

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DENYING GENERAL PLAN AMENDMENT NO. GP12-0003, ZONING AMENDMENT NO. ZA12-0004, SITE DEVELOPMENT PERMIT NO. SD12-0002, PLANNED UNIT DEVELOPMENT NO. PD12-0001, AND MAJOR VESTING TENTATIVE MAP NO. TM12-0001 (“WATERSTONE RESIDENTIAL PROJECT”) REQUESTING CHANGES TO THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS FROM INDUSTRIAL PARK TO RESIDENTIAL FOR DEVELOPMENT OF AN 84-UNIT RESIDENTIAL SUBDIVISION ON 10.7 ACRES, A PENITENCIA CREEK PEDESTRIAN BRIDGE AND A SUPPLEMENTAL REQUEST TO CHANGE THE GENERAL PLAN AND ZONING LAND USE DESIGNATIONS ON SIX OTHER PARCELS FROM INDUSTRIAL PARK TO GENERAL COMMERCIAL AND RESIDENTIAL FOR A TOTAL 18.5 ACRES OF DEVELOPED PROPERTY LOCATED AT 1494-1600 CALIFORNIA CIRCLE

WHEREAS, on May 23, 2012, an application was submitted by Trumark Homes, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506, for a development proposal to allow General Plan and Zoning Amendments to change the land use designation from Industrial Park to Residential for an 84-unit residential subdivision on a 10.7 acre site, construction of a Penitencia Creek pedestrian bridge, and a supplemental land use and zoning amendment on six other parcels (the “Project”). The properties are located within the Industrial Park Zoning District with Site and Architectural Overlay at 1494 California Circle (APN: 22-37-011), 1600 California Circle (APN 22-37-012), 1424-1436 California Circle (APN 22-37-019), 1501 California Circle (APN 22-37-047), 1521 California Circle (APN 22-37-046), 1533 California Circle (APN 22-37-045), 1543-1547 California Circle (APN 22-37-049), and 1551 California Circle (APN 22-337-040); and

WHEREAS, on May 7, 2013, the applicant conducted a community meeting on the proposed Project, wherein several California Landing residential community residents opposed the proposed pedestrian bridge landing adjacent to their private street; and

WHEREAS, on June 23, 2013, staff conducted a study session with the Planning Commission on the California Circle Area to review land uses, opportunities and constraints, and receive input for future planning of this area in which the Planning Commission directed staff to proceed with vision planning for this area; 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 March 1, 2013 to public agencies and interested parties for consultation on the scope of the EIR. The Draft EIR (SCH No.2013032005) was circulated between June 21, 2013 and August 5, 2013; and

WHEREAS, on October 23, 2013, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties. Based on the full record before the Planning Commission, the Planning Commission unanimously adopted Resolution No. 13-025 recommending that the City Council deny the application requesting a change in land use designation from Industrial Park to Single Family Residential Moderate Density for the construction of 84 dwelling units (GP12-0003, ZA12-0004, SD12-0002, PD12-0001, TM12-0001); and

WHEREAS, on November 19, 2013, the City Council held a duly noticed public hearing to consider the Planning Commission’s recommendation and evidence regarding the Project.

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

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

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

2. The project's environmental impacts are addressed in the project's Final EIR. The City Council has reviewed and considered the EIR for the proposed Project. As set forth below, the City Council denies the application to convert industrial land to residential for the development of 84 single-family residential units and no action is required by the City Council on the EIR.
3. **General Plan Amendment Findings** [Milpitas Municipal Code Section XI-57.02 (G)(1)]:
 - a. *The proposed general plan amendment is internally inconsistent with those portions of the Milpitas General Plan which are not being amended in that the following Guiding Principles and Implementing Policies of the Milpitas General Plan are not met by the proposed project.*

Land Use Guiding Principles

- **2.a-G-2:** Maintain a relatively compact form. Emphasize mixed use development to the extent feasible to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.
- **2.a-G-8 :** The City should consider a long term approach to managing its income/job generating lands and the impacts of development on public services.
- **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.
- **2.a-G- 10:** Consider long-term planning and strong land use policy in managing the City's fiscal position.
- **2.a-G- 11:** Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan. Discourage proposed re-zonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase the City's service costs to the City without offsetting increases in revenue.

Analysis: Denial of the proposed Project is consistent with the stated above Guiding Principles in that the proposed single family homes do not maximize density to achieve a compact form nor does the project emphasize mixed use development that maximizes job development or commercial or industrial opportunities. Further, the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. The proposed land use conversion from employment generating land uses to uses that increase the residential population absent City comprehensive planning and analysis, especially considering that the City is currently studying the overall California Circle area, is considered premature. Given the land use policy and planned growth for the Transit Area and Midtown areas of the City, conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Policies

Development Intensity

- **2.a-I-2:** Land use conversions from employment/sales tax generation properties to residential shall only be considered once there is 80% build-out in the Midtown and Transit Area Specific Plans.
- **2.a-I-4:** Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use.
- **2.a-I-9:** Prohibit encroachment of incompatible uses into industrial lands, and prohibit nonindustrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

Analysis: Denial of the proposed Project is consistent with stated polices on development intensity because the Transit Area and Midtown have not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is contrary to Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, has the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Finally, the conversion of these sites to residential will introduce residential uses in close proximity to industrial uses and the impacts of those uses, such as semi-truck/trailer activity, diesel exhaust, noise and odors. Introduction of residential and sensitive uses near pre-existing industrial uses can also compromise the day-to-day operation and activity of the existing industrial uses and hamper their economic production. It could also provide a barrier to attracting more industrial uses to the area.

Economic Development

- **2.a-I-10:** Maintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands.
- **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.

Analysis: Denial of the proposed Project is consistent with the stated polices on economic development because of the policy directive to maintain an adequate supply of industrial lands and only consider land use conversions to residential when contemplation of substantial economic benefit. There is no substantial economic benefit provided by the project that would justify the conversion of prime business park property with direct visibility and access to Interstate 880. These types of conversions, if considered, should only be contemplated after more comprehensive land use, design, market and economic analysis. Given the short-term trend in market and economic fluctuation, a more comprehensive and long-term fiscally sustainable approach is warranted.

Fiscally Beneficial Land Use

- **2.a-I-15** Maintain and expand the total amount of land with industrial designations. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas.

Analysis: Denial of the proposed Project is consistent with the stated polices on fiscally beneficial land use because this policy seeks to maintain and expand the City's industrial land base rather than allow conversion to a non-industrial land use.

- b. *The proposed general plan amendment will have an adverse effect on public health, safety, and welfare.*

The proposed general plan amendment will have an adverse effect on public health, safety, and welfare due to the uncertainty with what Base Flood Elevation (BFE) level to use for the project's site design. According the applicant's consultant memo dated 9/26/13, the VTA flood analysis is based on a complex set of hydrology and hydraulic assumption and methodology which has not been reviewed by either the Santa Clara Valley Water District or FEMA. The flood elevation is dependent upon various factors such as the volume and timing of the flows and the capacity of the City stormwater pump station and culverts that drain to the detention pond. A relatively small change in the flow modeling during the review process could have a significant effect on the flood elevation at the site. Redesigning the project at this time may expose it to a potential risk of a floodplain map revision change in the future or run the risk of building the project below the elevation of the overland release to the detention basin and the creek channel. However, if the project is built using the 18-foot NAVD, the project site would need to be raised approximately 6-feet in height and require tall retaining wall conditions which are generally discouraged and are not considered good site design or form. For these reasons, a finding cannot be made that the proposed amendment will not adversely affect the public health, safety, and welfare.

4. **Zoning Amendment Findings** [Milpitas Municipal Code Section XI-57.02 (G)(3)]:

a. *The proposed zoning amendment is inconsistent with the Milpitas General Plan.*

As explained in detail above, the proposed Project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed project.

b. *The proposed zoning amendment will have an adverse effect on public health, safety, and welfare.*

As explained in detail above, the proposed Project will have an adverse effect on public health, safety, and welfare due to the uncertainty related to the BFE required for flood protection and management.

5. **Major Tentative Map Findings** (Milpitas Municipal Code Section XI-1-4.03):

a. *The Planning Commission determines the proposed Tentative Map is inconsistent with the Milpitas General Plan.*

The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. As explained in detail above, the proposed Project is inconsistent with the General Plan in that many of the General Plan principles and policies will not be met with the proposed Project.

6. **Site Development Permit Findings** [Milpitas Municipal Code Section XI-10-57-03(F)]:

a. *The layout of the site and design of the proposed project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:*

- The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
- The project's site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.
- The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the proposed Project's proximity to a major gateway into the City, it does not provide any enhanced treatment to provide the area with a special and/or distinct identification.

b. *The proposed Project is inconsistent with the Milpitas General Plan as explained in detail above.*

c. *The proposed Project is inconsistent with the Milpitas Zoning Ordinance.*

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.

7. **Planned Unit Development Findings** [Milpitas Municipal Code Section XI-10-54.07 (B) (6)]:

- a. *The proposed Project is inconsistent with the Milpitas General Plan as explained in detail above.*
- b. *The layout of the site and design of the proposed Project is not compatible or aesthetically harmonious with adjacent and surrounding development because of the following:*
 - The proposed residential development appears as an island of residential amid the remaining Dixon Landing Business Park characterized by industrial buildings and commercial streetscape.
 - The proposed project’s site design and architecture does not relate or have design continuity that provides overall architectural cohesiveness with its surroundings.
 - The entire site is proposed to be elevated 6-feet higher than the neighboring properties. As such the site physically and visually detracts from the surrounding development.
 - The I-880/California Circle location is identified as a “Gateway Site” in the City’s Streetscape Master Plan, requiring enhanced design and identification.

8. Based on the findings set forth herein, the City Council of the City of Milpitas hereby denies General Plan Amendment No. GP12-0003, Zoning Amendment No. ZA12-0004, Site Development Permit No. SD12-0002, Planned Unit Development No. PD12-0001, and Major Vesting Tentative Map No. TM12-0001.

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