



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT: STATEMENT OF OVERRIDING  
CONSIDERATIONS UNDER  
CEQA – Messina Property  
Residential Planned  
Development Zoning Project**

**DATE:** 3/21/2006

The Final Environmental Impact Report for the Housing Opportunities Study General Plan Amendments, Phase I (the "FEIR") applicable to this proposed project identified significant environmental impacts that cannot be reduced to a non-significant level. Pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the City Council may take approval actions in connection with Planned Development Rezoning PDC05-060 ("Project"), Item 11.6 on the Council's meeting agenda for this evening, in connection with the real property located at the southwest corner of Capitol Avenue and Mabury Road, only if the Council adopts a Statement of Overriding Considerations in connection with the Project that sets forth how the benefits of the Project outweigh the unavoidable adverse environmental impacts of the Project. A copy of a proposed draft findings resolution in this regard is attached for your convenient reference and use in the event that the Council determines that it would like to take an approval action in connection with the Project.

Additionally, language such as the following should be included in any motion in the event the Council desires to take an approval action for Item 11.6:

The Final EIR for the Housing Opportunities Study Phase I General Plan Amendments identified significant and unavoidable environmental impacts. However, as described in more detail in our proposed resolution of EIR findings for this item, there is no feasible way to lessen or avoid these significant effects and approval of the proposed rezoning would result in several benefits to our City. All of these benefits outweigh the significant unavoidable environmental impacts identified in the Final EIR applicable to this Project.

RICHARD DOYLE  
City Attorney

By \_\_\_\_\_  
Renee Gurza  
Sr. Deputy City Attorney

cc: Les White, City Manager

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING IMPACTS AND MITIGATION MEASURES, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR MESSINA PROPERTY RESIDENTIAL PLANNED DEVELOPMENT ZONING PROJECT, FOR WHICH THE HOUSING OPPORTUNITIES STUDY PHASE I GENERAL PLAN AMENDMENTS ENVIRONMENTAL IMPACT REPORT AND THE MESSINA PROPERTY INITIAL STUDY/MITIGATED NEGATIVE DECLARATION HAVE BEEN PREPARED**

WHEREAS, the City Council on February 20, 2001 adopted Resolution No. 70174, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Impacts and Mitigation Measures Associated With Certain Specific Amendments to the General Plan of the City of San José, for Which the Housing Opportunities Study Phase I General Plan Amendments Environmental Impact Report Has Been Prepared in Accordance With the California Environmental Quality Act;" and

WHEREAS, the City Council on February 20, 2001 adopted Resolution No. 70175, entitled: "A Resolution of the Council of the City of San José Adopting, Pursuant to Title 18 of the San José Municipal Code, Amendments to the San José 2020 General Plan, San José, California", to approve text amendments to the *San Jose 2020 General Plan* and certain changes to the Land Use/Transportation Diagram of the *San Jose 2020 General Plan*, including approval of General Plan Amendment File No. GP00-04-05d; and

WHEREAS, General Plan Amendment File No. GP00-04-05d changed the land use designation on 14.5 acres located at the south side of Mabury Road and the west side of North Capitol Avenue from *Medium High Density Residential (12-25 DU/AC)* to *Transit Corridor Residential (20+ DU/AC)*; and

WHEREAS, prior to the adoption of Resolution Nos. 70174 and 70175 on February 14, 2001 the Planning Commission of the City of San Jose certified that the Final Environmental Impact Report for the *Housing Opportunities Study General Plan Amendments, Phase I* (the "FEIR") was completed in accordance with the requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended, and state and local guidelines; and

WHEREAS, Planned Development Rezoning File No. PDC05-060 was filed May 26, 2005 to allow up to 199 multi-family attached residential units and two existing single-family detached residences for property located at the south side of Mabury Road and the west side of North Capitol Avenue; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for Planned Development Rezoning File No. PDC05-060; and

WHEREAS, the Director of Planning, tiering off the *Housing Opportunities Study General Plan Amendments, Phase I* FEIR, as provided under CEQA Guidelines Section 15152(d), has prepared an Initial Study and on February 14, 2006 adopted a Mitigated Negative Declaration addressing the environmental impacts associated with Planned Development Rezoning File No. PDC05-060; and

WHEREAS, the Initial Study and Mitigated Negative Declaration prepared for Planned Development Rezoning File No. PDC05-060 indicates the project, with the incorporation of the identified mitigation measures, will not have a significant impact on the environment, with the exception of impacts to cultural resources previously identified in the *Housing Opportunities Study General Plan Amendments, Phase I* FEIR; and

WHEREAS, CEQA requires that in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant environmental effects, the decision-making agency must make certain findings regarding those effects;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby find that it has independently reviewed, considered and analyzed the FEIR, as well as the Initial Study/Mitigated Negative Declaration together with other information in the record and has considered all of the information contained therein, including the written and oral comments received at the public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR, together with and the Initial Study/Mitigated Negative Declaration, represents the independent judgment of the City of San Jose as Lead Agency for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara, Third Floor, San Jose, California 95113, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project:

**I. CULTURAL RESOURCES**

**A. Historic Buildings and Orchard**

- 1. Impact:** The two Spanish Colonial Revival Homes at 691 and 721 North Capitol Avenue, as well as associated landscaping and orchards, appear to be eligible for the California Register of Historic Places. The project would not directly impact the structures themselves, but would remove much of the surrounding historic orchard. The landscaping around the houses will remain intact and the homes will retain their character as viewed from the street. However, the remnants of the orchard are considered significant and the substantial loss of the historic orchard, 6.5 acres of roughly 10.9 total acres, is a significant cultural resources impact because a significant feature related to this property's association with local agricultural history would be lost, and the property and the two Spanish Colonial Revival Homes at 691

and 721 North Capitol Avenue may no longer be eligible for the California Register of Historic Places.

2. **Mitigation:** Prior to the approval of any grading permits, removal of any trees on the site or recordation of Final Map, the project applicant shall provide, to the satisfaction of the Director of Planning, Building and Code Enforcement additional historic documentation of the Messina property, prepared by a qualified historic consultant, supplementing the earlier documentation of the barn and fruit dehydration shed. The historic documentation shall include without limitation large-format photography based on the guidelines of the Historic American Building Survey, National Park Service. The documentation shall focus on a detailed description of orchard trees and of the spatial organization and patterns of the buildings in relation to the adjacent orchard and other landscape features. Supporting materials to the photographs shall include without limitation historic maps, site plans and aerial depictions.

Additionally, the applicant shall incorporate a display of historic exhibits within the Project site, salvage and replant select orchard trees, and plant non-fruit-bearing orchard tree species in and as a part of the Project development. These exhibits will be developed in consultation with a qualified historian.

3. **Finding:** The loss of the historic orchard is not a new significant impact associated with development of the site as proposed by the Project, inasmuch as such impact has been previously disclosed as part of the *Housing Opportunities Study Phase I* FEIR. The redevelopment of the site with the proposed Project or any other project consistent with the site's Transit-Corridor Residential (20+ DU/AC) land use designation would necessarily entail the removal of some or all of the historic orchard, resulting in a significant cultural resources impact. The impact to the orchard resulting from redeveloping the site is not susceptible to substantial reduction or avoidance by the choice of specific revisions in the Project, by the imposition of conditions, or other means. The loss of a historic orchard eligible for the California Register of Historic Resources as a result of implementation of the site's General Plan Transit-Corridor Residential (20+ DU/AC) land use designation and proposed Planned Development Rezoning File No. PDC05-060 would be **significant and unavoidable**.

## II. ALTERNATIVES TO THE PROPOSED PROJECT

- A. **NO PROJECT ALTERNATIVE:** Under a "No Project" alternative, the subject property would remain as it is. The property being considered for rezoning to the (A) PD Planned Development Zoning District would remain in the A Agricultural Zoning District, and the existing site condition would remain unchanged.

1. **Comparison to Project:** This alternative would avoid the project's cultural resources impact by leaving the existing site condition intact, including the historic orchard, retaining the site's potential eligibility for the California Register of Historic Places.

2. **Findings:** This alternative is hereby rejected for the following reasons:

a. The No Project Alternative would fail to satisfy the objectives of the Project, specifically:

- i. Maximize housing opportunities on infill parcels already served by City services;
- ii. Encourage more new housing within the existing Urban Service Area;
- iii. Promote higher density residential development in urban areas and along transit corridors;
- iv. Use available land as efficiently as possible;

b. The No Project Alternative would not promote the use of existing and planned transit facilities. Based on the foregoing, the City finds that the No Project Alternative is not feasible.

**B. LESSER INTENSITY ALTERNATIVE:** This alternative would reduce the amount of additional residential development below what would occur with the proposed Project. If fewer units were developed on the site, this alternative could retain more of the historic orchard compared to the proposed Project.

1. **Comparison to Project:** Impacts that would result from developing the site with fewer units, compared to the proposed Project, would be very similar. The cultural resources analysis concluded any further diminution of the historic orchard would substantially compromise the site's historic integrity. The benefits of encouraging transit use would not be as fully realized under this alternative.

2. **Findings:** This alternative is hereby rejected for the following reasons:

a. This alternative would not substantially reduce any of the significant impacts of the proposed Project.

b. Since this alternative would provide fewer dwelling units at locations proximate to existing and planned transit facilities, the City's ability to meet the following project objectives, as set forth in the *Housing Opportunities Study General Plan Amendments, Phase I* FEIR and in Planned Development Rezoning File No. PDC05-060 would be substantially reduced under this alternative:

- i. Maximize housing opportunities on infill parcels already served by City services;
- ii. Encourage more new housing within the existing Urban Service Area;
- iii. Promote higher density residential development in urban areas and along transit corridors;
- iv. Use available land as efficiently as possible;

c. Based on the foregoing, the City finds that the Lesser Intensity Alternative is not feasible.

**C. ALTERNATIVE LOCATION:** There are no specific alternative sites known to the City of San Jose whose development with up to 5,300 dwelling units, similar to the proposed *Housing Opportunities Study Phase I* project, would result in substantially fewer environmental impacts. This alternative is, therefore, not feasible.

## **XII. STATEMENT OF OVERRIDING CONSIDERATIONS**

The City Council of the City of San Jose adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project.

**A. SIGNIFICANT UNAVOIDABLE IMPACTS:** With respect to the foregoing findings and in recognition of those facts which are included in the record, the City has determined that the Project will result in the following significant unavoidable impacts: loss of historic orchard and impacts to historic setting and context for structures located at 691 and 721 North Capitol Avenue. These impacts cannot be mitigated to a less than significant level by feasible changes or alterations to the Project.

**B. BENEFITS OF THE PROJECT:** The City Council has considered the FEIR, the subsequent Initial Study/Mitigated Negative Declaration, the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

1. Increase Housing Supply: The Project supports the City's Housing Major Strategy by facilitating higher density residential development to meet the diverse needs of San Jose residents in a location (i.e., Transit-Oriented Development

Corridor) appropriate for intensification. The Project would foster the General Plan's Residential Land Use Goals of promoting higher density residential development, recognizing that remaining vacant and underutilized land should be used efficiently.

2. Growth Management: The Project supports San Jose's longstanding policy on infill development by locating development within San Jose's Urban Growth Boundary and Urban Service Area. The Project is consistent with the General Plan's Growth Management and Greenline/Urban Growth Boundary Major Strategies, recognizing the need to preserve San Jose's Greenline/Urban Growth Boundary and to maximize the use of existing City facilities and resources. Infill along transit corridors promotes efficient use of land and fiscal resources.
3. Transit-Oriented Development: Transit-Oriented Development is a means to achieve the City's key General Plan objectives including economic growth, increased affordable housing opportunities, more transportation capacity through increased transit use and efficient delivery of services. The Project involves an underutilized site within one of the General Plan's Transit-Oriented Development Corridors and would encourage higher density housing and more intensified uses near existing or planned passenger transit lines, facilitating the creation of new activity centers that enhance the identity of a community and accessibility of a light rail station.
4. Balanced Community: The General Plan's Balanced Community Policy supports the integration of housing with transportation systems as well as encourages higher density housing near light rail lines and other major transportation facilities. The Project would foster intensification in one of the City's Transit-Oriented Development Corridor and create a mutually supportive environment between intensified residential and/or mixed-use development and transit.
5. Efficient Use of Resources: The General Plan Sustainable City Major Strategy seeks to minimize waste, efficiently use its natural resources and to manage and conserve them for the present and future. Infill development contributes to a more sustainable city form and helps minimize the cost of providing urban services.

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**C. OVERRIDING CONSIDERATIONS:** The City Council finds that each of the items set forth above constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project.

**ADOPTED** and issued this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
RON GONZALES, Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk