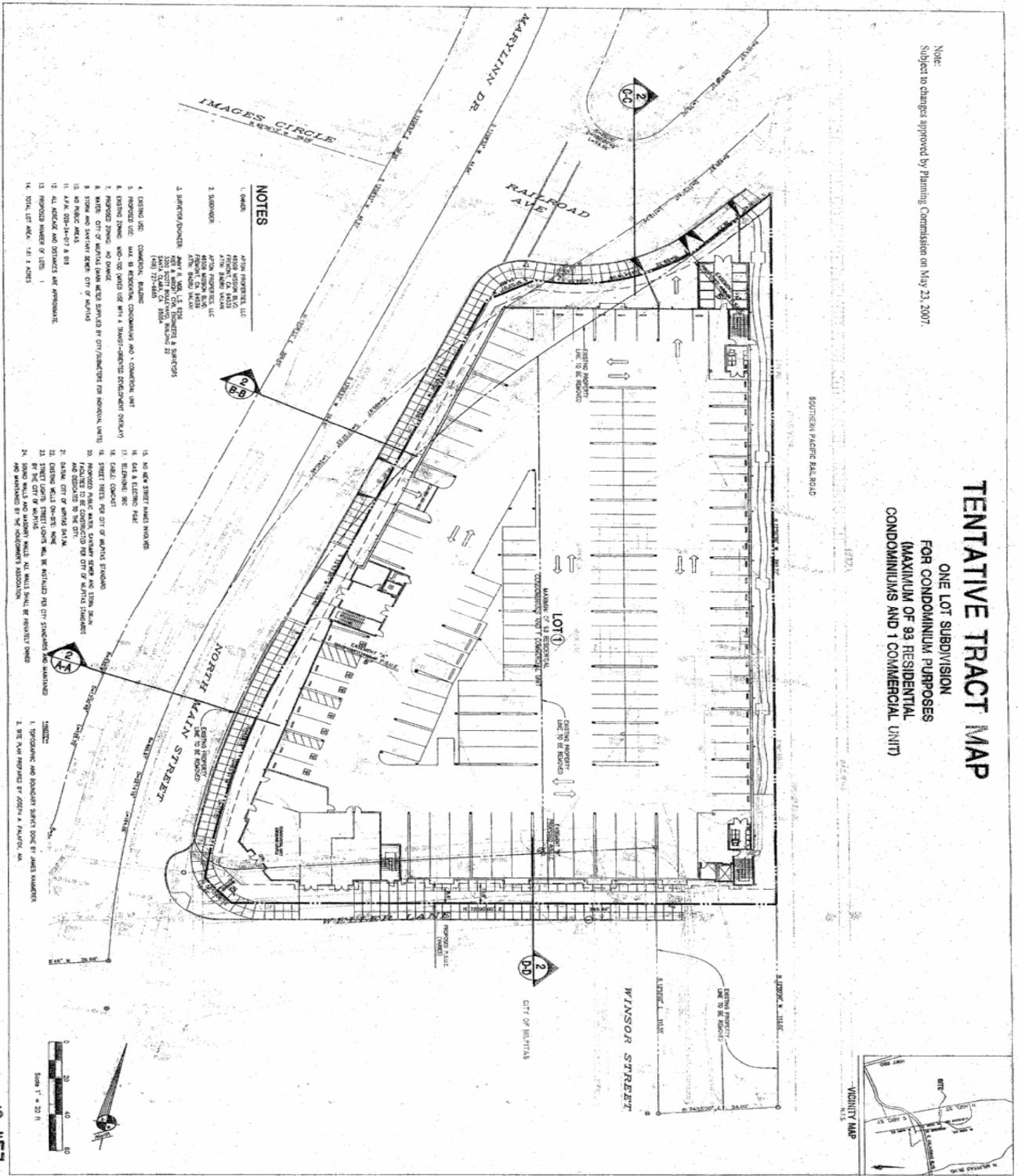
maintained in perpetuity to avoid accumulation of garbage and debris within the service rooms and abutting hallways. Provisions for the maintenance and operations of the trash chutes shall be included in the CC&Rs. (P) (E)

77. This approval is subject to all the conditions previously approved by the Planning Commission and City Council relating to "S" Zone Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and the Major Tentative Parcel Map No. MA2004-4. (E)
78. Prior to building permit issuance, the developer shall incorporate the changes shown on Engineering Services Exhibit "S" (dated 5/18/2007) in the design plans, and submit plans for review and approval. (E)

Note:  
 Subject to changes approved by Planning Commission on May 23, 2007.

# TENTATIVE TRACT MAP

ONE LOT SUBDIVISION  
 FOR CONDOMINIUM PURPOSES  
 MAXIMUM OF 93 RESIDENTIAL  
 CONDOMINIUMS AND 1 COMMERCIAL UNIT



### NOTES

1. OWNER: APTON PROPERTIES, LLC  
 1000 WILSON AVE  
 APTON, CALIFORNIA 95026
2. SUBDIVIDER: APTON PROPERTIES, LLC  
 1000 WILSON AVE  
 APTON, CALIFORNIA 95026
3. SURVEYOR/ENGINEER: JAMES W. HANSEN, CIVIL ENGINEER  
 3350 SCOTT BOULEVARD, BUILDING 22  
 SANTA CLARA, CALIFORNIA 95054
4. EXISTING USE: COMMERCIAL
5. PROPOSED USE: MAX 30 RESIDENTIAL CONDOMINIUMS AND 1 COMMERCIAL UNIT
6. EXISTING ZONING: MDC-10 (MEDIUM DENSITY RESIDENTIAL)
7. PROPOSED ZONING: MDC-10 (MEDIUM DENSITY RESIDENTIAL)
8. WATER: CITY OF MILPITAS WATER SUPPLIED BY CITY/INDIVIDUAL FOR INDIVIDUAL UNITS
9. SEWER AND SANITARY SEWER: CITY OF MILPITAS
10. NO PUBLIC UTILITY
11. ALL UTILITIES SHOWN ARE APPROXIMATE
12. ALL UTILITIES SHOWN ARE APPROXIMATE
13. TOTAL LOT AREA: 123,100 SQ. FT.
14. TOTAL LOT AREA: 123,100 SQ. FT.
15. NO NEW STREET NAMES PROPOSED
16. GAS & ELECTRIC FEES
17. TELEPHONE FEES
18. CABLE CONDUIT
19. STREET WIDTHS PER CITY OF MILPITAS STANDARD
20. PROPOSED LOT SIZES PER CITY OF MILPITAS STANDARD
21. EXISTING CITY OF MILPITAS
22. EXISTING CITY OF MILPITAS
23. EXISTING CITY OF MILPITAS
24. SOUND WALLS AND SOUND BARRIERS SHALL BE INSTALLED PER CITY STANDARDS AND MAINTAINED AND FINANCED BY THE DEVELOPER'S CONTRIBUTION.
25. TYPING AND BOUNDARY SURVEY DONE BY JAMES W. HANSEN
26. THE PLAN PREPARED BY JAMES W. HANSEN, CIVIL ENGINEER

13-457

13-457

**TENTATIVE TRACT MAP**  
 FOR: APTON PROPERTIES  
 NORTH MAIN STREET  
 CALIFORNIA

**KIER & WRIGHT**  
 CIVIL ENGINEERS & SURVEYORS, INC.  
 3350 Scott Boulevard, Building 22 (408) 727-6665  
 Santa Clara, California 95054 FAX (408) 727-5641

13-457

