



COUNCIL AGENDA: 06-13-06  
ITEM: 10.3 (b)

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** May 22, 2006

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## TRANSMITTAL MEMO

COUNCIL DISTRICT: # 4  
SNI AREA: None

**SUBJECT:** FILE # GP05-04-03. Tentative Denial of General Plan Amendment request to change the Land Use/Transportation Diagram designation from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on a 2.66-acre site located on the east side of Oakland Road, approximately 700 feet south of Calle Artis (2080 and 2090 Oakland Road).

The Planning Commission will hear this project on May 24, 2006. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.

  
for JOSEPH HORWEDEL, ACTING DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Planning, Building and Code Enforcement at (408) 535-7800.



Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San José, California 95113-1905

# GENERAL PLAN AMENDMENT STAFF REPORT WINTER 2006 HEARING

Hearing Date Agenda Number: P.C. May 24, 2006 Item: 7.c (2)
File Number: GP05-04-03
Council District and SNI Area: 4
Major Thoroughfares Map Number: 51
Assessor's Parcel Number(s): 244-23-067
Project Manager: Meera Nagaraj

**PROJECT DESCRIPTION:**

General Plan amendment request to change the Land Use/Transportation Diagram from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on a 2.66 gross-acre site.

**LOCATION:** East of Oakland Road, approximately 700 feet south of Calle Artis (2080 and 2090 Oakland Road)

**ACREAGE:** 2.66 Acres

**APPLICANT/OWNER:**

Bible Way Christian Center/ Cilker Revokable Trust

**GENERAL PLAN LAND USE / TRANSPORTATION DIAGRAM DESIGNATION:**

Existing Designation: Heavy Industrial

Proposed Designation: Heavy Industrial with Mixed Industrial Overlay

**ZONING DISTRICT(S):**

Existing Designation: HI - Heavy Industrial

Proposed Designation: Not applicable

**SURROUNDING LAND USE AND GENERAL PLAN DESIGNATION(S):**

North: Industrial uses– Heavy Industrial

South: Industrial uses– Heavy Industrial

East: Industrial uses – Heavy Industrial

West: Vacant– Industrial Park with Mixed Industrial Overlay (GP 05-04-07 pending for Medium-High Density Residential (12-25 DU/AC))

**ENVIRONMENTAL REVIEW STATUS:**

Mitigated Negative Declaration circulated on March 9, 2006

**PLANNING STAFF RECOMMENDATION:**

No change to the existing Heavy Industrial designation

Approved by: *Stan Hertz*  
Date: *May 17, 2006*

**PLANNING COMMISSION RECOMMENDATION:**

**CITY COUNCIL ACTION:**

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**CITY DEPARTMENT AND PUBLIC AGENCY COMMENTS RECEIVED:**

- **Department of Public Works:** The Transportation and Development Services Division (DPW) has stated that the project is subject to In-Lieu Under-grounding and Reimbursement Fees. Also per the Assessor's map, a pipeline currently goes through the property. (See attached memo.)
- **Department of Transportation:** The proposed land use change is exempt from a computer model (TRANPLAN) traffic impact analysis. (See attached memo.)
- **Environmental Services Department:** No comments.
- **Police Department:** The parking lot will need to be sufficiently illuminated during the hours of darkness. Each exit door should have its own light source mounted above the door on the exterior wall. (See attached memo.)
- **San José Fire Department:** The Fire Department has stated their review is limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San José Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process. The drawing provided did not include information necessary for their review. Site flow requirement may be as high as 4,500 GPM. The Hazmat Section of the Fire Department will comment on the environmental review when submitted to Mike Murtiff. (See attached e-mail memo.)
- **Santa Clara Valley Water District:** The District has stated that it has no objections to the proposal. District records show one well on the site. The well should be properly maintained or destroyed in accordance with the District's Standard. For other comments see attached memo. The site is located within Zone D, an area of undetermined but possible, flood hazards.

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**GENERAL CORRESPONDENCE:**

Staff has received comments through written correspondence regarding this project. See enclosed letters from Andre R. Walewski, Senior Vice President, Colliers International, San José; dated November 2, 2005.; Thomas R. Nickell, CFO, Mass Precision Sheetmetal inc., dated November 3, 2005; Brian T. Mullins, Vice-President, Union Bank of California, dated November 7, 2005; Jolie Houston, Berliner Cohen, Attorneys at Law, dated November 8, 2005

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**RECOMMENDATION**

Planning staff recommends No Change to the General Plan Land Use/Transportation Diagram designation of Heavy Industrial on the subject site.

**EXECUTIVE SUMMARY**

In December, 2005, the City Council approved a General Plan text amendment to modify the Mixed Industrial Overlay designation to discourage applying it to lands designated Light Industrial or Heavy Industrial. This was based on the findings of the Status Report on Industrial Lands, presented to the Council at that time, which concluded that Light and Heavy Industrial lands are becoming limited and recommended that policies be enhanced to preserve remaining lands designated Light and Heavy Industrial. Based on this, **the proposed addition of the Mixed Industrial Overlay (MIO) to this Heavy Industrial-designated site is not consistent with the General Plan policy.**

**Allowing the MIO and its specific non-industrial uses on the site would discourage the retention and expansion of existing surrounding industrial uses within close proximity of the subject site resulting in a potential loss of employment -- more than 300 jobs from one of the adjacent businesses, reduced tax revenue to the City, and an increase in vacancy rates. The addition of the MIO designation, while not removing the Heavy Industrial designation, would facilitate the development of non-industrial uses, which would be considered a conversion of industrial land. The proposed MIO could also induce further conversion of industrial lands to non-industrial uses in the vicinity, continuing the loss of heavy industrial land that would have long-term impacts on the City's economy.**

Apart from the economic loss to the City and loss of limited Heavy Industrial land resources, **occupants of future non-industrial uses on the site could be subjected to nuisances from the existing surrounding industrial uses**, including exposure to hazardous materials, as well as noise, dust, and odors from the industrial uses in the area. The Mitigated Negative Declaration adopted for the project incorporates appropriate Title 20 Zoning Code Performance Standards and General Plan and other programmatic mitigation measures to reduce potential future impacts to less than significant level. However, **the implementation of these measures could result in future limitations being imposed on the industrial uses in the immediate vicinity of subject site, thereby potentially compromising the future viability of surrounding businesses.**

This site is located in the North San Jose 5 Subarea, a portion of the larger North San Jose industrial area. The City's *Framework, as a Guideline, for Evaluating Proposed Conversions of Employment Lands to Other Uses Industrial Conversion* (Framework) states that **conversions in this subarea should only be considered in areas that are already in transition and that can be integrated into the neighborhood.** Properties on the opposite side of Oakland Road (Major Arterial 115-130 foot ROW) have been approved for residential development. However, **the uses on the easterly side of Oakland Road are consistently industrial, are not in any form of transition and do not demonstrate potential to integrate into the residential area approved for the west side of Oakland Road.**

Therefore the proposed General Plan amendment does not satisfy the Framework requirement. The evaluation of the criteria contained in the *Framework* is incorporated in the Analysis Section of the report.

**Based on the above summary of key issues, the proposed General Plan amendment is inconsistent with the Mixed Industrial Overlay General Plan designation, General Plan Industrial and Economic Development Policies regarding preservation of Industrial Land Uses and employment areas and the Council adopted Industrial Conversion Framework.**

## **PROJECT DESCRIPTION**

This is a privately initiated General Plan amendment to change the *San José 2020 General Plan Land Use/Transportation Diagram* designation from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on an approximately 2.66-acre site at 2080 and 2090 Oakland Road. The applicant, Bible Way Christian Center, represents that it leases the site for office uses (not a permitted use in the Heavy Industrial Zoning District) and has indicated intent to purchase the property for future religious assembly use, subject to approval of the proposed General Plan

amendment and a subsequent Conditional Use Permit and accompanying required environmental review.

The Mixed Industrial Overlay designation is intended to be applied in areas with an existing mixture of primarily industrial with compatible commercial or public/quasi-public uses. Such areas suitable for the MIO should already have an existing mix of uses so that the additional non-industrial uses do not compromise the integrity of areas reserved exclusively for industrial uses. Examples of non-industrial uses allowed in the MIO include, but are not limited to, primary or secondary schools, hotels and motels, night clubs, religious assembly, free standing day care centers, big box retailers, large gymnasiums, sports or arts instruction facilities, and hospitals. If the proposed General Plan amendment is approved, any new use allowed by the Mixed Industrial Overlay designation will be subject to approval of a Conditional Use Permit application and environmental review.

## **BACKGROUND**

### **Site and Surrounding Uses**

The subject site is located on the east side of Oakland Road approximately 700 feet south of Calle Artis. The subject site fronts on Oakland Road, which provides vehicular access to much of the larger industrial area in northeast San José. It is designated as a Major Arterial Street in the General Plan, a 115 to 130 feet right-of-way, and is defined as a facility designed mainly for the movement of through traffic. The existing roadway varies from two to four lanes between Hedding Street and Montague Expressway. A City Capital Improvement Project is in progress to complete widening of Oakland Road to four lanes. The Santa Fe Pacific Pipeline, a jet fuel transmission line is located along the eastern boundary of the parcel.

The site has an existing land use designation of Heavy Industrial. The Heavy Industrial designation is intended for industrial uses with nuisance or hazardous characteristics which for reasons of health and safety, environmental effects, or public welfare are best segregated from other uses. Traditional industrial activities such as heavy and light manufacturing and warehousing are encouraged under this designation. There is an existing one story, 37,000 square foot industrial building on the site.

The General Plan land use designations of the surrounding properties are as follows: Heavy Industrial to the north, Heavy Industrial to the south, Industrial Park with Mixed Industrial Overlay (pending General Plan amendment for Medium-High Density Residential (12-25 DU/AC)) across Oakland Road to the west, Heavy Industrial to the east across the Southern Pacific Transportation Company railway and Santa Fe Pacific Pipeline easements.

Buildings with industrial uses exist to the north and south of the site, and also across the railway line on the east. The buildings immediately to the north and south of the subject site are occupied by a sheet metal engineering and fabrication company. The building to the south at 2070 Oakland Road is linked to the far south side of the existing building on the subject site (2080 Oakland Road) with a common loading dock area. A trucking company is located to the east side of the site across the railway line adjacent to the rear side of the subject building. To the far south of the site are a number of parcels occupied by heavy industrial uses requiring a significant amount of

outdoor storage and activity. These uses include a wood milling and molding supply business, a tree pruning business, and further south a rock supply business and an auto salvage yard.

The area on the west side of Oakland Road between Rock Avenue and Montague Expressway, an approximately 52-acre area, was the subject of a City-initiated General Plan amendment in 1996 to add the Mixed Industrial Overlay designation to this area to create a transition area between the existing mobile home park and the industrial areas to the east. Approved and pending General Plan amendments would reduce the MIO area to the land generally north of Calle Artis (entrance to the Casa del Lago Mobile Home Park), approximately 45 acres. The existing uses in this area include a variety of light industrial uses and one existing church. There are several vacant buildings in the area.

### **Existing Development**

In 1984, a Site Development Permit (File No. H98-195) was approved to allow research and manufacturing buildings with a total area of 185,000 square feet on two parcels of approximately 13 acres, of which the subject site is a part. Subsequently, the subject parcel was created as a part of a four-parcel subdivision of the two larger parcels. The existing 37,000 square-foot building has two portions, each with its own address (2080 and 2090 Oakland Road). The applicant states that the building has been vacant for the past 18 months. From staff observation, the building appears to be partially occupied at this time. The portion of the building at 2080 Oakland Road was occupied by the US Post Office until three years ago and since then has been used for indoor storage for a Food Bank. The portion of the building at 2090 Oakland Road was previously used for sheet metal training. The existing sheet metal business occupying the buildings on both sides of the subject site, Mass Precision Sheet Metal, currently operates three shifts, 24-hours, 7 days a week and is planning to expand its weekend crew in the near future. Such operations are allowed in the Heavy Industrial Zoning District.

There is no development permit application on the proposed project on file at this time. Nevertheless, the applicant has stated on the application and also during the community meeting that the existing 37,000-square foot industrial building will be used for church, school, and other related uses. Again, such uses will only be allowed if the proposed General Plan amendment and subsequent Conditional Use Permit application are both approved.

### **Approved General Plan Amendments in the Surrounding Area**

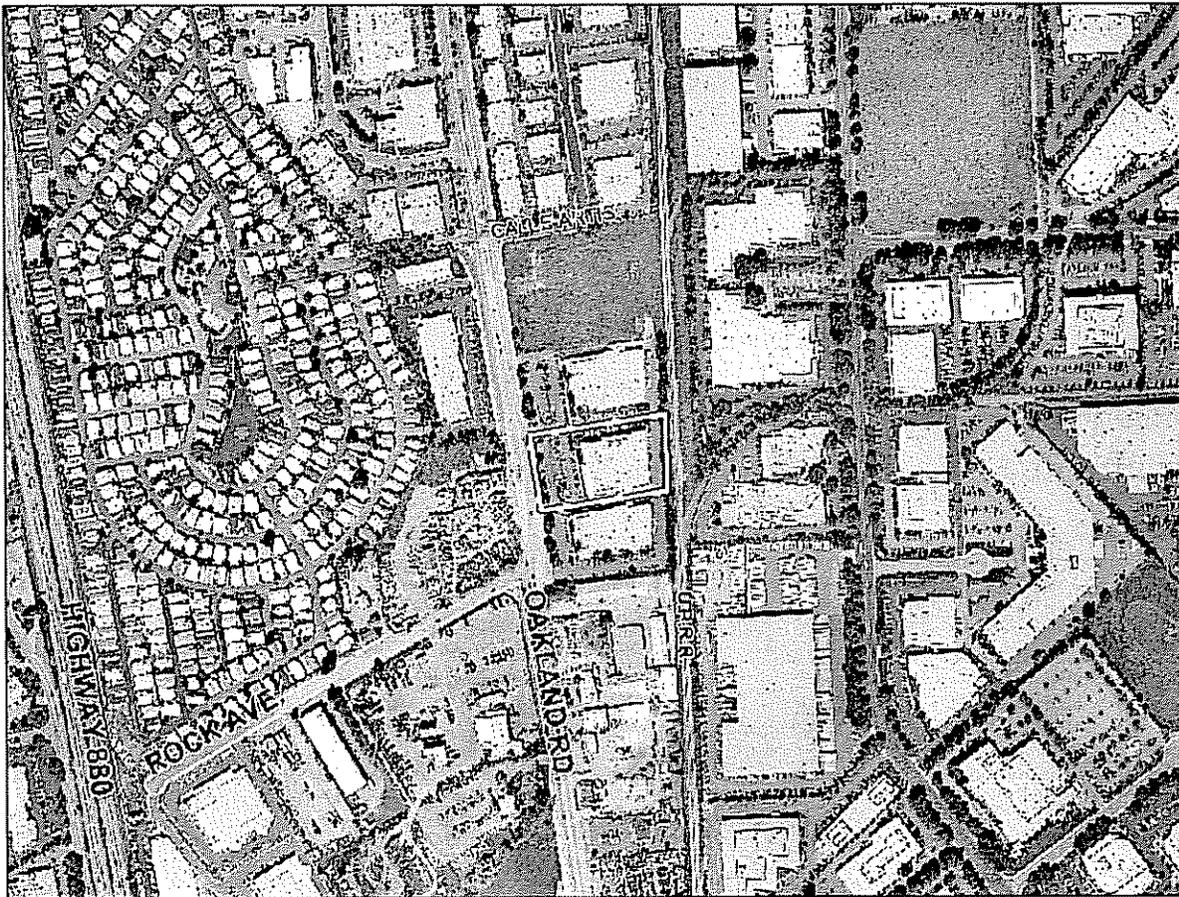
Two General Plan amendment requests were recently approved on sites located across the street from the subject property to the West of Oakland Road (see attached map) which were recommended for denial by staff, and by the Planning Commission on March 22, 2006. Both amendments were approved by the City Council on April 18, 2006. They are:

- File No. GP05-04-07 to change the General Plan Land Use/Transportation Diagram designation from Industrial Park with Mixed Industrial Overlay to Medium High Density Residential (12-25 DU/AC) on an approximately 2.82-acre site located at the southwest corner of Calle Artis and Oakland Road (2135 Oakland Road).
- File No. GP05-04-06 to change the General Plan Land Use/Transportation Diagram designation from Industrial Park to Medium Density Residential (8-16 DU/AC) on a 4.08-

acre site located on the south side of Rock Avenue, approximately 800 feet westerly of Oakland Road (1040 Rock Avenue).

Within the last two years, two General Plan amendments were approved from Industrial Park to residential land use designation to the West of Oakland Road. One of these sites previously had the Mixed Industrial Overlay designation.

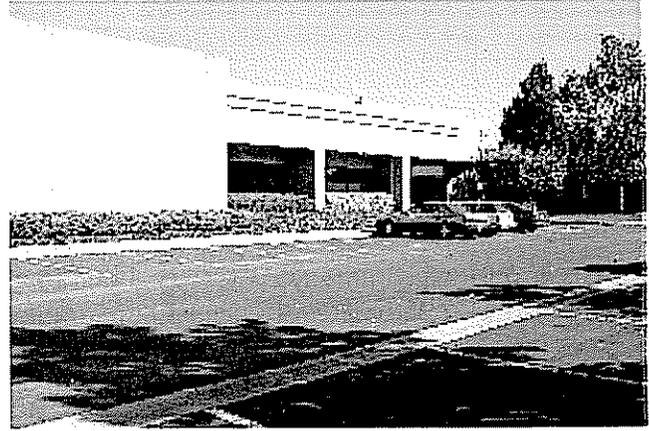
- File No. GP05-04-01 to change the General Plan Land Use/Transportation Diagram from Industrial Park with Mixed Use Overlay to Medium High Density Residential (12-25 DU/AC) was approved in November 2005 on 4.7 acres of land located across the subject site to the Westside of Oakland Road, where a pallet storage company was housed.
- File No. GP03-04-01 to change the General Plan Land Use/Transportation Diagram designation from Industrial Park to Medium Density Residential (8-16 DU/AC) was approved in April 2004 on 13.7 acres of land located at the southwest corner of Oakland Road and Rock Avenue.



Aerial Exhibit of the Subject  
Site and Vicinity



2090 Oakland Road, Part of the proposed site; Front View



2080 Oakland Road, Part of the proposed site; Front View

### **Industrial Conversion Framework**

The City's *Framework, as a Guideline, for Evaluating Proposed Conversions of Employment Lands to Other Uses (Framework)*, was adopted by the Council in April 2004 for the purpose of evaluating proposed conversions of employment lands to other uses. The subject site is a part of the North San Jose 5 Subarea, a portion of the larger North San Jose industrial area. The *Framework* states that conversions in this subarea should only be considered in areas that are already in transition and can be integrated into the neighborhood/area framework. As stated previously, the larger surrounding area on the easterly side of Oakland Road is consistently industrial, is not in any form of transition and would not integrate into the residential area resulting from recent General Plan amendments on the west side of Oakland Road.

The December, 2005 Status Report on the City's Industrial Lands shows that a total of approximately 607 acres have been converted to non-industrial uses since adoption of the *Framework*. The report status states that, of the approximately 11,000 acres of planned industrial land within the Urban Service Area, there are 1,400 acres of Heavy Industrial and 1,100 acres of Light Industrial remaining. The report further states that, given the limited inventory of industrial lands, San José needs to protect its diverse employment land base to provide for the expansion and recruitment of companies of all sizes and industries, thereby supporting employers to provide future jobs for all income levels. The report also states that, due to the scarcity of land with Light Industrial or Heavy Industrial designations, the addition of Mixed Industrial Overlay on these lands should be discouraged.



Common dock area (see right-hand side) at the far side of the subject building, connecting the adjacent industrial building; Front view.



Hiring Sign at 2110 Oakland Road.

## ANALYSIS

The key issues in analyzing the proposed General Plan amendment are: 1) consistency with the *San José 2020 General Plan* Major Strategies, goals, and policies; and 2) consistency with *Framework* criteria.

### **Consistency with the *San José 2020 General Plan* Major Strategies, Goals, and Policies:**

The conversion of industrial land in this location would not be consistent with several General Plan Economic development goals and policies.

#### Economic Development Major Strategy

The Economic Development Major Strategy is designed to maximize the economic potential of the City's land resources while providing employment opportunities for San José's residents. The Strategy calls for identifying opportunities for expanding the community's economic base, promoting a balance between "driving" industries and the service/supplier firms that support them, and actively marketing San José as a location for a wide range of businesses. The proposed General Plan amendment is inconsistent with the General Plan's Economic Development Major Strategy because it would result in a potential loss of jobs and economic development opportunities for the new and emerging industrial businesses. In particular, the addition of the Mixed Industrial Overlay designation to facilitate the conversion of the existing buildings to a range of non-residential uses, including commercial uses, schools, daycare, or religious assembly could impact the future retention of the existing adjacent sheet metal business and discourage the siting of other heavy industrial uses in the area.

Mass Precision Sheet Metal is an industrial business that occupies the two buildings on the north and south sides of the proposed site. According to its Chief Financial Officer, Tom Nickel, the business has been in operation at the site for the last 12 years and it operates 7 days a week, and 24 hours a day. Over the last one and half years the business has added 150 employees and is actively seeking to add more to its current work force of 300+ employees. The business operates three shifts with the largest crew working between 5:00 A.M. and 1:30 P.M. They are proposing to expand their operation to include a weekend shift, due to the continued increase in business. One of their buildings shares a common loading dock area with the building on the subject site. This

has created a concern for their company regarding the possible conflict between future non-industrial uses, including the church use referenced by the applicants, and their operations, including use of hazardous materials. Mr. Nickel stated that the lease for their buildings was due for renewal in 18 months (from November, 2005) and that if the applicants are successful in gaining approval for the Mixed Industrial Overlay and a subsequent Conditional Use Permit for a church, his company would not renew their lease and would relocate their business and their 300 plus employees elsewhere, possibly outside San José, and resulting in the creation of additional vacant buildings (see attached letters from Andre Walewski, representative of the owners of the adjacent buildings, dated November 2, 2005; Thomas R. Nickell, CFO, Mass Precision Sheetmetal Inc., dated November 3, 2005; and Brian T. Mullins, Vice-President, Union Bank of California, dated November 7, 2005).

### General Plan Goals and Policies

General Plan Economic Development goals and policies encourage the development of industrial land to provide sufficient opportunities for job growth and for expansion of the City's industrial tax base. The proposed addition of the Mixed Industrial Overlay and the resulting non-industrial uses weaken the City's employment land resources in the vicinity. Approval of the General Plan amendment would reduce the limited heavy industrial land resources and discourage existing and new industries from locating in the Heavy Industrial areas surrounding the subject site, due to the potential for incompatible activities, as described elsewhere in this report.

*Economic Development Policy No. 1* seeks to obtain and maintain an improved balance between jobs and workers residing in San José. Approval of the proposed General Plan amendment would likely eliminate future industrial employment opportunities on the subject site, and could also constrain the continued operation or expansion of adjacent industrial operations in the vicinity, due to the proximity of the non-industrial uses. Losing job opportunities would be inconsistent with this policy as it does not foster economic development that helps generate employment opportunities for the City's residents and revenue to support City services.

*Economic Development Policy No. 2* states, to enhance its economic development goals and increase employment opportunities for San José citizens, the City should:

- *Seek to attract businesses and industries which are particularly suited to the area.*
- *Protect the industrial lands designated exclusively for industrial uses.*
- *Attract a diverse mixture of businesses and industries that can provide jobs suitable for the City's unemployed and under-employed labor force.*

The proposed General Plan amendment is inconsistent with this policy. It would discourage existing industrial businesses from continuing operations or expanding existing operations that are particularly suited to the heavy industrial area, such as the adjacent sheet metal business. It would facilitate creation of 2.66 acres of non-industrial uses in the middle of a large, purely industrial area, on the east side of Oakland Road instead of protecting the limited heavy industrial land resources.

*Industrial Land Use Policy No. 11* states that *because of the importance in retaining viable industrial supplier/service lands and the inherent incompatibility between residential or non-industrial uses and industrial uses, new land uses that may restrict development of land reserved exclusively for industrial uses should not be allowed to locate adjacent to these areas of the City,*

*and, in particular, sensitive receptors should not be located near primary industrial areas.* By placing non-industrial uses adjacent to industrial uses in a predominantly industrial area, the proposed General Plan amendment could result in future limitations being imposed on the industrial uses in the immediate vicinity, thereby potentially compromising the future viability of the industrial businesses. Industrial activity can require outdoor storage, generate heavy vehicular traffic, odors and noise, or require the use of chemicals. Such activities are likely to be of concern to potential future non-industrial uses, especially such as religious assembly, schools and daycare which could house sensitive receptors. The proximity of non-industrial uses could result in restrictions being placed on these businesses. For these reasons, the proposed General Plan amendment is inconsistent with this policy.

*Industrial Land Use Policy Nos. 1 and 14:* Because of the incompatibilities of land uses between the industrial and non-industrial users as stated above, the existing industrial users could be required to install additional mitigation measures in conjunction with future facility upgrades or expansion. *Industrial Land Use Policy No.1* states, *Industrial development should incorporate measures to minimize negative impacts on nearby land uses.* This could further deter future businesses from locating in the area. Therefore this policy would prove to be a disincentive to existing and future businesses in the area if the proposed amendment is approved. *Industrial Land Use Policy No. 14* states: *Non-industrial uses which would result in the imposition of additional operational, and/or mitigation requirements or conditions on industrial users in a neighboring exclusively industrial area in order to achieve compatibility are discouraged.* The proposed amendment would facilitate development of non-industrial uses, which could result in the imposition of mitigation measures on existing and future industries surrounding the site because of sensitive users on the non-industrial sites and potential nuisances operational characteristics e.g., noise, dust, truck traffic or use of hazardous materials on the industrial sites. The proposed amendment is not compatible with the Policy Nos. 1 and 14.

*Industrial Land Use Policy No. 3* states, *the City should monitor the absorption and availability of industrial land to ensure a balanced supply of available land for all sectors.* The proposed amendment would facilitate conversion of an industrial land use to a non-industrial one, it would add to the cumulative loss of industrial land, and increase the potential for the adjacent industrially designated sites to seek conversion.

*Industrial Land Use Policy No .15* states, *exclusively industrial areas should be reserved for industrial uses to the extent possible.* The proposed amendment, if approved, would be inconsistent with this policy by allowing non-industrial uses in an exclusively industrial area.

The *Mixed Industrial Overlay designation* states that the overlay may be appropriate in *areas with a mixture of primarily industrial with compatible commercial or public/quasi –public uses....Areas with this overlay designation contain or are surrounded by an existing mix of uses, so that additional non-industrial uses would not compromise the integrity of areas reserved exclusively for industrial uses....* While residential uses have been approved across Oakland Road, a Major Arterial roadway, the area on the east side of Oakland Road continues to comprise exclusively industrial uses. The designation further states that *the proximity of areas established exclusively for industrial uses should be considered in the application of this overlay to minimize any restrictions on the operations of tenants in the exclusively industrial areas. New uses within the Overlay areas should be considered secondary when land use compatibility issues occur between existing or planned users of hazardous materials and sensitive receptors.* A staff-initiated General Plan text amendment GP05-T-03, approved by the City Council in December, 2005 added

language to the definition of the Mixed Industrial Overlay designation to discourage the addition of the Mixed Industrial Overlay designation on sites with the Heavy Industrial or Light Industrial land use designations.

## **ENVIRONMENTAL REVIEW**

A Draft Mitigated Negative Declaration was circulated on March 9, 2006 for public review and comments. The Mitigated Negative Declaration included mitigation to reduce any potential impacts to a less than significant level per the California Environmental Quality Act (CEQA). The Mitigated Negative Declaration concluded that the project would have a less than significant impact with mitigation measures in the following categories: Aesthetics, Air Quality, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Transportation and Traffic. On March 28, 2006, a Negative Declaration Protest was received. The public hearing on the Protest will be heard prior to consideration of this General Plan amendment by the Planning Commission on April 12, 2006.

As noted previously, if the proposed General Plan amendment is approved, any new use allowed by the Mixed Industrial Overlay designation will be subject to subsequent development applications and environmental review, including a detailed review of the relationship between the proposed new use and the hazardous material use at the surrounding industrial facilities.

## **CONCLUSION**

Currently, all the properties surrounding the subject site on the east side of Oakland Road are industrial. The Mixed Industrial Overlay designation is appropriate only in areas that already exhibit an existing mix of uses, so that the addition of non-industrial uses would not compromise the industrial integrity of the area. Non-industrial uses developed under the Mixed Industrial Overlay on the existing Heavy Industrial site could result in restrictions on existing and future industrial uses within proximity, especially when sensitive receptors are involved at the site.

Allowing the MIO and its specific non-industrial uses on the site would discourage the retention and expansion of existing surrounding industrial uses within close proximity of the subject site resulting in a potential loss of employment -- more than 300 jobs from one of the adjacent businesses, reduced tax revenue to the City, and an increase in vacancy rates. The addition of the MIO designation, while not removing the Heavy Industrial designation, would facilitate the development of non-industrial uses, which would be considered a conversion of industrial land. The proposed MIO could also induce further conversion of industrial lands to non-industrial uses in the vicinity, continuing the loss of heavy industrial land that would have long-term impacts on the City's economy.

Apart from the economic loss to the City and loss of limited Heavy Industrial land resources, occupants of future non-industrial uses on the site could be subjected to nuisances from the existing surrounding industrial uses, including exposure to hazardous materials, as well as noise, dust, and odors from the industrial uses in the area. The Mitigated Negative Declaration adopted for the project incorporates appropriate Title 20 Zoning Code Performance Standards and General Plan and other programmatic mitigation measures to reduce potential future impacts to less than significant level. However, the implementation of these measures could result in future limitations

being imposed on the industrial uses in the immediate vicinity of subject site, thereby potentially compromising the future viability of surrounding businesses.

The Mixed Industrial Overlay designation states that the overlay may be appropriate in areas with a mixture of primarily industrial with compatible commercial or public/quasi –public uses, so that additional non-industrial uses would not compromise the integrity of areas reserved exclusively for industrial uses. The proximity of areas established exclusively for industrial uses should be considered in the application of this overlay to minimize any restrictions on the operations of tenants in the exclusively industrial areas. New uses within the Overlay areas should be considered secondary when land use compatibility issues occur between existing or planned users of hazardous materials and sensitive receptors. Finally, the designation states that addition of the Mixed Industrial Overlay designation to areas with existing Heavy or Light Industrial land use designations should be discouraged. Based on the above, the subject site is not an appropriate location for application of the Mixed Industrial Overlay.

## **PUBLIC OUTREACH**

### Community Meeting

A community meeting notice was mailed out to the property owners and tenants within a 1000-foot radius of the subject site informing them about a community meeting held on October 27, 2005 at Orchard Elementary School on Fox Lane to discuss the proposed General Plan amendment. They also received a joint notice of public hearings to be held on the subject General Plan amendment before the Planning Commission on November 9, 2005 and City Council on December 6, 2005. The Planning Department web site contains information regarding the General Plan process, amendments, staff reports, and hearing schedules. This web site is available with the most current information regarding the status of the General Plan amendments.

The community meeting was attended by approximately ten people consisting of representatives of surrounding industrial businesses and the associates of the applicant, Bible Way Christian Center. Gerry DeYoung, representing the applicant, made a presentation about the applicant's plan for church uses of the existing building at 2080 and 2090 Oakland Road.

The representatives of the adjacent industrial businesses (2110, 2120, 2060 and 2070 Oakland Road) spoke of their concerns regarding the use of the subject site for the church and its related activities. Concerns included potential future liability for the owners of the adjacent industrial uses, safety of the users on the subject site (particularly children) given the presence of on-site hazardous materials, trucks driving in and out of the site, fork lift operations and a busy loading dock area, reduced property values to the adjacent owners, reduced ability to lease buildings resulting in increase in the inventory of vacant industrial buildings and loss of jobs and reduction in revenue to the City.

Andre Walewski, representing the owner of the adjacent properties at 2070 and 2060 Oakland Road, occupied by Mass Precision Sheetmetal, expressed concern that the proposal to add the Mixed Industrial Overlay designation would create one isolated parcel with non-industrial uses within the surrounding industrial area. He questioned the need for the Mixed Industrial Overlay, when there are many similar vacant buildings available in other areas of the city on sites already containing the Mixed Industrial Overlay land use designation. A representative from Union Bank

of California, San Francisco, representing owners of 2110 and 2120 Oakland Road, echoed the concerns of Mr. Walewski regarding the proposed amendment.

Mass Precision Sheet Metal is an industrial business that occupies the two buildings on the north and south sides of the proposed site. According to its Chief Financial Officer, Tom Nickel, the business has been in operation at the site for the last 12 years and it operates 7 days a week, and 24 hours a day. Over the last one and half years the business has added 150 employees and is actively seeking to add 30 more to its current work force of 300 employees. The business operates three shifts with the largest crew working between 5:00 A.M. and 1:30 P.M. They are proposing to expand their operation to include a weekend shift, due to the continued increase in business. One of their buildings shares a common loading dock area with the building on the subject site. This has created a concern for their company regarding the possible conflict between the future church uses and their operations, including use of hazardous materials. Mr. Nickel stated that the lease for their buildings was due for renewal in 18 months and that if the proposed General Plan amendment is approved, allowing the future church use, his company would not renew their lease and would relocate their business and their 300 plus employees elsewhere, possibly outside San José.

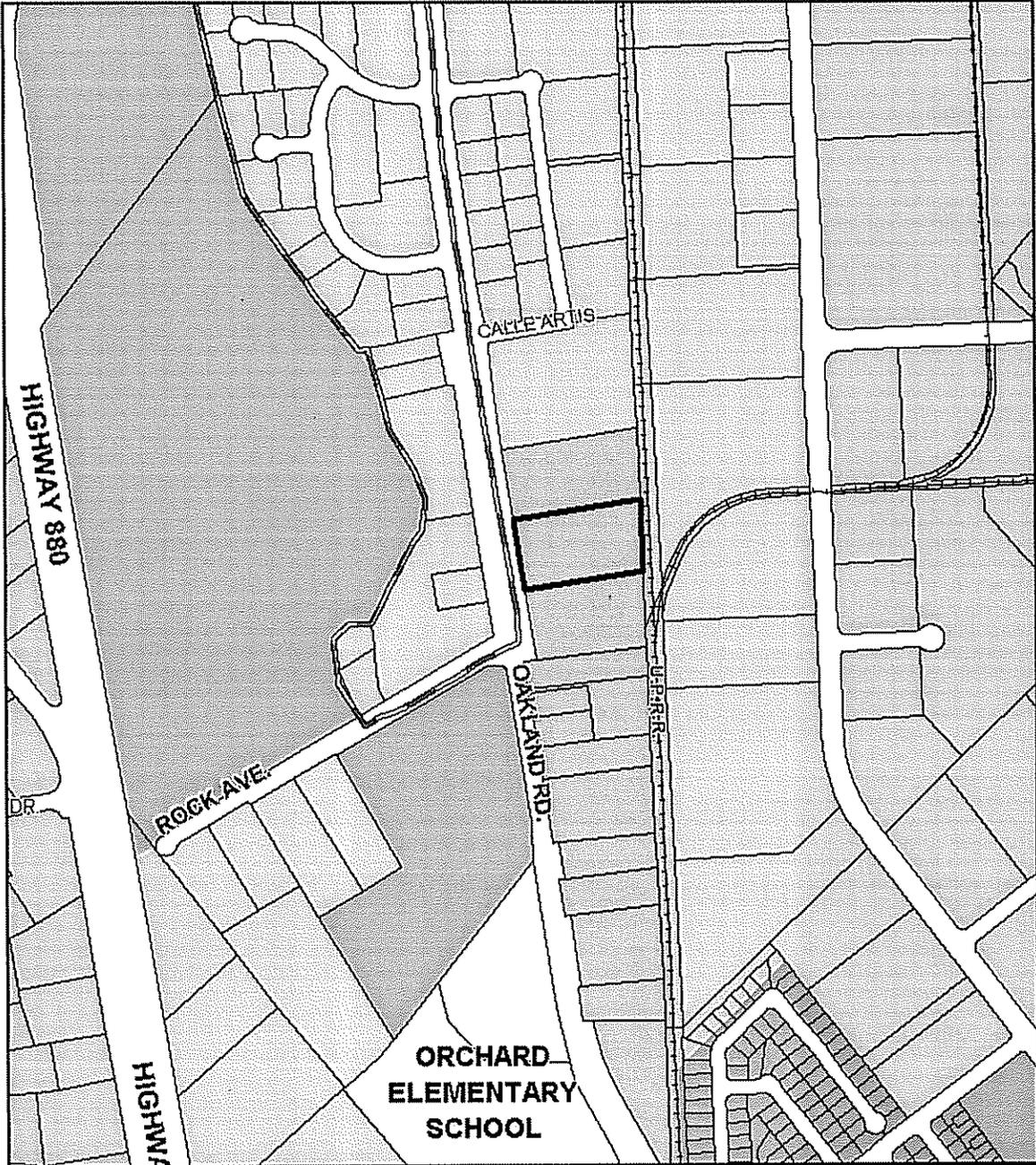
Pastor Dace, representing the applicant, Bible Way Christian Center, gave an example of how the presence of a church next to their present location has had no conflicts. They have found sharing the parking lots workable. He did not, however, address the compatibility of joint parking with the three existing shifts operated by Mass Precision Sheetmetal Company. He explained that the proposed church at the subject site would operate between 11:00 a.m. to 1:00 p.m. on Sundays and the school between 7:00 P.M. and 9:00 P.M. on Tuesdays. They also have an office in operation at the site everyday. The church employs private security. Additionally, he stated that the church offers teenage programs, counseling, a disaster relief aid station, weddings and funeral services. The wedding and funeral services are offered mostly on Saturdays and not everyday. Al Davis, a realtor representing the church, stated that they have considered numerous other sites and buildings and found none suitable for their needs or their financial ability. A vacant building across Oakland Road was available for a substantially higher lease amount.

Brian Mullen of Union Bank of California representing 2110 and 2120 Oakland Road stated the City would lose a re-emerging company if the General Plan amendment were approved. Property owners on either side of the subject site could lose tenants in this economic downturn. He was concerned about how long it could take to lease the space after the current lease expires in March 2007. He stated that there are 60 million square feet of empty buildings with no prospect of new tenants. He offered to show the applicants an alternative site for their church uses.

#### Tribal Consultation Compliance

This General Plan amendment is subject to the State of California Tribal Consultation Guidelines. For all General Plan amendments and Specific Plans initiated after February 2005, at least a 90-day consultation request period is required unless a shorter period has been agreed to by the tribal representatives, as well as noticing of the scheduling of the Planning Commission Hearing and City Council hearing at least 45 days prior to the proposed adoption date of the General Plan amendment or Specific Plan. The 90-day consultation request period for GP05-04-03 has concluded and no consultation request was received.

GP05-04-03



  
**SAN JOSE**  
 City of San Jose  
 Department of Planning, Building  
 and Code Enforcement  
 Planning Services Division

-  SITE
-  Mixed Industrial Overlay

  
**NORTH**  
 Scale 1" = 500'  
 Quad: 51

# Memorandum

**DATE:** 05/23/05

**TO:** Elena Lee

**FROM:** Nadia Naum-Stoian

Re: Plan Review Comments

**PLANNING NO:** GP05-04-03

**DESCRIPTION:** GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on a 2.66-acre site. (Cilker Revokable Trust, Owner/Bible Way Christian Center, Applicant)

**LOCATION:** east side of Oakland Road, approximately 400 feet North of Rock Avenue

**ADDRESS:** east side of Oakland Road, approximately 400 feet North of Rock Avenue  
(2080 OAKLAND RD)

**FOLDER #:** 05 025880 AO

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

The drawing provided does not include information necessary for our review.

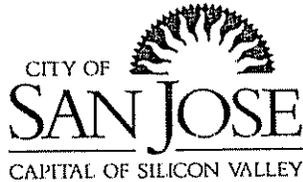
No comments can be made at this time concerning fire flow and access.

Site flow requirement may be as high as 4,500 GPM.

Hazmat Section will comment on the EIR when submitted to Mike Murtiff.



Nadia Naum-Stoian  
Fire Protection Engineer  
Bureau of Fire Prevention  
Fire Department  
(408) 277-8754



# Memorandum

**TO:** Elena Lee  
Planning and Building

**FROM:** Ebrahim Sohrabi  
Public Works

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

**DATE:** 05/24/05

---

**PLANNING NO.:** GP05-04-03  
**DESCRIPTION:** GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on a 2.66-acre site. (Cilker Revokable Trust, Owner/Bible Way Christian Center, Applicant)  
**LOCATION:** east side of Oakland Road, approximately 400 feet North of Rock Avenue  
**P.W. NUMBER:** 3-05672

Public Works received the subject project on 05/09/05 and submits the following comments:

NO Flood Zone  
NO Geological Hazard Zone  
NO State Landslide Zone  
YES State Liquefaction Zone  
NO Inadequate Sanitary capacity  
NO Inadequate Storm capacity  
NO Major Access Constraints  
NO Near-Term Traffic Impact Analysis

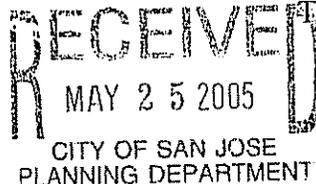
**Comments:** The project is subject to In-Lieu Undergrounding and Reimbursement Fees. Also, per the Assessor's map, a pipeline currently goes through the property.

Please contact the Project Engineer, Ryan Do, at 277-5161 if you have any questions.

EBRAHIM SOHRABI  
Senior Civil Engineer

Transportation and Development Services Division

*RD*  
ES:rd:gf



# Memorandum

**TO:** Laurel Prevetti  
Planning, Building  
and Code Enforcement

**FROM:** Hans F. Larsen

**SUBJECT: TRAFFIC IMPACT ANALYSIS  
FOR GP05-04-03**

**DATE:** 8-9-05

---

Approved

Date

---

File Number: GP05-04-03  
Location: E/o Oakland Rd., approx. 400 feet N/o Rock Avenue.  
Acreage: 2.66 ac.  
Description: Heavy Industrial to Heavy Industrial w/ Mixed Industrial Overlay  
(no net land use change)  
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 (TRANPLAN) 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.



HANS F. LARSEN  
Deputy Director  
Department of Transportation

HFL:PM

cc: Jenny Nusbaum  
Meera Nagaraj

## Nagaraj, Meera

---

From: Miller, William  
Sent: Thursday, October 06, 2005 9:05 AM  
To: Nagaraj, Meera  
Subject: GPA05-04-03

Hi Meera,

Here are my comments for the above.

- I would like to know if this will be used as a school during the week?
- Will there be sufficient parking or will there be a shared parking agreement with the other tenant's.
- The parking lot will need to be sufficiently illuminated during the hours of darkness.
- Each exit door should have its own light source mounted above the door on the exterior wall.

Thanks,

Bill Miller

Officer William R. Miller  
Environmental Design Detail  
Police Community Services Division  
(408) 277-4133



May 31, 2005

City of San Jose  
Department of Planning and Building  
801 North First Street  
San Jose, CA 95110

Attention: Elena Lee

Subject: City File No. GP05-04-03 / Rock - Old Oakland General Plan

Dear Ms. Lee:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the project referenced above for a General Plan amendment to change the land use from heavy industrial to heavy industrial with mixed-use overlay on 2.66 acres at the northwest corner of Old Oakland Road and Rock Avenue. We have the following comments.

The VTA Community Design and Transportation (CDT) Guidelines and the VTA Pedestrian Technical Guidelines should be used when designing developments at this site. These documents provide guidance on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements. For more information, please call Chris Augenstein, Development and Congestion Management Division, at (408) 321-5725.

VTA staff look forward to reviewing future development plans for this site when they become available.

For more information, general questions, technical support, or to arrange a meeting with VTA staff to discuss On-Site Planning and Design of this or any other development projects, please contact George Tacke, Development and Congestion Management Division, at (408) 321-5865 or via email at [george.tacke@vta.org](mailto:george.tacke@vta.org). VTA staff look forward to assisting you.

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, appearing to read 'Roy Molseed', is written over a large, faint, stylized signature graphic.

Roy Molseed  
Senior Environmental Planner

RECEIVED  
JUN 15 2005  
File: 30648  
CITY OF SAN JOSE  
PLANNING DEPARTMENT

June 13, 2005

Ms. Elena Lee  
Planning Division  
Department of Planning, Building, and  
Code Enforcement  
City of San Jose  
801 North First Street, Room 400  
San Jose, CA 95110-1795

Subject: General Plan Amendment (GP05-04-03)—Assessor's Parcel No. 244-23-067

Dear Ms. Lee:

The Santa Clara Valley Water District (District) has reviewed the proposed General Plan Amendment application, received on May 9, 2005.

The project does not directly impact any District facilities. As such, the District has no objections to change the subject parcel's Land Use/Transportation Diagram designation from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay on this 2.66-acre site. While the development of this site will not have a direct adverse impact on Lower Penitencia Creek or other downstream facilities, the cumulative increase in runoff should be considered. Site design measures should be incorporated in the development to reduce the amount of runoff from developed areas of the site.

If land disturbance 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.

According to the Federal Emergency Management Agency's Flood Insurance Rate Map 060349 0014E, dated December 16, 1988, the site is located within Zone D, an area of undetermined, but possible, flood hazards.

Ms. Elena Lee  
Page 2  
June 13, 2005

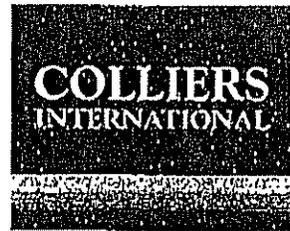
If you have any questions or comments, you can contact me at (408) 265-2607, extension 3174,  
or at [syung@valleywater.org](mailto:syung@valleywater.org).

Sincerely,

A handwritten signature in cursive script that reads "Samuel Yung".

Samuel Yung  
Associate Engineer  
Community Projects Review Unit

cc: S. Tippetts, S. Yung, T. Hipol, M. Klemencic, E. Hayes, File (2)  
eh:jl  
0610a-pl.doc



450 West Santa Clara Street  
San Jose, California 95113 USA  
Tel: 408-282-3800  
Fax: 408-292-8100  
www.collierspanish.com

November 2, 2005

San Jose Planning Commission  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905

**Re: General Plan Amendment (File No. GP 05-04-03)  
2080-2090 Old Oakland Road, San Jose, California**

Dear Planning Commissioner:

My name is André R. Walewski and I represent Mel and Patricia Schmucker who own 2060-2070 Old Oakland Road, San Jose, California. We are writing to oppose the general plan amendment to add a Mixed Industrial Overlay to the above reference property to specifically allow a church (Bible Way Christian Center) to be approved next door to our property. We do not believe a church is a compatible neighbor to our heavy industrial zoning.

Our building is currently occupied by Mass Precision Sheetmetal, a company in which Mel and Patricia Schmucker once owned. Mass has been a occupant of this building for over twelve (12) years and are also located at 2100-2110 Old Oakland Road. Mass Precision currently employs over 300 employees and are currently looking to hire an additional 30 employees.

We have been in recent discussion with Mass Precision about renewing and extending there current lease. Mass has been reluctant to discuss this extension do to the fact that a church (Bible Way Christian Center) is being proposed in between two buildings they currently occupy. Mass has stated on more than several occasions that they would relocate there company to another area in the event this proposed general plan change were to be approved.

We as a City cannot afford companies to move and potentially relocate all these jobs. We also cannot afford to continue to deplete our heavy industrial land base. Heavy industrial users such as Mass Precision need areas such as this to do business within the City of San Jose.



November 2, 2005  
Page 2 of 2

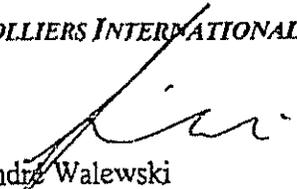
The City of San Jose has provided many industrial overlay area for churches such as Bible Way Christian to relocate. Please keep jobs in San Jose!

With the current available real estate inventory there definitely are more sites for a church within these allocated overlay areas.

Meanwhile if you have any questions please feel free to call me at your convenience.

Sincerely,

*COLLIERS INTERNATIONAL*



Andre Walewski  
Senior Vice President  
Corporate Director  
408-282-3837  
awalewski@colliersparrish.com

cc: Mel and Patricia Schmucker  
Stan Ketchum  
Meera Nagaraj  
Mass Precision Sheetmetal

## Nagaraj, Meera

---

**From:** Ketchum, Stan  
**Sent:** Friday, October 28, 2005 4:49 PM  
**To:** Nagaraj, Meera  
**Subject:** FW: File No. GP 05-04-03

FYI. Stan-----Original Message-----

**From:** Walewski, Andre' (SJC) [mailto:awalewski@colliersparrish.com]  
**Sent:** Friday, October 28, 2005 2:02 PM  
**To:** Stan.ketchum@sanjoseca.gov  
**Cc:** Meera.Nagara@sanjoseca.gov  
**Subject:** File No. GP 05-04-03

Stan ,

It was great meeting you last night at Orchard Elementary School relative to the above referenced file number and the proposed general plan change for 2080-2090 Old Oakland Road, San Jose .  
As mentioned , I represent Mel and Pat Schmucker who own 2070<sup>2,2060</sup> Old Oakland Road directly next door to the proposed general plan change to allow a church. As mentioned in the meeting we as owners are very concerned about this change of use especially with the fact that our tenant ( Mass Precision Sheetmetal ) is a heavy industrial user ( Sheetmetal Manufacturer ) and the potential liability as it relates to having a church in a heavy industrial zoned area.

As mentioned also , Mass Precision Sheetmetal is unwilling to enter into discussions to extending there lease because of the fact that a church is proposed for the adjacent building . As stated by the CFO of Mass Precision last night that they would move out of the area if this use is allowed . They currently employ over 300 people and have been in this location for over 12 years and if they move this would be a huge loss to the City of San Jose . As for the real estate community we are concerned as the City is that we are losing more and more heavy industrial areas and by allowing this GP change we once again lose more . Every city needs heavy industrial areas to allow business's like Mass to provide jobs within there cities.

Please consider these things when writing your staff report and recommendation. The City of San Jose has done a great job providing areas with the overlay zoning where church's like Bible Way Christian can relocate. I believe also that the church may not have been presented other and all alternatives for there future home .

I once again appreciate you Meera representing the City and coming to these community meetings to hear our concerns which directly affect the direction and growth within the City of San Jose !

Thank you and please don't hesitate to call me if you have any questions !

Very Truly Yours

André R. Walewski  
Senior Vice-President  
Corporate Director



November 3, 2005

San Jose Planning Commission  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905

**Re: General Plan Amendment (File No. GP 05-04-03)  
2080-2090 Old Oakland Road, San Jose, California**

Dear Planning Commissioner:

I'm writing you on behalf Mass Precision Sheetmetal, Inc. We currently occupy and lease 2060-2070 and 2100-2110 Oakland Road. As I stated at the Community Meeting on October 27, 2005 that we are opposed to the general plan amendment to add a Mixed Industrial Overlay to the above reference property to specifically allow a church (Bible Way Christian Center) to be approved between our two buildings. We do not believe a church is a compatible neighbor to our heavy industrial zoning. We were the first tenants in 2060-2070 locating there in 1988 and we have been in 2100-2110 for over twelve years. We currently employ over 300 employees and are expecting to grow this employment during year 2006 and beyond.

The building in question lies right between our two buildings. In fact, this building (2080-2090) is actually attached to 2060-2070 by a common dock.

One major issue is that there would be several safety concerns if this change should take place:

1. Throughout the day large trucks make deliveries looping around the buildings.
2. We have large bins of scrap metal that sit in the back of the building.
3. We have several forklifts moving parts and material from one area to another.
4. We have drums of Toxic Materials that are stored legally on a shared dock with 2080-2090.



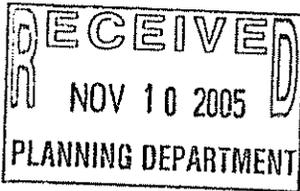
Our leases for 2060-2070 and 2100-2110 are due for renewal in less than eighteen months. We have recently been in discussion with our two landlords, about renewing our current leases. We have told them that we are reluctant to do so because a church (Bible Way Christian Center) is being proposed in between our two buildings which we currently occupy. We have said on several occasions that we would relocate the company to another area in the event these proposed general plan changes are approved. If we were to relocate out of the area it would affect the City of San Jose by loss of jobs and tax income.

Please contact me if there any question in this matter.

Sincerely

Thomas R. Nickell  
CFO  
MASS Precision Sheetmetal Inc.  
408-954-0200 ex 200  
Thomas@massprecision.com

✓CC: Stan Ketchum  
Meera Nagaraj



## BERLINER COHEN

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING  
PROFESSIONAL CORPORATIONS

TEN ALMADEN BOULEVARD  
ELEVENTH FLOOR  
SAN JOSE, CALIFORNIA 95113-2233

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RALPH J. SWANSON  
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JOSEPH E. DWORAK  
SAMUEL L. FARB  
ALAN J. PINNER  
FRANK R. UBHAUS  
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JAMES P. CASHMAN

STEVEN J. CASAD  
NANCY J. JOHNSON  
JEROLD A. REITON  
ROBERT L. CHORTEK  
JONATHAN D. WOLF  
KATHLEEN K. SIPLE  
KEVIN F. KELLEY  
MARK MAKIEWICZ  
JEFFREY S. KAUFMAN  
JOLIE HOUSTON  
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PETER BAJOREK  
HARRY A. LOPEZ  
JOHN F. DOMINGUE  
SETH J. COHEN  
MONICA B. BOROCHOFF

CHRISTINE H. LONG  
DAVID D. WADE  
THOMAS E. EBERSOLE  
LAURA PALAZZOLO  
AARON M. VALENTI  
SHANNON N. COGAN  
CLAIRE L. IMELLI  
JENNIFER I. GROSSMAN  
ANDREW J. GIORGIANNI  
FORREST W. HANSEN  
GENEVIEVE M. NICKERSON

\*A Professional Corporation  
RETIRED  
SAMUEL J. COHEN

Branch Office - Merced, CA

OF COUNSEL  
HUGH L. ISOLA  
STEVEN L. HALLGRIMSON  
ERIC WONG  
NANCY L. BRANDT  
CHARLES W. VOLPE  
VICTOR A. PAPPALARDO

November 8, 2005

### VIA FACSIMILE & U.S. MAIL

Chairman Bob Dhillon and Members of the  
City of San Jose Planning Commission  
200 East Santa Clara Street  
San Jose, CA 95113

Re: *Bible Way Christian Center*

Dear Chair Dhillon and Members of the Commission:

We represent the Bourn Family LLC, managed by Union Bank of California, and Mel and Patricia Schmucker, property managed by Colliers International, the owners of the property located at 2110-2120 and 2060-2070 Oakland Road, respectively. This letter is submitted on their behalf in opposition to Bible Way Christian Center's (the "Applicant") proposed General Plan Amendment to change the Land Use/Transportation Diagram from Heavy Industrial to Heavy Industrial with Mixed Industrial Overlay for the property located at 2080-2090 Oakland Road (the "Project"). This letter further serves as our comments to the City of San Jose's ("City") Mitigated Negative Declaration dated October 21, 2005 "MND").

### The Project is Incompatible with the Surrounding Heavy Industrial Uses

We oppose the Project because it is incompatible with the existing industrial land uses surrounding the Project site and several of the San Jose 2020 General Plan Economic Development Goals and Policies.

As stated in the City Staff Report dated November 3, 2005, the proposed Mixed Industrial Overlay ("MIO") is incompatible with the existing industrial land uses in the vicinity

November 8, 2005

of the Project site. The Staff Report further states that the proposed MIO could also induce further conversion of industrial lands to non-industrial uses in the vicinity, continuing the loss of heavy industrial land that could have long-term impacts on the City's economy. It was also noted that the Project could result in future limitations being imposed on the industrial uses in the immediate vicinity of the Project site, thereby potentially compromising the future viability of surrounding businesses. In addition, the Project does not satisfy the City's *Framework, as a Guideline, for Evaluating Proposed Conversions of Employment Lands to Other Uses* ("*Framework*").

As you may be aware, Mass Precision Sheet Metal ("Mass Precision") is an industrial business that occupies our properties on the north and south side of the Project. Mass Precision has been in operation at the site for the last 12 years, and operates 7 days a week, 24 hours a day. Having a large church facility, which includes religious services and congregation area, teenage programs, counseling, a disaster relief aid station, weddings, funeral services and a school is not compatible with the legally permitted heavy industrial land uses, such as Mass Precision. The Project's traffic and parking impacts will not only adversely affect Mass Precision, but also the current and future industrial tenants in the vicinity. More importantly, the Project will affect Mass Precision's lease renewal and possibly the relocation of Mass Precision and its employees outside of San Jose.

The intensity of this Project's use will adversely affect the peace, health, safety and general welfare, and will impair the utility and value of the properties in the existing heavy industrial area. Today the reality is that church facilities have become much more than a *religious worship center*, they are offices, schools, day cares and social centers. This Project seeks to convert the existing 37,000 square foot industrial building into a **service-oriented enterprise**, which will not only include the underlying church use, but also a wide variety of other non-industrial uses. The Project not only operates on Sundays with school on Tuesdays, but it has office uses at the site every day. The Staff Report did not state when the teen-age program, counseling, disaster relief, weddings and funeral services would occur, but nonetheless, these uses, if the Project is approved, would adversely impact Mass Precision.

**The Mitigated Negative Declaration is Inadequate Because it Did Not Analyze the Whole Project**

We maintain that the MND for the Project is inadequate because it failed to analyze the *whole project* proposed, which includes the General Plan Amendment as well as the Conditional Use Permit ("CUP") required for the church to legally operate within the MIO.

Pursuant to the California Environmental Quality Act ("CEQA"), the general rule is that a city cannot treat one project as a succession of smaller projects, none of which, by itself, causes significant impacts. *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165-166. In keeping with this general rule, if a project requires multiple discretionary governmental approvals, then the environmental analysis for the first discretionary approval must analyze the impacts of the *entire project*, and not merely the particular approval at issue. See CEQA Guidelines, § 15378(c) (noting that definition of a "project" encompasses entire activity, not each separate approval); *Bozung v. Local Agency*

November 8, 2005

*Formation Commission* (1975) 13 Cal.3<sup>rd</sup> 263, 283-284. The City must consider “all phases of project planning, implementation, and operation.” CEQA Guidelines, § 15063(a)(1). The analysis must analyze future development that will foreseeably occur if the local agency approves the project. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333-1336.

Here, the entire project is the General Plan Amendment as well as the CUP. The CUP is a foreseeable discretionary approval, which should have been addressed in the MND, and failure to do so violates CEQA. Courts have held that a negative declaration may be defective if it mischaracterizes the proposed project and fails to acknowledge evidence showing that significant effects might occur. *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180.

In addition, the MND is inadequate for failing to analyze the following impacts created by the Project:

- (1) Compatibility with existing land use in the surrounding vicinities.
- (2) Traffic impacts and mitigation measures for such impacts.
- (3) Parking impacts and lack of mitigation for parking.
- (4) Exposure to sensitive receptors from noise and air quality impacts.
- (5) Interference with an emergency response plan or emergency evaluation plans.

**The Project’s Incompatibility with Existing Land Uses in the Surrounding Vicinity**

The MND failed to analyze the Project’s land use compatibility. The MND states:

“Industrial Land Use Policy No. 14: Non-industrial uses which result in the imposition of additional operational, and/or mitigation requirements, or conditions on industrial users in neighboring exclusively industrial area in order to achieve compatibility are discouraged.”

“Urban Design Policy No. 22: Design guidelines adopted by the City Council should be followed in the design of development projects.”

These are not adequate mitigation measures. The land use compatibility impacts as a result of the Project have not been addressed by the MND.

In addition, the MND did not address the cumulative impact from the loss of industrial land and the potential increase for the adjacent industrially designated sites to seek conversion.

November 8, 2005

### **Project's Traffic Impacts**

The MND did not analyze the Project's traffic impacts. The Staff Report dated August 9, 2005, noted that this Project (as only a land use change and *not* the CUP) was exempt from the TRANPLAN traffic impact analysis. This same report stated that *if* an Environmental Impact Report ("EIR") is required, then the EIR must include a traffic analysis for the Project and a cumulative analysis for all general plan amendments this year.

However, if the Project included the CUP, then the traffic impact analysis may have triggered an EIR, or additional traffic mitigation measures. "The CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885.

### **Project's Impact on Parking Capacity on Site**

According to the MND, parking has not been analyzed. The Staff Report notes that the Applicant has "found sharing the parking lots workable." However, the Applicant has not proposed how the parking will be secured, either by easement, agreement or covenants. This is not an adequate mitigation measure for the parking requirement because parking agreements have not been secured, and may never be secured. The Applicant, at a minimum, should be required to obtain permanent easements to secure parking for its proposed use.

### **Project's Noise and Air Quality Impacts**

The MND failed to address the Project's impacts on sensitive receptors due to air pollutants or other exposure of people to severe noise levels. The MND failed to analyze the location of the Project, including its proposed school/classroom use, for impacts caused by the Project's location near Mass Precision Sheet Metal, or other heavy industrial uses.

### **Project's Interference with Emergency Response Plan and Emergency Evaluation Plans**

The MND did not adequately address the possible interference with emergency response plans or emergency evacuation plans of the surrounding uses. The Project site is surrounded by existing heavy industrial development. The heavy industrial district allows, as a permitted use, a sheet metal engineering and fabrication company and other heavy industrial uses, which by right would be able to use hazardous materials. This Project will adversely affect the businesses that are currently permitted to use hazardous materials because their emergency response plans would have to address the church's school and other outdoor uses. This impact has not adequately been addressed by the MND.

In addition, the Project will adversely affect the legal rights of all the current and future businesses that have been planned and designed to use hazardous materials at their facilities. These businesses have existing entitlements to their legal uses that this Project will severely impair. This impact has not been adequately addressed by the MND.



November 7, 2005

To: Stan Ketchum  
Meera Nagaraj

Chairman Bob Dhillon and Members of the  
City of San Jose Planning Commission  
200 East Santa Clara Street  
San Jose, CA 95113

Re: Bourn Family LLC (*Bible Way Christian Center*)

Dear Chair Dhillon and Members of the Commission:

I represent the Bourn Family LLC as the owners of the property located at 2110-2120 Oakland Road, San Jose, California. I am writing to oppose the General Plan Amendment to add a Mixed Industrial Overlay, which would allow Bible Way Christian Center to be a conditionally permitted use in what is an existing heavy industrial area.

The Bourn Family LLC, along with Mel and Patricia Schmucker, currently own the properties occupied by Mass Precision Sheet Metal Company. As you may be aware, Mass Precision Sheet Metal has been an existing industrial business for over 12 years and employs over 300 employees, and is seeking to hire an additional 30 employees.

If this Mixed Industrial Overlay is approved, Mass Precision Sheet Metal has informed me that they will not renew their lease and relocate their company to another part of San Jose, or even outside of the City.

It is my professional opinion that with the local real estate inventory currently available, there are more appropriate sites for churches that do not impact the heavy industrial users.

Sincerely,

BRIAN T. MULLINS  
Vice-President  
Manager Trust Real Estate Investment  
Management North

cc: Mel and Patricia Schmucker  
Andre Walewski, Colliers International

475 SANSOME STREET, 12TH FLOOR, 1-475-12, SAN FRANCISCO, CALIFORNIA 94111  
P.O. BOX 45000, SAN FRANCISCO, CALIFORNIA 94111  
FAX 415 296 6743

March 22, 2006

San Jose Planning Commission  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905

**Re: General Plan Amendment (File No. GP 05-04-03)  
2080-2090 Old Oakland Road, San Jose, California**

Dear Planning Commissioner:

This letter is a follow-up to my letter of November 3, 2005.

Our Company currently occupies and leases 2060-2070 and 2100-2110 Oakland road. Again we are opposed to the general plan amendment to add a Mixed Industrial Overlay to the above reference property to specifically allow a church (Bible Way Christian Center) to be approved between our two buildings. We do not believe a church is a compatible neighbor to our heavy industrial zoning. As I pointed out in my November letter we were the first tenants in 2060-2070 and we have been in 2100-2110 for over twelve years.

Last year was our best year since we have been in business and we are projecting this year an increase of over 18% of last year. We currently employ over 310 employees and we are looking to hire an additional 45. We would expect that many of these new employees would be hired for our weekend shift. We need to be able to work and have full access to parking 24/7 as the workload demands.

There are several Safety concerns if the church is allowed to move to this location:

1. We have throughout the day large trucks making deliveries.
2. We have large bins of scrapped Sheet Metal.
3. We have several forklifts moving parts and material from one area to another.
4. We have drums of Toxic Material that are stored on a shared doc with 2080-2090 awaiting pick up.

Our leases for the locations of 2060-2070 and 2100-2110 are due for renewal in twelve months. We have recently been in discussion with our two landlords, about renewing our current leases. We have told them that we are reluctant to do so because a church (Bible Way Christian Center) is being proposed in between our two buildings that we currently occupy. We have said on several occasions that we would relocate the company to another area in the event these proposed general plan changes are approved. Unfortunately if we do move, most likely it will be out of San Jose and Santa Clara County to an area that would be more business friendly to our type of usage.

If we were to relocate out of the area it would affect the City of San Jose by loss of jobs and tax income.

There are currently available allocated overlay areas that are approved for churches in the area.

Please contact me if there any question in this matter.

Sincerely

Thomas R. Nickell  
CFO  
MASS Precision Sheetmetal Inc.  
408-954-0200 ex 200  
Thomas@massprecision.com

CC: Mel and Patricia Schmucker  
Stan Ketchum  
Meera Nagaraj

Attachment letter 11-03-05

①

**Nagaraj, Meera**

---

**From:** Houston, Jolie [jolie.houston@berliner.com]  
**Sent:** Monday, April 10, 2006 3:00 PM  
**To:** Nagaraj, Meera; Ketchum, Stan  
**Subject:** FW: Letter to Planning  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

PC4 April 12, 06  
Item No. 7a & b  
GPOG-04-03

Meera: Attached is a letter regarding the land use impacts. Please distribute to the PC.

Also, I will be sending a letter to Joe today.

Jolie Houston, Esq.  
Berliner Cohen  
Jolie.Houston@berliner.com  
(408)-938-2535



②

PC H April 12, 06  
Item No. 7a sub  
EIP05-04-03

April 7, 2006

Ms. Jolie Houston  
Berliner Cohen  
Ten Almaden Boulevard  
Eleventh Floor  
San Jose, California 95113-2233

Re: 06-CSJ-109, Consultation  
Oakland Road Church Conversion  
San Jose, California

Dear Ms. Houston:

At your request and authorization, Carnegie-Blum & Partners, Inc. is providing an analysis of the likely impacts resulting from a proposed conversion of an industrial property to use as a church facility. The property located at 2080-2090 Oakland Road in San Jose is requesting a change in use from industrial to allow a church use. The impacts on the surrounding neighborhood and particularly the two adjacent industrial properties at 2060-2070 and 2110-2120 Oakland Road are considered in this report.

**I. Subject Property**

The property proposed for conversion from industrial to church use is located at 2080-2090 Oakland Road and is identified by the Santa Clara County Assessor's office as parcel number 244-23-067. It consists of a 2.66 acre (115,870 square foot) site improved with a one story concrete tilt up industrial building containing 37,381 square feet. This building is part of a three building industrial complex. The property has current zoning and general plan designations of Heavy Industrial. The building is currently used by a church group as office space but is being proposed for worship service use and related activities which would require a General Plan Amendment and a Conditional Use Permit.

The table below outlines relevant facts about the property proposed for church conversion as well as the two adjacent industrial properties which are the focus of this report.

<u>Address</u>	<u>Parcel Number</u>	<u>Building Size</u>	<u>Site Size</u>
2080-2090 Oakland Road	244-23-067	37,381 sf	2.66 ac
2060-2070 Oakland Road	244-23-066	39,268 sf	2.56 ac
2110-2120 Oakland Road	244-23-068	43,434 sf	2.84 ac

## *II. Neighborhood Character*

The subject property is located in a traditional industrial neighborhood of San Jose on the east side of Oakland Road.

### *East Side of Oakland Road*

Immediately adjacent uses to the north and south of the proposed church conversion site consist of similar one story concrete tilt up industrial buildings. These two adjacent buildings (2060-2070 and 2110-2120 Oakland Road), along with the proposed church conversion site, form a single business park, known as the Oakland Road Technology Center. The adjacent buildings north and south are similar one story concrete tilt up structures and they are both occupied by Mass Precision Sheetmetal, a heavy industrial manufacturing firm which reportedly operates 24 hours a day, seven days a week (as indicated in the General Plan Amendment Staff Report, Fall 2005 Hearing issued by the City of San Jose Planning Department regarding the proposed subject General Plan amendment). Further south and north on the east side of Oakland Road are additional industrial uses. To the east is an active railroad line, with industrial buildings beyond.

### *West Side of Oakland Road*

Across Oakland Road to the west is a mix of industrial, residential (mobile home park), and public facility (school) uses. Two sites on the west side of Oakland Road are currently under construction with new residential developments. Two additional sites, one with Oakland Road frontage and the second on Rock Avenue, are noted to have pending General Plan change requests to allow for residential redevelopment of existing industrial properties. Also across Oakland Road from the subject is an industrial building which is currently occupied by a church.

### *Neighborhood Trends*

While there is extensive redevelopment evident on the west side of Oakland Road (industrial to residential), these residential uses are located adjacent to an existing mobile home park, an existing school, and more recently constructed R&D oriented industrial buildings with lower intensity manufacturing uses than found in the two buildings flanking the subject. These developments are not considered to reflect a change in the neighborhood characteristics on the west side of Oakland Road but rather represent compatible uses with an emphasis on shifting to residential in response to market demand. There is no evidence of such a transition on the subject east side of Oakland Road which is purely industrial in character. The proposed conversion of the property at 2080-2090 Oakland Road from an industrial use to a church use would represent the first such transitional element on the east side of Oakland Road and would represent a change to the existing character of the

neighborhood. This change would also increase the chance of future conversions on the east side of Oakland Road, thus further altering the neighborhood character.

### *III. Property Values & Marketability*

To assess the impact of the conversion of the property at 2080-2090 Oakland Road from industrial to church use on the property values and marketability of the adjacent properties (2060-2070 and 2110-2120 Oakland Road), a survey of brokers active in the local industrial market was conducted. Comments received from the brokers surveyed are summarized as follows:

- Mr. Bob Bower with CB Richard Ellis indicated that having a church adjacent to an industrial use has a direct negative impact on price and lease rate achievable at the industrial site.
- Mr. Greg Galasso with Colliers International commented that an adjacent Heavy Industrial property would be heavily impacted by a church conversion such as the subject, and also in his opinion projected that a value loss of 30-40 percent would not be out of the question for the adjacent properties.
- Mr. Fred Pilster with Cornish & Carey said he was not aware of a situation where a church moving into an industrial neighborhood impacted the value of the nearby properties or affected the ability of the landlord to lease to other tenants. He cited the Christian Jubilee facility at Fortran Drive and Nortech Parkway in San Jose, Silicon Valley Chinese Church occupying a building near Scott Boulevard and Bowers Avenue in Santa Clara, and The Korean Church occupying a building on Weddell Drive in Sunnyvale. It is noted that Mr. Pilster's examples are all free standing buildings in office R&D oriented locations which is significantly different than the adjacent building with a heavy industrial use such as the subject.
- Mr. Jeff Black with Grubb & Ellis indicated that a church in an industrial neighborhood would have a negative impact on the industrial properties, with a major area of concern being hazardous materials. He noted that even for cleaner light industrial or R&D tenants, hazardous materials can be an issue when there are nearby non-industrial uses.
- Mr. Tom Costello with Costello Commercial Real Estate indicated that the main problem would be if the adjacent building is in use on a Sunday when the church is in use, there would be an interface problem between the manufacturing business and the church attendees. This would be exacerbated if the adjacent business uses toxic materials.

- Mr. Mike Cobb with Colliers International suggested that there would be a difference depending upon the industrial nature of the adjacent uses, with an adjacent church use being a factor if the adjacent use is heavy industrial.
- Mr. Frank Friedrich with CB Richard Ellis commented that in the case of a church use being located next to a heavy industrial site “if I had two sites and everything about the two sites were the same, except one was located by a church, I would imagine that the tenant would favor the other site.”
- Mr. Erik Hallgrimson with CPS though the situation would be terrible for the adjacent industrial properties with the tenants being severely impacted as they would be responsible for hazmat compliance to a higher degree.
- Mr. John Olenchak with BT Commercial didn’t see much of an impact on the adjacent industrial properties by having an adjacent church use.
- Mr. Steve Horton with CPS thought marketing of the adjacent industrial properties would be more difficult with an adjacent church use.
- Mr. Eric Flores with Grubb & Ellis didn’t think the presence of the church would have an impact on the value of adjacent industrial properties.
- Mr. Steve Houston with CPS responded that having a church use next to an industrial property would have a negative impact on the value of the industrial property.
- Mr. Ed Hofer with Colliers International commented that a church in an industrial neighborhood would have a negative impact on the adjacent industrial properties. The presence of the church would reduce the pool of potential tenants and purchasers for the industrial building, which would result in a decline in value. Noted areas of concern include noise, chemicals, life safety issues, and church overflow parking which can create liability issues for the adjacent industrial users.

To summarize, the vast majority of the brokers responding to the survey indicated a negative impact on the adjacent industrial properties due to the conversion of the subject property to a church use. Overall, approximately 77 percent (10 of 13) of the brokers responding to the survey indicated a negative value/marketability impact on the adjacent properties while the remaining 23 percent (3 of 13) indicated no impact. However, in the specific examples cited by these brokers, none of the churches were in as close proximity to a heavy industrial neighbor as the situation proposed for the subject. No broker indicated a positive influence due to this change in use.

More specifically addressing the adjacent properties at 2060-2070 and 2110-2120 Oakland Road, the existing tenant in these buildings (Mass Precision Sheetmetal) has indicated that

if the proposed church use is approved, they will not renew their lease which expires in 2007. This will have a direct negative impact on the value of the adjacent properties since securing new tenants would then be required. According to the commercial brokerage firm BT Commercial, the average marketing time for industrial space in the North San Jose market area is currently 13.1 months (as of year end 2005). This suggests that were the adjacent tenant (Mass Precision Sheetmetal) to vacate, the adjacent property owners would have an extended period of vacancy. However, this statistic does not factor in the circumstances commented on by the majority of the brokers; i.e. that another heavy industrial tenant would be reluctant to lease the space. This would result in a situation where either a change of use is required or the landlord would have to offer well below market rent as an enticement to attract another tenant. Either way, the anticipated vacancy period would be well beyond the market norm.

#### *IV. Property Taxes*

Real estate taxes are based on the assessed value as determined by the Santa Clara County Assessor's office. However, religious institutions are eligible for an exemption providing an offset to the total amount of tax due. According to the California State Board of Equalization publication entitled *Property Tax Exemptions for Religious Organizations*, "whether owned by the church or leased to the church, property is eligible for the Church Exemption as long as it is used exclusively for religious worship." Allowed activities which qualify as religious worship include worship services, baptisms, confirmations, weddings, religious instruction, and administrative office use.

For the 2005/06 tax year, the subject property has total taxes due amounting to \$41,366.24. The proposed conversion of the subject property to a church use would have the effect of potentially eliminating this revenue to the County, City, school district, and other government jurisdictions that share in the property tax revenue. Additionally, potential loss in value suffered by adjacent properties as was discussed above would create the opportunity for those adjacent property owners to pursue assessment appeals resulting in further potential revenue loss.

#### *V. Employment*

As an industrial property, the subject has the potential to house a company providing multiple job opportunities while conversion to a church use would result in minimal job opportunities. A typical industrial building can provide employment at a rate of roughly three to four employees per 1,000 square feet of building area. Mass Precision Sheetmetal which occupies the adjacent buildings at 2060-2070 and 2110-2120 Oakland Road has an employment ratio of approximately 3.6 employees per 1,000 square feet of building area based on the reported employment of 300 people and a total building square footage of 82,702 in the two buildings. Based on a similar ratio and the subject building size, a company employing 135 people would likely occupy the building at 2080-2090 Oakland

Road. These employment opportunities would be lost to the City of San Jose should the proposed church conversion at the subject site proceed.

Furthermore, Mass Precision Sheetmetal, the company occupying the adjacent properties to the north and south, has indicated that they would relocate upon lease termination in 2007 if the proposed church use of the subject property is approved. This company has a reported payroll of 300 employees. The majority of the manufacturing buildings in Silicon Valley are found outside of the City of San Jose and it is plausible that Mass Precision would be relocated outside the City, resulting in both job and revenue losses. Even if Mass Precision relocated within San Jose to a building previously occupied by a different tenant, it would still result in a net loss of jobs in the long term since few new industrial manufacturing buildings are being constructed.

#### *VI. Conclusion*

**In conclusion, it is the opinion of the undersigned that the proposed conversion of the subject property at 2080-2090 Oakland Road from industrial to church use would represent a change to the neighborhood development patterns, would negatively impact the marketability and values of the adjacent industrial properties at 2060-2070 and 2110-2120 Oakland Road, and would result in a loss of property tax revenue and jobs in the City of San Jose.**

We, the undersigned, hereby certify that, to the best of our knowledge and belief: the statements of fact contained in this report are true and correct; the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions; we have no present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved; we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment; our engagement in this assignment was not contingent upon developing or reporting predetermined results, our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal; the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan; our analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute; we have made a personal inspection of the property that is the subject of this report; no one provided significant real property appraisal assistance to the persons signing this certification. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. As of the date of this report Chris Carneghi has completed the requirements under the continuing education program of the Appraisal Institute. In

Ms. Jolie Houston

- 7 -

April 7, 2006

accordance with the Competency Provision in the USPAP, we certify that our education, experience and knowledge are sufficient to appraise the type of property being valued in this report.

We are pleased to have had this opportunity to be of service. Please contact us if there are any questions regarding this appraisal.

Sincerely,

CARNEGHI-BLUM & PARTNERS, INC.



Chris Carneghi, MAI  
Certified General Real Estate Appraiser  
State of California No. AG001685



Neil Johnson  
Certified General Real Estate Appraiser  
State of California No. AG025966

3

Nagaraj, Meera

From: Houston, Jolie [jolie.houston@berliner.com]  
Sent: Monday, April 10, 2006 4:17 PM  
To: Joe Horwedel@sanjoseca.gov  
Cc: Nagaraj, Meera; Ketchum, Stan; Danielsen, Akoni  
Subject: Bible way Letter re "project"

PCH April 12, 06  
Item No. 7a2b



Houston, Jolie -  
04-10-06 - FM...

GIP05-04-03

Joe:

Attached is a letter regarding Bible Way's application and CEQA. As I previously stated this project must include the CUP as a foresee ably project under CEQA. As you came see, the application states it will be used for "church uses" and that the CUP will be filed for the church.

Jolie Houston, Esq.  
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Jolie.Houston@berliner.com  
(408)-938-2535

BERLINER COHEN

ATTORNEYS AT LAW

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IN ASSOCIATION WITH

MCCRANE GREENFIELD LLP  
SAN JOSE • SAN FRANCISCO

April 10, 2006

GP 05-04-03

(4)  
PCH April 12, 06  
Item No. 7a & b

SANFORD A. BERLINER\*  
ANDREW L. FABER  
ROBERT W. HUMPHREYS  
RALPH J. SWANSON  
PEGGY L. SPRINGGAY  
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FORREST W. HANSEN  
GENEVIEVE M. NICKERSON

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OF COUNSEL:  
HUGH L. ISOLA  
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CHARLES W. VOLPE  
VICTOR A. PAPPALARDO

Mr. Joseph Horwedel  
Acting Director of Planning, Building and  
Code Enforcement  
City of San Jose Planning Department  
200 E. Santa Clara Street  
San Jose, CA 95113

Re: Bible Way Christian Center GP 05-04-03  
PROTEST OF NEGATIVE DECLARATION

Dear Joe:

As you are aware, we represent the Bourn Family LLC, managed by Union Bank of California, and Mel and Patricia Schmucker, property managed by Colliers International, the owners of the property located at 2110-2120 and 2060-2070 Oakland Road, respectively.

Pursuant to the City of San Jose ("City") City Code section 21.07.010 *et seq.*, on March 28, 2006, we timely submitted a protest of the Mitigated Negative Declaration ("MND") for a General Plan Amendment ("GPA") for a Mixed Industrial Overlay ("MIO") ("Project") to allow a future church assembly use at 2080 and 2090 Oakland Road, APN 244-23-067. This letter is submitted in response to your Memorandum dated April 5, 2006, to the Planning Commission.

As addressed in our letter to the City dated March 28, 2006, we maintain that the MND for the Project is inadequate because it failed to analyze the *whole project*, which includes the GPA as well as the Conditional Use Permit ("CUP") required for the proposed church assembly use to legally operate within the MIO.

Joseph Horwedel  
City of San Jose  
April 10, 2006

This Project will allow a church assembly use in a Heavy Industrial area and is the initial step in the City's land use approval process for this church assembly use. Although further discretionary approvals will be required before this church assembly use can occur, the City's environmental review must extend to the development or project envisioned by the initial approvals.

Pursuant to the California Environmental Quality Act ("CEQA"), the general rule is that a city cannot treat one project as a succession of smaller projects, none of which, by itself, causes significant impacts. See CEQA Guidelines § 15003(h). The City's analysis must analyze *future* development that will *foreseeably* occur if the local agency approves the project. *City of Antioch v. City Council* 187 Cal.App.3d 1325, 1333-1336(1986).

Under the CEQA Guidelines, the term "project" applies to "whole of an action," which may result in a direct or reasonably foreseeable indirect impact. See CEQA Guidelines § 15378(a). This definition ensures that the action reviewed under CEQA is not the approval itself but the development or other activities that will result from the approval. See CEQA Guidelines § 15378(a), (c), (d); *Association for a Cleaner Environment v. Yosemite Community College District* 116 Cal.App.4<sup>th</sup> 629, 637 (2004) ("ACE").

Furthermore, the City does not have discretion in determining whether an act constitutes a project for purposes of CEQA. "Whether an act constitutes a 'project' within the purview of CEQA 'is an issue of law which can be decided on undisputed data in the record on appeal,' and thus presents no question of deference to agency discretion or review of substantiality of evidence." *ACE, supra* at 637; *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District*, 9 Cal.App.4<sup>th</sup> 464, 470 (1992). "Stated otherwise '[w]hether a particular activity constitutes a project in the first instance is a question of law.'" *ACE, supra* at 637; *Black Property Owners Association v. City of Berkeley*, 22 Cal.App.4<sup>th</sup> 974, 984 (1994).

The California Supreme Court in addressing what constitutes a project for purposes of CEQA, has stated that "CEQA is to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247, 259 (1972). "From this principle, 'it is clear that the requirements of CEQA cannot be avoided by chopping up proposed projects into bite-size pieces which, when taken individually may have no significant adverse effect on the environment.'" *ACE, supra* at 637-638; *Plan for Arcadia, Inc. v. City Council of Arcadia* 42 Cal.App.3d 712, 726 (1974).

In *ACE*, an association of citizens appealed the denial of a writ of mandate and contended that a community college ("College") violated CEQA when it failed to perform an initial study in connection with its decision to close and remove a campus shooting range and transfer certain classes to a range off campus. The court of appeal concluded the College's action constituted a project for the purposes of CEQA.

The court in *ACE* started with the premise that "the whole of the action" must be considered in determining whether or not a project existed for purposes of CEQA. The court

Joseph Horwedel  
City of San Jose  
April 10, 2006

noted that the record included the following information: First, the College board minutes clearly indicated that plans for removal of the campus shooting range had been in place for almost a decade. Second, these plans had been reiterated in correspondence by the College district personnel. Third, the implementation of the range removal plans had been advanced by the College district's decisions to develop land near the range and by its neglect of range maintenance, thereby increasing the safety concerns arising from range operation. The court further noted that the College district had issued an addendum to its request for bids on lead abatement which stated that the decisions to "dismantle or demolish the range was still in question." The *ACE* court commented:

"That the District could not yet say with certainty whether the range was to be dismantled or demolished, however, does not change the Board's decision, made on October 15, to destroy it. We note that respondent's supply nothing, save the ambiguous language of the October 18 amendment and in the face of overwhelming evidence to the contrary, support the assertion that no decision to remove the MJC range had yet been made." *ACE, supra* at 638-639.

As addressed in our letter dated March 28, 2006, there is ample evidence in the record that Bible Way Christian Center ("Bible Way") is the applicant for the GPA and that the CUP for the church assembly use is an integral part of the whole project.

The following evidence should be considered:

- Bible Way is the applicant, not the property owner. This is not the case where the property owner applied for a GPA because he is trying to solicit a broader range of tenants. Here, Bible Way currently leases the property with an option to purchase.
- Bible Way's application (see exhibit "A") on file for the GPA states:

**REASON(S) FOR AMENDMENT REQUEST**

**TO ALLOW THE EXISTING BUILDING(S) TO BE USED FOR CHURCH USES IN CONFORMANCE WITH THE MIXED INDUSTRIAL OVERLAY, AND TO ALLOW FOR THE FILING OF A CONDITIONAL USE PERMIT**

- The City's staff report dated November 9, 2005 ("2005 Staff Report") clearly states "the applicant, *Bible Way Christian Center*, presently leases the site for office uses and has indicated the intent to purchase the property for future religious assembly use." (See 2005 Staff Report at p.3.)
- "The applicant has stated on the application and also during the community meeting that the existing 37,000 square foot industrial building *will be used for a church, school and other related uses.*" (See 2005 Staff Report at p.4)

Joseph Horwedel  
City of San Jose  
April 10, 2006

- At the community meeting, Bible Way Christian Center's representative "made a presentation about the *applicant's plan for church uses of the existing building at 2080 and 2090 Oakland Road*" (See 2005 Staff Report at p.11)
- "Pastor Dace, representing the applicant, Bible Way Christian Center, gave an example of how the presence of a church next to their present location has no conflicts. They have found sharing the parking lots workable. *He explained that the proposed church at the subject site would operate between 11:00 a.m. to 1:00 p.m. on Sundays and the school between 7:00 p.m. and 9:00 p.m. on Tuesdays. They also have an office in operation at the site every day. The church employs private security. Additionally, he stated that the church offers team programs, counseling, a disaster relief station, weddings and funeral services. The wedding and funeral services are offered mostly on Saturdays and not every day.* (See 2005 Staff Report at pp.11-12)

Just as in *ACE*, the fact that the Bible Way applicant states that there are "no development permit applications on the proposed project on file at this time," is not evidence to support the piecemealing of this Project. Simply put, the applicant has not justified a GPA for this MIO for *any other use* than the intended church assembly use.

The law is very clear, a governmental decision that is a precursor to development, expanded use, or other impacts on the environment is subject to CEQA. The evidence in the record establishes that the entire Project is the GPA and the CUP for the proposed church assembly use. The CUP for the proposed church use is a foreseeable discretionary approval, which should have been addressed in the MND, and failure to do so violates CEQA. Courts have held that a negative declaration may be defective if it mischaracterizes the proposed project and fails to acknowledge evidence showing that significant effects might occur. *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180.

The MND is inadequate because it failed to identify analyze "whole project." Therefore, there is a fair argument based on substantial evidence in the record that the GPA for the MIO would, under CEQA, include the foreseeable projects such as the CUP for the church assembly use.

I look forward in discussing this issue with you further.

Sincerely,

BERLINER COHEN

  
JOLIE HOUSTON  
E-Mail: [jh@berliner.com](mailto:jh@berliner.com)

cc: Brian Mullins  
Andre Walewski



CITY OF SAN JOSE

Department of Planning, Building and Code Enforcement  
 Planning Divisions, 801 North First Street, Room 400  
 San Jose, California 95110-1795  
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**GENERAL PLAN AMENDMENT APPLICATION**

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER (LAND USE AMENDMENT) <b>GP05-04-03.</b>	COUNCIL DISTRICT <b>4</b>	QUAD # <b>51</b>	RECEIPT #: <b>365281</b>
FILE NUMBER (TEXT AMENDMENT) <b>GPT GP -T-</b>	ZONING <b>H1</b>	AMOUNT: <b>\$14,613.54</b>	
PROJECT LOCATION AND STREET ADDRESS <i>east side of Oakland Rd. approx. 400 north of Oak Ave.</i>			DATE: <b>05/02/05</b>
			BY: <b>ECORRALES</b>

TO BE COMPLETED BY THE APPLICANT	
(PLEASE PRINT OR TYPE FOR ADDITIONAL INFORMATION USE A SUPPLEMENTAL SHEET)	
EXISTING GENERAL PLAN / DESIGNATION OR TEXT REFERENCE  HEAVY INDUSTRIAL	
REQUESTED GENERAL PLAN / DESIGNATION OR TEXT  HEAVY INDUSTRIAL WITH MIXED INDUSTRIAL OVERLAY	
OTHER GENERAL PLAN CHANGES	
FOR THE PROPERTY LOCATED AT 2080-2090 OAKLAND ROAD	
ASSESSOR'S PARCEL NUMBER(S) (APN) 244-23-067	GROSS ACREAGE 2.66
EXISTING LAND USE(S) SUBJECT SITE - INDUSTRIAL OFFICE BUILDINGS	
NORTH -	INDUSTRIAL OFFICE BUILDINGS/VACANT LAND
EAST -	INDUSTRIAL OFFICE BUILDINGS
SOUTH -	INDUSTRIAL OFFICE BUILDINGS/GREENWASTE RECYCLING FACILITY
WEST -	INDUSTRIAL OFFICE BUILDINGS/RESIDENTIAL

THIS APPLICATION IS ACCEPTED BY APPOINTMENT ONLY WITH THE GENERAL PLAN STAFF. CALL (408) 277-4576

**EXHIBIT A**

**TO BE COMPLETED BY THE APPLICANT**  
**(PLEASE PRINT OR TYPE FOR ADDITIONAL INFORMATION, USE A SUPPLEMENTAL SHEET)**

**REASON(S) FOR AMENDMENT REQUEST**

TO ALLOW THE EXISTING BUILDING(S) TO BE USED FOR CHURCH USES IN CONFORMANCE WITH THE MIXED INDUSTRIAL OVERLAY, AND TO ALLOW FOR THE FILING OF A CONDITIONAL USE PERMIT.

**THE FOLLOWING REQUIRED MATERIALS ARE ATTACHED:**

- Application for Environmental Clearance
- Assessor's Parcel Map(s)
- Application Fee(s) and Public Noticing Fees

THIS APPLICATION IS ACCEPTED BY APPOINTMENT ONLY WITH THE GENERAL PLAN STAFF, CALL (408) 277-4576

P. 04/07 408 292 6055

**EXHIBIT A**

APR-10-2006 09:28 CITY OF SAN JOSE-PLANNING

APPLICANT			
That for the purpose of processing and coordination of this application, the following person is my (our) designated representative/contact person:			
PRINT NAME OF APPLICANT BIBLE WAY CHRISTIAN CENTER	RELATIONSHIP TO OWNER(S) LESSEE	NAME OF FIRM, IF APPLICABLE	
ADDRESS 1746 JUNCTION AVE., SAN JOSE, CA 95112	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE # (408) 441-6164	FAX TELEPHONE # (408) 571-2222	E-MAIL ADDRESS	
CONTACT PERSON (IF DIFFERENT FROM APPLICANT)			
PRINT NAME OF CONTACT PERSON GERRY DE YOUNG	NAME OF FIRM, IF APPLICABLE RUTH & GOING, INC.		
ADDRESS 2216 THE ALAMEDA, SANTA CLARA, CA 95050	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE # (408) 236-2400	FAX TELEPHONE # (408) 236-2410	E-MAIL ADDRESS gdeyoung@ruthandgoing.com	
PROPERTY OWNER			
PRINT NAME OF OWNER CILKER REVOKABLE TRUST	NAME OF FIRM, IF APPLICABLE		
ADDRESS 1631 WILLOW STREET, SUITE 225 SAN JOSE, CA 95125	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE # (408) 264-2534	FAX TELEPHONE # ( )	E-MAIL ADDRESS	
PRINT NAME OF OWNER	NAME OF FIRM, IF APPLICABLE		
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE # ( )	FAX TELEPHONE # ( )	E-MAIL ADDRESS	

EXHIBIT A

THIS APPLICATION IS ACCEPTED BY APPOINTMENT ONLY WITH THE GENERAL PLAN STAFF, CALL (408) 277-4578