



# MILPITAS PLANNING COMMISSION STAFF REPORT

January 14, 2015

**APPLICATION:** RESOLUTION AMENDMENT – GP14-0005 – Repealing Paragraph Number 7 in City Council Resolution No. 8220 relating to land use conversion.

**RECOMMENDATION:** Staff recommends that the Planning Commission: Conduct the public hearing and adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to conversion of employment/sales tax generation properties to residential, while considering to continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

**LOCATION:**  
Address/APN: Properties west of McCarthy Ranch Drive and north of Highway 237 (APNs 022-56-005; -006; -007; -008; -009; 022-29-036; 022-30-035; -037; -038; -039); and Properties east of California Circle and west of Penitencia Creek (APNs 022-37-011; -012; 017; -019)  
Area of City: Dixon Landing Business Park

**PEOPLE:**  
Project Applicant: City of Milpitas  
Consultant(s): NA  
Property/Business Owner: (APN 022-56-005; -006; -007; -008; -009) BRE/Milpitas LLC, Equity Property Tax Group LLC, PO Box A- 3879 Chicago, IL 60690-3879  
  
(APN 022-29-036; -30-037; 30-039) McCarthy Ranch LP 15425 Los Gatos Blvd Unit 102 Los Gatos, Ca 95032  
  
(APN 022-30-038) New Trend Tech Inc, 680 N McCarthy Blvd, Milpitas, CA 95035  
  
(APN 022-30-35) City of Milpitas, 455 E. Calaveras Blvd, Milpitas CA 95035  
  
(APN 022-37-011; -012) Everlasting Private Foundation, 19620 Stevens Creek Blvd, Suite. 200, Cupertino, CA 95014

(APN 22-37-019) BAP San Jose LLC, 81 Suttons Ln. Piscataway, NJ 08854

(APN 22-37-017) iStar Financial, 1 Sansome St 30<sup>th</sup> Floor, San Francisco, CA 94104

Project Planner: Adam Petersen, Senior Planner

**LAND USE:**

General Plan Designation: Industrial Park (INP)  
Zoning District: MP (Industrial Park) – PUP 31  
Overlay District: Site and Architectural Overlay (-S)

**ENVIRONMENTAL:**

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 is exempt pursuant to Section 15061(b)(3).



## BACKGROUND

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On January 15, 2013, the City Council adopted Resolution No. 8220 approving amendments to the Land Use and Circulation elements of the Milpitas General Plan. This amendment addressed long term planning and fiscal sustainability for the City when evaluating development proposals. Specifically, the amendment added General Plan Policy 2.a-I-2 to the Land Use Element. This policy states the following:

- **2.a-I-2 -- Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% buildout in the Midtown and Transit Area Specific Plans.**

The implementation of Policy 2.a-I-2 focuses residential development in the Midtown and Transit Area Specific Plans, where there is the existing infrastructure and plans to accommodate the anticipated growth. However, Resolution No. 8220 included Paragraph Number 7, which is an exception to Policy 2.a-I-2 for certain properties from complying with the Policy. Specifically, Paragraph Number 7 states:

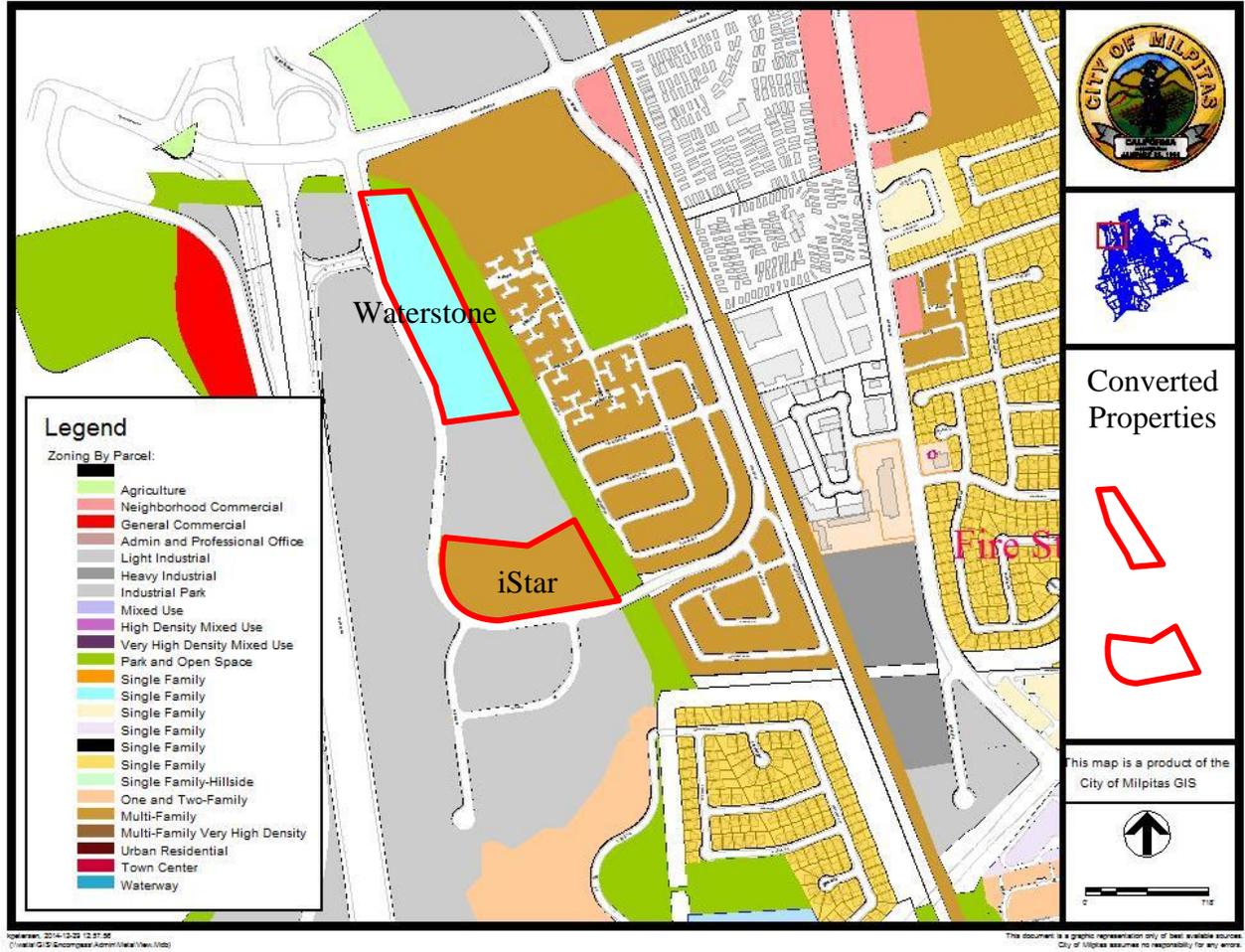
7. Implementing Policy 2.1-I-2 (sic) shall not apply to General Plan Amendment application for properties west of McCarthy Boulevard north of Highway 237 and for properties east side (sic) of California to Penitencia Creek.

This exemption has recently resulted in consideration and conversion of industrial properties located east of California Circle and west of Penitencia Creek to residential subdivision. Map 2 illustrates the two properties that have been converted from industrial to residential under the Policy exception. These two projects are as follows:

- Waterstone – APNs 022-37-011; -012 – Approved by City Council on November 19, 2013; and
- iStar – APNs 022-37-017 – Approved by City Council on November 18, 2014.

At the Mayor's request, staff has prepared this report and draft resolution to amend Resolution 8220 by repealing Paragraph Number 7. If the City Council approves the Mayor's recommendation, all employment/sales tax generation properties shall only be considered once there is 80 percent buildout of the Midtown and Transit Area Specific Plan areas and the focus of residential developments in the near future will be in these two Specific Plan areas only.

## Map 2 Industrial Properties Approved For Residential



## **PROJECT DESCRIPTION**

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The City of Milpitas is proposing an amendment to Resolution No. 8220 repealing Paragraph Number 7 relating to land use conversion of industrial land to residential. Item number 7 allows specific industrial properties located in the City of Milpitas to be exempted from General Plan Policy 2a-I-2, which prohibits land use conversion to residential until there is 80 percent buildout of the Midtown and Transit Area Specific Plan areas.

Repealing Paragraph Number 7 will affect the following properties located west of McCarthy Boulevard and north of Highway 237:

- APNs 022-56-005; -006; -007; -008; -009
- APN 022-29-036
- APNs 022-30-035; -037; -038; -039
- APNs 022-29-036; 022-30-035; -037; -038; -039

It will also affect the following properties located to the east of California Circle and west of Penitencia Creek:

- APNs 022-37-011; -012
- APN 22-37-019
- APN 22-37-017

As discussed previously, the Waterstone (APN 022-37-011; -012) and iStar (APN 022-37-019) projects have already converted the industrial properties east of California Circle and west of Penitencia Creek to residential purposes. Repealing Paragraph 7 would not affect these projects because they are already converted to residential purposes.

## **PROJECT ANALYSIS**

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Repealing Paragraph Number 7 from Resolution 8220 would achieve a higher level of consistency with General Plan Policy 2.a-I-2. The original intent of the policy was to maximize the economic development potential of land in the City by allocating adequate areas to income/job generating land uses. Repealing Paragraph Number 7 would preserve over 134 acres of industrial, job generating, and income producing lands located to the west of McCarthy Ranch Road. Further, it would minimize the impacts of development on public services. Public services would not have to be extended a large distance to service these areas.

The proposed amendment to Resolution 8220 would promote and focus residential development in the Midtown and Transit Area Specific Plan areas. The Midtown and Transit Area Specific Plan areas are both carefully thought out to accommodate future development, as demonstrated by the certified environmental impact reports. Further, focusing residential development in these areas would assist the City in achieving its vision for these places to function as the dense urban and mixed use town core.

As previously discussed, and as illustrated in Map 2 above, two projects have converted industrial land east of California Circle to residential developments. Repealing Paragraph 7 from Resolution 8220 will not apply to these projects. The approved entitlements will continue for these parcels. However, the result of these approvals is that it has essentially sandwiched one remaining 10-acre piece of industrially designated land between residential projects. This land use pattern presents potential inconsistencies. Accordingly, staff recommends that the Commission consider continuing to exempt parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

## **FINDINGS FOR APPROVAL (OR DENIAL)**

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

There are no specific findings required for the Planning Commission to support the repealing of Paragraph Number 7 in City Council Resolution No. 8220 since there are no General Plan Amendments, Zoning Amendments, or approval of any other permits or amendments required to repeal Paragraph Number 7 in City Council Resolution No. 8220.

Although no specific findings are required, the Planning Commission does find repealing Paragraph Number 7 in City Council Resolution Number 8220 is consistent with the City's General Plan. Specifically, the amendment will focus residential development on the Midtown and Transit Area Specific Plans, consistent with Policy 2.a-I-2 by removing other areas of the City from residential development until 80% of the Midtown and Transit Areas are built out. Additionally, amending the resolution will also preserve properties from converting to residential uses that instead are intended for employment and income producing purposes.

Further, the Planning Commission finds amendment to Resolution No. 8220 will not adversely affect the public health, safety and welfare. The amendment will focus residential development in areas that anticipate and have planned for significant future residential development. Further, amending the resolution will help the City achieve long term fiscal sustainability by focusing residential development in areas with the infrastructure to accommodate the development. For these reasons, the proposed amendment to Resolution No. 8220 will not affect the public health, safety and welfare.

## **ENVIRONMENTAL REVIEW**

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The proposed resolution amendment is exempt from the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The purpose of amending Resolution No. 8220 is to achieve greater consistency with the Milpitas General Plan. The amendment will not expand the range or intensity of uses permitted on the subject properties. Instead, it will facilitate the utilization of these properties as the General Plan intends. The amendment does not authorize any construction and will not result in any physical change in the

environment. Therefore, the proposed amendment is exempt from CEQA review because it can be seen with certainty, there is no possibility it will have a significant adverse on the environment.

## **PUBLIC COMMENT/OUTREACH**

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Staff publicly noticed the application in accordance with City and State law. Staff did not receive public comments as of the date of writing this Report.

## **CITY COUNCIL REVIEW**

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This project requires review by the City Council and is tentatively scheduled on the February 3, 2015 City Council agenda.

## **CONCLUSION**

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In summary, it is recommended that the Planning Commission recommend the City Council adopt a resolution to repeal Paragraph Number 7 in City Council Resolution No. 8220. Amending the resolution will promote a more orderly and financially sustainable development pattern for the City of Milpitas. The City adopted the Transit Area Specific Plan and the Midtown Specific Plan. These plans anticipate residential development, and accordingly have the infrastructure and capacity to accommodate the planned development. Converting industrial properties to residential developments will deprive the city of income and job generating lands, thereby negatively impacting its fiscal sustainability. Therefore, rescinding item 7 from Resolution No. 8220 will promote fiscal sustainability and a more orderly approach to development in the City of Milpitas.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct Public Hearing; and
2. Adopt Resolution No. 15-002 recommending the City Council find the project exempt from the California Environmental Quality Act and adopt a resolution to repeal Paragraph Number 7 in City Council Resolution No. 8220 relating to land use conversion, while considering to continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

## **ATTACHMENTS**

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- A. Resolution 15-002
- B. Resolution No. 8220