



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: July 23, 2007

COUNCIL DISTRICT: 4
SNI AREA: N/A

SUBJECT: PDC03-108, PLANNED DEVELOPMENT REZONING FROM A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 2,818 RESIDENTIAL UNITS, 365,622 SQUARE FEET OF RETAIL COMMERCIAL, OFFICE, OR INDUSTRIAL USE, AND APPROXIMATELY 36 ACRES OF PUBLIC PARK/OPEN SPACE ON THE 120.3-ACRE SITE OF THE SAN JOSÉ FLEA MARKET.

RECOMMENDATION

The Planning Commission voted 4-2-1 (Campos & Kalra opposed, Platten absent) to recommend that the City Council approve the proposed Planned Development Zoning with direction to the Council that they consider the following items in making their decision.

1. Development of a City strategy to assist in finding a new site for the Flea Market.
2. Implementation of Green Building practices within the project.
3. A City Council Study Session on the issues related to the development and potential relocation of the Flea Market.
4. A requirement for affordable housing within the project, in spite of the project not being located within a Redevelopment Area.
5. Further meetings with representatives of the East Side Union High School District to clarify the implications of the proposed development on the capacity of the schools in the District.
6. The Project should include an appropriate balance of housing and retail to minimize the fiscal impact on the City of providing services for additional housing.
7. The Project should include water conservation measures to reduce potable water demand.
8. Council should take into consideration the concerns raised in the attached July 18, 2007 letter from Citizens for Environmental and Economic Justice (CEEJ).

OUTCOME

Should the City Council approve the Planned Development Rezoning, up to 2,818 residential units, 365,622 square feet of retail commercial, office, or industrial use, and approximately 36 acres of public park/open space would be allowed on the 120 acre site of the San José Flea Market, subject to the approval of Planned Development Permits by the Director of Planning, Building and Code Enforcement.

BACKGROUND

On May 30, 2007 and continued to July 18, 2007, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning. The item was continued from the May 30, 2007 Planning Commission to address the issues as identified in the attached memo dated July 11, 2007.

ANALYSIS

Staff Presentation

As part of the May 30th Planning Commission meeting, Planning Staff explained that in 2002, the City Council approved a General Plan amendment (GP/GPT02-04-02) for Transit Corridor Residential on a majority of the site and more recently, a General Plan amendment (File No. GP/GPT06-04-01) was approved by the City Council on April 24, 2007 to add an additional 9 acres on the site for Transit Corridor Residential (south of Berryessa Road) and an additional acre for Public Park/Open Space.

Staff from the Department of Public Works gave a presentation on the results of the Traffic Impact Analysis that had been performed for the project as well as the Roadway and Mitigation Master Plan that includes a number of road widenings and interchange improvements, the most significant being the reconstruction of the bridge structure and modification of the on and off ramps at the US101/Oakland Road interchange.

At the July 18th Planning Commission, staff gave an overview of the City's response to the issues identified by the Commission in their decision to continue the item from May 30, 2007. Staff also reported on the Community Meeting that had been held on Monday, July 16, 2007.

Applicant Presentation

Erik Schoennauer, a representative of the applicant, the Flea Market Inc., gave an overview of the project, speaking about the "extraordinary public benefits" of the project including the importance of the project in achieving federal funding for the BART extension project. The other benefits included the proposed riparian open space and parks, the new elementary school, the interchange improvements at US 101/Old Oakland Road, the variety of housing types proposed and the Green Building measures that would be implemented.

Regarding the relocation of the Flea Market, he indicated that they were actively searching for a new location and that they intended to prepare a response to a request for qualifications to the County of Santa Clara regarding the potential use of the County Fairgrounds. It was his understanding that the County Board of Supervisors would not make a decision on the issue until the spring of 2008. He also indicated that they were exploring sites in Morgan Hill and have had discussion with the City of San José regarding a city-owned site. He indicated that the approval of the proposed project will improve their ability to secure a new location for the site as the proceeds from the sale of all or a portion of the site are needed to purchase a new location. He estimated that a site of 75 acres is needed to run a Flea Market of a comparable scale to the existing operation, which is oversized at 120 acres.

Public Testimony

The Planning Commission heard public testimony at both the May 30, 2007 and July 18, 2007 Planning Commission hearings.

In summary, those speaking in support of the project included representatives of the Silicon Valley Chamber of Commerce, Silicon Valley Leadership Group, and the Santa Clara Valley Housing Action Coalition. Reasons stated for their support included:

- o The need to demonstrate sufficient density adjacent to BART stations in order to acquire the needed funding for the BART project, which is of regional importance.
- o The project will provide much needed housing, the lack of which was identified as a major impediment to future economic growth in San José and the region.
- o The proposed project takes advantage of a great opportunity for Smart Growth/Transit-Oriented Development.

Representatives of two developers of affordable housing also spoke in support of the project, indicating that the project's location, density and amenities will make it a potentially attractive site for an affordable housing development. The representative from Bridge Housing indicated that she had informally discussed the site's potential for affordable housing with the applicant. They also indicated that the future housing would likely be relatively more affordable than housing in other areas of San José.

Concerns regarding the project were received from neighborhood residents and members of the Berryessa Citizens Action Council, Citizens for Environmental and Economic Justice and the Flea Market Merchant's Association. They were either opposed to the project or called for the relocation of the Flea Market to a new location.

The most frequently stated concern was that approval of the rezoning would result in the eventual closure of the Flea Market. They stated that the Flea Market is important to the City economically as it employs a large number of people, many of which rely upon the Flea Market for their livelihood is a major attraction and it is something that San José is well known. It was stated that the Flea Market is relied upon by low-income residents for the purchase of affordable new and second hand goods and as a result the loss of the Flea Market would be particularly impact the poor. The loss of the jobs will result in an increase in homelessness, crime and gang activity. It was stated that the Flea Market served as a "trampoline" for new entrepreneurs who establish businesses at the Flea

July 23, 2007

Subject: PDC03-108

Page 4

Market and are able to eventually move to a more permanent location. It was expressed that there should be more support from the City to support an existing City business or actively assist the Flea Market in finding a new location within San José.

Concerns were also expressed regarding the traffic impacts of the project and that the proposed road improvements and lane widening were not sufficient. A member of the community suggested that the project be conditioned so that development not be permitted until construction of the BART project and that the developer be required to dedicate land to VTA for the purposes of the Berryessa BART Station.

Concerns were also expressed with the lack of any affordable housing proposed and the need to require Green Building requirements on the future development. Staff indicated that the proposed projects within the boundaries of a Redevelopment area and that the project would be strongly encouraged to obtain LEED certification. However it is not the current policy of the City of San José to mandate the obtainment of LEED certification for private development and therefore no such requirement is proposed as part of the PD Zoning requirements. The Council would have the option of requiring a certain level of certification if they determine to be necessary. Staff indicated that the City standards for Green Building will likely be refined by the time specific development is proposed.

Planning Commission Discussion

Subsequent to the Public Hearing, in response to a Commissioner's inquiry the applicant indicated that they were not agreeable to committing that a certain number of units be reserved for affordable housing. He indicated that it would not be equitable to make such a requirement on this site but not other residential projects in the area. He also indicated that imposing triggers on the project that would limit development until further funding or construction of BART is not necessary, as the traffic mitigation imposed on the project does not assume BART is constructed. He stated his opinion that restrictions on the property with respect to affordability requirements and/or development triggers would likely delay the eventual sale of the property, which is needed for the purposes of acquiring a new site on which to relocate the Flea Market. He stated that the site was an appropriate location for high density housing regardless of whether BART exists.

A representative of the VTA spoke in response to Commissioner's questions, confirming that the project would contribute towards achieving the MTC thresholds for units in the vicinity of planned BART stations which is used to demonstrate the ridership potential of proposed transit projects for the purposes of obtaining federal funds.

The applicant presented information regarding a meeting on June 22, 2007 between the applicant and the superintendent of the East Side Union High School District. The meeting had been requested by the Planning Commission as part of their direction to defer the item on May 30, 2007. The Commission had expressed concerns regarding the accuracy of the student generation rate of .02 (2 per 100 units) that was used in the Environmental Impact Report as well as the cumulative impact of recent residential development in the area. The applicant had provided information on the type of units that would be constructed and when there would likely be any students coming out of the area. They presented information to the district that the project's student generation rate was more likely in the range of .05 (5 students per 100 units) and .1 (10 students per 100 units). He presented information from a February 2007 report from the District's Demographic Sub Committee which

including at Independence High School. The Planning Director concurred that given the length of time before development would occur and the high-density nature of the project, that the East Side Union School District would not be substantially impacted by the project. Staff indicated that they had yet to receive an updated response from the District regarding the meeting and concerns they have regarding the project.

During discussion the Commission also raised the concern with the potential development of the site as proposed without more certainty as to when or if the BART extension is constructed. The City Attorney indicated that it is not the City's practice to impose constraints on development that do not correspond with the need to mitigate certain environmental impacts. As the proposed project was evaluated without BART, there would not be any basis for linking development entitlements with the timing of the BART project, as it is not a required mitigation measure to address the traffic impacts of the project.

Commissioner Zito made a motion to recommend approval of the project with a recommendation that the Council take into consideration the items as described in the recommendation section on page 1 above.

The concerns stated by the two Commissioners in opposition to the motion (Commissioners Campos & Kalra) are summarized as follows:

- o City Council action should await completion of further study of the housing needs near the proposed BART stations to confirm the need for a project of the proposed density and to allow time for the City to work with the applicant to identify an alternative site for the Flea Market or to develop a program for the assistance of Flea Market vendors that would be displaced as a result of the development of the proposed project.
- o The project should include a plan for the relocation of the Flea Market to a new location in San José, given the potential loss of 2000-jobs and that it is a unique cultural resource that has taken years to create.
- o The City should require that the project include affordable housing or the applicant should be willing to commit to the provision of some level of affordable housing as part of the project.

EVALUATION AND FOLLOW-UP

This is the first time that this item is presented to the City Council. If approved by the City Council, this project will be brought back to the City Council for the adoption of the ordinance within two to four weeks from this hearing date.

POLICY ALTERNATIVES

The City Council could approve the proposed Planned Development Rezoning as recommended by staff in the Staff Report or with additional requirements that address some or all of the issues identified by the Planning Commission or by the City Council at the public hearing. Staff considers the proposed project to fulfill the General Plan objectives for the site, which encourage transit-oriented development at a minimum average density of 55 dwelling units per acre.

The City Council could deny the proposed Planned Development or defer the project to allow time to address any outstanding issues that are determined to be necessary. There is the concern that a denial or delay of the Planned Development Zoning could hinder the obtainment of the necessary funding to construct the proposed extension of BART to San José given that projected ridership is a criteria used by the federal government in evaluating funding requests for transit systems.

A change of zoning is a legislative act, and therefore the Council could potentially place additional requirements that address Green Building, Flea Market Relocation, Affordable Housing and other issues. There will be additional opportunities for the City to review and to place conditions upon development on the site at the time of the submittal of Planned Development Permits, which will be required prior to development on any portion of the site.

Green Building

The proposed Planned Development Zoning standards require that elements of the LEED Project Checklist be incorporated into the design and construction of buildings to the satisfaction of the Director of Planning, Building and Code Enforcement. This is not a requirement to construct LEED certified buildings. As previously indicated, staff anticipates that the City standards for Green Building will likely be refined by the time specific development is proposed which is not anticipated for a minimum of two years. It may be appropriate to require that future development meet a minimum LEED standard level as the applicant has noted that the project is several years away from construction.

Flea Market Relocation

Staff has indicated their availability to assist the Flea Market operator by preliminarily evaluating sites that may warrant further consideration as potential Flea Market locations. At this point is not known whether there is a site on which the Flea Market could be relocated at which it could operate at its current level to adequately replace the current Flea Market and therefore it is not advisable to place such a requirement on the project. The Council could direct City staff to identify a new location of the Flea Market prior to the approval, or as requirement of the proposed rezoning. Staff is not proposing such a requirement because of the potential precedent it could place on similar proposals involving properties in which a business is anticipated to close.

Affordable Housing

The Flea Market site is not within a Redevelopment Area and it is therefore not required to provide affordable units under existing City policy. A typical 20% affordability requirement could result in approximately 560 affordable units. Staff is not recommending the requirement that the project include a requirement to reserve a portion of the site for affordable housing.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

July 23, 2007

Subject: PDC03-108

Page 7

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30; Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public. Community meetings were held on January 20, 2005, March 7, 2007, and July 16, 2007.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

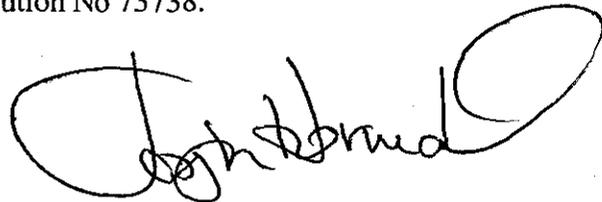
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: San José Flea Market General Plan Amendment & Planned Development Rezoning EIR certified April 24, 2007 per City Council Resolution No 73738.



JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Richard Buikema at 408-535-7854.

Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: July 11, 2007

COUNCIL DISTRICT: 4

SUPPLEMENTAL

SUBJECT: FILE NO. PDC03-108, PLANNED DEVELOPMENT REZONING FROM A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 2,818 RESIDENTIAL UNITS, 365,622 SQUARE FEET OF RETAIL COMMERCIAL, OFFICE, OR INDUSTRIAL USE, AND APPROXIMATELY 36 ACRES OF PUBLIC PARK/OPEN SPACE ON THE 120.3-ACRE SITE OF THE SAN JOSÉ FLEA MARKET.

BACKGROUND

On May 30, 2007, the Planning Commission held a public hearing to consider the Planned Development Rezoning as described above. After hearing testimony from the public, the Commission voted 4-3-0 (Commissioners Kamkar, Jensen, Kinman opposed) to continue the item to the Planning Commission Hearing on July 18, 2007 to allow time:

1. For the City to develop a strategy to assist in finding a new site for the Flea Market.
2. For staff to provide further direction on how to best implement Green Building practices within the project.
3. For the City Council to consider conducting a Study Session on the issues related to the development and potential relocation of the Flea Market.
4. For staff to explore the potential requirement of low-income housing within the project, in spite of the project not being located within a redevelopment area.
5. For the applicant to conduct further meetings with representatives of the East Side Union School District to clarify the implications of the proposed development on the capacity of the schools in the District.

ANALYSIS

Flea Market Relocation

At its hearing on May 30, 2007, the Planning Commission asked for clarification on the City's role in finding a new location for the San José Flea Market and assisting vendors who may be displaced by the proposed development. Staff acknowledges the Commission's concern regarding the potential impact of the proposed development on the livelihoods of the existing vendors. However, because the Flea Market is a private enterprise, the Flea Market operator has the primary responsibility to:

- 1) Consider alternative locations and to propose a new location for the Flea Market,
- 2) Provide sufficient advance notification to the existing vendors of the future closure or partial closure of the Flea Market, and
- 3) Assist vendors ultimately displaced by development of the Flea Market.

While City staff has not received specific direction from the City Council on this issue, staff in Planning, the Office of Economic Development and the City Manager's Office are available to assist the Flea Market operator by preliminarily evaluating sites they identify that may warrant further consideration as potential Flea Market locations. In addition, Staff will facilitate General Plan amendments and/or rezoning requested by the applicant as necessary, to allow for a Flea Market use at an appropriate location, but it is the responsibility of the applicant to demonstrate the benefits to the City of any proposals.

Concerns have been expressed regarding the importance of keeping the vendors informed as to if and when the Flea Market may close or relocate. To ensure that the vendors are kept apprised of the status of the development of the Flea Market Property, staff is proposing an additional requirement that states that:

Applicants shall provide written (multi-lingual) notification to all existing vendors at the San José Flea Market within 14-days of the filing of a Planned Development Permit to include a description of the proposal and an explanation as to the proposals impact (if any) on the continued operation of the Flea Market.

Green Building

The proposed Flea Market rezoning will promote and facilitate the ultimate achievement of LEED certification for future individual development proposals on the site. The project exhibits many characteristics that are consistent with the green building, smart growth and new urbanism practices, which are the basis for the LEED (Leadership in Energy and Environmental Design) Green Building Rating system, and the newly created Neighborhood Development Rating System. These principles include:

- Development within or near existing communities.
- Development near public transportation infrastructure (infill).
- Development within walking distance of a planned school.
- Residential Density to achieve compact development.
- A diversity of land uses and employment opportunities.
- Streets that promote pedestrian activity.

Proposed projects within the boundaries of the proposed project will be strongly encouraged to obtain LEED certification. However it is not the current policy of the City of San José to mandate the obtainment of LEED certification for private development and therefore no such requirement is proposed as part of the PD Zoning requirements.

Study Session

Staff forwarded the attached informational memorandum to the City Council, to convey the Planning Commission's desire for the City Council to conduct a Study Session on the Flea Market development. Because of the time constraints of setting an early August study session, and in order to avoid further delay in the processing of the proposed rezoning, staff has suggested that the broader discussion on the Flea Market occur as a part of the Council's deliberation of the item, now scheduled for August 14, 2007, instead of at a separate Study Session. The City Council has not yet decided whether to conduct a Study Session prior to their scheduled consideration of the project.

Low Income Housing

City Policy requires that market rate projects proposed within Redevelopment areas provide 20 percent of the units as affordable. As has been discussed, The Flea Market site is not within a Redevelopment area and is therefore not required to provide affordable units under existing City policy. The applicant has indicated that developers of affordable housing have expressed interest in the site and that they intend to actively market the property to these generally non-profit developers. Given the scale of the proposed project, staff believes it is likely that the project will ultimately include a full range of housing types for a mix of income levels.

School District Communication

As requested by the Planning Commission on May 30, 2007 the applicant met with the Superintendent and other representatives of the East Side Union School District on June 22, 2007 to explain the project and to clarify the anticipated number of students to be generated by the project. According to the applicant, the current status of capacities at various District schools and school enrollment projections was also discussed. The District mentioned the issue related to the uneven distribution of students in different parts of the District and the fact that overall the District has experienced a decline in enrollment and still encounters overcrowding in certain schools, in particular the new Evergreen Valley High School in the southern part of the District.

The applicant indicated to the District that the project is expected to build out over a 10 year period with no housing for at least the next 3 to 4 years. The total amount of school fees to be paid will be determined as part of the student generation agreement prior to City issuance of building permits for residential development of the site. No additional dedication of land for school purposes is required beyond the current 3.5 acre site proposed by the applicant for donation to the Berryessa Union School District.

PUBLIC OUTREACH

In response to the concerns expressed by a Berryessa area resident during the May 30, 2007 Planning Commission public hearing, an additional community meeting will be conducted on July 16, 2007. Any information received at the meeting will be forwarded to the Planning Commission at the July 18, 2007 meeting. In addition to the meetings previously held, the following public outreach has occurred subsequent to the May 30th Planning Commission hearing:

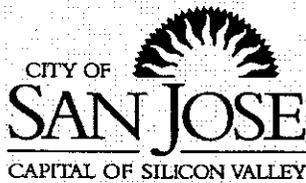
- June 21, 2007 – Applicant presented project to the 13th Street Neighborhood Advisory Committee of the Strong Neighborhoods Initiative, representing Downtown neighborhoods west of Highway 101.
- June 22, 2007 – Project discussed with the Superintendent and other representatives of the East Side Union High School District.
- June 28, 2007 – Applicant and City staff (Planning, Public Works, Transportation, Parks) discussed project with the Planning and Land Use Committee of the Berryessa Citizens Advisory Council.

RECOMMENDATION

Planning staff continues to recommend that the Planning Commission recommend approval of the proposed project with the additional requirement for early notification of vendors of pending Planned Development Permits to the City Council for the reasons stated here and in the original Staff Report.


For JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments



SENT TO COUNCIL: _____

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: Planning Commission Request
For a Council Study Session
(PDC03-108)

DATE: June 28, 2007

Approved

Date

INFORMATION

The purpose of this memorandum is to forward to the City Council a request from the Planning Commission that the Council conduct a formal Study Session (prior to their formal consideration of the project on August 14, 2007) to discuss the details and implications of the proposed rezoning of the San José Flea Market.

At the Planning Commission hearing on May 30, 2007 the Planning Commission voted to defer consideration of the proposed rezoning to the Planning Commission meeting on July 18th. As a result of the deferral, the City Council's consideration of the project was deferred from June 19, 2007 to August 14, 2007.

The motion to defer the item included a request that the City Council, prior to their formal consideration of the project on August 14, 2007, conduct a separate Study Session on the proposed rezoning to further discuss the details and implications of the project. A request for a study session had been received from a representative of the Berryessa Citizens Advisory Council during public testimony on the item. Councilmember Campos had also discussed the possibility of a Study Session at the April 24, 2007 City Council hearing on the associated General Plan amendment (File No. GP06-04-01), but it was not agreed upon as being necessary by the Council as a whole.

Staff will be bringing forward the pertinent information on August 14 when the item is scheduled to return to Council. Staff feels that the discussion can occur at the Council Meeting given the time constraints of setting an early August study session.

The additional reasons given by the Planning Commission for deferral of the item included the following:

- For staff to prepare a plan for providing assistance in finding a new site for the Flea Market.

- For the applicant to conduct further meetings with representatives of the East Side Union School District to clarify the implications of the proposed development on the capacity of the schools in the District.
- For City staff to provide further direction on how to best implement Green Building practices within the project.
- For staff to explore requiring the provision of the low income housing, in spite of the project not being located within a redevelopment area.

For 
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Citizens for Environmental and Economic Justice CEEJ

July 18, 2007

Hon. Xavier Campos and Planning Commission
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

RE: Flea Market Rezoning Issues, PDC03-108

Honorable Chair Campos and Planning Commissioners,

We respectfully submit the following comments regarding the above referenced item for the record.

Proposed Rezoning Requirements:

We recommend that the following be mandatory components of a rezoning:

1. Infrastructure/Core Services:

- As cited in the PUC comment letter of January 16, "Of chief concern is that approval of the project be contingent upon the BART to San Jose project receiving full funding and being built as planned." As indicated by the PUC, safety and traffic level-of-service would be further compromised by the substitution of a different rail format such as at-grade heavy gauge or light rail should adequate BART funding not be achieved. The PUC stated, "...full funding for the project is not secured and is in no way guaranteed...The EIR doesn't consider the project with rail alternatives to BART". However, it should be noted that the applicant's representative suggested at the April 24 Council meeting that one of these rail options could be utilized when asked what happens if BART can't be achieved.
- Projects must not be approved without adequate core services such as police, fire, water supply, and school capacity.
- Projects must not be approved without adequate transportation infrastructure. Waiting for BART to come before improving the Mabury/Taylor 101 overpass/interchange as stated by Staff at the 4/24/07 Council meeting is unacceptable to the community! The result will most certainly be gridlock.

2. Affordable Housing:

- There is no affordability component/inclusionary zoning in the project as proposed. While we understand that the site is not in a redevelopment area, a stated objective of the project is to achieve BART funding. Our understanding is that the MTC gives 50% unit count credit for affordable units towards the number required within a node to achieve funding. Further, we think an affordable housing requirement is appropriate adjacent to a stated transit corridor when federal funding (and thus NEPA requirements) must be achieved.
- The Housing Commission recommended 30% of the rental units on site to be affordable housing.
- CEEJ further recommends that provisions for affordable housing be made in the for-sale component as well.
- Lower income residents who depend on transit would benefit from affordable housing in a TOD project, and they could help increase transit ridership.

3. Green Building Standards:

- A minimum LEED Silver Certification requirement should be included as a condition of approval or as a possible mitigation measure.
- Page 14 of the EIR states, "As discussed in section 4.12.4 Mitigation and Avoidance Measures for Energy Impacts, measures are identified to reduce the impacts to a less than significant level (e.g. U.S. Green Building Council's Leadership in Energy

Environmental Design (LEED) Certification, passive solar design, etc.). None of these measures are proposed by the project. Unless determined by the City Council to be infeasible, these measures will be required as conditions of approval."

- CEEJ believes that LEED certification requirements and the piping for and utilization of recycled water must be conditions of approval given the significant energy and environmental impacts of the proposed project. While we understand that this isn't currently required at the policy level, we believe that the size, scope, and significance of the proposed TOD project demands a higher standard of sustainability.

4. Adequate Setbacks:

- Consistent setbacks which facilitate the best 100-year flood control project and protect the riparian habitat (including endangered steelhead) must be required as recommended by the commenting agencies. Setback averages are meaningless as choke points impede water flow and diminish flood protection.
- Consistent setbacks must be required to maximize trail system connectivity and function as an alternate transit mode, and to assure continuity.
- Offsetting Mabury Rd. and realigning the City maintenance yard driveway may be necessary to achieve an acceptable setback and ensure a quality project.

5. Hazardous Materials:

- CEEJ believes that the Shelter-In-Place and Evacuation Plans discussed on page 13 of the EIR should be made mandatory, even though they will not reduce the impacts of a worst-case chemical release to less than significant. Given the fact that worst-case chemical releases at eight facilities in the project area could be life threatening to people on the project site, and that an accident or an earthquake could produce serious impacts, we believe that all measures to maximize safety should be required.

6. Relocation:

- CEEJ believes that project approval should be conditioned upon a viable relocation plan. We encourage creativity and inter-agency cooperation in finding solutions to retain the Flea Market in San Jose. Optional formats, such as multi-story buildings with built-in vendor stalls surrounding plazas, should be considered to reduce the amount of land required and to enhance attractiveness of the future venue as well as to maximize its interface potential with surrounding uses. Similar market formats can be found throughout the world. The Flea Market is a significant and unique cultural resource which symbolizes the diversity of San Jose. It is also an important small business incubator and a treasured gathering space to many.

7. Parks/Trails:

- Front-end land dedication should be a condition of rezoning. Given the intensity of the proposed project, the maximum amount of open space is necessary for emergency safety as well as to achieve adequate recreational opportunities.
- Other resources can be secured to make park and recreational improvements to the land. Securing the land up front, rather than accepting in-lieu fees with diminished purchasing power or reducing acreage requirements with credits for improvements in piecemeal fashion, should be required.

8. Industrial/Commercial:

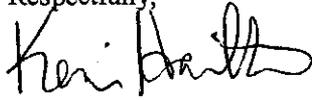
- CEEJ and other community members have extreme concern about the reduced amount of retail/office space/employment square footage on the project site. The proposal presented at the 2005 community meeting included 700,000 square foot for the stated uses, yet the currently proposed rezoning would only provide up to approximately half of the square footage. Additionally, square footage would be further reduced for BART facilities on the southern portion of the site (see VTA diagram in the Staff report). VTA's May 17, 2007 comment letter states that the area referenced as So. Village Mixed Industrial/Commercial for retail/office/industrial uses as proposed is inconsistent with the land use specified in the approved EIR for the BART project.

9. Council Study Session:

- Given the scope, complexity, and extreme impacts of the proposed project, CEEJ believes that a thorough Flea Market Council Study Session with adequate opportunity for community input should be held before a rezoning of this site is considered.

Thank you for your thoughtful consideration of our comments.

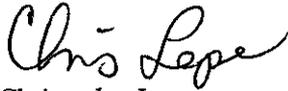
Respectfully,



Kerri Hamilton
Kerrihamilton2004@yahoo.com



Ada Marquez
ada_gonzalo@yahoo.com



Christopher Lepe



Noren Caliva



Marian Duran



Adam Welch

