



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: April 10, 2013

APPLICATION: GENERAL PLAN AMENDMENT NO. GP12-0002, SPECIFIC PLAN AMENDMENT NO. ST12-0002, ZONING AMENDMENT NO. ZA12-0003, PLANNED UNIT DEVELOPMENT NO. PD12-0002, MAJOR TENTATIVE MAP NO. MT12-0002, SITE DEVELOPMENT PERMIT NO. SD12-0001 & CONDITIONAL USE PERMIT NO. UP12-0010: PRESTON PROPERTY RESIDENTIAL PROJECT

APPLICATION
SUMMARY:

A request to change the General Plan, Specific Plan and Zoning land use designation from Heavy Industrial to High Density Multi-family Residential and Parks and Open Space with Planned Unit Development. The project proposes 213 dwelling units with on and off-site improvements. A Draft Environmental Impact Report has been circulated for the project.

LOCATION: 133, 225, 227-261 Bothelo Lane (APN: 086-26-029, 086-26-030, 086-27-002, 086-27-003, 086-27-008, 028-23-018, 086-26-032)

APPLICANT: KB Home, 5000 Executive Parkway, #125, San Ramon, CA 94583

OWNER: Michael Preston, 133 Bothelo Ave., Milpitas, CA 95035; Union Pacific Corporation, 1400 Douglas Street Omaha, NE 68179

RECOMMENDATION: Staff recommends that the Planning Commission: Adopt Resolution No. 13-013 recommending denial of the project to the City Council.

PROJECT DATA:

General Plan/
Zoning Designation: Manufacturing and Warehousing (MW)/Heavy Industrial (M2)

Specific Plan: Midtown

Overlay: Site and Architectural (-S)

CEQA Determination: Draft EIR was circulated

PLANNER: Sheldon S. Ah Sing, Senior Planner

PJ: 2777

- ATTACHMENTS:
- A. Resolution No. 13-013
 - B. Project plans
 - C. Draft EIR
 - D. Opposition letter
 - E. The Local Regulation of Interstate Railroads

LOCATION MAP



BACKGROUND

In mid 2011, KB Home inquired about the possibility of developing a residential project on the existing Preston Pipeline industrial site. Staff communicated that there are major project site deficiencies with the proposal due to significant general plan and specific plan land use inconsistencies and land use conflicts with surrounding properties as analyzed within this staff report. On October 17, 2011, a development application was submitted by KB Home to change the land use designation of the Heavy Industrial property to High Density Multi-family Residential and Parks and Open Space on 16.6 acres to include 213 dwelling units. Staff again reiterated that the proposed plan conflicts with the surrounding uses and presents challenges to connecting the neighborhood with Main Street.

On December 1, 2011, KB Home initiated the preparation of an Environmental Impact Report (EIR).

The last project submittal by the applicant was on May 18, 2012 and staff responded with a letter on June 14, 2012 deeming application incomplete due to missing information on the economic analysis of the project, missing details regarding the elevations of the proposed buildings, providing consistency on the site plans, and incomplete engineering information.

Although the project submittal was incomplete, there was sufficient information to prepare the Draft EIR which was circulated for public comment on November 15, 2012 through January 2, 2013 pursuant the applicant’s request. On March 13, 2013, the applicant submitted a revised site plan dated “March 2013”. Rather than further prolong the process and expending staff and consultant resources on additional evaluation and comment on the revised site plan and the Draft EIR, staff is forwarding this project to the Planning Commission, as requested by the applicant, for consideration.

PROJECT DESCRIPTION

Site and Vicinity

The project site (see Figure 2) includes several parcels totaling 16.6 acres and includes a vacant office/warehouse building and a contractor’s yard. The properties are zoned Heavy Industrial with Site and Architectural Overlay (M2-S). To the north is Calaveras Boulevard. To the west is Union Pacific Railroad line. To the east is the 40 acre Union Pacific Rail Yard. To the south are Heavy industrial zoned properties with a church and single family residence and the 58 acre Union Pacific freight processing yard. A vicinity map of the subject site location is included on the previous page.

Project Analysis

The major deficiencies with this project are:

1. Union Pacific Railroad operations authority supersedes City authority over land use and community disturbance. See Attachment E;
2. The adjacency of the project to the Railroad Rail Yard and the potential negative impacts the yard has on adjacent properties and that potential nuisances as a result of operations at the rail facility are pre-empted by Federal law;

3. The adjacency of the project to the Railroad Freight Yard and the potential negative impacts the yard has on adjacent properties and that potential nuisances as a result of operations are pre-empted by Federal law; and
4. The lack of connectivity of the proposed neighborhood with the rest of the community, especially with Main Street.
5. The difficulty of making the required findings for the various entitlements necessary to carry out the project (inconsistency with the General Plan, Midtown Specific Plan, incompatible with the surrounding land uses, etc.)

Figure 1 below identifies the project site with the checkerboard pattern. The map depicts a gray area south of Calaveras (including the project site) as the “Future Study Area” as described by the Midtown Specific Plan.

Figure 1
Project Site Within Midtown Specific Plan

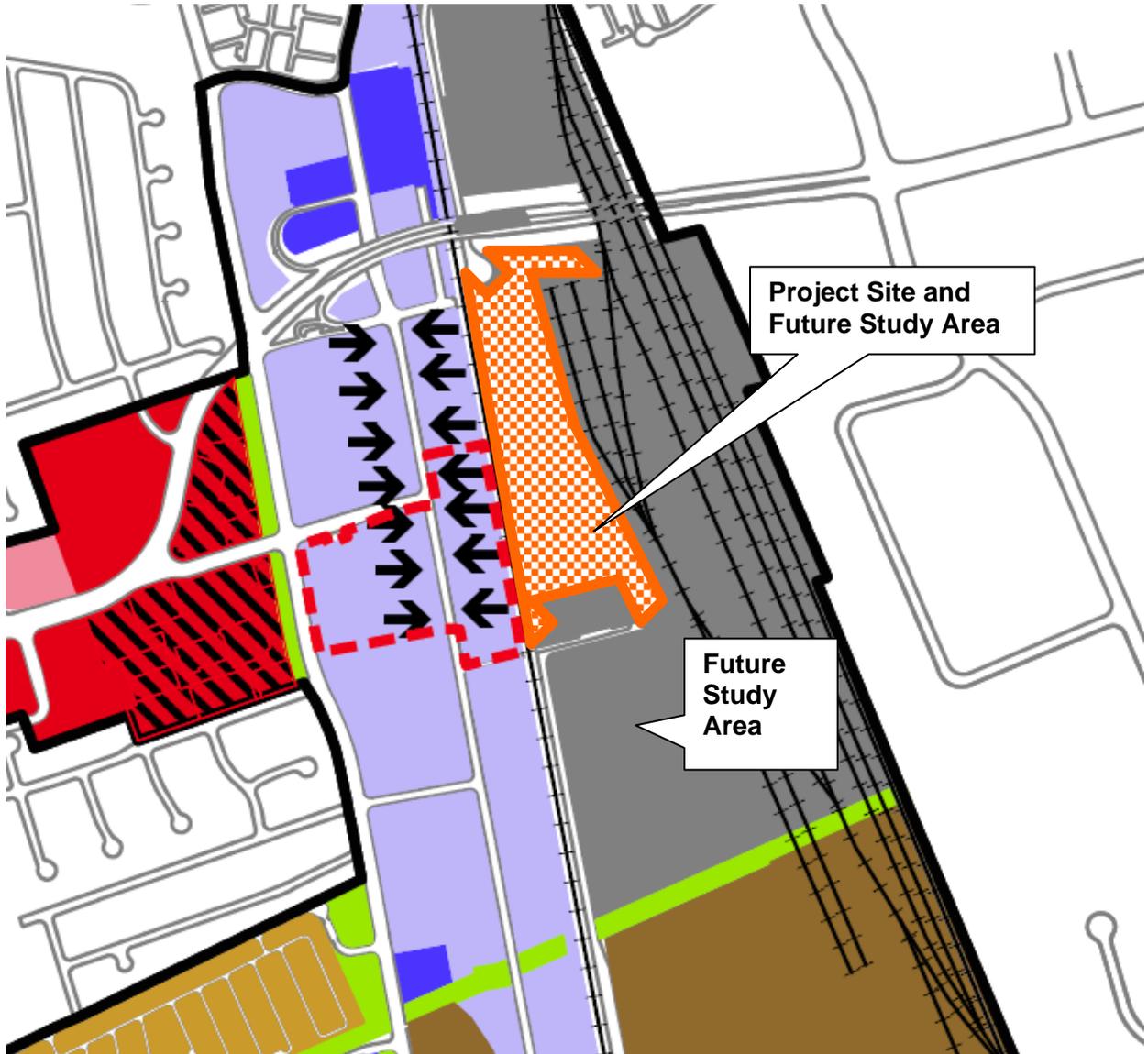
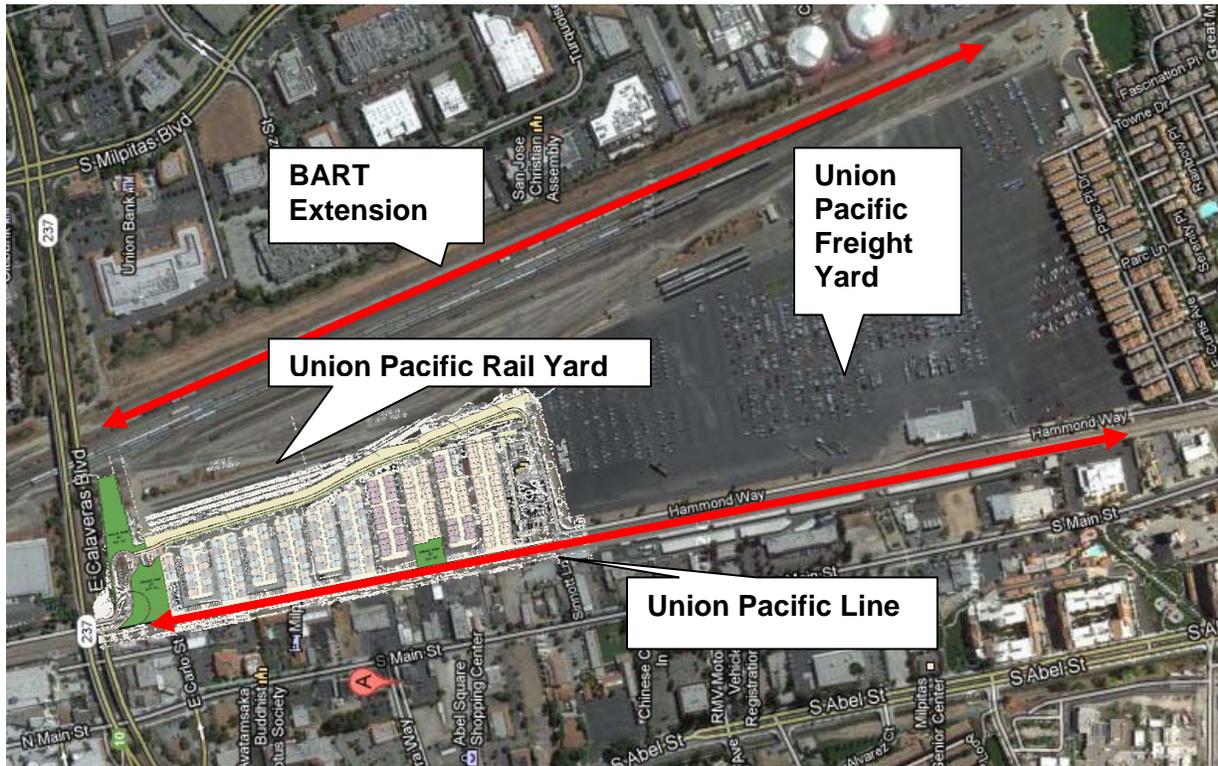


Figure 2
Aerial With Project Site Plan



Project Site Deficiencies

Adjacency to the Milpitas Union Pacific Rail Yard

The Union Pacific Railroad Milpitas Yard (rail yard) is adjacent to the project site. The closest track is 50 feet away from the project. The rail yard serves as a distribution center for automobiles including cargo containers with freight and materials traverse the site on an ongoing basis, 24-hours a day, including those with hazardous materials. The rail cars reside on site for as short as a day or as long as months at a time.

Adjacency to Union Pacific Freight Processing Yard

The freight yard is mostly used to transfer automobiles and freight from the rail cars to commercial transport trucks for off-site delivery. The facility is a 24-hour operation. Union Pacific has communicated to the City their intention of expanding the operations of the adjacent 58 acre freight processing yard with the addition of 100-foot tall high-intensity light standards to assist with nighttime freight processing operations. There is no indication from Union Pacific that the freight processing yard activities will diminish in activity or cease activity in the future.

As a comparison, the Roseville, California “J.R. Davis” Rail Yard (largest rail yard on the west coast) has a land use buffer around it with no residential. This is the case in Milpitas with the exception of Parc Place residential development to the south of the Milpitas rail and freight yards. The city receives complaints from residents in Parc Place every year regarding the noise and nuisance from the adjacent rail operations. Unfortunately, the city cannot respond effectively to these complaints because activities associated with railroads are preempted by Federal law.

The proposed project proposes to introduce new residents adjacent to the rail yard. Pictures 1-3 illustrate how close the rail yard would be to the project site.

Picture 1
View Looking East from Project Site



Picture 2
View Looking Southeast from Proposed Private Park Location



Picture 3
View Looking Southeast from Proposed Private Park Location



Lack of connectivity to Main Street

The project is constrained by the rail yard to the east, the Calaveras overpass to the north and the Union Pacific rail line to the west. Although the project is adjacent to Calaveras Boulevard, because Calaveras is elevated at that location to maintain clearance over the rail yard, there is no vehicular connection from the project site to Calaveras. Due to this constraint, the applicant proposes a circuitous path to Main Street via Railroad Avenue to the north and Hammond Way to the south.

The applicant proposes including bike lanes and sidewalks within the Railroad Avenue and Hammond Way rights-of-way (See project plans attachment). In addition, adjacent to Ford Creek a public Class I bike trail is proposed to connect Railroad Avenue (north of the project) and Hammond Way (south of the project). A walkway is proposed from Railroad Avenue along the Calaveras embankment to connect with the existing sidewalk along Calaveras. Early in the planning process, staff had strongly recommended that any change in land use include a direct over- or under-pass from the project site to Main Street. However, the applicant has offered no direct access between the project site and Main Street.

Density

The project includes both single family and multi-family dwelling units. The proposed overall density for the project is 12.8 units per gross acre. This density most closely matches the High Density Multi-family Residential district [MFH-General Plan, R3-Zoning (12-20 dwellings per gross acre)].

Concerns

The General Plan (including its Housing Element) and the Midtown Specific Plan does not intend for this site to be developed with housing. The City, the Santa Clara Valley Transit Authority, Santa Clara Valley Water District, Metropolitan Transportation Commission, Association of Bay Area Governments, Santa Clara County and other stakeholders have collaborated with the City’s development of the Milpitas Transit Area Specific Plan that places significant city resources on concentrating residential growth and development within the Transit Area. This includes the development of a new BART station, the development of high density around transit centers, and the use of flood control facilities as trails and includes uses that have connectivity and synergy that reduce impacts on city resources. The proposed plan by the applicant is contrary to the local and regional plans, and specifically the Milpitas General Plan and the Transit Area Specific Plan.

Development Standards

The project proposes setbacks that do not meet the city’s standard site development standards and therefore proposes a Planned Unit Development. Planned Unit Developments (PUD) are prescribed in Section 54.07 of the Zoning Code allowing for diversification in the relationships of various buildings, structures and open spaces in planned building groups, while insuring substantial conformance with the underlying zoning.

Table 1
Development Standards

	Zoning Ordinance	Proposed
<u>Density</u> (Min-Maximum)	12-20 du/gross acre	12.8 du/gross acre
<u>Setbacks</u> (Minimum)		
Front to Primary Structure	20 feet	10-12 feet
Front to Street-facing Garage	20 feet	4 feet
Interior Side	30 feet combined	4-5 feet
Street Side	10 feet	6-10 feet
Rear	40 feet	4 feet
<u>Building Height</u> (Maximum)	35 feet	35 feet

The proposed reduced standards would become the PUD standards if adopted.

Parking

The project includes 213 dwelling units, which differs from the previous 216-unit submittal by the applicant in May 2012. The most recent submittal does not provide a full parking description for staff to determine if the calculations are accurate. However, using the information submitted on the revised site plan, 17 parking spaces are located off-site, which is inconsistent with the City’s parking ordinance requirements. All of the proposed project parking is required to be located on-site for the project to be in compliance with the parking ordinance.

The project does include two on-site parking lots at the southern end of the project site. These parking lots are incompatible with the adjacent uses, which include a church and a residence.

Architecture

Single Family

The single family architectural themes include “craftsman”, “contemporary” and “cape cod”. There are three plan types for the single family product. Materials proposed for the elevations include a variety of siding, stucco, stone, and shutters. Only front elevations were submitted. Incomplete items include identifying the other elevations, the type of roof material, and other details.

Townhouse

The townhouse architectural themes include “craftsman” and “contemporary”. There are three plan types for the townhouse product. Materials proposed for the elevations include a variety of siding, stucco, stone, and shutters. Only front elevations were submitted. Incomplete items include identifying the other elevations, the type of roof material, and other details.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan Analysis

The City’s General Plan was recently amended to include new Land Use Conversion policies that strengthen previous General Plan policies that discourage conversions of industrial lands to residential before the Midtown and Transit Area are substantially built out. Given that this project was submitted prior to the initiation of the amendments, this project is excluded from complying with the new amendments. However, there are general plan policies that are applicable as identified in Table 2. The project Environmental Impact Report “Land Use” section describes how the project is consistent and in many cases **only with mitigation**.

The project requires a change to the land use designation from Manufacturing and Warehousing (MW) to High Density Multi-family Residential (R3). In addition, a Planned Unit Development overlay is proposed.

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

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-G-6. Implement the Midtown Specific Plan goals polices and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing</i>	Inconsistent. The project location is incompatible with the surrounding uses. Neither the Union Pacific rail yard nor the Union Pacific rail lines are changing their use or activities in the foreseeable future. The project does not create the required connections with the Midtown community and specifically does not

Policy	Consistency Finding
<i>and central community ‘gathering place’ while maintaining needed industrial service and commercial uses.</i>	include a crossing over the Union Pacific rail line to obtain access with Main Street. The project is inconsistent with the policies of the Midtown Specific Plan.
<i>2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Inconsistent. The project proposes demolition of economically viable industrial properties to be used for residential. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to the this policy.

Zoning Ordinance

A rezone is proposed to change the land use designation from Heavy Industrial (M2) to High Density Multi-family (R3). In addition, a Planned Unit Development Overlay is proposed.

The project requires a General Plan, Specific Plan and Zoning amendment, in addition to a Site Development Permit, Conditional Use Permit and Planned Unit Development. The Planning Commission is required to make the following findings in order to approve the project. Any one finding not made necessitates a denial of the project. Table 3 summarizes the required findings and whether that finding can be made.

Table 3
Zoning Findings

Required Finding	Consistency Finding
<i>(General Plan) The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.</i>	Inconsistent. Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project described in Table 2.
<i>(General Plan) The proposed amendment will not adversely affect public health, safety and welfare.</i>	Inconsistent. The project brings residents (children/seniors) to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail yard. The site currently represents a “buffer” from the rail yard.
<i>(Specific Plan) The proposed specific plan amendment is consistent with the goals, objectives, policies, and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan.</i>	Inconsistent. Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.
<i>(Specific Plan) The uses proposed in the</i>	Inconsistent. The project is adjacent to an active rail

Required Finding	Consistency Finding
<i>specific plan amendment are compatible with adjacent uses and properties.</i>	line and rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan.
<i>(Specific Plan) The proposed specific plan amendment will not adversely affect the public health, safety and welfare.</i>	<p>Inconsistent. The project brings residents (children/seniors) to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail line and rail yard.</p> <p>Incidents at the Rail Yard occurred in 2007 and 2009 where ethanol isopropanol (a clear and flammable liquid at room temperature with odor resembles that of a mixture of ethanol and acetone) leaked. Although, the project EIR states that the Federal Government has standards in place to ensure safety, the proposed project introduces residents in close proximity to potential accidents.</p>
<i>(Specific Plan) The proposed specific plan amendment will not create internal inconsistencies within the specific plan.</i>	Inconsistent. The project is inconsistent with Land Use Goal 1, Land Use Policies 3.9, 3.17; Circulation Goals 1 and 2, Circulation Policies 4.2, 4.13, 4.14, and 4.17 of the Midtown Specific Plan. (See Table 4 for detail)
<i>(Zoning) The proposed zoning amendment is consistent with the general plan.</i>	Inconsistent. Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.
<i>(Zoning) The proposed zoning amendment will not adversely affect the public health, safety and welfare.</i>	Inconsistent. The project brings residents (children/seniors) to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail line and rail yard.
<i>(Site Development) The layout of the site and design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.</i>	Inconsistent. The project proposes three private recreation areas. Two of the areas are adjacent to the Calaveras overpass and one is adjacent to the Union Pacific Rail Yard and are not considered to be ideal locations for recreation space. The open space areas should be located centrally for the neighborhood and adjacent to the proposed trail. There are two parking lots on the southern portion of the project that are incompatible with the existing adjacent uses, which include a church and residence.

Required Finding	Consistency Finding
<i>(Site Development) The project is consistent with the zoning ordinance.</i>	Inconsistent. The project does not meet the intent of the Zoning Ordinance (Section 1.02) that ensures the most appropriate use of land throughout the city; to stabilize and conserve the value of property to provide adequate light, air and reasonable access; to secure safety from fire and other dangers and in general to promote the public health, safety, peace, morals, comfort and welfare.
<i>(Site Development) The project is consistent with the general plan.</i>	Inconsistent. Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project as described in Table 2.
<i>(Site Development) The project is consistent with the Midtown Specific Plan.</i>	Inconsistent. The project is inconsistent with Land Use Goal 1, Land Use Policies 3.9, 3.17; Circulation Goals 1 and 2, Circulation Policies 4.2, 4.13, 4.14, and 4.17 of the Midtown Specific Plan.
<i>(CUP) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety and general welfare.</i>	Inconsistent. The project brings residents (children/seniors) to a nuisance (potential rail related noise, light and glare, odor and safety issues) that the City has no authority to remedy. The City is pre-empted by Federal law with respect to the operations of the Union Pacific rail line and rail yard.
<i>(PUD) The proposed development will result in an intensity of land utilization no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the general plan, zoning ordinance or subdivision ordinance.</i>	Inconsistent. The project is inconsistent with the surrounding uses.
<i>(PUD) 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.</i>	Inconsistent. While the project includes some on- and off-site improvements; these improvements are minimal given the Midtown Specific Plan Policies to find a resolution for access and circulation to the site including the railroad crossing. Project does not propose any identifiable added public benefit.
<i>(PUD) The proposed Planned Unit Development is consistent with the Milpitas General Plan.</i>	Inconsistent. Goal 2.aG-6 and Implementation Policy 2.a-I-3 of the general plan are not met by the project.
<i>(PUD) The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the</i>	Inconsistent. The project proposes three private recreation areas. Two of the areas are adjacent to the Calaveras overpass and one is adjacent to the Union Pacific Rail Yard. These are not ideal locations for

Required Finding	Consistency Finding
<i>adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.</i>	recreation space. There are two parking lots on the southern portion of the project that are incompatible with the existing adjacent uses.

Midtown Specific Plan

The project requires a change in the land use designation from Manufacturing and Warehouse (MW) to Multi-family High Density (R3). In addition, a Planned Unit Development overlay is proposed.

Policy 3.9 of the Land Use Section of the Midtown Specific Plan states:

Establish a “future study area” on a portion of the rail yards (between Calaveras Boulevard and the Hetch-Hetchy right of way). Maintain the current Manufacturing and Warehousing zoning within the Future Study area and re-zone the area upon resolution of circulation and access issues.

A portion of the rail yards which is currently planned for manufacturing and warehousing uses represents an area that is attractive for new land uses in the future. Due to access constraints, specifically, the need for an additional railroad crossing, the existing manufacturing and warehousing designation should be maintained for the area. In the future, if property owners wish to pursue other uses on these properties, appropriate land uses should be determined at that time, taking into consideration the goals of the Specific Plan as well as market opportunities and constraints.

The project site is located within the “Future Study Area”. Staff communicated to the applicant the circulation and access issues of the area. The applicant has not committed to the railroad crossing. And therefore, the proposed circulation and access remains inconsistent with the Midtown Specific Plan

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

Table 4
Midtown Specific Plan Consistency

Policy/Goal	Consistency Finding
<i>Goal 1 (land use): Encourage a compatible mixture of residential,</i>	Inconsistent. The project location is incompatible with the surrounding uses. Neither the Union Pacific

Policy/Goal	Consistency Finding
<p><i>retail, office, service-oriented commercial and industrial uses within the Midtown Area.</i></p>	<p>rail yard nor the Union Pacific rail lines are changing their use or activities in the foreseeable future. The project does not create the required connections with the Midtown community and specifically does not include a crossing over the Union Pacific rail line to obtain access with Main Street. The project is inconsistent with the policies of the Midtown Specific Plan.</p>
<p><i>Policy 3.17: Encourage the development of new office/business uses along the Calaveras Boulevard corridor in order to take advantage of the area’s convenient freeway access and visibility.</i></p>	<p>Inconsistent. The project proposes demolition of economically viable industrial properties to be used for residential. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to this policy. In addition, there exist incompatibility with adjacent uses issues that may be unresolvable for the foreseeable future.</p>
<p><i>Policy 3.9: Establish a “future study area” on a portion of the rail yards (between Calaveras Boulevard and the Hetch-Hetchy right of way). Maintain the current Manufacturing and Warehousing zoning within the Future Study area and re-zone the area upon resolution of circulation and access issues.</i></p>	<p>Inconsistent. While the proposed mitigation addresses some of the circulation and access issues. The applicant does not propose a crossing over the Union Pacific rail line for access to Main Street. Main Street is the major focus roadway in the Midtown Specific Plan.</p> <p>The Midtown Specific Plan Policy 3.9 states that rezoning may occur in this “future study area” after circulation and access issues are resolved. The project’s EIR includes three alternatives for the crossing of the Southern Pacific Railroad line. While the EIR’s focus is grounded in specific laws, guidelines and thresholds that restrict the analysis for procedural purposes, it does not circumvent the Midtown Specific Plan. The issue of circulation and access for the site remains unresolved.</p>
<p><i>Goal 1 (circulation): Improve the viability of the pedestrian, bicycle and transit systems.</i></p>	<p>Inconsistent: While the project proposes mitigation for some connections; the lack of a connection over the Union Pacific Railroad line to access Main Street is a significant deficiency.</p>
<p><i>Goal 2 (circulation): Balance the need for through movement with livability and pedestrian orientation.</i></p>	<p>Inconsistent: While the project proposes mitigation for some connections; the lack of a connection over the Union Pacific Railroad line to access Main Street is a significant deficiency.</p>
<p><i>Policy 4.2 (circulation): Provide</i></p>	<p>Consistent. With mitigation, the on- and off-site</p>

Policy/Goal	Consistency Finding
<p><i>pedestrian connections between the transit stations and commercial, employment and residential destinations that are direct attractive and interconnected with the larger city sidewalk and pedestrian path.</i></p>	<p>improvements to sidewalks and trails and bike lanes provide a direct access to the Great Mall and Light Rail Stations.</p>
<p><i>Policy 4.13 (circulation): Establish an interconnected system of sidewalks and pedestrian paths that provides safe and convenient pedestrian access between the transit stations and other destinations within the Midtown Area.</i></p>	<p>Consistent. With mitigation, the on- and off-site improvements to sidewalks and trails and bike lanes provide a direct access to the Great Mall and Light Rail Stations, since Hammond does not have many driveways or intersections.</p>
<p><i>Policy 4.14 (circulation): Require a public access easement through new developments, when necessary to ensure that public parks and the City’s trail network are accessible to the general public.</i></p>	<p>Consistent. With mitigation, the use of the area adjacent to Ford Creek will be made available to the public for use as a Class I trail.</p>
<p><i>Policy 4.17 (circulation): Ensure that new development complies with the City’s requirements for off-street parking. Consider reductions on a case by case basis.</i></p>	<p>Inconsistent. The project includes parking for its development on public streets, which is inconsistent with the City’s site development standards. In addition, staff does not support a reduction in parking.</p>

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project requires an Environmental Impact Report. The Draft EIR was circulated for public comment on November 15, 2012 through January 2, 2013.

Significant Impacts

The EIR contains analysis based on thresholds established for CEQA using the “initial study” checklist. A project may have “no impact”, “less than significant impact”, “less than significant impact with mitigation” or “significant impact”. The following topics have been identified as being significant requiring mitigation:

Aesthetics, light and glare; air quality; biological resource; cultural resources; geology, soils and seismicity; hazards and hazardous materials; hydrology and water quality; land use; noise and vibration; public services and recreation; transportation; utility systems; and cumulative impacts.

Staff has identified the following errors that affect the analysis of the project:

Circulation

The Midtown Specific Plan Policy 3.9 states that rezoning may occur in this “future study area” after circulation and access issues are resolved. The project’s EIR includes three alternatives for the crossing of the Union Pacific Railroad line. The EIR erroneously states on Page 5-18 that a grade-separated extension of Carlo Street does not constitute a feasible alternative in (1) because Policy 3.9 is the nexus in terms of avoiding or substantially lessening any significant project impact. Furthermore, while the EIR is drafted under CEQA procedures, it cannot circumvent the Midtown Specific Plan and its set of goals and policies. The proposed project is inconsistent with the Midtown Specific Plan.

The project site is located within the “Future Study Area” of the Midtown Specific Plan. Staff brought to the applicant’s attention the circulation and access issues of the area. The applicant has not committed to the railroad crossing. And therefore, the circulation and access issues remain unresolved. The EIR’s conclusion in the Executive Summary (Page ES-17) under Impact LU-3 is incorrect in that no mitigation has been proposed to cross the railroad and as such **remains a “significant impact.”**

The project’s EIR erroneously states on Page 3.8-32 “Circulation Goal 1” is consistent.

Land Use

The project’s EIR erroneously states on Page 3.8-31 (Land Use Goal 1) that the project is “compatible with neighboring commercial and industrial lands”.

The project’s EIR erroneously states on Page 3.8-31 “Land Use Policy 3.9” “...rezone the area upon resolution of circulation and access issues.

Hazardous Materials

Incidents at the Rail Yard occurred in 2007 and 2009 where ethanol isopropanol leaked. Although, the project EIR states that the Federal Government has standards in place to ensure safety, and that the incidents were “small”, the project nevertheless proposes introducing residents to be adjacent to potential hazardous accidents. The City has no jurisdiction over Union Pacific for the transport and handling activities of materials throughout the Rail Yard. This is one of several reasons that the adjacent properties are designated industrial and provide the appropriate buffer of the rail yards.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. Throughout the course of processing the project, various members of the public have inquired about the project. The adjacent residential property owner has opposed the project from its inception as well as the Macedonia Church. In addition, the Milpitas Unified School District Superintendent wrote in opposition of the project (see Attachment D).

CONCLUSION

At the time of project submittal, the applicant understood the project inconsistencies with the City’s General Plan, Midtown Specific Plan and Zoning Ordinance. In addition, the applicant

understood staff's recommendation for denial based on these inconsistencies. Staff's analysis combined with the Draft Environmental Impact Report analysis identifies numerous issues and inconsistencies with the City's General Plan, Midtown Specific Plan and Zoning Ordinance. Staff recommends the Planning Commission recommend that the City Council deny the project and not certify the Final EIR.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission may concur with staff and recommend denial of the project to the City Council.

This action would result in a recommendation of denial being forwarded to the City Council.

2. The Planning Commission may, at its discretion, direct staff to prepare certain findings, draft conditions of approval and return at a subsequent Planning Commission public hearing.

This action would result in any modifications being incorporated accordingly.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 13-013 recommending denial of the project.

Attachments:

- A. Resolution No. 13-013
- B. Project Plans
- C. Draft EIR
- D. Opposition letters
- E. The Local Regulation of Interstate Railroads