

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, APPROVING SITE DEVELOPMENT PERMIT AMENDMENT SA08-0022, MAJOR TENTATIVE MAP AMENDMENT TM08-0002, AND PLANNED UNIT DEVELOPMENT PERMIT AMENDMENT PA08-0001 FOR A PROJECT LOCATED AT MURPHY RANCH ROAD AT SANDISK DRIVE

WHEREAS, on November 6, 2007, the City Council approved Fairfield Residential LLC’s plan for the development of a 21.73 acre parcel along the west side of Murphy Ranch Road in Milpitas, California, that included an apartment building containing 374 units, 65 townhome buildings providing 285 units, and approximately two acres of publicly accessible park area; and

WHEREAS, on July 25, 2008, Fairview Murphy Road LLC submitted an application to modify the previously granted land use approvals for said development. Specifically, the applicant sought a Planned Unit Development Amendment, a Site Development Amendment, and the adoption of a Tentative Map that would provide for certain modifications to the townhouse component of the development, such as a revised site design for the 285 townhome units, tandem parking, and modifications to open space and setbacks in the townhouse area (“Project”); and

WHEREAS, on December 10, 2008 the Planning Commission held a noticed public hearing on the Project, at which time the Commission considered a written staff report, plans and all other oral and written comments presented to them. Based on this evidence, the Planning Commission recommended that the City Council approve the Project, subject to several additional conditions of approval; and

WHEREAS, the City Council finds that the proposed amendments to the previously issued approvals do not change the overall unit count of the proposed townhouse component of the development and impose relatively limited changes to the parking, set back and other aspects of the development, and are therefore exempt from CEQA pursuant to CEQA Guideline 15162, since all potentially significant effects have been adequately analyzed in the previous Final Environmental Impact Report, dated November 2007, and other environmental documents for the original project, pursuant to applicable legal standards, and/or have been avoided or mitigated pursuant to those earlier environmental documents; and

WHEREAS, pursuant to Milpitas Municipal Code XI-10-54.07, in order to grant a Planned Unit Development permit, the Planning Commission and City Council must determine that the proposed development will result in an intensity of land utilization no higher than and standards of open space at least as high as permitted for such development in the General Plan, Zoning ordinance and Subdivision Ordinance. Further, the development must meet all requirements set forth by the California Environmental Quality Act and the Milpitas General Plan Land Use Element as it relates to traffic, land use and density. The proposed project meets the requirements of this section; and

WHEREAS, on December 10, 2008, the City Council held a duly notice public hearing on the Project and considered evidence presented by City staff and other affected parties, including but not limited to the materials and evidence presented to the Planning Commission below.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

- Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.
- Section 2:** The Project is in the public interest.
- Section 3:** The City Council makes the following findings as required for approval of a Site Development Permit Amendment:
 - A) The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
 - B) The project is consistent with the Milpitas Zoning Ordinance.

- C) The project is consistent with the Milpitas General Plan.
- D) Development of the Project under the Planned Unit Development standards of the Milpitas Municipal Code will result in a public benefit not otherwise attainable by application of the regulations of general zoning districts.

Section 4: The City Council makes the following findings as required for approval of a Planned Unit Development Permit Amendment:

- A) Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.
- B) The proposed Planned Unit Development is consistent with the Milpitas General Plan; and
- C) The proposed development will be in harmony with the character of the surrounding neighborhood and will no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction or loss of privacy that are not mitigated to acceptable levels.

Section 5: The City Council makes the following findings as required for approval of an amended tentative map:

- A) The proposed subdivision (a 29-lot tentative map), its design and improvements are consistent with the General Plan of the City of Milpitas, as it is subdividing land into smaller parcels to accommodate more compact development and higher densities, promoting in-fill development in the incorporated areas of the City, and increasing the variety of available housing types.

Section 6: The City Council approves the applications **PA08-0001, TM08-0002** and **SA08-0022**, subject to the attached conditions of approval (Exhibit A).

PASSED AND ADOPTED this _____ day of _____ 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A

CONDITIONS OF APPROVAL

Major Tentative Map No. TM08-0002, Planned Unit Development No. PA08-0001 and Site Development Amendment No. SA08-0022

A request for approval of a Planned Unit Development Amendment and Site Development Amendment which includes a revised site design for 285 townhome units, tandem parking, modifications to open space and setbacks.

SPECIAL CONDITIONS OF APPROVAL: PLANNING

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials board approved by the City Council on January 6, 2009, in accordance with these Conditions of Approval. (P)
2. Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
3. The project approval shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued. (P)
4. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of the project if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
5. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
7. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place. (P)
8. LANDSCAPE: All landscape planters adjacent to vehicle parking areas or travel lanes shall be contained by a full depth (6" above AC to bottom of structural section of adjacent paving) concrete curb. Where landscape planters abut a public street, a 24-inch deep water barrier shall be installed behind the curb. (P)
9. MECHANICAL EQUIPMENT: All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts. (P)
10. ROOFTOP EQUIPMENT: Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets. (P)
11. STREETS "F" AND "D": Streets "F" and "D" shall be constructed to match "22 Travel Way, Site Plan Revision" dated December 4, 2008. This revisions shows:
 - Additional landscaping area along the street and a minimum 3 foot landscape buffer between the porch and the edge of pavement.
 - The street, landscaping, and walkways are all at the same elevation (no curbs)
 - The streets are finished with decorative concrete or of a similar finish to be reviewed and approved to the satisfaction of the Director of Planning and Neighborhood Services Director prior to issuance of building permit.

12. BUILDING SETBACK: 7 foot minimum (building to edge of pavement) 3 foot minimum (porch to edge of pavement)
13. LANDSCAPING: Applicant shall revise the landscape plan to include additional foliage along Murphy Ranch Road perimeter to the extent possible and to the satisfaction of the Director of Planning and Neighborhood Services. (Planning Commission 12/10/08)
14. LEVEE IMPROVEMENT: To the satisfaction of the Santa Clara Water District and the City of Milpitas, the applicant shall place base rock, decomposed granite or a similar material on the top of Coyote Creek Levee in order to allow pedestrian use. (Planning Commission 12/10/08)

PUBLIC WORKS

1. 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.
2. Prior to issuance of any building permits, the 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.
3. At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development.
4. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents.
5. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along Murphy Ranch Road frontage, including but not limited to, the entire width of Murphy Ranch Drive frontage pavement restoration, curb, gutter, new sidewalk installation, new median installation, signage and striping, street lights, fire hydrants, bus stop, Coyote Creek slope landscaping, Bellew Pump Station Improvements, proposed public park and Hetch hetchy park improvement, Coyote Creek trail access improvements, storm drain, sewer and water services, and new 42-inch storm drain line installation along Murphy Ranch Road frontage and Technology Drive extension. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit. **Developer shall work with City Staff and Santa Clara Valley Water District to prevent possible Coyote Creek slope mudslides or earth movement. (Planning Commission 12/10/08).**
6. Prior to building occupancy permit issuance, the developer must upgrade Bellew Pump Station diesel engines to electric engines with backup emergency generators, or at the City's option retrofitted to meet the ATCM 2009 requirements for diesel emissions and to the satisfaction of the City Engineer.

7. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
 - A. Storm water connection fee of **\$364,434** based on 21.73 acres @ \$16,771 per acre. The storm water connection fee may be credited toward the construction of the 42" storm drain line along Murphy Road and Technology Drive. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.
 - B. Water Service Agreement(s) for water meter(s) and detector check(s).
 - C. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
8. Prior to building permit issuance, the developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the development. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be **\$1,255,632**, as of October 2008, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
9. Prior to any building permit issuance, the developer shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of an estimated amount of **\$720,568** to the City for this purpose. This amount is as of October 2008, and to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
10. Prior to building permit issuance; the developer shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be **\$300,782**, as of October 2008, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
11. Prior to any building permit issuance, the developer shall pay a Milpitas Business Park traffic fee of **\$447,600** based on the 1997 study, and to be adjusted by ENR at the time of payment.
12. Prior to any building permit issuance, the developer shall pay a Montague Expressway Traffic Impact fee of **\$82,173**.
13. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% permit automation fee.
14. Prior to any building permit issuance, the developer shall submit a tentative tract map for review and approval, and record the final map.
15. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements.
16. Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the flows and protect all buildings.
17. Prior to final map approval, the developer shall establish necessary homeowner association(s) for both condominium lots. The homeowner association(s) shall be responsible for the maintenance of the landscaping, walls, private street lights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer.
18. In accordance with California Government code 66462.5, the developer shall obtain and record a reciprocal maintenance agreement with the adjacent property owners on the North (apartment site) for the proposed ingress/egress, and parking and public. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to access, EVA, drainage, lighting, landscaping, and other common area facilities. Applicant shall pay costs of acquisition of off-site real property interests in accordance with California Government Code 66462.5
19. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
20. The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes.

21. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove the related poles within the proposed subdivision, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed subdivision, and clearly identify the existing PG&E wire towers and state the wire voltage.
22. 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.
23. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas.
24. Prior to the final map approval, the developer shall dedicate adequate right of way for pedestrian purposes crossing the driveways.
25. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division.
26. If necessary, the developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 942-3233.
27. 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 developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information.
28. Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste roll off compactors. The enclosure shall be designed per the Development Guidelines for Solid Waste Services. City review & approval of the enclosures and their access are required prior to construction of the enclosures.
29. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.
30. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit.
31. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - A. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - B. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.
 - C. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.

32. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.
33. Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
34. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, 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.
35. Prior to any Building permit issuance, the developer shall process and obtain approval of a joint use agreement between the City and Santa Clara Valley Water District (SCVWD) for the proposed improvements and their maintenance within the SCVWD right-of-way to the satisfaction of City Engineer.
36. Prior to any building permit issuance, the developer shall submit construction plan to San Francisco Public Utility Commission (SFPUC) for review and approval, and obtain necessary encroachment permits for the proposed work.
37. Prior to start of any work along or within Santa Clara Valley water District (SCVWD) right of way, the developer shall submit construction plans to SCVWD for review and approval, and obtain necessary encroachment permits for the proposed work.
38. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
 - A. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.
39. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. The developer is encouraged to retrofit the entire landscaped area for recycled water connection. If the site is not properly retrofitted for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. To meet the recycle water guideline the developer shall:
 - A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).

- B. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
 - C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
- 40. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara Valley Transportation Agency, City and County of San Francisco, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division.
 - 41. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms.
 - 42. The site is located in Local Improvement District #9R and 12R. Developer must file amended assessment diagrams and assessment allocations concurrent with the parcel map recordation.
 - 43. Prior to building permit issuance, the developer shall form a Landscaping and Lighting Maintenance Assessment District (LMD) on the subject property, to fund the maintenance of Coyote Creek Slope landscaping and pay for the annual lease cost of Hetch Hetchy Park, if any. The applicant will be required to pay for all operational & maintenance costs until such time as the City receives revenues from the proposed District.
 - 44. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
 - 45. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress.
 - 46. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X".
 - 47. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review.



MILPITAS PLANNING COMMISSION AGENDA REPORT

Meeting Date: December 10, 2008

PUBLIC HEARING

APPLICATION: **Major Tentative Map No. TM08-0002**
 Planned Unit Development No. PA08-0001
 Site Development Amendment No. SA08-0022

APPLICATION SUMMARY: A request for approval of a Planned Unit Development Amendment and Site Development Amendment which includes a revised site design for 285 townhome units, tandem parking, modifications to open space and setbacks.

LOCATION: Murphy Ranch Road at Sandisk Drive (APN: 086-01-042)
APPLICANT: Fairview Murphy Road LLC, 5510 Morehouse Drive Suite 200, San Diego, CA 92121
OWNER: Fairview Murphy Road LLC, 5510 Morehouse Drive Suite 200, San Diego, CA 92121

RECOMMENDATION: **Staff recommends that the Planning Commission:**
 1. Close the public hearing; and
 2. Adopt Resolution No. 08-068 recommending the City Council approve the proposed project, subject to the conditions of approval.

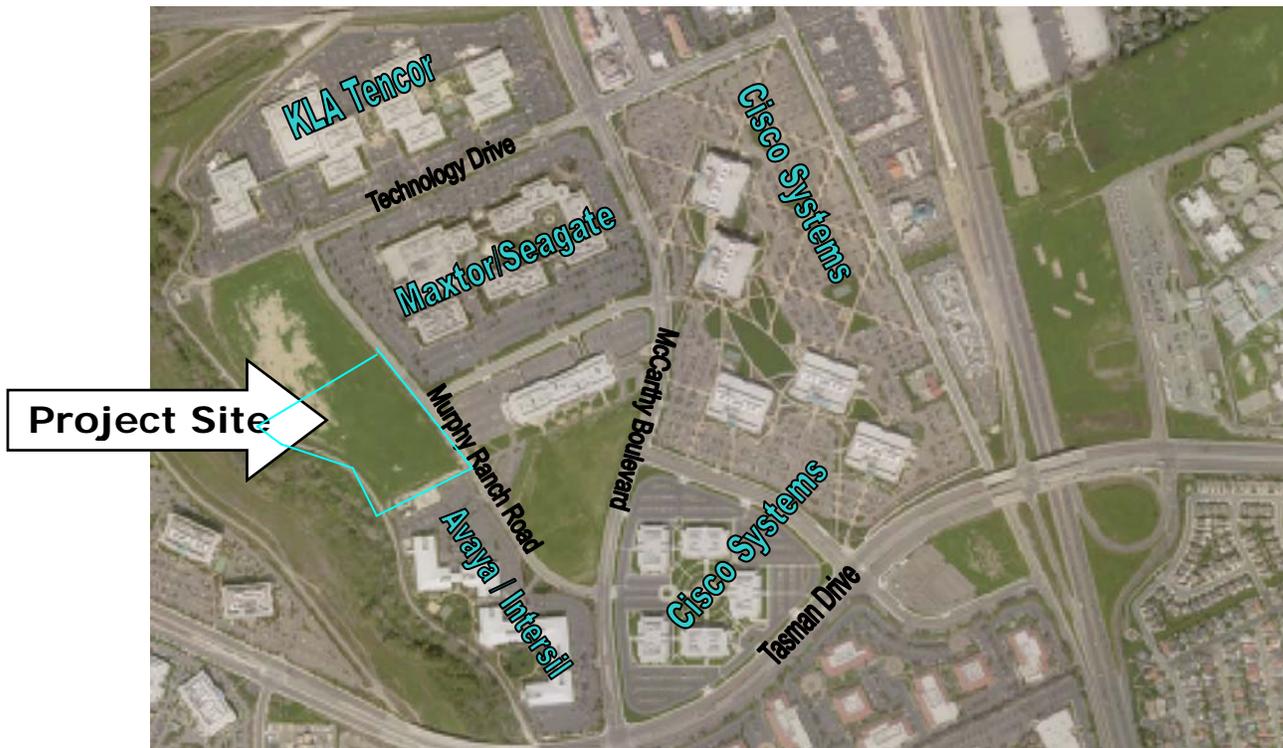
PROJECT DATA:
General Plan/Zoning: Single Family Residential (R-4)
Overlay District: Planned Unit Development
Project Site Area: 13.03 Acres
Density 21.1 Dwelling Units Per Acre
Dwelling Units: 285
Stories (height): 3 (35.5 ft.)
CEQA Determination: A Final Environmental Impact Report dated November 2007 has been prepared for the project. The project is consistent with the findings of the EIR.

PLANNER: Judie Gilli, Associate Planner

PJ: 2546

ATTACHMENTS: A. Project Plans
 B. Planning Commission Resolution No. 08-068

LOCATION MAP



BACKGROUND

On November 6, 2007 the City Council approved a plan for a 21.73 acre parcel that included an apartment building containing 374 units, 65 townhome buildings providing 285 units, and approximately two acres of publicly accessible park area. The apartment building and the public park are currently under review through the City's building department and the project is scheduled to start construction in 2009. The townhome portion of the project (13.03 acres) is the subject of the proposed application. The applicant is requesting a change to the previously approved Tentative Map, Planned Unit Development and Site Development Permit, in accordance with Sections XI-1-4.00, 10-54.07 and 10-57-03.

SITE DESCRIPTION

Site Description

The project site is a relatively flat 13.03 acre parcel located along the west side of Murphy Ranch Road, and bounded to the north, south and east by office uses and to the west by Coyote Creek. Surrounding businesses include KLA Tencor to the north, Maxtor, Seagate and Scan Disk to the east, and Intersil, Phoenix Technologies and Avaya to the south. Cisco Systems has two major campuses within close vicinity of the site.

PROJECT DESCRIPTION

The proposed project consists of three components: 1) Tentative Map Amendment 2) Planned unit Development Amendment and 3) Site Development Amendment. The applications are amendments of the previously approved project. The following is a summary of the proposed changes to the approved project:

Table 1:
PROJECT INFORMATION

<u>Use/Standards</u>	<u>Approved November 6, 2007</u>	<u>Proposed Project</u>
Tentative Map	Subdivision for two lots totaling 21.73 acres for condominium purposes.	Subdivision of one of the two existing lots into 29 lots totaling 13.03 acres for condominium purposes.
Planned Unit Development	374 Apartment unit and 285 Townhome units	285 Townhome units
Number of Buildings	66	28
On-site Usable Open Space	16%	25%
Setbacks	8 foot minimum	7 foot minimum
Tandem Parking	Standard spaces	Some Tandem Space

ANALYSIS

Tentative Map Amendment

The proposed project includes the subdivision of 29 lots (with 28 buildings total) for condominium purposes. Each lot will have either a townhome or a motor court with multiple dwellings within each building. A condominium map will be required at the time of building permit approval.

Site Development Permit Amendment

The site plan has been revised from the previously approved plans. The approved plans allowed for 65 buildings, oriented in a grid pattern. The approved plan included vehicular access through an alleyway and pedestrian access through inward facing paseos. The proposed site plan includes 28 buildings. The proposed buildings are differentiated by two distinct design variations; row townhome and motor court. The row townhomes are located on the east and west sides of the project site while the motor courts are located in the middle portion of the project site. While the orientation of buildings remain the same, the proposed plan calls for fewer buildings.

Row Townhome

Twelve row townhome buildings are on the west side of the site and six row townhome buildings are located on the east side of the site. Each row townhome unit has a garage access from a rear alley. The front doors of most of the row townhomes face in towards a pedestrian paseo. The row townhome portion of the site would be accessed from two private streets (A and C) off of Murphy Ranch Road. The driveway of Street A would align with Sandisk Drive and become the fourth leg of the Murphy Ranch Road/Sandisk Drive intersection. Streets A & C would be connected internally via Streets B, D and F.

The row townhomes have six building designs with seven different unit designs offered. The six different building designs all have approximately the same height, bulk and massing, but they differ in the colors, materials and architectural finish of each building. The building designs are grouped in different sections of the project site. For example, six buildings with Building Design 1 are located in the south west corner of the site. Directly north of that grouping is two buildings with Building Design 6. With the different designs grouped into different areas of the site, the designs are compatible with

each other and create an aesthetically pleasing neighborhood. The row townhomes on the east side of the project are more modern in design to mimic the modern office buildings located north of the site. The scale and massing of the proposed buildings are compatible with the existing buildings in the area. Please see AT sheets of the projects plans for building floor plan, site location and elevations.

Motor Court

The motor court buildings are located in the middle section of the project site. The project includes ten buildings that are offered in four building styles and eight unit types within each building. The four styles are similar in massing, but varied in color, material and architectural detail. The proposed motor court buildings are different from the row townhomes and will create a sense of variation within the neighborhood. The buildings are designed with an interior court for vehicular access. The pedestrian access is on the perimeter of the building. The motor courts are accessed off Street F, B and D. On street parking is proposed on the south side of Street D. Please see the AM sheets of the project plans for building floor plan, site location and elevations.

Planned Unit Development Amendment

The Planned Unit Development Amendment (PUD) application is being requested because the project does not meet all the development standards set forth by the previously approved PUD. The following summarizes the variations from the PUD development standards that the project is proposing.

Table 2:
PUD Amendment

PUD Standard	Proposed
Building Setback	7 foot minimum (building to edge of pavement) 3 foot minimum (porch to edge of pavement)
Front & street side setback – min. 8 ft. / max. 10 feet from back of sidewalk	NA
Interior side yard – 10 feet	NA
Rear yard – 10 feet	NA
Parking: 655 required (includes guest parking)	655-No change to parking arrangement
Private Open Space – 16%	25%

**See original PUD for remaining standards*

Setback

The previously approved PUD required a minimum eight foot setback from the back of the sidewalk. The interior side yard and rear require a ten foot setback.

Due to the design and orientation of the buildings, the previous standard of front/side/rear setback is not an appropriate standard to measure the setback. It is more reasonable to establish a general building setback for the townhomes and motorcourts. For the purposes of reviewing this proposal, staff

recommends that the Commission consider a seven foot setback requirement for all sides of the buildings, which is measured from building to edge of pavement. The porch setback is a three foot minimum, measured from porch to edge of pavement.

Open Space

The project would provide approximately two (2) acres of private open space which would consist of separate pool areas for the apartments and townhomes, a clubhouse for the apartment units, the larger paseos around the towns and balconies over 60 square feet. Balconies and porches may be considered usable open space if they are a minimum of 100 square feet at ground level or 60 square feet above ground. The proposed plan includes 25% of private open space.

Street “F” and “D”

Staff and applicant have worked together to improve the design of these two streets by adding additional landscape space and providing treatment to the driveway that would create a more pedestrian friendly space for the residents. The applicant has agreed to provide the following improvements to the street:

1. Additional landscaping area along the street where possible. The minimum landscape buffer between a porch and the edge of pavement is 3 feet.
2. Eliminate the curb and provide a flush condition on the entire driveway so the driveway and walk areas are on the same plane.
3. Treat the driveway with concrete.

Please see the Conditions of Approval (attached to City Council Resolution) for conditions of approval and exhibit of the proposed condition.

ADOPTED PLANS AND ORDINANCE CONSISTENCY

Table 3
General Plan Consistency

Policy	Consistency Finding
<i>2.a-G-1 Maintain a land use program that balances Milpitas’ regional and local role by providing for a highly amenable community environment and a thriving regional industrial center.</i>	Consistent. The proposed project is consistent with this Policy in that the proposed use is consistent with the Planned Unit Development for the subject property. Providing high density residential land use adjacent to industrial use is conducive to a thriving regional industrial center.
<i>2.a-G-3 Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent. Consistent in that the proposed project offers high density residential townhomes located near an industrial area, which will meet the needs of individuals and families in Milpitas.
<i>2.a-I-12 Use zoning for new residential developments to encourage a variety and mix in housing types and costs.</i>	Consistent. Consistent in that the proposed project offers high density residential townhomes with various housing types and costs.

Zoning Ordinance

PUD Consideration

Pursuant to Section 10-54.07, in order to grant a Planned Unit Development permit, the Planning Commission and City Council shall determine that the proposed development will result in an intensity of land utilization no higher than and standards of open space at least as high as permitted for such development in the General Plan, Zoning ordinance and Subdivision Ordinance. Further, the development shall meet all requirements set forth by the California Environmental Quality Act and the Milpitas General Plan Land Use Element as it relates to traffic, land use and density. The proposed project meets the requirements of this section.

ENVIRONMENTAL REVIEW

A Draft Environmental Impact Report (DEIR) was prepared and circulated for public review on June 18, 2007 and the public comment period ended on August 2, 2007. Four comment letters were received during the review period and responses were prepared and provided in the Final Environmental Impact Report (FEIR). The DEIR found that all environmental impacts from this project can be mitigated to a less than significant level. Since the project is proposing the same number of units, the traffic assumptions, impacts and mitigation will remain the same. Therefore, the DEIR and FEIR adequately address the requirements as specified by the California Environmental Quality Act (CEQA). The FEIR was certified by the City Council on November 6, 2007 and no additional environmental review is necessary.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

The proposed application includes a revised site design for 285 townhome units, tandem parking, modifications to open space and setbacks. The project's site design and building type have been revised from the previously approved proposal. The proposed project is consistent with the previously approved PUD and General Plan. Staff believes that the revised site design and building architecture is improved from the previously approved and recommends approval of the project subject to the conditions of approval.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission recommend approval to the City Council of TM08-0002, PA08-0001, SA08-0022 subject to the attached Resolution.

ATTACHMENTS:

- A. Resolution No. 08-068
- B. Plans

- *1 **CONDITIONAL USE PERMIT NO. UA08-0013:** A request to expand a daycare center for children located at 633 and 635 S. Main Street. No exterior changes are proposed. *(Recommendation: Adopt Resolution No. 08-064 approving the project subject to Conditions of Approval.)*
- *2 **CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0014:** A request to amend an existing Conditional Use Permit to allow the sale of alcoholic beverages for consumption on-site at an existing restaurant within the Great Mall located at 246 Great Mall Drive. *(Recommendation: Adopt Resolution No. 08-065 approving the project subject to conditions of approval.)*

Chair Williams opened the public hearing on Item No. 3 and Item No. 4.

There were no speakers from the audience.

Motion to continue Item No. 3 and Item No. 4 to the January 14, 2009 meeting.

M/S: Ciardella, Sandhu

AYES: 6

NOES: 0

ABSENT: 1 (Aslam Ali)

ABSTAIN: 0

- *3 **MAJOR TENTATIVE MAP NO. MT08-0002, CONDITIONAL USE PERMIT NO. UP08-0046, DEVELOPMENT AGREEMENT, OWNER PARTICIPATION AGREEMENT, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0005:** A request to subdivide a 24 acre site into nine (9) parcels for condominium purposes, establish building setbacks, improve existing roads, construction of a new local street, and create an urban plaza and public trail along Penitencia Creek. The project is located at 1315 McCandless Drive. *(Recommendation: Continue to January 14, 2009.)*
- *4 **MAJOR TENTATIVE MAP NO. MT08-0001, SITE DEVELOPMENT PERMIT NO. SZ07-0002, CONDITIONAL USE PERMIT NO. UP08-0045, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0004:** A request to develop an existing office campus by maintaining the existing buildings and parking lot and adding 424,814 square feet of office space in six, five story buildings and constructing an elevated parking deck. The project is located at 205 N. McCarthy Ranch Blvd. *(Recommendation: Continue to January 14, 2009.)*

**IX.
PUBLIC HEARING**

**5. MAJOR TENTATIVE
MAP NO. TM08-0002
PLANNED UNIT
DEVELOPMENT NO. PA-
08-0001 AND SITE
DEVELOPMENT
AMENDMENT NO. SA08-
0022**

Judi Gilli, Associate Planner, presented a request for approval of a Planned Unit Development Amendment and Site Development Amendment which includes a revised site design for 285 townhome units, tandem parking, modifications to open space and setbacks. The project is located at Murphy Ranch Road at SanDisk Drive. Ms. Gilli recommended to Adopt Resolution No. 08-068 recommending approval of the project to the City Council subject to Conditions of Approval.

Commissioner Ciardella asked if there was enough room to get in and out of the garage area. Ms. Gilli stated yes there is enough room.

Commissioner Galang asked if there was covered parking for the townhomes. Ms. Gilli stated that there are 2 covered spaces for the townhomes.

Chair Williams asked if the applicant submitted color chips. Ms. Gilli stated not in this case. Chair Williams stated this project was presented to the Commission before. He asked if the project was approved at that time. Ms. Gilli stated it was denied. Chair Williams asked what was the reason for denial. Sheldon Ah Sing, Senior Planner, stated that the reason for denial was the incompatibility of the use. Chair Williams asked about the logistics of busing the children to the nearest schools. Ms. Gilli said that there was no discussion about the schools. The focus was on the site design, open space, and parking.

Sean Finch, Fairfield Development, 2410 Camino Ramon, San Ramon, CA 94582, said that this project was approved and that the intent is to enhance and improve what already existed while still preserving access to the site circulation from the public right-of-way through the site.

Chair Williams asked the applicant if he submitted a color pallet to staff as part of the record since the color scheme has changed. Mr. Finch said yes.

Vice-Chair Mandal asked if there are any special conditions to consider since the project is in the middle of an industrial area. Mr. Finch said that they will pay additional fees for sewer, water, and things of that nature. Vice-Chair Mandal also asked if there will be a HOA fee. Mr. Finch said yes.

Commissioner Ciardella asked if there is any fencing separating the trail from the project. Mr. Finch stated the only fencing proposed for the project is around the pool area.

Commissioner Tabladillo asked if there is a stop sign at the median along Murphy Ranch Road. Mr. Finch stated yes at the intersections there will be stop signs. Commissioner Tabladillo also asked about slope landscaping. Mr. Finch said that the slope area would be dirt for the time being. Commissioner Tabladillo is concerned with the dirt getting into the street and asked staff to follow up on this issue with San Jose Water Works.

Chair Williams is concerned with the children school bus pickup. He asked if the school bus would go through the complex for pickup or would the children have to go to Murphy Ranch Road for pickup. Mr. Finch stated that they did not have any discussion with the school district since the last approval from City Council. Chair Williams asked about the tandem parking and what was the deciding factor in decreasing the parking from 33 to 21. Mr. Finch stated they wanted to remove some of them but was unable to remove all of them.

Motion to close the public hearing.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Aslam Ali)

ABSTAIN: 0

Commissioner Ciardella stated that he would like to see the City possibly put some kind of rock product on top of the levy for the walkway.

Commissioner Tabladillo stated she wants to make sure that the residents are safe when they go to and from work and that it has high safety standards. She wants to stress to staff that they make sure the developers work hand and hand with the Santa Clara Water District that the slope area is well protected and that no mud comes down from the slope.

Chair Williams asked staff if there is any street parking on Murphy Ranch Road. Mr. Lindsay stated that there is no available street parking on Murphy Ranch Road. Chair Williams is also concerned with the schools and the children getting to and from school safely.

Motion to adopt Resolution No. 08-068 recommending approval of the project to the City Council subject to Conditions of Approval.

M/S: Ciardella, Galang

AYES: 5

NOES: 1 (Williams)

ABSENT: 1 (Aslam Ali)

ABSTAIN: 0

**6. ZONING
AMENDMENT NO. ZA08-
009, CONDITIONAL USE
PERMIT NO. UP08-0039
AND ENVIRONMENTAL
ASSESSMENT NO. EA08-
0007**

Cindy Hom, Assistant Planner, presented a request to amend the City of Milpitas Zoning Ordinance to conditionally permit farmer's markets in the Industrial Park Zoning Districts (Section 35) and include as Special Use (Section 13) of the Milpitas Zoning Ordinance. The application request also includes a Conditional Use Permit and Environmental Assessment to allow for the establishment of a farmer's market that will be operated all year on Sundays between the hours of 7:00 a.m. to 1:00 p.m. at the India Community Center located at 525 Los Coches Street. Ms. Hom recommended to Adopt Resolution No. 08-067 recommending approval to the City Council, subject to Conditions of Approval.

Vice-Chair Mandal asked the difference between this location compared to the Sports Center location. Ms. Hom said that the Sports Center Farmer's market was adjacent to commercial retail uses and another retail building to the west side of the Sports Center. The new farmer's market is sited on a community Center which does have available parking. Also, the community center is implementing a traffic handling plan which the Sports Center did not have.

Commissioner Galang asked if the vendors would have designated parking areas. Ms. Hom stated that the vendors would have designated parking areas in the rear of the building and along Los Coches Street.

Anil Godhwani, India Community Center, 525 Los Coches Street, Milpitas, stated the farmer's market will bring the community together and they have worked with the City the past 4 months on the parking situation.

John, Pacific Coast Farmer's Market Assoc., 5056 Commercial Circle, Concord, CA, stated the goal is to make this a true community event.

Chair Williams asked how they would keep the flow going so there is not a crowd in front of the market and people not going into the street. John said the people would be coming in from different locations so there is no bottleneck what so ever.

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, October 16, 2007
Time: 6:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

**2. Actions Related to the
Proposed Fairfield/Murphy
Ranch development project**

Acting Planning Director Felix Reliford provided an overview of the project site on the west side of Milpitas. He explained the proposal put forward in the application from Fairfield Development Co. for residential development on the parcel west of Interstate 880 bordering San Jose, near several current corporate offices on industrial land.

Mr. Reliford reviewed the reasons for the staff's recommendation to deny the project, in order to preserve the last large site for industrial use, as a large corporate campus. The idea was essential to save it for future jobs. The location was viewed as an isolated island of residential property when industrial parcels were north and south of it. The project would conflict with the City's Economic Development Plan. There was a lack of sidewalks and easy access to retail, as well as issues related to access to local schools.

**Fairfield Murphy Ranch project,
continued**

A draft Environmental Impact Report was prepared and circulated, and the Final EIR document was presented to the City Council at this meeting. Additionally, there were findings for denial presented (found in the written staff report to Council).

Councilmember Gomez acknowledged that previously the Council had recommended housing on that side of 880, but the City of San Jose said no. Mr. Reliford responded on the master plan for land behind McCarthy Ranch, with multiple facilities, etc. and that was not similar to the site of this project. He further asked about isolation of the area.

Councilmember Giordano noted that the Milpitas Planning Commission had voted 3-2 for denial of the project. She asked staff about the two who voted favorably, and why they favored it. Mr. Reliford recollected those votes were related to the favorable view of jobs near homes.

Councilmember Polanski inquired if this matter went before the Economic Development Commission. Mr. Reliford replied yes, and it recommended denial. When staff looked at project, did they look at how close the housing would be to work places? Mr. Reliford responded that could be a benefit, but the City was encouraging development at other locations in the City such the Mid-Town specific plan and transit area plan sites.

Councilmember Gomez asked, in terms of the site, whether vacant land was more appealing than any other empty lots. Staff replied this one was dead center on industrial land, west of I-880, and could be valuable for a corporate campus use, and was not compatible as residential alone by itself.

Mayor Esteves inquired if the City of San Jose was involved on this project. Staff replied that San Jose had opportunity to comment on the EIR but no comments were received. He asked about findings for approval, and how to obtain those. Mr. Reliford explained the process, and could bring those, after listening to the Council's discussion on the merits of the project.

Mayor Esteves opened Public Hearing for comments.

Public Speakers:

1. **Dhaval Brahmhatt**, chair of the Milpitas Economic Development Commission,

spoke as an individual on this project. He stated that the EDC on October 8 adopted a memo stating its agreement with the staff's recommendation to deny. He asked, "what about kids? Where will they go to school and is it safe for them to be next to industrial businesses?" Once converted, the land would not go back to industrial use.

2. Michelle Beasley, on behalf of the Greenbelt Alliance, spoke in favor of the re-zone. She believed it would provide much needed housing, including eco-pass, with the project. More local housing was good, when the housing was near jobs. She felt it was important to have unbundling of parking from rental housing.

3. Dr. Luis Gonzalez, Assistant Superintendent for the Milpitas Unified School District, discussed financial challenges and burdens for the school district, if approved. By his calculation, the Fairfield project would yield 100 new students, with no safe route to walk or ride bikes to school campuses.

Vice Mayor Livengood addressed Dr. Gonzalez on the process of how the school district came to its position. It was the position of the superintendent, he reported.

4. Guy Haas, Pines resident, thought that the approval of this project might mitigate how much housing was coming to his area of the City, but he still opposed this land use since the residential area would be isolated. He favored use of the eco-pass for transit. Overall, he stated this would be a bad land use decision.

Fairfield Murphy Ranch project,
continued

5. Rob Means, agreed with the last speaker, it sounded like a bad project, and he was not in favor. There were concerns for smells and odors, with worry about sewer capacity for new development. He liked the Greenbelt Alliance, but it was wrong on this particular project. He promoted affordable housing as does City staff.

6. Don Peoples, Spring Creek Lane resident, business owner and Downtown Association President, agreed 100% with the City staff assessment on this project. He strongly urged denial. He moved his business here in 1999, since he already lived here.

7. Frank DeSmidt, Economic Development Commissioner, noted a story in the San Jose Mercury News about that City's regrets on some re-zoning from industrial use to residential. He made further comments about San Jose and its impact on Milpitas. Finally, he commented on how it would be difficult to walk or travel for families going to the Great Mall or other parts of town.

8. Irene Whiteside, resident and realtor association staff, agreed with the City staff and several speakers' comments on this re-zone issue. She also stated that the Santa Clara County Association of Realtors (her employer) did not support the application.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Livengood/ Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

The project developer, Fairfield companies, was called to the podium at this time.

Mr. Mark Faulkner, Vice President representing Fairfield, spoke first, introducing Mr. Ed McCoy also. Mr. Faulkner spoke directly to Dr. Gonzalez about the exact funding proposal made to the school district and the fair share of developer costs. He discussed impacts of the Environmental Impact Report, with no significant impacts to mitigate. His company and the City had been meeting for three years on the project.

Mr. Ed McCoy, the Fairfield Residential representative, discussed the concept of the "co-location" proposal or smart growth project at the Murphy Ranch site. He did not

consider it to be isolated. He pointed out how close existing retail shopping, including a grocery store, was located to the development site. Mr. McCoy refuted the floor area ratio (FAR) data numbers and the space needs in Milpitas. He pointed out KLA Tencor as a neighbor. He commented on some of the positive comments in the EIR.

It was a land use issue, specifically. On the sewer issue, the developer was buying sewer capacity for the residential development, so there was not any burden on the City. 20% of the units were planned to be affordable. The regional trail system went through that area. Mr. McCoy said student generation would be low, based on a study done of Fairfield's other properties. He asked the City Council to look at the big picture, to be open minded, and future oriented.

Mr. Brendan Hayes, another project representative, spoke in response to Ms. Giordano. The company looked at mixed use originally on the site, and initially it had less density, but groups recommended having more dense residential there. A research group in the company looked at an urban infill type projects to analyze. Councilmember Giordano asked him about green building, and the response was that Fairfield was committed to green building.

Councilmember Polanski inquired about apartments and who would manage these for leasing. Fairfield representatives responded that they have an on-site management company to do that. She asked if there would be a homeowners association, and the company replied yes. Ms. Polanski had met with Fairfield representatives prior to the Council meeting and appreciated receiving information. She discussed large businesses that could use the housing for temporary workers from out of town for lengthy stays in Milpitas.

Councilmember Gomez asked about the student generation numbers and Mr. McCoy responded with a formula and the analysis done by Fairfield.

Mayor Esteves asked staff about any conflict with the City's General Plan. Mr. Reliford reviewed that certain types of uses were allowed on Industrial land, and that was potentially in conflict with surrounding uses. Mayor Esteves asked about a definition of smart growth which staff provided.

City Manager Williams informed the Council that there were approximately 1800 housing units in the development pipeline, at this time.

Vice Mayor Livengood wanted to dispel some of the written information. He was not a supporter of the idea that you make a blanket decision on land use for a set area of the City. He considered a parcel on a project by project basis, as applications come in. On the issue of isolation, he did not agree that this project would be isolated, as it was close to transit. On issues addressed in the EIR document, there was no argument presented that it was invalid. Companies complain about housing as an issue for getting people to move here into the Valley. He asked himself if it was quality development and he felt the answer was yes. Also, it was a good affordable housing opportunity. From a financial point of view, it made sense. The school district must be nimble in terms of serving its students, too, the Vice Mayor said.

Councilmember Gomez looked at this project from the point of view, "what can cities do to support business?" He offered to provide infrastructure and housing close to jobs, as was discussed at a Silicon Valley workshop of corporate leaders recently. He wondered how to tell a good one from a bad one (an industrial land use conversion). Features such as walk to retail, close to transit, parks on site and the Coyote Creek trail, with high quality design were noted here. Mr. Gomez commented further on industrial land use and existing vacancies.

Councilmember Giordano quoted recent news articles and data about the ongoing need for housing in the Santa Clara Valley. This project would meet some of that need.

Fairfield Murphy Ranch project,
continued

Mayor Esteves subscribed to the City's General Plan. The City had invested a lot in the MidTown Specific Plan. It was not true that City was not addressing housing to date. In the Transit Area Plan, also money was invested there. The project was a great project, but he believed it was in the wrong place. Additionally, he was scared that more project developers would come forward asking for land use conversion. The realtors were not supportive, for one of the first times in Milpitas. The schools were a big issue. Homes near jobs he agreed with, but felt homes should also be near mass transit. City must consider the long term benefits in an area he wished to see more new jobs.

The Mayor read aloud a letter from SanDisk Corp. to the City's Economic Development Manager Diana Whitecar, opposing the Fairfield development project. Mayor Esteves commented on sewer capacity and the City had been purchasing more capacity, for areas where housing was planned.

Councilmember Polanski was conflicted about the project. The City was only thirteen square miles, and did not believe that the project area was isolated really, considering how small the city was. When she had moved into a bedroom community here 30 years ago, it was not so today. A balance of jobs/housing was important and it was balanced now. She had concern for the schools and their needs with regard to more students being added.

The City Council at this point wanted to move select actions on the project.

Fairfield Murphy Ranch project,
continued

Staff noted that adoption of a Resolution was needed on findings in order to adopt the final Environmental Impact Report first.

Several Councilmembers tried to move actions, while City Manager Williams suggested a brief break so that staff could gather all appropriate documents for the City Council to consider approval of the project (v. the staff recommendation for denial).

At 10:37 PM, the Mayor called for a break, to move on to Items No. 7 and 8, and then to return to this project proposal for consideration of Resolutions and an ordinance. The City Council resumed the meeting at 10:56 PM.

(2) Motion: adopt Resolution No. 7707 certifying the final Environmental Impact Report EA2005-4 for the Murphy Ranch Residential Project, located at the Southwest Corner of Murphy Ranch Road and Technology Drive, from applicant Fairfield Residential, LLC

Motion/Second: Vice Mayor Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (Esteves)

(3) Motion: adopt Resolution No. 7708 approving General Plan Amendment No. GP2005-11 to Change the Land Use Designation of Approximately 22 Acres Located at the Southwest Corner of Technology Drive and Murphy Ranch Road from Industrial Park to Multi-Family Very High Density, for applicant Fairfield Residential, LLC

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

Next for consideration was the ordinance for the zone change. City Attorney Michael Ogaz read aloud the title of Ordinance No. 38.774 "An Ordinance of the City Council of the City of Milpitas Amending Chapter 10 Title XI of the Milpitas Municipal Code for Zone Change ZC 2005-11."

(4) Motion: waive the first reading beyond the title of Ordinance No. 38.774

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: introduce Ordinance No. 38.774, for the zone change from industrial to residential for Fairfield Murphy Ranch project

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

Additional actions necessary for this project were identified including a resolution to approve the Planned Unit Development PD 2007-4 and approval of the project Tentative Map. Councilmembers requested that the resolution for those actions return at the next City Council meeting. City Attorney Ogaz responded that staff would do so, along with the Ordinance for a second reading and adoption next time.

The foregoing minutes were approved by the Milpitas City Council as amended on November 6, 2007.

Mary Lavelle
City Clerk

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, November 6, 2007
Time: 7:00 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Polanski requested removal of Item No. 5 from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

**5. Adopt Zone Change
Ordinance No. 38.774,
Resolution and Affordable
Housing Regulatory Agreements
for the Fairfield Murphy Ranch
Development**

This matter was removed from the Consent Calendar and was heard prior to the Redevelopment Agency meeting.

Motion: move to approve and adopt all actions recommended by staff including:

1. Adopted Resolution No. 7714 approving Planned Units Development No. PD2007-4, Tentative Map No. MA2005-7 and "S" Zone No. SZ2005-12.
2. Waived the second reading of Ordinance No. 38.774.
3. Adopted Ordinance No. 38.774 for Zone Change No. ZC2005-11.
4. Approved two affordable housing Regulatory Agreements: one for 285 townhomes (ownership) and 374 apartments (rental units).

Motion/Second: Vice Mayor Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

The foregoing minutes were approved by the Milpitas City Council as amended on November 27, 2007.

**Mary Lavelle
City Clerk**

RESOLUTION NO. 08-068

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA RECOMMENDING THE MILPITAS CITY COUNCIL APPROVE SITE DEVELOPMENT AMENDMENT SA08-0022, MAJOR TENTATIVE MAP TM08-0002, AND PLANNED UNIT DEVELOPMENT PA08-0001 FOR A PROJECT LOCATED AT MURPHY RANCH ROAD AT SANDISK DRIVE

WHEREAS, on July 25, 2008, the applicant submitted an application to request approval for a Planned Unit Development Amendment, Tentative Map and Site Development Amendment which includes a revised site design for 285 townhome units, tandem parking, modifications to open space and setbacks; and

WHEREAS, the Planning Commission held a duly notice public hearing on the Project and considered evidence presented by City staff and other affected parties.

WHEREAS, Pursuant to Section 10-54.07, in order to grant a Planned Unit Development permit, the Planning Commission and City Council shall determine that the proposed development will result in an intensity of land utilization no higher than and standards of open space at least as high as permitted for such development in the General Plan, Zoning ordinance and Subdivision Ordinance. Further, the development shall meet all requirements set forth by the California Environmental Quality Act and the Milpitas General Plan Land Use Element as it relates to traffic, land use and density. The proposed project meets the requirements of this section.

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

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The Project is in the public interest.

Section 3: The Project is consistent with the General Plan and Zoning Ordinance.

Section 4: The City Council makes the following findings as required for approval of a Site Development Permit:

- A) The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
- B) The project is consistent with the Milpitas Zoning Ordinance.
- C) The project is consistent with the Milpitas General Plan.

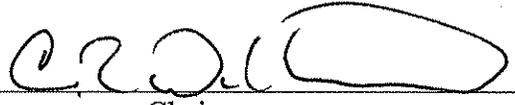
Section 5: The City Council makes the following findings as required for approval of a Planned Unit Development:

- A) Development of the site under the provisions of the Planned Unit Development will result in public benefit not otherwise attainable by application of the regulations of general zoning districts.
- B) The proposed Planned Unit Development is consistent with the Milpitas General Plan; and
- C) The proposed development will be in harmony with the character of the surrounding neighborhood and will no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction or loss of privacy that are not mitigated to acceptable levels.

Section 5: The Planning Commission of the City of Milpitas hereby recommends the City Council approve the Project by taking the following actions:

- A. Approve attached resolution

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on December 10, 2008.


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 December 10, 2008 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams		X		
Gunawan Ali-Santosa				
Lawrence Ciardella	X			
Alexander Galang	X			
Sudhir Mandal	X			
Gurdev Sandhu	X			
Noella Tabladillo	X			
Aslam Ali			X	