

ATTACHMENT 1.a.

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FRAMEWORK FOR PRESERVATION OF EMPLOYMENT LANDS

BACKGROUND

2005 Framework

On April 6, 2004, the City Council approved the *Framework, as a Guideline, to Evaluate the Proposed Conversions of Employment Lands to Other Uses* (2005 Framework) to address the cumulative loss of employment lands, and in particular, land designated for industrial uses (industrial lands), through incremental conversions resulting from General Plan amendments. The intent of the 2005 Framework was to identify employment subareas within the City where conversion should be discouraged, and identify other subareas where conversion of industrial land to other uses could be considered on a case-by-case basis depending on consistency with key criteria listed in the Framework. The 2005 Framework was modified on November 15, 2005 (see attachment). Despite these modifications, the 2005 Framework has not been successful in stemming the tide of industrial land conversions. Since 2004, the City has lost approximately 120 acres of industrial land per year through conversion to other uses.

Retail Strategy

In 2004, the City completed the *San José Neighborhood Retail Model Summary Report* (Retail Study) that identified significant retail sales leakage out of San José. In particular, this was due to the lack of retail uses in many areas of the City, especially areas within the Berryessa community and North San José. In response to the conclusions of the Retail Study, the City is proactively identifying sites that have the potential to provide retail opportunities. For these reasons, the *Framework* includes criteria for the preservation of lands designated for industrial or commercial uses, and criteria for converting industrial to commercial land.

Council Direction to Change the 2005 Framework

On March 29, 2007, as part of a presentation to the City Council during a study session on Economic Development and Employment Lands, City staff provided extensive data on the relationship between land use and revenue to the City, demonstrating serious potential fiscal impacts related to the conversion of employment lands to non-employment uses. In this presentation to Council, staff defined employment lands as industrial and commercial lands supporting private sector employment.

Staff suggested that the Council consider an update to the 2005 Framework and identified three possible directions that update might reinforce: 1) prohibiting any further conversions of industrial lands; 2) strengthening the 2005 Framework to limit conversions to projects of "Extraordinary Economic Benefit"; or 3) continuing to use previous policies without modification. Staff recommended that the Framework be strengthened per the second option.

In response to the information presented at the March 29, 2007 study session, the City Council gave direction to staff to conduct public outreach on proposed changes to the 2005 Framework and to return to the City Council with an update to the Framework in advance of the City Council's consideration of the Evergreen*East Hills Vision Strategy (EEHVS) General Plan amendments.

Framework Update

Acting on Council direction, on May 15, 2007, City staff recommended to the City Council that the 2005 Framework be updated and strengthened to limit industrial conversions to projects of "Extraordinary Economic Benefit". In response, Council provided direction to staff to prepare an updated Framework that emphasizes the Preservation of Employment Lands (Preservation Framework), and that incorporates policies to discourage the conversion of employment lands— industrial and commercial lands— to non-employment uses, while maintaining the flexibility to consider special or unique proposals with clear benefit to the City towards the achievement of overall City goals for economic development including retail opportunities and other strategies for increasing revenue to the City's General Fund.

DEFINITION OF EMPLOYMENT LANDS

Employment lands are defined as non-residentially designated lands supporting private sector employment. Sites designated Public/Quasi-Public in the San Jose 2020 General Plan Land Use/Transportation Diagram are not considered employment lands for the purposes of the Preservation Framework.

PURPOSES OF PRESERVATION FRAMEWORK

To maintain a viable economy and provide services to residents at levels consistent with City of San José policies, the City has a strong interest in preserving the City's remaining employment land acreage and building floor area capacity for various business operations. Purposes of preserving and enhancing the City's remaining employment land capacity include:

1. Bringing revenue to the City;
2. Providing jobs to residents;
3. Providing a variety of types and sizes of sites for employment opportunities for the City to remain competitive internationally;
4. Identifying and facilitating the development of sites for retail to serve individual neighborhoods, larger community areas, and the Bay Area region; and
5. Accommodating future demand for land for employment uses through 2020.

As per the Council Memo from Mayor Reed dated May 15, 2007, and adopted by the City Council, the Preservation Framework is intended to achieve the following outcomes:

1. No net loss of total employment capacity as the result of any amendment to the San José 2020 General Plan.
2. No net loss from non-employment land use conversions of Light Industrial or Heavy Industrial acreage or building area square footage on land that has the General Plan land use designation of Light Industrial or Heavy Industrial.
3. Applications for conversions to support public infrastructure may be accepted only after the infrastructure has been designated by the City Council as public infrastructure intended to be supported by increases in non-employment uses.
4. Extraordinary Economic Benefit conversions must meet the above criteria and shall be limited to those instances where there will be an increase or retention of jobs, and a significant increase in revenue to the City, or a significant capital contribution for investments in economic development like the Catalyst fund or the Economic Development Reserve.
5. Changes in areas with mixed use overlays shall not decrease the amount of land available for religious assembly uses.

APPLICABILITY

The Preservation Framework applies to any General Plan amendment that includes:

1. The conversion of any category of employment lands, including industrial or commercial lands, to non-employment uses; or
2. The conversion of employment lands to a mix of uses that includes both employment and non-employment uses.

Examples of conversions include, but are not limited to:

- Land designated for exclusively employment uses changed to land designated for a mix of uses that includes non-employment uses; and
- Land designated for exclusively Light or Heavy Industrial uses changed to land designated for other industrial or non-industrial uses.

The Preservation Framework does not apply to conversions of Light Industrial acreage to Heavy Industrial acreage or vice versa, and does not apply to conversions of commercial land to industrial land.

Strategies for Preservation

In contrast to the 2005 Framework, the Preservation Framework focuses on strategies for preserving employment lands instead of identifying criteria or subareas where conversion can be facilitated. The maintenance of an adequate supply of a variety of employment lands is essential to San José's economic development. Production is increasing again as part of the new industrial economy focused on clean technology, and the City needs to maintain an adequate inventory of Light and Heavy Industrial lands to accommodate the new industrial demands.

The specific measures for the preservation of employment lands are discussed below:

1. Maintain No Net Loss of Light or Heavy Industrial Acreage

Heavy and Light Industrial lands have had the lowest vacancy rates of all employment lands even during the recent economic downturn. It is essential to retain Light and Heavy Industrial lands for production-related jobs, many of which do not require 4-year college degrees. Examples of such businesses include cabinetry, auto repair, home improvement warehouses, garbage and recycling operations, and concrete and asphalt production.

Many Light and Heavy Industrial businesses cannot function in smaller, vertical spaces because their operations require large horizontal spaces and outdoor storage areas. Examples include composting, garbage truck parking, auto wrecking yards, and recycling.

Ideally, existing Light and Heavy Industrial acreage should be preserved. If it is not feasible to preserve the acreage and job capacity of existing Light or Heavy Industrial employment lands, then changing non-employment, or other employment, acreage to Light or Heavy Industrial acreage should offset the impacts of conversion of Light or Heavy Industrial acreage to other uses so that there is no net loss. The challenge is to find viable sites in suitable locations for this type of offset.

By way of example, the area bounded by East Trimble, Zanker, and Brokaw Roads, and Interstate 880 could be a viable location for such offsets. This area is designated Industrial Park on the General Plan, but is zoned LI-Light Industrial or HI-Heavy Industrial and may contain existing LI and HI businesses.

An applicant requesting an offset should demonstrate to City staff the viability of the offset proposal. Based on this information and staff's analysis, staff would make a recommendation to Council. The City Council may approve General Plan amendments to change land use designations on such sites to allow exclusively Light or Heavy Industrial uses, thereby creating acreage for these uses. This new acreage could then offset the loss of other acreage proposed to convert from Light Industrial or Heavy Industrial to other designations.

These re-designations would be most successful in protecting industrial lands, if they met all of the following criteria:

1. The site is adjacent to viable Light or Heavy Industrial designated land.

2. The site is currently zoned to allow Light or Heavy Industrial uses.
3. The site currently contains legal Light or Heavy Industrial businesses.
4. The site is at least five acres in area.

Another way to create Light or Heavy Industrial land capacity is by the removal of an overlay that allows a mix of uses such as a Mixed Industrial Overlay or a Transit/Employment Residential Overlay, on a site with a base land use designation of Light or Heavy Industrial. In situations where an overlay that allows a mix of uses is removed from a site, it should be demonstrated that such a removal does not decrease the amount of land available for religious assembly uses.

A third way to create Light or Heavy Industrial acreage is by changing sites designated Combined Industrial/Commercial to an exclusively Light or Heavy Industrial land use designation.

The project proponent should coordinate with City staff to determine an appropriate area in which to look for a site for an appropriate offsetting conversion to a Light or Heavy Industrial land use designation. The project proponent should then work with the appropriate property owners to obtain their support for such a proposal, and then submit to the Planning Division a privately-initiated General Plan amendment application with environmental clearance and appropriate fees paid.

Land Use Planning to Support Public Infrastructure Projects: In some cases, a special public infrastructure project may warrant land use changes. Specifically, the extension of the BART system to San José requires such a significant investment of public resources that it is appropriate for the City to consider the conversion of employment lands to viable mixed commercial-residential uses, or, where clearly not marketable, even purely residential uses in order to support the project. Such conversions may be supported if they provide the highest possible density of new residential development with adequate incorporation of open space, retail, and other services to support the new residential development. In these situations, it may not be feasible to maintain no net loss of employment capacity; however, no net loss of Light or Heavy Industrial acreage should be maintained through the acquisition and conversion of other lands in the City of San José to Light or Heavy Industrial uses. The “no net loss of Light or Heavy Industrial designated acreage” criterion may not be applicable to publicly owned land used by a public agency for public purposes related to the public infrastructure project.

2. Discourage Conversion to Non-Employment Uses in Key Employment Areas

Conversion of employment lands to non-employment uses are discouraged in key employment areas including Coyote Valley, North San José, the Evergreen industrial area, the Edenvale Redevelopment Project Area, the Monterey Corridor Redevelopment Project Area, and the expanded Downtown Core. Conversion of employment lands to non-employment uses in a key employment area may be supported by the Framework only if there is no net loss of employment capacity in the subject key employment area as a result of the conversion, and if an Extraordinary Economic Benefit accrues to the City as a result of

the conversion. Please refer to the map for these areas that is incorporated into this Framework document.

The North San José Development Policy Area is not eligible for intensification from the transfer of employment square footage from sites outside of the boundaries of the North San José Development Policy Area. This is because such a transfer would result in a net loss of employment square footage to the City. Sites within the North San José Development Policy Area already have the potential for higher density development (greater than a Floor Area Ratio of .35) given the adopted North San José Area Development Policy, so that the square footage in question is lost. A total of 26.7 million square feet is allowed by the North San José Area Development Policy regardless of transfer of square footage from outside the North San José Development Policy Area.

In the recently expanded Downtown Core, the Downtown Strategy 2000 Plan provides for a balance of residential and commercial uses. Nothing in this Framework limits the development of residential uses consistent with the Downtown Strategy 2000 Plan in the Downtown Core.

3. Intensify to Retain Job Capacity on Sites Currently Designated for Industrial Park or Combined Industrial/Commercial

In situations where conversion does not involve Light Industrial or Heavy Industrial land uses, retention of employment capacity on site by intensification of the development's Floor Area Ratio (FAR) may be feasible. Sites located within North San José and the Downtown Core are eligible for intensification on site as a strategy to preserve employment uses if the proposed General Plan amendment involves conversion of one employment land use designation (e.g., Industrial Park) to another employment land use designation (e.g., Combined Industrial/Commercial). For example, a proposal could combine ground floor retail uses with second-story office uses.

Non-employment uses may be added to a site by retaining the existing job capacity through intensification on the remainder of the site for properties located outside of Coyote Valley, North San José, the Monterey Corridor Redevelopment Project Area, and the Evergreen industrial area. Minimum FARs to achieve this should be at least .35. For sites located within 2000 feet of existing or planned Light Rail Transit stations, or within 3000 feet of future BART stations, the minimum FAR for existing employment uses to be maintained prior to intensification with other uses should be .40.

As part of the City's Retail Strategy, the City continues to consider adding potential retail sites to the City's inventory based on specific criteria for a property's size, shape, access to transportation, and connection to neighborhoods. This strategy includes considering sites for retail uses that are currently designated for exclusively industrial employment uses. Vertical intensification of employment uses can accommodate the retention of existing industrial employment capacity on a site while adding new retail employment capacity. This approach works well for Industrial Park/Research and Development types of businesses that can locate in buildings with multiple stories. The Vision 2030 Plan for North San José and the approved

General Plan amendment and zoning changes for the Hitachi site are good examples.

In situations where it is not feasible to add retail capacity to an existing site while maintaining the original industrial employment capacity on the site, the original industrial employment capacity may be forsaken if the project proponent can document to the satisfaction of the City that a net addition of sales tax revenue to the City of San José will result from the conversion.

4. Maintain Employment Lands for Non-Residential Uses

Land designated for a mix of employment uses that was previously designated for exclusively industrial uses should not be converted to allow residential uses. If a conversion is proposed at a later date, any conversion that occurred less than ten (10) years previously to the proposed conversion shall be reviewed and considered as if the land is designated for exclusively industrial uses.

5. Retain Citywide Job Capacity

Sites in areas of the City other than Coyote Valley, North San José, the Monterey Corridor Redevelopment Project Area and the Evergreen industrial area, may be eligible to convert from employment to non-employment uses only if there is no net loss of total job capacity within the City and there is an Extraordinary Economic Benefit (see below for further discussion) provided by the conversion of the site to non-employment uses. When land designated for employment uses is converted to land designated for exclusively non-employment uses, such as residential uses, there should be no net loss of job capacity in the City of San José. Intensifying job capacity on other lands designated for employment uses in the City of San José or concurrently converting equivalent acreage from exclusively non-employment uses to acreage designated for employment uses within the City are possible methods of maintaining the criterion of no net loss of job capacity Citywide.

6. Discourage New Residential Development on Sites Converted from Industrial to Commercial Land Use Designations

The Combined Industrial/Commercial land use designation should be selected to allow commercial and industrial uses on sites converted from exclusively industrial uses. The Combined Industrial/Commercial land use designation excludes residential uses.

Extraordinary Economic Benefit from Conversion

For an Extraordinary Economic Benefit to occur when employment lands are converted to other uses, the City must receive significant off-setting fiscal benefits, such as revenues, beyond those required or expected from a project that does not result in the net conversion of employment land to other uses. Provision of affordable housing, parks, and related infrastructure improvements are an ordinary component of new development and do not qualify as an Extraordinary Economic Benefit.

The Extraordinary Economic Benefit should be defined by a Development Agreement or similar mechanism at the same time as the proposed General Plan amendment is considered so that the Council can evaluate the merits of the actual development project with the proposed General Plan land use designation.

1. Capital Contribution for Investments in Economic Development

Contributions of capital in the City's programs for economic development may provide an Extraordinary Economic Benefit to the City. Proposals will be considered on a case-by-case basis. Examples of programs include the City's Economic Development Catalyst Program and the Economic Development Reserve fund. These two programs are described below:

- Through the City's Economic Development Catalyst Program (EDCP) the City of San José will provide up to \$3 million over the next four years to leverage substantial venture capital investment in private small businesses located in the City of San José. The EDCP leverages City funds at a 6 to 1 ratio. In addition to increasing the direct impact of City funds, the EDCP is anticipated to make equity investments that will enhance job creation, expand the local tax base, and facilitate the integration of other programs and services targeted to the small business community.
- The City Manager has proposed establishing a fund that would be available to provide incentives for extraordinary and unanticipated economic development opportunities to create jobs in San José, such as the recent success of securing CleanTech solar company Nanosolar. The account would only be utilized for unanticipated and extraordinary projects that may require financial incentives to ensure the creation of new jobs in San José and a corresponding increase in City revenues. To determine whether a given economic development opportunity meets the threshold of "unanticipated and extraordinary," the Office of Economic Development will consider the following:
 - a. Does the company meet the City's definition of a driving industry (Computer technology, Bioscience, CleanTech, Nanotech, Informatics, etc)?
 - b. Does the company have the potential to create from 10 to 100 jobs within the next two years?
 - c. Will the company's headquarters be located in San José?
 - d. Does the business activity of the company have the potential to generate significant revenues for the City?
 - e. Does the company have significant location options (regionally, nationally, or internationally) and require assistance to ensure that the site selected is in San José?

2. Mitigation Fee

In the future, the City may propose a mitigation fee program. Such a program should provide a methodology to quantify the economic impact of a proposed conversion and assess a fee that can be used to offset the impact. The Office of Economic Development is working with a consultant to investigate the feasibility of such a program and will further address its implementation if it is determined to be viable.



Memorandum

TO: City Council

 FROM: Mayor Chuck Reed
 Councilmember Madison Nguyen
 Councilmember Nancy Pyle
 Councilmember Forrest Williams

SUBJECT: SEE BELOW

DATE: October 19, 2007

APPROVED: *Forrest Williams*DATE: *10/19/07*
 SUBJECT: PROPOSED FRAMEWORK FOR PRESERVATION OF EMPLOYMENT LANDS
Madison P. Nguyen *Chuck Reed*
Forrest Williams

RECOMMENDATION

Approve staff recommendations with the following clarifications and changes:

1. The following are not employment land conversions and are not governed by the Framework:
 - Rezoning that are consistent with existing General Plan land use designation;
 - Rezoning that are consistent with existing Specific Plan land use designation;
 - Changes from Industrial Park uses to Combined Industrial/Commercial uses;
 - Conditional Use Permits for Emergency Residential Shelters and SRO's per the Zoning Code;
 - Development of sites in the General Plan designations of Commercial in Neighborhood Business Districts under Discretionary Alternative Use Policies as appropriate, with preference for mixed use; and
 - Public Schools.
2. Commercial uses or a combination of industrial and commercial uses should be considered on small or unusually configured remnant industrial designated sites per the proposed Discretionary Alternative Use Policies. Staff is directed to develop specific criteria to allow for some flexibility on such sites. Other uses for small or unusually configured industrial sites will be considered by the General Plan Task Force at the appropriate time.
3. Small, isolated remnant commercial parcels that are degrading neighborhoods and are no longer suitable for commercial uses may be considered for conversion for affordable housing projects which include Extremely Low Income units, and/or schools, assembly uses, and other Public/Quasi-Public uses, secured by a Development Agreement or similar mechanism. Staff is directed to identify such remnant parcels and make the information publicly available.
4. Proposals to designate employment lands for conversion to non-employment uses in support of public infrastructure, such as BART or Light Rail, must be accompanied by a proposal to offset the loss of Light Industrial or Heavy Industrial lands as recommended by City staff. Proposals for conversions to residential use in support of BART or Light Rail should include a significant portion of Extremely Low Income (ELI) units and other Affordable units, secured by a Development Agreement or similar mechanism. It is recommended that staff

coordinate the direction above with discussions that are currently in progress on a proposal for citywide inclusionary housing.

5. There are currently 12 pending General Plan Amendments involving the potential loss of 147 acres of employment lands. These pending applications could generate an estimated 3,600 dwelling units. All pending conversion applications will be processed and evaluated under the Preservation Framework and agenda'd for Council consideration at one time, no later than the end of March 2008, if ready.
6. Staff is directed not to pursue a mitigation fee program nor monetary capital contributions for economic development.

BACKGROUND

The Framework to Evaluate Proposed Conversions of Employment Lands to Other Uses was originally approved by the City Council in April 2004. Direction was given to staff at our March 2007 Council Study Session that the Framework be updated. On May 15, 2007, City Council unanimously approved strengthening the employment lands conversion criteria and directed staff to modify the Framework as such. Staff has acted upon this direction and drafted a proposed Framework for Preservation of Employment Lands that is before us now.

City Council actions since 1990 have led to the conversion of over 1,400 acres of prime employment lands, a conversion of 9% of all employment lands. We need to send a message that our commitment to land use, economic development and a fiscally sustainable city is a long-term proposition. We must discourage conversion of employment lands that are based on current market demand and pricing. We need to preserve employment lands to support driving industries, as well as our business-support and people-serving industries, jobs, and tax base. We need to generate more revenue to support residents. We need to eliminate the structural budget deficit.

While we take a stand on preservation of employment lands, let us reiterate that our commitment to leading the South Bay in housing production continues to be strong. Staff estimates a General Plan residential holding capacity of approximately 75,000 dwelling units including allocations in the Greater Downtown Core Area and North San Jose. We must encourage and work with our housing partners to achieve full build-out of the General Plan capacity.

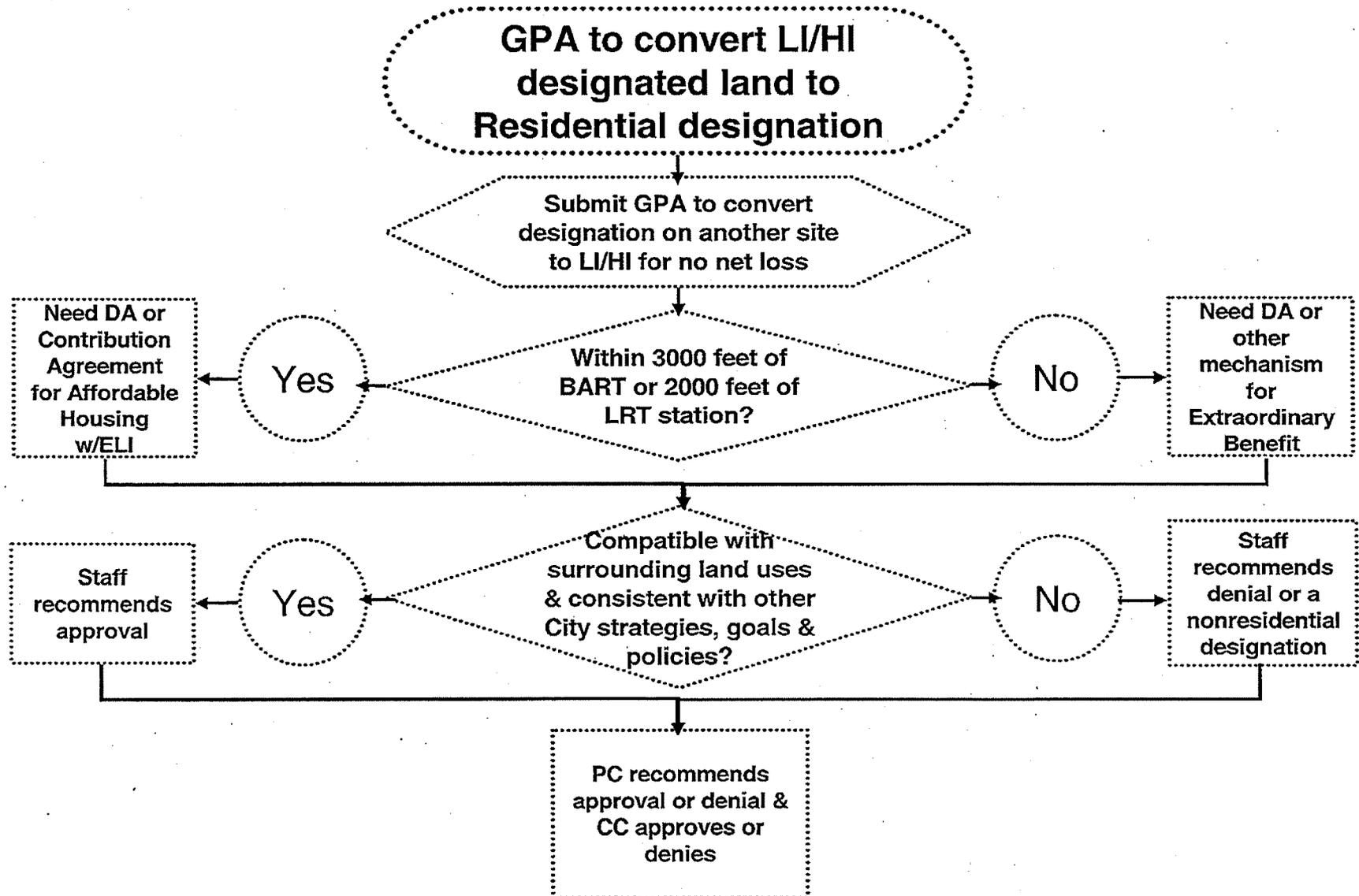
Comparing San Jose data with other Silicon Valley cities provides a grim picture of our current fiscal status: Total revenue per capita is 1.4 times less in San Jose than in Santa Clara and 2.1 times less than in Sunnyvale. San Jose continues to be the County's bedroom community with 0.9 jobs per employed resident, trailing badly behind Santa Clara with 2.1 jobs per employed resident, and Sunnyvale with 1.2 jobs per employed resident.

Approval of the proposed Framework will be our opportunity to intentionally slow down the rate of employment land conversions while the General Plan Update is in development. Our approach is not misguided. Rather it is an opportunity to correct the existing imbalance and create opportunities for jobs and housing.

The San Jose Metro Area is ranked as the 10th Major Manufacturing Center in the US. Other major cities in the country including San Francisco, Los Angeles, Oakland, Boston, Chicago, Cleveland, New York, and Portland, are facing similar pressures on conversion of employment lands, and are similarly engaged in preservation and zoning protection of their industrial lands.

Your support of these recommendations is appreciated.

Framework Conversion Scenario



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Recording Requested by
and
When Recorded mail to:
City of San José
Housing Department
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attn: Loan Management
Re: **San Jose V Investors Berryessa BART Housing**

THIS DOCUMENT IS RECORDED FOR THE
BENEFIT OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER
GOVERNMENT CODE SECTIONS 27383 and 6103.
AND SECTION 33334.3(f)2 HEALTH AND SAFETY CODE

99-YEAR AFFORDABILITY RESTRICTIONS **San Jose V Investors Berryessa BART Housing**

This 99-Year Affordability Restrictions ("Restrictions") is entered into by the **CITY OF SAN JOSE**, a municipal company ("City") and **San Jose V Investors Berryessa BART Housing**, a California limited partnership ("Developer" or "Owner") on the 20th day of May, 2008, with respect to the following facts:

A. On July 10, 2006, the applicant, UBS Realty Investors, filed a General Plan Amendment request to change the Land Use/Transportation Diagram designation from Light Industrial to Transit Corridor Residential (20+ DU/AC) on a 13.64-acre site located on southeasterly side of Berryessa Road, approximately 770 feet southwesterly of the intersection of Berryessa Road and North King Road.

B. On October 23, 2007, the City Council adopted the Framework for Preservation of Employment Lands (Framework) to preserve remaining industrial and commercial lands in the City of San José. This policy provides criteria to maintain no net loss of employment capacity on lands designated in the San José 2020 General Plan for commercial or industrial uses. Proposals for changes in land uses on designated employment lands in the City of San José are subject to the criteria in the Framework and the associated Joint Mayor-Council Memo.

C. City File No. GP06-04-05, because it proposes conversion of a site currently designated Light Industrial to a non-employment use, is subject to this framework. Specifically for this project, the Framework requires an off-setting conversion on another site in the City and an extraordinary benefit from the project proponents to the City.

D. On December 18, 2007, the applicant filed an off-setting conversion under General Plan amendment file number GP07-04-04, General Plan amendment request to change the

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Land Use/Transportation Diagram designation from Industrial Park to Heavy Industrial on a 13.68-acre site at the northeast corner of Junction Avenue and Dado Street.

E. To satisfy the Framework criterion of extraordinary benefit, developer will develop prior to other units and maintain 5% of the units to be affordable to those making 30% or less of the Area Median Income (ELI), 8% of the units to be affordable to those making 50% of the Area Median Income (VLI), and 12% of the units to be affordable to those making 60% of the Area Median Income (LI) on the property located at APNs 254-17-066, -067, -068, -069, -070 (1610-1650 Berryessa Road), in the City of San José, County of Santa Clara, California as more particularly set forth in **EXHIBIT A** attached hereto (the "Property").

F. Health and Safety Code Section 33334.3(f) requires a covenant or restriction be recorded against all units constructed or substantially rehabilitated with the assistance of 20% Funds, restricting such units to remain available at "affordable housing costs" (as defined in Health and Safety Code Section 50053, as amended from time to time) ("Affordable Housing Costs") to Persons and Families of Lower or Very Low- or Extremely Low- Income Households. The restrictions or covenants must be enforceable against City and the successors in interest of City pursuant to Health and Safety Code Section 33334.3(f).

NOW, THEREFORE, Developer hereby declares and covenants:

1. Affordability Restrictions.

(a) Restrictions to Affordable Housing Cost. For a period of ninety-nine (99) years, commencing on May 20, 2008, 5% of the units be affordable to those making 30% or less of the Area Median Income (ELI), 8% of the units be affordable to those making 50% of the Area Median Income (VLI), and 12% of the units be affordable to those making 60% of the Area Median Income (LI) with one (1) unrestricted manager's unit. A person or family shall be determined to be eligible ("Eligible") to rent an Assisted Unit (i) if the Assisted Unit is made available to such person or family at Affordable Housing Cost based on the maximum income level for Extremely Low, Very Low, or Low-Income Households as adjusted for family size in accordance with the procedures set forth below, as shown in the table contained in 25 Cal. Code Reg. 6932, as amended from time to time and (ii) such person or family is an Extremely Low, Very Low, or Low-Income Household. In adjusting for family size to determine the maximum income level on which to base the calculation of Affordable Housing Cost, Owner may make the following adjustments according to the number of bedrooms in each Assisted Unit: studio - one person, one bedroom - two persons, two bedrooms - three persons, three bedrooms - four and one half persons, and four bedrooms - six persons. The City shall have the sole discretion whether to grant the request to make this adjustment. Without the prior written consent from the City, the Developer shall calculate Affordable Housing Cost based on the actual size of the family to whom the Developer intends to rent an Assisted Unit. **EXHIBIT B**, **EXHIBIT B-1**, and **EXHIBIT B-2** attached hereto and incorporated herein by this reference contain illustrations of the calculation of Affordable Housing Cost for a rental project developed for Extremely Low, Very Low, and Low-Income Households and Persons and Families, respectively. Developer shall prohibit any person or family who has not been determined to be Eligible at the time of taking possession of an Assisted Unit from renting or occupying any Assisted Unit and shall cause any such person or family to vacate

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any Assisted Unit so rented or occupied. All of the Assisted Units shall be generally distributed in terms of location and number of bedrooms throughout the Project. The Assisted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants. Tenants in the Assisted Units shall have equal access and enjoyment to all common facilities of the Project. Notwithstanding the provisions contained in **EXHIBITS B - B-2**, Affordable Housing Cost shall have the same meaning as "Affordable Rent" which shall be defined as a cost not in excess of that which may be charged the applicable Eligible Person or Family pursuant to (i) Section 50053 of the California Health and Safety Code or (ii) those program rules and limitations established by TCAC, or (iii) the program rules and limitations imposed by 42 U.S.C. 1437f (b)(c) and (o) and 24 C.F.R. section 982 Subpart K, [HUD's Section 8 Housing Choice Voucher Program], whichever is applicable to each tenant in each case.

(b) Recertification of Income; Continued Availability at Restricted Level. On an annual basis, on or before the anniversary of the closing of the Loan, City or Owner or Developer, as the case may be, shall submit a report (the "Annual Report") to the City which contains, with respect to each Assisted Unit, the rental rate and income and family size of the occupant. The Annual Report shall be based on information supplied by the tenant or occupant of each Assisted Unit in a certified statement on a form provided or previously approved by the City. When the Assisted Unit is vacated, for any reason whatsoever, by the person or family, the Assisted Unit shall then again be rented or otherwise made available at Affordable Housing Cost to a Low, Very-Low, or Extremely-Low Income Household, as the case may be.

(c) Definition of Vacate. For the purposes of these Restrictions, "vacate" shall include, without limitation, departure from an Assisted Unit at the termination (whether at the end of a term or upon default) of the lease pursuant to which the Assisted Unit was occupied ("Lease"), abandonment of the Assisted Unit, sublease or assignment of an Assisted Unit (whether or not such sublease or assignment complied with the terms and conditions of the Lease).

2. Definitions. The definitions of Affordable Housing Costs, Persons and Families of Lower or Very-Low- or Extremely Low- Income Households, and Area Median Income shall have the definitions given these terms in Health and Safety Code Sections 50053, 50105 and 50093, as amended from time to time.

3. Default and Remedies.

(a) Covenants Running With The Land. Owner hereby subjects the Property and the Assisted Units to the covenants and restrictions set forth in these Restrictions. Owner hereby declares its express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in interest; provided, however, that on the termination of these Restrictions, said covenants and restrictions shall expire. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Property or improvements constructed on the Property or any portion thereof or interest therein (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to these Restrictions regardless of whether the terms of these Restrictions are set forth in such Contract and regardless of whether the other party or parties to such Contract have actual knowledge of these Restrictions.

Owner hereby declares its understanding and intent that:

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(i) the covenants and restrictions contained in these Restrictions shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by City; and

(ii) the burden of the covenants and restrictions set forth in these Restrictions touch and concern the Property in that the Owner's legal interest in the Property and all improvements thereon is rendered less valuable thereby; and

(iii) the benefit of the covenants and restrictions set forth in these Restrictions touch and concern the land by enhancing and increasing the enjoyment and use of the Property and Assisted Units by households making 30% or less of the Area Median Income (ELI), households making 50% of the Area Median Income (VLI), and households making 60% of the Area Median Income (LI), the intended beneficiaries of such covenants and restrictions.

All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon the Owner and its successors in interest for the benefit of the City and Low, Very Low, and Extremely Low Households, and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenant and restrictions relate.

(b) Non-Complying Assisted Units. In addition to and without limitation of any other rights and remedies set forth in these Restrictions or otherwise available to any party legally entitled to enforce these Restrictions, in the event of any Default (as defined in Section 3(d) below) that results in a "Non-Complying Assisted Unit(s)", as defined below, after thirty (30) days notice to Owner, City shall have the right to locate an Eligible Person for and rent to an Eligible Person, any and all of the Non-Complying Assisted Units at such time as the Non-Complying Assisted Unit(s) is vacated, in the event Owner has not taken affirmative steps to bring any and all Non-Complying Assisted Units into compliance by locating and renting to an Eligible Person within thirty (30) days of the vacancy. "Non-Complying Assisted Units" shall mean an Assisted Unit, which is occupied and/or leased in violation of Section I of these Restrictions. Determination of such a violation may be based on information provided in the Annual Report or determined by City in its reasonable discretion based on information otherwise available to it. Notwithstanding any term or condition of the lease under which the City leases a Non-Complying Assisted Unit pursuant to this subsection 3(b), Owner hereby consents to and grants to City the right to assign such lease or sublet such Assisted Unit at Affordable Housing Cost to any non-profit housing provider (a "Provider") in the community on the condition that such Provider subleases such Assisted Unit(s) or assigns such lease(s) to an Extremely Low-Income Household at Affordable Housing Cost. If the City assigns or sublets to any Provider, notwithstanding any term or condition of the lease with the City, the Owner hereby consents to and grants such Provider the right to assign such lease or sublet such Assisted Unit to any Eligible Person at an Affordable Housing Cost. If the City, leases any Assisted Unit(s) or a Provider subleases any Assisted Unit(s) or is the assignee of any lease(s) from the City, the City or Provider, as the case may be, to the extent necessary to ensure compliance with Section I hereof, shall sublease such Assisted Unit(s) or assign such lease(s) to any Eligible Person at Affordable Housing Cost, any rent paid under such a sublease or assignment shall be paid to Owner after the City or Provider, as the case may be, has been reimbursed for any expenses incurred by it in connection with exercising the rights and remedies set forth in this subsection 3(b);

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provided, that if the Owner is in default under any loan documents in connection with the financing of the Property or any improvements thereon, such rent shall be paid to the party legally entitled thereto.

(c) Excess Rent. In the event that and to the extent that Owner receives rents or other payments from the operation of the Assisted Units or other improvements constructed on the Property in excess of what Owner is permitted to charge and receive pursuant to these Restrictions, after thirty (30) day notice to Owner by City, Owner agrees and covenants to pay to the City the full amount of such excess immediately on demand by the City. The Owner and the City agree and intend that the payment of such excess, absent other remedies described in these Restrictions to ensure for the term hereof that rents or other payments do not exceed those Owner is permitted to charge and receive pursuant to these Restrictions, shall not alone be an adequate remedy to accomplish the purposes of these Restrictions.

(d) All Remedies Available and Cumulative. In the event of any breach of any of the covenants or restrictions set forth herein, which is not cured within twenty (20) days after delivery of written notice of such breach to Owner by City (a "Default"), the City or members of the community (as defined in the Health and Safety Code) shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceedings, including without limitation, specific performance, to enforce the covenants and restrictions and the curing of any breach or violation thereof. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the provisions hereof in the future for any continuing or new breach or violation of any of the covenants or restrictions contained in these Restrictions. All rights and remedies, including without limitation those set forth in paragraphs 3(a) through (c) above, of any party legally entitled to enforce these Restrictions shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such rights and remedies.

4. Reporting. In addition to the Annual Report, the Owner, as the case may be, shall provide all information reasonably requested by the City with respect to the number of Assisted Units in the Property and the income levels of the persons or families renting or otherwise occupying the Assisted Units.

5. Restrictions to be Attached. The Owner shall attach a copy of these Restrictions to any lease or purchase and sale contract with respect to any Assisted Unit.

6. Successors, Assigns. The provisions contained in these Restrictions shall bind the City, its successors in interest and assigns and shall inure to the benefit of the City and members of the community.

7. Lienor's Remedies. The provisions of these Restrictions do not limit the right of any obligee to exercise any of its remedies for the enforcement of any pledge or lien upon the Property; provided, however, that in the event of any foreclosure, under any mortgage, deed of trust or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage or deed of trust, or in the case of a deed in lieu of foreclosure, the purchaser (or other transferee) and their successors in interest and assigns and the Property shall be, and shall continue to be, subject

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to all of the covenants and restrictions set forth in these Restrictions, unless City have agreed in writing to subordinate these Restrictions.

8. Amendments. The City and their successors and assigns, on the one hand, and the Owner and its successors in interest and assigns, on the other, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in these Restrictions without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. These Restrictions shall not be amended, modified or terminated except upon the written consent of the City and Owner and upon the recordation of an amendment hereto duly executed and acknowledged by City and Owner.

9. Termination. Notwithstanding anything to the contrary herein, these Restrictions shall terminate and be of no further force and effect ninety-nine (99) years from May 20, 2008.

10. Severability. If any provision of these Restrictions, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of these Restrictions and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

11. No Discrimination. The City covenants and agrees for itself, its successors, assigns and any successor in interest to the Property that, unless otherwise permitted by law, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, family status (minor children or no minor children), national origin, ancestry or handicap in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of its Property, nor shall the City or any person claiming under or through City, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in their Property.

All deeds, leases or contracts made relative to the Property, improvements thereon, or any part of said Property or improvements, shall contain or be subject to substantially the following non-discrimination and non-segregation clauses:

(a) Deeds. In deeds: "The Grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of person on account of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, family status (minor children or no minor children), national origin, ancestry or handicap in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) Leases. In leases: "The lessor herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

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That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, family status (minor children or no minor children), national origin, ancestry, or handicap in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessor, or any person claiming under or through lessor, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

(c) Contracts. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identify, marital status, family status (minor children or no minor children), national origin, ancestry or handicap in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

12. Notices. All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given and received when delivered by hand or, if mailed, three (3) business days after deposit in the mail, postage prepaid, certified or registered mail, return receipt requested, and addressed to City at:

City of San José
Housing Department
200 East Santa Clara Street, 12th Floor Tower
San José, California 95113-1905
Attention: Fiscal Administration
Re: **San Jose V Investors Berryessa BART Housing**

And to Owner at:

San Jose V Investors
4400 MACARTHUR BL SUITE 400
NEWPORT BEACH CA
Re: **San Jose V Investors Berryessa BART Housing**

13. Governing Law. These Restrictions shall be governed by and construed in accordance with the law of the State of California.

14. Counterparts. This agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

Remainder of page intentionally left blank.

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Document continues on next page.

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IN WITNESS WHEREOF, the City has executed these Restrictions as of the date first written above.

CITY:

CITY OF SAN JOSE,
a municipal corporation

By: _____

Name: _____

Its: _____

OWNER:

MONTEREY FAMILY APARTMENTS, a California limited partnership

By: **San Jose V Investors**
4400 MACARTHUR BL SUITE 400
NEWPORT BEACH CA
Its: Managing General Partner

By: _____

Name: _____

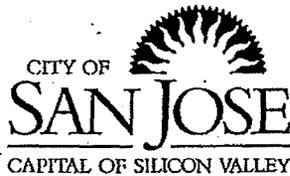
Its: _____

By: **San Jose V Investors**
4400 MACARTHUR BL SUITE 400
NEWPORT BEACH CA
Its: Developer/General Partner

By: _____

Name: _____

Its: _____



ALLEN
ELLA
LUCIA
RACHEL
BINBER
Memorandum

TO: Jenny Nusbaum
PBCE Dept.

FROM: David J. Mitchell
PRNS Dept.

SUBJECT: General Plan Amendments
Spring 2008

DATE: 2-08-08

The Department of Parks, Recreation and Neighborhood Services has reviewed the following proposed Amendments to the City's General Plan. PRNS comments are attached to this memorandum regarding possible land dedications from future housing associated with the following Amendments:

GP05-02-02	GP06-02-02
GP07-03-04	GP07-03-05
GP06-04-05	GP05-05-03
GP07-06-01	

If these amendments are approved by the City and lead to future housing projects, then at the rezoning or site development permit process for such new housing, which every occurs first, will be the phase for which PRNS to actually declare its position regarding future land dedication for public parks and trails. New residential projects over 50 units are subject to land dedication requirements of the Parkland Dedication Ordinance (PDO) and/or Park Impact Ordinance (PIO).

If you have any questions, please give me a call at 408-793-5528.

DAVID J. MITCHELL
Parks Planning Manager

PROPOSED GENERAL PLAN AMENDMENTS

SPRING 2008

No.	GPA File No. and Location	Existing Use	Proposed Use	Hearing Schedule	PRNS Recommendation
1	<p>GP05-02-02</p> <p>West side of Snell Avenue, approximately 400 feet southerly of Santa Teresa Boulevard (1.46 acres)</p>	<p>General Commercial</p>	<p>Medium High Density Residential (12-25 DU/AC)</p>	<p>Spring 2008 Planning Commission March 26, 2008 City Council April 22, 2008</p>	<p>If approved by the City, the proposed Project's housing range is 17 to 36 new dwelling units. A future housing project will be under 50 units and therefore PRNS can only request the associated park in-lieu fees from this project in CD2.</p>
2	<p>GP06-02-02 & UGB06-001</p> <p>Easterly side of Piercy Road, northeasterly corner of Piercy Road and Silicon Valley Road (3.2 acres)</p>	<p>Rural Residential (0.2 DU/AC)</p>	<p>Medium High Density Residential (12-25 DU/AC) and a Urban Growth Boundary Change</p> <p>50</p>	<p>Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008</p>	<p>If approved by the City, the proposed Project's housing range is approximately 80 to 160 new dwelling units. A future housing project will be over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. In this case, PRNS will request the associated park in-lieu fees from this project do to a proposed new neighborhood park on the adjacent property to the south in CD2.</p>
3	<p>GP07-03-04 & GPT07-03-04</p> <p>Block bounded by E. Jackson Street, N. 6th Street, E. Taylor Street, and N. 7th Street (675—696 North 6th Street) (5.78 acres)</p>	<p>Jackson-Taylor Planned Residential Community Specific Land Use Plan Mixed Use 2 and Public Park/Open Space. Maximum height 65 feet.</p>	<p>Jackson-Taylor Planned Residential Community Specific Land Use Plan Mixed Use 2A to allow (1) up to 600 multiple-dwelling units, (2) 16,000 to</p>	<p>Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008</p>	<p>If approved by the City, the Project's proposed housing is up to 600 new dwelling units. This proposed Project is over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. PRNS will request land dedication for a new park from the future housing project. Land dedication for the new park is based on the developer proposal, hereto attached for a plaza/park and a community performing art center in CD3. Remaining units, minus any exempt units, and/or private recreational credits will pay the associated park in-lieu fee.</p>

			30,000 square feet of ground-floor retail space, (See Note)		Note: (3) 10,000 to 20,000 square feet of community amenity space, (4) up to 900 underground parking spaces with limited surface parking, and (5) an increase in height from 65 to 175 feet on a 5.78 acre site.)
4	<p>GP07-03-05 & GPT07-03-05</p> <p>Southeast corner of North 10th and East Mission Streets (2.2 acres)</p>	<p>Jackson Taylor Planned Residential Community Specific Land Use Plan area High Density Residential (25-50 DU/AC)</p>	<p>Jackson Taylor Planned Residential Community Specific Land Use Plan area Medium High Density Residential (12-25 DU/AC)</p>	<p>Spring 2008 Planning Commission April 21 2008 City Council April 22 2008 <i>May 20</i></p>	<p>If approved by the City, the proposed Project's housing range is approximately 26 to 55 new dwelling units. The future proposed housing project may be under 50 units and therefore PRNS can only recommend the collection of the associated park in-lieu fees from this project in CD3.</p> <p>The Jackson Taylor Plan did not call for the development of a park on this site.</p>
5	<p>GP06-04-05</p> <p>Southeasterly side on Berryessa Road, approximately 770 feet southwest from the intersection of Berryessa Road and North King Road (13.64 acres)</p>	<p>Light Industrial</p>	<p>Transit Corridor Residential (20+ DU/AC)</p>	<p>Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008</p>	<p>If approved by the City, the proposed Project's minimum housing range is approximately 270 new dwelling units at 20 units to the acre. A future housing project will be over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. PRNS will request land dedication for a new trail connection from the future housing project. The new trail will connect the proposed Penitencia Creek Trail from King Street to Berryessa Road in CD4.</p> <p>Land dedication for the trail is the same as land dedication for a new park site. Minimum trail corridor width is 30 feet wide.</p>

No.	GPA File No. and Location	Existing Use	Proposed Use	Hearing Schedule	PRNS Recommendation
6	<p>GP05-05-03</p> <p>South side of Alum Rock Avenue, approximately 250 feet easterly of McCreery Avenue (1.5 acres)</p>	<p>General Commercial on 0.5 acres and Medium High Density Residential (12-25 DU/AC) on 1.0 acre</p>	<p>Transit Corridor Residential (20+ DU/AC) on 1.5 acres.</p>	<p>Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008</p>	<p>If approved by the City, the proposed Project's minimum housing range is approximately 30 new dwelling units at 20 units to the acre. A future housing project may be over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. PRNS is interested in acquiring the Water District Land and part of the adjacent site for a new neighborhood park site near the intersection of Alum Rock Road and Sunset in CD5.</p>
7	<p>GP07-06-01 & GPT07-06-01</p> <p>West side of S. Monroe St, approximately 400 feet north from Tisch Way (7.8 acres)</p>	<p>Regional Commercial (2.7 acres) and Office (5.15 acres)</p>	<p>Medium High Density Residential (12-25 DU/AC) on 5.1 acres. No change to Regional Commercial on 2.7 acres.</p> <p>Text amendment to increase maximum allowable building height to 90 Feet on a 2.7-acre portion of the site between Dudley Ave and South Baywood Ave.</p>	<p>Spring 2008 Planning Commission April 9, 2008 City Council May 6, 2008</p>	<p>If approved by the City, the proposed Project's housing range is approximately 61.2 to 127 new dwelling units. A future housing project will be over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. PRNS will request land dedication from the future housing project to expand Frank Santana Park in CD6.</p> <p>(Note) GP08-09-01 located on the Northwest corner of Blossom Hill Road and Coniston Way will help to defer any job lost associated with GP-7-06-01 by converting existing Medium Density Residential Land (8-16 DU/AC) to General Commercial on a 4.17 acres in CD9.</p>

Memorandum

TO: Stan Ketchum
Planning, Building
and Code Enforcement

FROM: Manuel Pineda

SUBJECT: TRAFFIC IMPACT ANALYSIS
FOR GP06-04-05

DATE: 10-06-06

Approved

Date

File Number: GP06-04-05

Location: Approx. 770 feet S/W from intersection of Berryessa Rd. and N. King Rd.

Acreage: 13.6 ac.

Description: Light Industrial to Transit Corridor Res. (20+ DU/AC)
(Add 750 HH, Delete 75 J)
Outside Special Subarea (Remainder of City)

We have reviewed the subject General Plan Amendment (GPA) and submit the following comments. This GPA requires a computer model traffic impact analysis based on established criteria. We have completed the CUBE analysis, and the results of the analysis indicate that the impacts exceed the established significant threshold. Therefore, we conclude that the proposed land use change is projected to have a significant traffic impact.

The applicants shall contact the Department of Transportation to review and discuss the results of the analysis and obtain traffic data necessary for the preparation of the EIR. The cumulative traffic impact analysis will be performed by the City, and cumulative traffic impact report will be prepared by a consultant to be selected. This cumulative traffic impact report shall be incorporated into all EIRs within this GPA cycle.

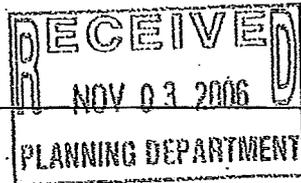
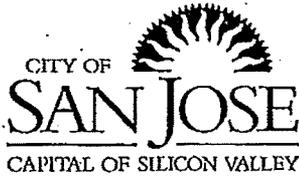
Please contact Paul Ma at 975-3272 if you have any questions.



MANUEL PINEDA
Senior Civil Engineer
Department of Transportation

MP:PM

cc: Jenny Nusbaum
Licina McMorrow



Memorandum

TO: Jenny Nusbaum
Planning, Building
and Code Enforcement

FROM: P. Paul Ma

SUBJECT: TRAFFIC IMPACT ANALYSIS
FOR GP06-04-05 (Staff Alternative)

DATE: 10-06-06

Approved

Date

File Number: GP06-04-05

Location: Approx. 770 feet S/W from intersection of Berryessa Rd. and N. King Rd.

Acreage: 13.6 ac.

Description: Light Industrial to Combined Industrial/Commercial
(Delete 13 Jobs)
Outside Special Subarea (Remainder of City)

We have reviewed the subject General Plan Amendment (GPA) and submit the following comments. The estimated number of new PM peak hour trips resulting from the proposed land use change is below the exemption threshold established for this area. Therefore, this GPA is exempt from a computer model traffic impact analysis.

If an Environmental Impact Report (EIR) is required for this GPA for other reasons, the EIR must include a traffic impact analysis report for the project and a cumulative analysis for all GPAs on file this year. Additional traffic data will be provided to the applicant's traffic engineering consultant for the preparation of the report.

Please contact Paul Ma at 975-3272 if you have any questions.

P. PAUL MA
Transportation Systems Planning Manager
Department of Transportation

PM

cc: Licinia McMorro

Memorandum

TO: Allen Tai
Planning and Building

FROM: Michael Liw
Public Works

**SUBJECT: RESPONSE TO GENERAL PLAN
AMENDMENT APPLICATION**

DATE: 08/21/06

PLANNING NO.: GP06-04-05
DESCRIPTION: GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Light Industrial to Transit Corridor Residential (20+ DU/AC) on a 13.64-acre site. (UBS Realty Investors, LLC, Owner/The Enterprise Group, Applicant)
LOCATION: Southeasterly side on Berryessa Road, approximately 770 feet southwest from the intersection of Berryessa Road and North King Road
P.W. NUMBER: 3-18109

Public Works received the subject project on 07/25/06 and submits the following comments:

A, AO-1,B Flood Zone
NO Geological Hazard Zone
NO State Landslide Zone
YES State Liquefaction Zone
UNKNOWN Inadequate Sanitary capacity (see note below)
NO Inadequate Storm capacity
NO Major Access Constraints
NO Near-Term Traffic Impact Analysis (see note below)

Notes:

- 1) In their certified EIR document, VTA has identified this site as a potential location for multi-modal transportation connections and a kiss-and-ride facility associated with the future Berryessa BART station.
- 2) A Traffic Impact Analysis Report is required prior to environmental clearance at Zoning.
- 3) Flow monitoring of sanitary sewer lines in the area will be required at the Zoning stage. Sanitary sewer mitigations, if any, will be identified based on the analysis of the flow monitoring data.

Planning and Building
08/21/06
Subject: GP06-04-05
Page 2 of 2

Please contact the Project Engineer, Mirabel Aguilar at (408) 535-6822 if you have any questions.

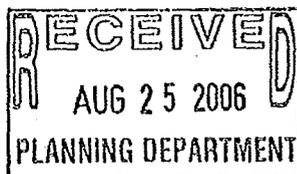
A handwritten signature in black ink, appearing to read 'MLIW', is positioned above the typed name.

MICHAEL LIW
Senior Civil Engineer
Transportation and Development Services Division

ML:MA:ar



August 24, 2006



File: 01706
Upper Penitencia Creek

Mr. Allen Tai
Planning Division
Department of Planning, Building, & Code Enforcement
City of San Jose
200 East Santa Clara Street, Third Floor
San Jose, CA 95113-1905

Subject: General Plan Amendment (GP06-04-05) – Assessor's Parcel Nos. 254-17-066, 067, 068, 069, and 070

Dear Mr. Tai:

The Santa Clara Valley Water District (District) has reviewed the proposed General Plan Amendment to change the Land Use/Transportation Diagram designation of the site from Light Industrial to Transit Corridor Residential (20+ DU/AC) on a 13.64-acre site located southeasterly of Berryessa Road, approximately 700 feet southwesterly from the intersection of Berryessa Road and King Road. Although we have no objections, please note the following:

Current Federal Emergency Management Agency (FEMA) maps show that the site is within Zone AO and would be subject to 1 foot of flooding in the event of a 1 percent flood. To comply with federal flood insurance regulations, the lowest floor and highest adjacent grade of any building, must be above the 1 percent water surface elevation. We recommend the lowest floor be a minimum of 2 feet above the 1 percent water surface elevation.

The District in partnership with the Army Corps of Engineers is currently planning flood protection improvements for Upper Penitencia Creek. Completion of the Environmental Impact Report is scheduled to be completed mid to late 2007. Feasible alternatives have been evaluated and the District staff's preferred alternative is the 100-year widened channel and floodplain alternative. This would involve excavating and widening the creek, creating an excavated bench area for flood conveyance, and constructing a floodwall along the east side of the site. Construction of the flood protection improvements will require right of way from the subject parcels, as shown in the enclosed plans. This alternative has been endorsed by the resource agencies, including NOAA Fisheries, Regional Water Quality Control Board, Department of Fish and Game, and the U.S. Environmental Protection Agency as their preferred alternative.

The flood protection improvements will not only serve to protect the adjacent properties from flooding, it will also provide an opportunity for the City to incorporate a multi-use trail. If there is a future consideration for access from this site to the trail, an allowance for construction of a ramp crossing over the floodwall should be included. It may also be desirable to consider this floodwall in designing adjacent grades and building views.



Mr. Allen Tai
Page 2
August 24, 2006

Since future flood protection improvements include floodwalls, there should be no overbank drainage from the developed portions of the site into the creek. Storm water runoff should be collected and directed to the city storm system. If an outfall into the creek is necessary, it should be designed to serve a general area to minimize the number of future outfalls needed.

To prevent pollutants from construction activity, including sediments, from reaching Coyote Creek, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction."

Postconstruction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in the "Start at the Source-Design Guidance Manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater Management Agencies Association.

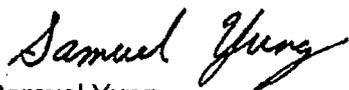
Because the site is greater than 1 acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity with the State Water Resources Control Board. The developer must also prepare, implement, and maintain a Storm Water Pollution Prevention Plan and provide measures to minimize or eliminate pollutant discharges from construction activities, the parking lot, and landscaping areas after construction.

District records show one well on the site. The well should be properly maintained or destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

When the zoning plans become available, please submit two sets for our review.

Please reference District File No. 01706 on future correspondence regarding this project. If you have any questions or comments, you can contact me at (408) 265-2607, extension 3174, or at syung@valleywater.org.

Sincerely,



Samuel Yung
Associate Civil Engineer
Community Projects Review Unit

Enclosures: Upper Penitencia Creek 100-Year Floodplain Alternative

cc/enc: Ms. Dionne Early, City of San Jose

Ms. Jenny Nusbaum, City of San Jose

Ms. Mirabel Aguilar, City of San Jose

Mr. Ebrahim Sohrabi, City of San Jose

cc: S. Tippets, S. Yung, T. Hipol, S. Bui, M. Klemencic, S. Katric, G. Fowler, File (2)

eh:fd

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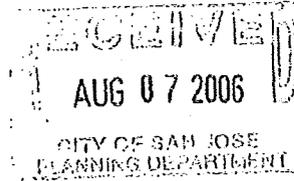


Airport Land Use Commission

County Government Center, 70 W. Hedding Street, East Wing, 7th Fl., San Jose, CA 95110
(408) 299-5798 FAX (408) 288-9198

SANTA CLARA COUNTY

August 3, 2006



Allen Tai, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113

**Re: City of San Jose No. GP06-04-05
General Plan Amendment request to change the Land Use/Transportation Diagram designation from Light Industrial to Transit Corridor Residential (20+ DU/AC) on a 13.64 -acre site located on the southeast side of Berryessa Road, southwest of the intersection of Berryessa Road and North King Road (APN 254-17-066)**

Dear Allen:

I am writing in response to the City of San Jose's referral of the above-referenced project. The project site is located approximately two (2) miles from the nearest referral zone, San Jose International Airport. Therefore, the project site lies outside the Airport Land Use Commission (ALUC) project referral boundaries and the ALUC has no comments.

ALUC staff appreciates the opportunity to review this project. If you have any, please contact me at (408) 299-5798.

Sincerely,

Dana Peak
ALUC Staff Coordinator



August 7, 2006

City of San Jose
Department of Planning and Building
200 East Santa Clara Street
San Jose, CA 95113

Attention: Allen Tai

Subject: City File No. GP06-04-05 / Berryessa GPA at BART Station Site.

Dear Mr. Tai:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the General Plan Amendment for Transit Corridor Residential (20+ du/ac) on 13.64 acres on the south side of Berryessa Road, west of King Road. We have the following comments.

- *Location of future transit center for Berryessa BART.* Area within subject land has been designated by VTA as the site for a multi-modal transit center, connecting bus, automobile, pedestrian and bicycle modes to BART.
- *Optimization of project densities to support the transit system and create vibrant community life.* The project description provided indicates residential densities of 20 du/ac. For regional station areas, VTA's *Community Design & Transportation Manual of Best Practices for Integrating Transportation and Land Use* (CDT) recommends a minimum (net) density of 55 du/ac and an average of 75 du/ac; which implies that residential building densities closest to the station area can be of considerably higher density. In the Environmental Impact Report developed for the subject area, the report's Transportation section of the EIR should include a discussion of projected ridership for all options considered, including a "high-density" option using an average density of 75+ units per acre. The analysis should indicate the superior alternative in terms of the percentage of population riding transit (ridership) and traffic mitigation.
- *Provision of an integrated street system and circulation plan.* Proposed streets within the subject area should support BART traffic and operations. Streets that may cross the BART right-of-way must be placed so they do not interfere with BART structural elements. Any street crossings of the BART alignment must be clearly identified and analyzed in the EIR.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink that reads 'Roy Molseed'.

Roy Molseed
Senior Environmental Planner

RM:kh

cc: Ebrahim Sohrabi, San Jose Development Services
Samantha Swan, VTA

Kat Mereigh, VTA
3331 North First Street - San Jose, CA 95134-1906 • Administration 408.321.5555 • Customer Service 408.321.2300

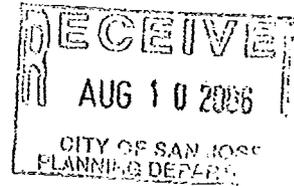
Marc B. Liebman, Ph.D.
Superintendent

1376 Piedmont Road
San Jose, CA 95132-2427



Phone: (408) 923-1800
Fax: (408) 923-0623

August 3, 2006



Allen Tai
Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
801 North First Street
San Jose, CA 95110-1795

RE: City File No. GP06-04-05 APN: 25417066

The District is in receipt of a General Plan Amendment, a request to change the Land Use/Transportation Diagram designation from Light Industrial to Transit Corridor Residential on the above described 13/64 acre site.

The schools that serve this project are currently at or above capacity and any new development will create a facility impact that will not be satisfactorily compensated for by Developer Fees. The Berryessa Union School District is opposed to this project. Developer fees will only cover a small percentage of the real cost of additional students from these new homes.

We request that the Department of Planning recommend a denial of the project until such time as a satisfactory agreement can be reached to allow the impacted schools to construct the adequate classroom, lavatory, and playground space to accommodate the students who will ultimately come to our schools from this proposed development.

If you have any questions, or need additional information or justification for this request for denial, please contact me at 408.923.1811.

Sincerely,

Marc B. Liebman
Superintendent,

c: Chuck Reed, District 4 Council Member

MBL:mh

Board of Trustees

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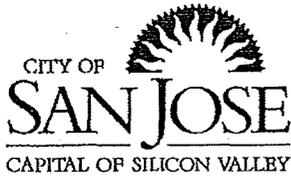
McMorrow, Licia

From: jimlsiebert@netscape.net
Sent: Monday, July 16, 2007 1:10 PM
To: Licia.mcmorrow@sanjoseca.gov
Subject: Flea market rezone transit corridor residential

What will be done to prevent this from becoming a slum like the rest of the residential areas next to above ground BART. These above ground elevated in areas like Chicago produce slum neighborhoods. How will you abate the noise these trains run every 15 minutes compared to a railroad which is about 3 times a day. Houses next to railroads complain. Why is the industrial not next to the train. What are your plans for parking. Every project next to the light rail does not provide enough parking. Your estimates of cars per household have been inaccurate every time. Is there a trigger to prevent development before BART is complete.

Jim Siebert

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Department of Parks, Recreation and Neighborhood Services

PARKS AND RECREATION COMMISSION

April 2, 2008

Mayor and Members of the City Council
City of San José
200 East Santa Clara Street,
San José, California 95113

Subject: Extraordinary Economic Benefit from Land Conversions

The Honorable Mayor and Members of the City Council:

The Parks and Recreation Commission (hereinafter "Commission") has become aware of the "Framework for the Preservation of Employment Lands" and the section entitled "Extraordinary Economic Benefit from Conversion" as noted in "Attachment 1.a., hereto attached. The Commission disagrees with the following sentence from the "Extraordinary Economic Benefit from Conversion" section of the Report:

"Provision of affordable housing, parks, and related infrastructure improvements are an ordinary component of new development and do not qualify as an Extraordinary Economic Benefit."

The Commission is asking the Council to reconsider this action which effectively limits developers from dedicating parkland in excess of a project parkland obligation to the City. With land costs ranging from \$1.5 to \$4.0 million dollars pre acre, land dedications free the City from acquiring such lands. The City's General Plan objective is 3.5 acres of neighborhood/community parkland and recreational school grounds per 1,000 population. To meet this goal in 2020 for an estimated population of 1.1 million, the City and School Districts will need to provide approximately 400 additional acres of recreational lands valued at \$1.0 billion to \$1.5 billion just for acquisition. Additional dollars are needed to plan, design and fully build out the parks into usable facilities.

The Commission has clearly heard from the public over the past several years regarding the importance of adequate recreational facilities including parks, open space, sport fields, pools and other facilities. If developers are willing to dedicate additional lands beyond their project's parkland obligation, the Commission supports such dedications as Extraordinary Benefit to the City. This may be one of the only ways we can attain our parkland goals as identified in the Greenprint and the City's General Plan. The Commission understands the need to preserve employment lands where such lands are providing employment. In some cases, landowners have vacated such properties in order to convert to housing, or the land has never been built on. In either case, the City Council will need to deliberate the overall benefit to the City to either convert or not to convert such lands.

developer is to dedicate additional parklands to the City, which truly fulfills a City desire for such recreational lands, then a developer should be able to claim the excess dedication as Extraordinary Benefit.

It's a balancing act, the City has needs for employment lands, additional residential lands, retail lands and public recreational lands in order to make San Jose an great livable City. Without a balance of such lands, the City will no longer be an economic engine to the Silicon Valley. Recreational lands helps to define the economic benefit of an area. If done right, recreational lands enhance property values, bring in homebuyers, employers, and may attract retirees.

Recreational lands are a good financial investment for a community. The City of Chicago is truly benefiting from its development of Millennium Park through tourism and enhanced municipal revenues. This 24.5 acres addition to Grant Park has become a major Chicago attraction with interactive public art, ice-skating, dining, and free music presentations by the Grant Park Orchestra and Chorus.

Recreational lands are an important element of smart growth that addresses both the public's need for greenspace and the role of greenspace has in mitigating higher density developments. The suburban backyard will no longer by a main stay of housing development within the City of San Jose. Row houses and high density projects are becoming the norm for such residential development. However, many residents oppose such high density housing because they believe it will consume open space, exacerbate parking and traffic issues, and/or threaten the existing quality of life. A strong policy promoting parks and greenspaces can play a crucial role in addressing their concerns. If done right, density can actual enhance a community through additional retail opportunities and recreational facilities to provide various leisure time activities.

Parks and recreational facilities are part of the urban fabric of the City along with libraries, internet cafes, restaurants, health clubs, theaters to name a few. These facilities help to define a City, just and as job do. Therefore the Commission is requesting a change in the Framework Policy to include additional parklands and affordable housing as Extraordinary Benefit to the City when converting commercial land use designations into additional residential lands.

The Parks and Recreation Commission will be glad to answer any questions the City Council may have regarding this recommendation.

Sincerely,



Melanie Richardson
Chair, Parks and Recreation Commission

cc: PRNS
PBCE

April 2, 2008

City of San José Planning Commission
200 East Santa Clara Street, 3rd Floor
San José, California 95113

Subject: Spring 2008 – General Plan Amendments

Dear Planning Commissioners:

The Parks and Recreation Commission (hereinafter “Commission”) reviewed the proposed Spring 2008 General Plan Amendments dealing with future residential projects at the Commission’s regular business meeting on April 2, 2008. This letter transmits the Commission’s comments regarding the following General Plan Amendments to be considered by the Planning Commission and the City Council.

- 1) **GP05-02-02:** The Commission is neutral on the conversion of this land from General Commercial to Residential. However, if this General Plan Amendment request for Medium High Density Residential is approved by the City Council, the proposed housing range is 17 to 36 new dwelling units. A future housing project will be under 50 units and therefore the City can only request the associated park in-lieu fees from this project in CD2. The Commission understands that the City can not request land dedication under this General Plan request for a future housing project. A future housing project will still need to comply with the requirements of the PDO or PIO, depending on housing types.

- 2) **GP06-02-02 & UGB06-001:** The Commission is neutral on both the conversion of this land from Rural Residential to Medium High Residential and the change in the Urban Growth Boundary. If this General Plan Amendment request for Medium High Density Residential is approved by the City Council, along with the Urban Growth Boundary change, the proposed housing range is approximately 80 to 160 new dwelling units. A future housing project will be over 50 units and therefore the Commission can recommend land dedication under the Parkland Dedication Ordinance (PDO) or the Park Impact Ordinance (PIO). In this case, the Commission understands that a new neighborhood park is proposed on the property just south of site. Therefore, the Commission is not requesting land dedication from this site as part of a future housing project in CD2. A future housing project will still need to comply with the requirements of the PDO or PIO. Depending on housing types, the project will be required to submit the required park fees in lieu of land dedication.

- 3) **GP07-03-04 & GPT07-03-04:** If this General Plan Amendment request for Mixed Use is approved by the City Council, the proposed housing range is approximately 600 new dwelling units with a three quarter acre park/plaza and a 10,000 to 20,000 square foot performing art center. A future housing project will be over 50 units and therefore the City can recommend land dedication under the PDO or PIO. The Commission is concerned with the size of the proposed park/plaza has not kept pace with the proposed increase in density for this project. The Jackson-Taylor Residential Strategy Plan calls for mix use development on this 5.14 acres site and states: "The residential component must develop to a minimum of 25 du/ac and may be a maximum density of 50 du/ac. For densities above 35 du/ac, projects must exhibit exemplary architectural design that is urban in character and express the essence of the design guidelines contained in the Residential Strategy." Therefore the original range for this property is 110 units at 25 du/ac to 220 units at 50 du/ac. The proposed project would allow 600 units, or approximately 137 du/ac without increasing the size of the proposed park/plaza. The Plan further states: "The amount of parks within the study area is based on the City's population-based parkland objective." This objective per the City's General Plan is 3.5 acres per 1,000 population. The proposed density increase is equal to approximately 382 units, or 2.6 acres of additional parkland is needed within the Jackson-Taylor Residential Strategy Plan Area. The Commission support's Parks, Recreation and Neighborhood Service Department (PRNS) recommendation to request land dedication for a new central located neighborhood park/plaza from the future housing project on this site. The Commission also supports the inclusion of the performing art center as part of this housing project in Japan Town. However, the Commission is concern with the increase in density; the proposed park/plaza will be over crowned and the 2.6 acres of additional parkland will never be achieved within the Plan Area.
- 4) **GP07-03-05 & GPT07-03-05:** If this General Plan Amendment request to lower density to Medium High Density Residential on this property in the Jackson-Taylor Residential Plan Area is approved by the City Council , the proposed housing range is 26 to 55 new dwelling units. A future housing project may be under 50 units and therefore the City can only request the associated park in-lieu fees from this project in CD3. The Commission understands that the City can not request land dedication under this General Plan request for a future housing project. Furthermore, the Jackson-Taylor Residential Plan did not indicate a future public park on this site. Any future housing project will still need to comply with the requirements of the PDO/PIO, depending on housing types. This reduction would also off-set 0.3 acres of future parkland increase from GP07-03-04.
- 5) **GP06-04-05:** The Commission supports the conversion of this land from General Commercial to Residential. If this General Plan request is approved by the City Council, the proposed minimum housing range is approximately 270 new dwelling units at 20 units to the acre. A future housing project will be over 50 units and therefore the City can recommend land dedication under the PDO/PIO. PRNS staff has will be requesting land dedication for the Penitencia Creek Trail connection from this future housing

project. The new trail is a missing link in the Penitencia Creek Trail Alignment from King Road to Berryessa Road in CD4. The Commission is in support of this future trail alignment and the proposed General Plan Amendment which could deliver the proposed trail alignment to the City.

- 6) **GP05-05-03:** If the General Plan Amendment request is approved by the City Council, the proposed minimum housing range is approximately 30 new dwelling units at 20 units per acre. A future housing project may be under 50 units and therefore the City can only recommend the collection of in-lieu fees under the PDO/PIO. PRNS is interested in acquiring the nearby Water District's land and part of the adjacent parcel for a new neighborhood park site along the west side of Silver Creek at the intersection of Alum Rock Road and Sunset in CD5. The Commission is in support of such an endeavor to create a new park at this location.
- 7) **GP07-06-01 & GPT07-06-01:** If approved by the City Council, the proposed housing range is approximately 61 to 127 new dwelling units. A future housing project will be over 50 units and therefore the City can recommend land dedication under the PDO/PIO. PRNS has requested land dedication from this future housing project to expand Frank Santana Park in CD6 with a second sport field. The Commission strongly support this proposed General Plan Amendment by the Developer on the conversion of this land from Regional Commercial to Residential on 5.1 acres, which would provide additional parkland to expand Frank Santana Park through land dedication under the PDO/PIO.

The Parks and Recreation Commission will be glad to answer any questions the Planning Commission may have regarding these recommendations.

Sincerely,



Melanie Richardson
Chair, Parks and Recreation Commission

cc: PRNS
PBCE