

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DENYING  
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 AND CONDITIONAL USE PERMIT NO. UP12-0010 FOR THE PRESTON  
PROPERTY RESIDENTIAL PROJECT REQUESTING A GENERAL PLAN AMENDMENT,  
SPECIFIC PLAN AMENDMENT AND REZONING TO CHANGE THE LAND USE  
DESIGNATION FROM HEAVY INDUSTRIAL TO HIGH DENSITY MULTI-FAMILY  
RESIDENTIAL AND PARKS AND OPEN SPACE WITH PLANNED UNIT DEVELOPMENT  
FOR THE DEVELOPMENT OF 213 DWELLING UNITS WITH ON AND OFF-SITE  
IMPROVEMENTS LOCATED AT 133 BOTHELO LANE**

**WHEREAS**, on October 17, 2011, a pre-application was submitted by KB Home (“Applicant”), 5000 Executive Parkway, #125, San Ramon, CA 94583. On May 18, 2012, a formal application was submitted by the Applicant to request a General Plan amendment, Specific Plan amendment and rezoning changing the land use designation from Heavy Industrial to High Density Multi-family Residential and Parks and Open Space with Planned Unit Development for the development of 213 dwelling units with on and off-site improvements (the “Project”). The subject property is located within the Heavy Industrial with Site and Architectural Overlay (M2-S) zoning district and within the Midtown Specific Plan (APNs: 086-26-029, 086-26-030, 086-27-002, 086-27-003, 086-27-008, 028-23-018, 086-26-032); and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and determined that an Environmental Impact Report (EIR) would be required for the Project, and circulated a Notice of Preparation dated February 28, 2012 to public agencies and interested parties for consultation on the scope of the EIR. The Draft EIR (SCH No. 2012022075) was circulated between November 15, 2012 and January 2, 2013; and

**WHEREAS**, on April 10, 2013, the Planning Commission held a noticed public hearing on the Project at which time the Planning Commission considered a written staff report, the Draft EIR, written and oral comments on the Draft EIR, and all other oral and written comments and documents as part of the administrative record. Based on the full record before the Planning Commission, the Planning Commission adopted Resolution No. 13-013 recommending that the City Council deny the application requesting a change in land use designation from Heavy Industrial to High Density Multi-Family Residential for the construction of 213 dwelling units (GP12-0002, ST12-0002, ZA12-0003, PD12-0002, MT12-0002, SD12-0001, and UP12-0010); and

**WHEREAS**, on November 5, 2013, the City Council held a noticed public hearing to consider the Planning Commission’s recommendation and evidence regarding the Project.

**NOW, THEREFORE, BE IT RESOLVED**, that the Milpitas City Council hereby determines, finds and certifies as follows:

**Section 1**

The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence

submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2**

The Project’s environmental impacts are addressed in the Project’s Final EIR. The City Council has reviewed, considered, and exercised its independent judgment on the Final EIR for the proposed Project. As further provided below, by this Resolution the City Council denies 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 and Conditional Use Permit No. UP12-0010 and no further action is required by the City Council on the EIR.

**Section 3**      **Milpitas General Plan Conformance Findings - Milpitas Municipal Code Section XI-10-57.02(G):**

*A. The proposed general plan amendment is internally inconsistent with those portions of the General Plan which are not being amended because of the following:*

i. Policy 2.a-G-6. Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community ‘gathering place’ while maintaining needed industrial, service and commercial uses.

a. The proposed 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 proposed 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 to Main Street. The proposed Project is inconsistent with the policies of the Midtown Specific Plan as discussed herein.

ii. Policy 2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.

a. The proposed Project would demolish economically viable industrial properties to be used for residential development. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to this policy.

iii. Policy 2.a-I-13. When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

a. The applicant has rejected the City’s repeated proposals to negotiate and discuss substantial economic benefits for the City. For example, the applicant does not provide any direct connection to Main Street from the Project site.

iv. Policy 2.a-G-9. The City should make land use decisions that improve the City’s fiscal condition. Manage the City’s future growth in an orderly, planned manner that is consistent with the City’s ability to provide efficient and economical public services, to maximize the use of

existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

a. The proposed Project may have a negative effect on the City's General Fund regarding providing public services based on the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

v. Policy 2.a-G-10. Consider long-term planning and strong land use policy in managing the City's fiscal position.

a. The proposed Project proposes does not manage and improve the City's fiscal position in the long-term as evidenced in the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

*B. The proposed general plan amendment will adversely affect public health, safety and welfare because of the following:*

i. The proposed Project introduces new residents in between two active rail lines with 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" between the rail yard and the remainder of the City. 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 to be adjacent to potential accidents.

**Section 4**      **Milpitas Specific Plan Conformance Findings - Municipal Code Section XI-10-57.02(G)(2):**

*A. The proposed Specific Plan amendment is inconsistent with the goals, objectives, policies, and programs of the Milpitas General Plan because:*

i. Goal 2.a-G-6. Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community 'gathering place' while maintaining needed industrial, service and commercial uses.

a. The proposed 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 proposed 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 to Main Street. The proposed Project is inconsistent with the policies of the Midtown Specific Plan as discussed herein. The proposed Project also does not create transit-oriented housing and a central community "gathering place" as it is isolated from transit and other compatible uses and does not maintain needed industrial uses but rather depletes them.

ii. Policy 2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.

a. The proposed Project does not strengthen and promote development through stability and balance but instead creates an imbalanced pattern of incompatible uses inviting future disharmony between the industrial rail yard and automobile loading and storage facility and the proposed residential Project.

iii. Policy 2.a-I-13. When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

a. The Applicant has rejected the City's repeated proposals to negotiate and discuss substantial economic benefits for the City. For example, the applicant does not provide any direct connection to Main Street from the Project site.

iv. Policy 2.a-G-9. The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

a. The proposed Project may have a negative effect on the City's General Fund regarding providing public services based on the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

v. Policy 2.a-G-10. Consider long-term planning and strong land use policy in managing the City's fiscal position.

a. The proposed Project proposes does not manage and improve the City's fiscal position in the long-term as evidenced in the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

*B. The uses proposed in the Specific Plan amendment are incompatible with adjacent uses and properties because:*

i. As discussed in detail above, the proposed Project is adjacent to an active rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan cited herein.

*C. The proposed Specific Plan amendment will adversely affect the public health, safety and welfare because:*

i. As discussed in detail above, the proposed Project introduces new residents in between two active rail lines with 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” between the rail yard and the remainder of the City.

*D. The proposed specific plan amendment will create internal inconsistencies within the Milpitas Midtown Specific Plan because of the following:*

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.

a. The proposed Project is adjacent to an active rail line and rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan.

b. While the proposed mitigation for off-site improvements addresses some of the circulation and access issues, the proposed Project does not provide a crossing over the Union Pacific rail line for access to Main Street. The proposed Project also does not contemplate another east-west crossing as described in the Midtown Specific Plan. 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 future study area creates a void in the City’s circulation network and the proposed Project does not resolve the circulation and access issues identified in the Midtown Specific Plan.

c. While the Project proposes mitigation for some connections (sidewalks along Railroad Court and Hammond); the lack of a connection over the Union Pacific Railroad line to access Main Street is a significant deficiency and inconsistent with the Midtown Specific Plan.

ii. Policy 4.10. Consider long-term opportunities for an additional east-west vehicular crossing of the Union Pacific Railroad tracks between Calaveras Boulevard and Great Mall Parkway.

a. The proposed Project does not contemplate an additional east-west vehicular crossing of the Union Pacific Railroad tracks between Calaveras Boulevard and Great Mall Parkway and is inconsistent with the Midtown Specific Plan.

iii. Land Use Goal 1. Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown Area.

a. The proposed Project brings new residents in between two active rail lines with 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. 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.

b. The proposed 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 proposed 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. Based on the foregoing, the proposed Project is inconsistent with the policies of the Milpitas Midtown Specific Plan.

c. The proposed Project proposes demolition of economically viable industrial properties to be used for residential development. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to the this policy.

iv. Circulation Goal 1. Improve the viability of the pedestrian, bicycle and transit systems.

a. As discussed above, connections across the barrier created by the Union Pacific Railroad tracks are not being explored sufficiently or comprehensively by the proposed Project.

v. Circulation Goal 2. Balance the need for through movement with livability and pedestrian-orientation.

a. The proposed Project's location is sandwiched between two active railroad tracks and the lack of a proposed connection to Main Street fails to meet this goal.

vi. Policy 4.17. Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.

a. The proposed Project does not meet the City's parking requirements because it attempts to satisfy the parking requirements with off-site spaces.

**Section 5**      **Zoning Amendment Findings – Milpitas Municipal Code Section XI-10-57.02(G):**

*A. The proposed zoning amendment is inconsistent with the Milpitas General Plan because of the following:*

i. Goal 2.a-G-6. Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community 'gathering place' while maintaining needed industrial, service and commercial uses.

a. The proposed 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 proposed 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 to Main Street. The proposed Project is inconsistent with the policies of the Midtown Specific Plan as discussed herein. The proposed Project does not create transit-oriented housing and a central community "gathering place" as it is isolated from transit and other compatible uses and does not maintain needed industrial uses but rather depletes them.

ii. Policy 2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.

a. The proposed Project does not strengthen and promote development through stability and balance but instead creates an imbalanced pattern of incompatible uses inviting future disharmony between the industrial rail yard and automobile loading and storage facility and the proposed residential Project.

iii. Policy 2.a-I-13. When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

a. The Applicant has rejected the City's repeated proposals for substantial economic benefit including a direct connection to Main Street.

iv. Policy 2.a-G-9. The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

a. The proposed Project may have a negative effect on the City's General Fund regarding providing public services based on the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

v. Policy 2.a-G-10. Consider long-term planning and strong land use policy in managing the City's fiscal position.

a. The proposed Project does not manage or improve the City's fiscal position in the long-term as evidenced in the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

*B. The proposed zoning amendment will adversely affect the public health, safety and welfare because:*

a. The proposed Project introduces new residents in between two active rail lines with 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. 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 to be adjacent to potential accidents.

**Section 6**      **Site Development Findings – Milpitas Municipal Code Section XI-10-57.03(F):**

*A. The layout of the site and design of the proposed buildings, structures, and landscaping are incompatible and not aesthetically harmonious with adjacent and surrounding development.*

i. The proposed Project includes 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 recreation space. There are two parking lots on the southern portion of the Project that are incompatible with the existing adjacent uses. The proposed Project is located between two rail lines and offers no direct connection to Main Street.

*B. The proposed Project is inconsistent with the Milpitas Zoning Ordinance because:*

i. As explained in detail herein, the proposed 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.

*C. The proposed Project is inconsistent with the Milpitas General Plan because of the following:*

i. Goal 2.a-G-6. Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community ‘gathering place’ while maintaining needed industrial, service and commercial uses.

a. The proposed 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 proposed 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 to Main Street. The proposed Project also does not create transit-oriented housing and a central community ‘gathering place’ as it is isolated from transit and other compatible uses and does not maintain needed industrial uses but rather depletes them.

ii. Policy 2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.

a. The proposed Project does not strengthen and promote development through stability and balance but instead creates an imbalanced pattern of incompatible uses inviting future disharmony between the industrial rail yard and automobile loading and storage facility and the proposed residential Project.

iii. Policy 2.a-I-13. When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

a. The applicant has rejected the City's repeated proposals for substantial economic benefit including a connection to Main Street.

iv. Policy 2.a-G-9. The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

a. The proposed Project may have a negative effect on the City's General Fund regarding providing public services based on the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

v. Policy 2.a-G-10. Consider long-term planning and strong land use policy in managing the City's fiscal position.

a. The proposed Project does not manage or improve the City's fiscal position in the long-term as evidenced in the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

*D. The proposed Project is inconsistent with the Midtown Specific Plan because of the following:*

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.

a. The proposed Project is adjacent to and in between two active rail lines and a rail yard and proposes no direct connection to Main Street, which is inconsistent with the policies of the Midtown Specific Plan.

b. While the proposed mitigation for off-site improvements addresses some of the circulation and access issues, the proposed Project does not provide a crossing over the Union Pacific rail line for access to Main Street. The Project also does not contemplate another east-west crossing as described in the Midtown Specific Plan.

c. While the Project proposes mitigation for some connections (sidewalks along Railroad Court and Hammond); the lack of a connection over the Union Pacific Railroad line to access Main Street is a significant deficiency and is inconsistent with the General Plan.

ii. Policy 4.10. Consider long-term opportunities for an additional east-west vehicular crossing of the Union Pacific Railroad tracks between Calaveras Boulevard and Great Mall Parkway.

a. The proposed Project does not contemplate an additional east-west vehicular crossing of the Union Pacific Railroad tracks between Calaveras Boulevard and Great Mall Parkway.

b. While the proposed mitigation for off-site improvements addresses some of the circulation and access issues, the proposed Project does not provide a crossing over the Union Pacific rail line for access to Main Street. The Project also does not contemplate another east-west crossing as described in the Midtown Specific Plan.

ii. Land Use Goal 1. Encourage a compatible mixture of residential, retail, office, service-oriented commercial and industrial uses within the Midtown Area.

a. The proposed Project brings new residents in between two active rail lines with 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. 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.

b. The proposed 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 proposed 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. Based on the foregoing, the proposed Project is inconsistent with the policies of the Milpitas Midtown Specific Plan.

c. The proposed Project proposes demolition of economically viable industrial properties to be used for residential development. Rezoning 16.6 acres of industrial land adjacent to active rail lines and rail yards is contrary to the this policy.

iii. Circulation Goal 1. Improve the viability of the pedestrian, bicycle and transit systems.

a. Connections across the barrier created by the Union Pacific Railroad tracks are not being explored sufficiently or comprehensively by the proposed Project.

iv. Circulation Goal 2. Balance the need for through movement with livability and pedestrian-orientation.

a. The proposed Project's location sandwiched between two railroad tracks and lack of proposed connection to Main Street fails to meet this goal.

v. Policy 4.17. Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.

a. As previously discussed, the proposed Project does not meet the City's parking requirements.

**Section 7**      **Conditional Use Permit Findings – Milpitas Municipal Code Section XI-10-57.04(F):**

*A. The proposed use, at the proposed location will be detrimental or injurious to property or improvements in the vicinity and to the public health, safety and general welfare because:*

i. The proposed Project brings residents in between two active rail lines with 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. 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.

**Section 8**      **Planned Unit Development Findings -- Milpitas Municipal Code Section XI-10-54.07(B)(6)(d):**

*A. Development of the site under the provisions of the Planned Unit Development will not result in public benefit not otherwise attainable by application of the regulations of general zoning districts because:*

i. As previously discussed, while the proposed Project includes some on- and off-site improvements; these improvements are the minimum necessary to integrate a residential project at this location and do not constitute public benefit not otherwise attainable by application of the regulations of general zoning districts. Additionally, the proposed Project does not take into account the Midtown Specific Plan Policies (mentioned previously) to find a resolution for access and circulation to the site including the railroad crossing.

*B. The proposed Planned Unit Development is inconsistent with the Milpitas General Plan because of the following:*

i. Goal 2.a-G-6. Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community ‘gathering place’ while maintaining needed industrial, service and commercial uses.

a. The proposed 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 proposed 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 to Main Street. The proposed Project also does not create transit-oriented housing and a central community “gathering place” as it is isolated from transit and other compatible uses and does not maintain needed industrial uses but rather depletes them.

ii. Policy 2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance.

a. The proposed Project does not strengthen and promote development through stability and balance but instead creates an imbalanced pattern of incompatible uses

inviting future disharmony between the industrial rail yard and automobile loading and storage facility and the proposed residential Project.

iii. Policy 2.a-I-13. When considering land use conversions from commercial or industrial lands to residential, the City should contemplate substantial economic benefit through negotiable development agreements with contributions towards the Economic Development Corporation to spur economic development.

a. The applicant has rejected the City's repeated proposals for substantial economic benefit including a connection to Main Street.

iv. Policy 2.a-G-9. The City should make land use decisions that improve the City's fiscal condition. Manage the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

a. The proposed Project may have a negative effect on the City's General Fund regarding providing public services based on the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

v. Policy 2.a-G-10. Consider long-term planning and strong land use policy in managing the City's fiscal position.

a. The proposed Project does not manage or improve the City's fiscal position in the long-term as evidenced in the Project's Fiscal Analysis because the findings suggest a possibility that the proposed Project, alone or in combination with all or partial relocation of the existing uses, may result in a negative net fiscal impact on the City's General Fund for additional police services.

*C. The proposed development will not be in harmony with the character of the surrounding neighborhood and will have adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels because:*

i. The proposed Project includes three private recreation areas, with 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 recreation space. There are two parking lots on the southern portion of the proposed Project that are incompatible with the existing adjacent uses. The proposed Project is located between two rail lines and does not propose a direct connection to Main Street.

**Section 9      Tentative Map Findings - Milpitas Municipal Code Section XI-1-4.03:**

Based on the analysis set forth above, the proposed Project is inconsistent with the General Plan, Midtown Specific Plan, and Milpitas Zoning Ordinance and does not support the request to subdivide the property for residential development.

**Section 10**

Based on the foregoing, the City Council hereby denies 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 AND CONDITIONAL USE PERMIT NO. UP12-0010 and no further action is required by the City Council on the EIR.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney