



MILPITAS PLANNING COMMISSION
AGENDA REPORT

PUBLIC HEARING

Meeting Date: October 23, 2013

APPLICATION: **Waterstone Residential Project: 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**

APPLICATION
SUMMARY:

A request to (i) change the General Plan and Zoning Land Use Designations from Industrial Park to Residential for subdivision and construction of an 84-unit detached single-family residential development on 10.7 acres, (ii) construct a Penitencia Creek pedestrian bridge, and (iii) change the General Plan and Zoning Land Use Designations on six other parcels from Industrial Park to General Commercial and Residential for 18.5 acres of developed property. The project includes an Environmental Impact Report.

LOCATION: 1424-1600 & 1501-1551 California Circle (APNs: 22-37-011, 012, 019, 040, 045, 046, 047, and 049)

APPLICANT: Trumark Homes, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506

OWNERS: Proposed Subdivision Properties: (APNs 22-37-011 and 012) Everlasting Private Foundation, 19620 Stevens Creek Blvd, Suite. 200, Cupertino, CA 95014;
Proposed Supplemental Properties: (APN 22-37-019) BAP San Jose LLC, 81 Suttons Ln. Piscataway, NJ 08854; and (APN 22-37-040) DF Venture Inc., C/O TEG Micro Technology Inc., 821 Corporate Way, Fremont, CA 94539; (APNs 22-37-045 and 046) US Bank NA ASSC TTEE, C/O Benjamin Miller, CW Capital Asset MGT. 7501 Wisconsin Ave. Suite 500 W, Bethesda, MD 20814; (APN 22-37-047) Milpitas Dixon Landing Hotel C/O Clement Chen & Associates, 400 S. El Camino Real, San Mateo, CA 94402; (APN 22-37-049) Westcore Greenfield LLC Et Al, C/O Lamb & Meyer, 1761 Hotel Cir, Suite 100, San Diego, CA 92122

RECOMMENDATION: Adopt Resolution No.13-025 recommending to the City Council denial of 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 based on the finding set forth in this Report.

PROJECT DATA:

General Plan/ Industrial Park (INP) / Industrial Park (MP)

Zoning Designation:

Overlay District: Site and Architectural Overlay (-S)

CEQA Determination:

In accordance with Article 7 of the CEQA Guidelines, an Environmental Impact Report (EIR) was prepared and circulated between June 21, 2013 to August 5, 2013. The Final EIR was made publically available on September 27, 2013.

PLANNER:

Cindy Hom, Assistant Planner

PJ:

2830

ATTACHMENTS:

- A. Resolution No. 13-025
- B. Project Plans
- C. Applicant's Project Description Letter
- D. Final EIR [Draft EIR, (Appendices: Flood Study, Storm Water Control Plan, Noise Study, Traffic Impact Assessment, Phase 1 Site Assessment, Arborist Report)]
- E. Public Comments
- F. Planning Commission Meeting Minutes for 6-12-2013

**Map 1:
Land Use Map**



Legend	
	WATERSTONE PROJECT AREA
	PROPOSED PENITENCIA BRIDGE
	SUPPLEMENTAL PARCELS
	TRUMARK'S PROPOSED SUBDIVISION SITE
	SINGLE FAMILY RESIDENTIAL (R1-6)
	ONE OR TWO FAMILY (R2)
	MULTI-FAMILY, HIGH DENSITY (R3)
	NEIGHBORHOOD COMMERCIAL (C1)
	GENERAL COMMERCIAL (C2)
	HIGHWAY SERVICES (HS)
	HEAVY INDUSTRIAL (M2)
	LIGHT INDUSTRIAL (M1)
	INDUSTRIAL PARK (MP)
	INSTITUTIONAL (I)
	PARK AND OPEN SPACE (POS)

Map 2:
Project Site and Vicinity Map



- Legend
-  WATERSTONE PROJECT AREA
 -  PROPOSED PENITENCIA BRIDGE
 -  SUPPLEMENTAL PARCELS
 -  TRUMARK'S PROPOSED SUBDIVISION SITE

Map 3:
Proposed Single-Family Residential Subdivision



EXECUTIVE SUMMARY

The proposed project is a request from a residential developer (Trumark Homes) to convert 10.7 acres of Industrial property to 84 single family detached homes along California Circle. There are other components of the proposed project that supplement this request such as land use changes to adjacent properties totaling 18.5 acres, and a proposal for a Penitencia Creek pedestrian bridge. The staff report focuses on the applicant's objective to construct the 84 single family homes along California Circle. The staff report analysis focuses on: (1) City's Discretion Regarding Legislative Acts; (2) General Plan Consistency; (3) Planning/Land Use Opportunities; and (4) Zoning Implications. Staff analysis concludes that the applicant's request is pre-mature representing a lost opportunity for the City to significantly influence planning and future land use for the study area. In addition, the required Findings for the General Plan and Zoning Amendments cannot be made. Based on these main points, staff recommends that the Planning Commission recommend the City Council deny the request to change the land use designations from Industrial park to Residential.

BACKGROUND

Previous land uses and planning entitlements for the project area are listed below including a general chronology of this application:

- August 1984 - The City Council approved a General Plan Amendment (GPA 1984-2), Zone Change (ZC No.538), and PUD Amendment (PUD 31-B) that approved the Dixon Landing Business Park with various industrial uses throughout the majority of the area, and commercial uses in the northern section.
- November 2011 - The applicant submitted a pre-application for an 84-unit detached single-family residential subdivision with a Penitencia Creek pedestrian bridge.
- May 2012 - The applicant submitted a formal application for the development proposal for the 84 detached single-family homes, a Penitencia Creek pedestrian bridge, and supplemental land use and zoning amendments.
- October 2012 – Staff requested supporting information for code-required public benefit associated with the proposed residential subdivision and the pedestrian bridge.
- December 2012 – Due to lack of information regarding code-required public benefit, staff informed the applicant that the project was placed on hold until supporting information for public benefit associated with the proposed residential subdivision and the pedestrian bridge was submitted.
- May 2013 - The applicant conducted a community meeting for the proposed project. Several California Landing residential community residents opposed the proposed pedestrian bridge landing adjacent to their private street, favoring a more southerly public street location. Staff communicated to applicant the lack of support for the proposed project based on General Plan and Zoning inconsistencies, as well as a need to comprehensively study the California Circle, Fairview, Cadillac Court Area.
- June 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. The Planning Commission directed staff to proceed with vision planning for this area. (Refer to attached 6-12-13 Planning Commission Meeting Minutes).

The Application

On May 23, 2012, an application was submitted pursuant to Section 57, Applications of the Milpitas Zoning Code:

- *General Plan and Zoning Amendments* – The request includes a change for five of the eight parcels from Industrial Park to General Commercial and three of the parcels to be changed from Industrial Park to Residential. Two of the three residential parcels are proposed with 84-unit residential subdivision. Planned Unit Development zoning is required with the 84-unit subdivision zoning amendment to allow for reductions to lot area, height and setback requirements and to consider a proposed Penitencia Creek pedestrian bridge.
- *Tentative Maps* – For the creation of 84-residential lots, and other common lots (private parks), and assign responsibility for maintaining common lots and infrastructure.
- *Site Development Permit* – To evaluate the proposed site layout, landscaping, and architectural review of 84 detached single family home development and a Penitencia Creek pedestrian bridge.

PROJECT DESCRIPTION

Location and Land use

The proposed project area encompasses approximately 29.2 acres of industrial land located south of the intersection at Dixon Landing Road and California Circle, within the Dixon Landing Business Park. The project area is bounded by Dixon Landing Road to the north, Interstate I-880 to the west, industrial buildings to the south and the Penitencia Creek to the east. The proposed project area is currently developed with two vacant industrial buildings and a cultural and religious center located on the eastern half of the project area. The western portion of project area is comprised of commercial and professional office buildings as well as a Residence Inn Hotel.

The proposed project area is currently zoned and designated as Industrial Park with Site and Architectural Overlay. Surrounding land uses includes Penitencia Creek and Multi-family Residential, High Density to the east. Industrial buildings and uses are located to the north and south of the project area. Interstate I-880 freeway is located to the west. Refer to land use map and project site/vicinity map shown on Page 3 and 4 of the staff report.

Project Proposal

The proposed project consists of two components:

- 1) A General Plan Amendment and Zone Change for two parcels on 10.7 acres from Industrial Park to Residential that would include the construction of 84 single family homes and various site improvements. This component also includes a pedestrian bridge spanning Penitencia Creek; and
- 2) A General Plan Amendment and Zone Change for six parcels on 18.5 acres from Industrial Park to Commercial and Residential that includes no construction.

Project Analysis

The proposed project is a request from a residential developer (Trumark Homes) to convert 10.7 acres of Industrial property to 84 single family detached homes along California Circle. There are other components of the proposed project that supplement this request such as land use changes to adjacent properties totaling 18.5 acres, and a proposal for a Penitencia Creek Pedestrian bridge. However, because the applicant's proposed project objective is to construct 84 single family detached homes along California Circle, the staff report analysis focuses on: (1) City's Discretion Regarding Legislative Acts; (2) General Plan Consistency; (3) Planning/Land Use Opportunities; and (4) Zoning Implications.

1) City's Discretion Regarding Legislative Acts

Legislative Acts include both General Plan Amendments and Zone Changes, as proposed by the project applicant. The City is granted broad discretion to make these decisions by State statute and the California Constitution. Applications for such changes are not subject to the Permit Streamlining Act, and the City maintains significant discretion on all such requests, providing no obligation to recommend project approval or make findings to recommend denial. As such, legislative acts carry the highest threshold for consideration because the General Plan establishes well planned land uses and internally consistent development policies for the entire City. Proposed amendments to the City's General Plan and zoning ordinance require careful consideration. As such, the staff report documents the City's policies and procedures, provides analysis of the proposed project, identifies required Findings, and specific recommendations to the Planning Commission.

As a result of the applicant's request, staff has processed the proposed application, completed a Draft Environmental Impact Report (DEIR) and scheduled public hearings for the Planning Commission and City Council. Staff currently does not support the proposed introduction of single-family residential land use into this industrial-zoned business park as further explained in this report. Staff has carefully reviewed the completed application and is recommending the Planning Commission recommend the City Council deny the land use designation changes at this time.

2) General Plan Consistency.

The recent economic recovery in the Silicon Valley has led to General Plan Amendment inquiries by residential developers to convert properties along California Circle from industrial to residential use. To date, the project applicant is the only developer to apply for and process a

General Plan Amendment land use conversion in the California Circle area. A review of the General Plan Principles and Policies raises significant project-related concerns regarding managing future growth, economic development, long-term fiscal sustainability, land use compatibility, and the lack of planning for the overall California Circle industrial area, as analyzed below.

Staff acknowledges that housing is in high demand throughout the South San Francisco Bay area. However, regional land use and transportation policy administered through the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) through “Plan Bay Area” and the “Sustainable Communities Strategy” (SCS) (www.mtc.ca.gov/planning/plan_bay_area) recommend limiting the proliferation of auto-dependent single-family housing and focusing development efforts on multi-family housing in close proximity to transit. The City has embraced this strategy and proactively provides two areas for planned residential growth for approximately 10,000 new housing units within the Transit Area and Mid-Town Specific Plan areas. These are the locations where the City’s General Plan anticipates the majority of its residential growth, as well as improving the housing to jobs imbalance. Currently, there are 11,524 single family residential units and approximately 10,166 multifamily residential units citywide. Specific General Plan analysis is identified below to compare the applicant’s project and proposed land use change to the City Council adopted General Plan Policies.

Land Use Guiding Principles

- **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.

Staff Analysis

A recommendation of denial is consistent with the stated Guiding Principles in that the City must consider a long term land use strategy to maintain and manage the City's fiscal sustainability. Pre-mature conversion from employment generating land uses to uses that increase the residential population should only be considered after proper planning and analysis in light of the City as a whole. Given the land use policy and planned growth for the Transit Area and Midtown Specific Plan areas of the City, lack of comprehensive planning for the California Circle area, and conversion from Industrial Park to Single-Family Residential use is inconsistent with the City's long term strategy.

Land Use Implementing Polices

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.

Staff Analysis

A recommendation of denial is consistent with stated polices on development intensity because the Transit Area and Midtown has not reached 80% of build-out. Therefore, conversion of employment/sales tax generation properties to residential is in contrary with Policy 2.a-I-2. Further, Dixon Landing Business Park, although currently experiencing some vacancies, may have the ability to reposition itself and take advantage of the recent economic recovery with a proper planning, improvement and marketing strategy. Much of this could be further considered with a comprehensive study and plan for future changes in land uses within the overall California Circle area which has not been completed. In the meantime, the conversion of the proposed project site to single family 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.

Staff Analysis

A recommendation of denial is consistent with the stated policies 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 contemplating 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.

Staff Analysis

A recommendation of denial is consistent with the stated policies 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.

3) Planning/Land Use Opportunities.

According to the project application, the project merits City consideration for land use conversion to single-family detached residential because it presents a tremendous opportunity to meet the high demand for housing. The application also states that the project will improve the existing housing to jobs imbalance, concluding that the proposed 84-home single-family homes will increase the diversity of housing in Milpitas.

The above General Plan consistency analysis is contrary to the applicant's project justification. Although these adopted General Plan policies of the City Council clearly do not support change in industrial land use to residential land use, the City Council has recognized a lack of market interest for industrial uses in the California Circle area in the past, and previously indicated they are open to planning for other uses. In order to seek clarity on the topic of changes in land use within the California Circle area, staff arranged a study session with the Planning Commission to gauge their comments and direction for potential changes in land use, if any.

On June 12, 2013, the Planning Commission held a study session to discuss planning opportunities within the California Circle area. The study area included properties along California Circle, Fairview Way, Cadillac Court, the adjacent Penitencia Creek and City storm water pump and reservoir. The general consensus of the Commission was that the area should be

further studied, an overall vision established, and possibly a specific plan developed by the City (Refer to attached Planning Commission 6/12/13 minutes for details).

In late June 2013, staff began discussions with Cal Poly San Luis Obispo City & Regional Planning Urban Design Studio in developing conceptual development alternatives for the California Circle Study Area leading to a formal work scope and contract. Cal Poly has extensive experience and national recognition in assisting public agencies with planning and urban design concepts for public agencies throughout California. Opportunity and constraints, technical details, market trends, and comparable South Bay Area development analysis is currently underway. Site review, assessments and tours, including visits to nearby Silicon Valley sites, as well as detailed discussions with City and Santa Clara Valley Water District (SCVWD) staff were completed in September 2013. A brief update of study scope and schedule was presented to the Planning Commission on September 25, 2013. A special Planning Commission workshop is scheduled for October 26, 2013 where the Commission, staff, and the Cal Poly team will engage in developing new and creative land use concepts for the study area. The results of this overall pre-planning study will be presented to the Planning Commission on December 11, 2013 where the Commission will have the opportunity to provide further comment on developing a Specific Plan for this area. A final print document will be delivered to the City in early January 2014.

The Santa Clara Valley Water District (SCVWD) has also expressed interest and partnered with the City on planning for a Penitencia Creek water-quality interpretative "Riverwalk" theme pedestrian way within the California Circle Study Area where future land uses could orient towards the creek and incorporate this concept. Basic concepts are currently being studied such as an expanded trail network along and within the greater California Circle study area, high quality pedestrian paving, lighting, wayfinding, interpretative signage, specialized native and drought resistant landscaping and irrigation, low-impact and low-maintenance non-mechanical bio-swale features, and possible Penitencia Creek bridge location(s) and design concepts.

4) Zoning Implications.

As a result of staff analysis in items 1, 2, and 3 above, the proposed 84-unit residential subdivision is physically separated from all residential development by the 250-foot wide Penitencia Creek that has a General Plan land use designation and zoning district designation of Park & Open Space.

Staff analysis concludes that the applicant's request is pre-mature, and not consistent with the General Plan and the City's long term land use strategy. Further, it compromises the City's long-term fiscal zoning sustainability and represents a lost opportunity for the City to significantly influence planning and future land use for the study area, and reposition Dixon Landing Business Park for economic recovery and success. Therefore, staff does not recommend support for this request and recommends the Planning Commission support the recommendation of denial to the City Council.

Residential Project Deficiencies

Flood Zone Issues

The proposed project site is located in a Flood Hazard Zone area. The applicant prepared a Flood Study to determine the existing floodplain conditions for the 100-year Federal Emergency Management Agency (FEMA) based flood event, define what the building elevation necessary to meet FEMA and City floodplain management requirements, and evaluation whether the proposed development may have an area wide effect on flood flows or existing water surface elevations.

The flood study initially indicated an inconsistency with the FEMA maps. The Flood Study incorporated a conservative approach to reconcile the issue by raising the building pad elevations approximately six feet in height, creating an elevated pad condition above California Circle.

The Santa Clara Valley Transportation Authority (VTA) recently prepared a study of the two major creek systems: Berryessa Creek and Upper Penitencia Creek which may affect the project site because of new impacts associated with the nearby BART project. The results conclude that the proposed project site would require less fill and lower pad elevation along California Circle.

Staff Analysis

The proposed project would physically and visually detract from the surrounding properties. This would also create a visual prominence with retaining walls that have an overall height that ranges from 3-feet to 6-feet tall along the California Circle street frontage and from 6-feet to 8-feet tall along the southern boundary. The applicant proposes to install a 6-foot tall fence that would be constructed on top of the retaining wall which would bring the overall wall height of 9-feet to 14-feet. This is another example where the project is pre-mature, as final FEMA elevations should incorporate the VTA study to determine actual finished grade elevations along California Circle, prior to project consideration of the project.

Municipal Code Development Standards

Because the project does not meet the required development standards for the Single Family Residential minimum lots size 2,500 square feet Zoning District (R1-2.5), the applicant requests a Planned Unit Development (PUD) that allows for deviations from the lot area, setbacks, height, and driveway dimensions which are summarized in the table below. Planned Unit Developments is a type of discretionary permit that allows for diversification in the relationships of buildings, structures and open space, while insuring substantial compliance to the District Regulations and other provisions of the Zoning Ordinance.

Table 1:
Setbacks and Development Standards

	R1-2.5 Development Standards	Proposed Development Standards
<u>Density</u> (Maximum)	6-15 Units/Gross Acre	7.9/Gross Acre
<u>Lot Area</u>	Min. 2,500 sq. ft.	1,850 to 3,300 square feet
<u>Lot Width</u>	Min. 30'	Min. 30'

	R1-2.5 Development Standards	Proposed Development Standards
<u>Setbacks</u> (Minimum)		
Front to Primary Structure	Min. 20'	10'
Interior Side	Min. 5' one side	3.2'
Street Side (Corner Lots)	Min. 10'	3.2'
Rear	Min. 15' one-story Min. 20' two-story	3.5
<u>Building Height</u> (Maximum)	Min. 30'	39'
<u>Parking</u>	Min. 232	240
<u>Driveway Dimensions</u>	10'x20'	Shared driveways

Architecture

Architecture

The project proposes three architectural styles: “Cottage”, “Southern Cottage”, and “Beach Cottage”. The units are proposed with flat concrete tile roofing, gable and/or hipped roof forms, and exterior finishes of stucco and simulated wood siding, shutters, decorative railing, window awnings and window framing treatments. Figure 1 illustrates the proposed Cottage style architecture and details for each home style are attached in Attachment B.

Figure 1:
Proposed Architecture



FINDINGS

Pursuant to Section 57 of the Zoning Code, the Planning Commission is required to make specific Findings before recommending approval of a General Plan Amendment, Zoning Amendment, Site Development Permit, Planned Unit Development, or Conditional Use Permit.

Findings shall identify the rationale behind the decision to take a certain action. Each code-required Finding is analyzed below.

General Plan Amendment Findings [MMC XI-57.02 (G)(1)]

1. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.

Findings cannot be made due to the project's inconsistency with the General Plan Principles and Polices. The proposed amendment is internally inconsistent with those portions of the General Plan which are not being amended as set forth below:

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.

Staff Analysis

The proposed project is inconsistent with the stated Guiding Principles in that the proposed single family detached 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, is premature, especially considering that the City is currently studying the overall California Circle area land use. 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 Polices

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.

Staff Analysis

The proposed project is inconsistent with the 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 in contrary with 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.

Staff Analysis

The proposed project is inconsistent 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.

Staff Analysis

The proposed project is inconsistent with the stated policies 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.

2. *The proposed amendment will not adversely affect the public health, safety, and welfare.*

Staff Analysis

The proposed project may have an adverse effect on public health, safety, and welfare due to the uncertainty with what BFE level to use for the project's site design. According to 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 on various factors such as the volume and timing of the flows and the capacity of the City's stormwater pump station and culverts that drain to the nearby 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 six (6) feet in height and require four (4) to six (6) feet tall retaining walls along California Circle and six (6) to eight (8) feet tall retaining walls along the southern boundary which is not a site and architectural review condition supported or recommended by staff without a comprehensive site and land use planning analysis of the larger California Circle area. For these reasons and those discussed above, a finding cannot be made that the proposed amendment will not adversely affect the public health, safety, and welfare.

Zoning Amendment Findings [MMC XI-57.02 (G)(3)

1. *The proposed amendment is consistent with the General Plan.*

Staff Analysis

The proposed zoning amendment is inconsistent with the General Plan as explained in detail above.

2. The proposed amendment will not adversely affect on the public health, safety and welfare.

Staff Analysis

The proposed zoning amendment may have an adverse affect on the public health, safety and welfare as explained in detail above.

Tentative Map Findings (MMC XI-1-4.03)

1. *The tentative map is in conformity the Subdivision Map Act, Milpitas Subdivision Ordinance, and the General Plan.*

Staff Analysis

The State Subdivision Map Act defers to the local ordinance with respect to the approval of a vesting tentative map. The City's Subdivision Ordinance requires design and improvement consistent with the General Plan. Staff cannot make this finding due to the project's inconsistency with the previously stated General Plan Principles and Policies.

Site Development Permit [MMC XI-10-57-03(F)]

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

Staff Analysis

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 and commercial buildings and streetscape.
- The project's single-family residential site design and architecture is not consistent with the site surroundings.
- The entire site is proposed to be elevated six (6) feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the project's proximity to Interstate 880 entry and exit, it does not provide enhanced treatment to provide the area with a special and/or distinct identification.

2. *The project is consistent with the Milpitas General Plan*

Staff Analysis

The proposed project is inconsistent with the General Plan as analyzed above.

3. *The project is consistent with the Milpitas Zoning Ordinance:*

Staff Analysis

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.

Planned Unit Development [MMC XI-10-54.07 (B) (6)]

1. *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 and Subdivision Ordinance.*

Staff Analysis

As proposed, the project is not proposing a higher density than allowed in the General Plan and the R1-2.5 zoning district. The project proposes a density of approximately eight (8) units per gross acre, which is within the General Plan density requirement of six (6) to fifteen (15) units per gross acre Single Family Moderate Density. However, the proposed detached single family homes require significant deviations from the minimum standards on setbacks, heights, and lot areas.

2. *The development will not create traffic congestion pursuant to the California Environment Quality Act (CEQA). However, if traffic congestion is created by the proposed development, the traffic impacts will be mitigated by traffic improvements proposed by the developer or by funding capital projects and by on-site provisions for traffic circulation and parking or, if it cannot be mitigated, the Planning Commission and City Council shall issue any necessary findings pursuant to CEQA.*

Staff Analysis

A Transportation Impact Analysis was prepared by Hexagon to analyze potential traffic and parking impacts (Attachment I). The project would generate less than 100 net new peak-hour trips. Project conditions would maintain LOS D or better on studied intersections.

3. *For residential development in the Valley Floor Planning Area, as defined in the Milpitas General Plan Land Use Element, the maximum dwelling unit density per gross acre shall be the upper limit of the corresponding General Plan density range within each zoning designation. In the case of the Valley Floor Planning Area residential developments proposed on land zoned "R3" (Multiple Family Residential) an overall density of up to forty (40) units per gross acre can be approved if the following criteria are found by the City Council to be met.*

Staff Analysis

The project is proposing a density that is consistent with the upper range of the allowable units per gross acre for the proposed R1-2.5 zoning district.

4. *Sewer capacity and water availability will be sufficient to accommodate the proposed project density as well as other future planned unit development downstream from the project site. Any improvements to the sewer or water system that would be required to accommodate any higher density proposals may be made conditions of project approval*

Staff Analysis

Based on staff's analysis, there is sufficient sewer and water availability to accommodate the proposed project density.

5. *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.*

Staff Analysis

The project proposes installation of a Penitencia Creek pedestrian bridge and trail improvements a part of the code-required public benefit.

6. *The proposed Planned Unit Development is consistent with the Milpitas General Plan*

Staff Analysis

The proposed project is inconsistent with the General Plan as analyzed above.

7. *The proposed development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development, such as shadows, view obstruction, or loss of privacy that are not mitigated to acceptable levels.*

Staff Analysis

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 and commercial buildings and streetscape.
- The project's single-family residential site design and architecture is not consistent with the site surroundings.
- The entire site is proposed to be elevated six (6) feet higher than the neighboring properties. As such, the site physically and visually detracts from the surrounding development.
- Given the project's proximity to an Interstate 880 entry and exit, it does not provide enhanced treatment to provide the area with a special and/or distinct public benefit.

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 a focused Environmental Impact Report. The EIR focused on Land Use, Transportation, Air Quality, Greenhouse Gases Emissions, and Biology. The Draft EIR was

circulated for public comment on June 21, 2013 through August 5, 2013, and the Final EIR was made publicly available on September 27, 2013.

Significant Impacts

The EIR contains analysis based on thresholds established for CEQA using the “initial study” checklist. The EIR identified a significant and unavoidable impact related to odors. The implementation of proposed residential uses would expose future residences to significant unavoidable odor impacts from the Newby Island landfill which is located within one-mile of the project site.

If the Planning Commission recommends denial of the proposed project to the City Council, no action on the EIR is required by the Planning Commission. However, if the Planning Commission recommends approval of the project, the Planning Commission will be required to recommend the City Council certify the EIR and adopt a statement of overriding consideration for the odor impacts. Furthermore, the following Findings would be required:

- The EIR has been completed in accordance with CEQA.
- The EIR adequately describe the environmental impacts of the proposed project.
- The EIR reflect the City’s independent judgment and analysis on the potential environmental effects.

PUBLIC COMMENT/OUTREACH

The application was publicly noticed in accordance with City and State law. Staff has received comment letters from Caltrans and the Santa Clara Valley Water District on the Environmental Impact Report. Two letters were received in opposition of the General Plan Amendment and zone change associated with the proposed single-family residential land use. The table below provides a summary of the City’s public noticing for this project.

Table 3
Public Noticing Summary

Notice of Public Hearing	Agenda
<ul style="list-style-type: none"> ▪ Posted on the site (<i>14 days prior to the hearing</i>) ▪ Two hundred and 637 notices mailed to property owners and residents within 1,000 feet to the project site (<i>10 days prior to the hearing</i>) ▪ Posted on the City's official notice bulletin board (<i>10 days prior to the hearing</i>) 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>) ▪ Posted on the City of Milpitas’s Web site (<i>one week prior to the hearing</i>)

The map below illustrates the extent of the mailed notices.

Map 4
Public Notice Radius



CONCLUSION

Based on staff analysis, the proposed application is pre-mature representing a lost opportunity for the City to significantly influence planning and future land use for the California Circle area. The required findings for the General Plan and Zoning Amendment cannot be made to support the project. The project would not provide a harmonious development with surrounding properties and land uses. Staff recommends that the Planning Commission recommend the City Council deny the request to change the land use designations from Industrial Park to Residential.

ALTERNATIVES

Other alternatives that the Planning Commission could pursue is to continue the item to a date certain of January 8, 2014 to allow the Planning Commission to review the results of this overall pre-planning study of the California Circle Area prior to considering the proposed project *or* the Planning Commission can direct staff to prepare certain findings, draft conditions of approval and return at a subsequent Planning Commission public hearing for only the proposed subdivision properties APNs 22-37-011 and 012.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission conduct a public hearing and adopt Resolution No. 13-025 recommending the City Council deny of 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.

Attachments:

- A. Resolution No. 13-025
- B. Project Plans
- C. Applicant's Project Description Letter

- D. Final EIR [Draft EIR, (Appendices: Flood Study, Storm Water Control Plan, Noise Study, Traffic Impact Assessment, Phase 1 Site Assessment, Arborist Report)]
- E. Public Comments
- F. Planning Commission Meeting Minutes for 6-12-2013