COUNCIL AGENDA: 12-01-09
ITEM: 10.7

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 13, 2009

COUNCIL DISTRICT: 7
SNI AREA: N/A

SUBJECT: FILE NO. GP08-07-04. General Plan Amendment request to change the Land Use/Transportation Diagram designation from Combined Industrial/ Commercial to High Density Residential (25-50 DU/AC) on a 2.88 acre site, located on the located on the east side of Monterey Road, approximately 700 feet northerly of Tully Road.

RECOMMENDATION

The Planning Commission voted 5-0-2 (Commissioner Do absent and Commissioner Jensen recused) to recommend that the City Council approve the proposed General Plan Amendment request to change the Land Use/Transportation Diagram designation from Combined Industrial/ Commercial to High Density Residential (25-50 DU/AC) on a 2.88 acre site, located on the east side of Monterey Road, approximately 700 feet northerly of Tully Road.

OUTCOME

Should the City Council approve the General Plan Amendment, the applicant would be able to move forward with a Planned Development Rezoning to allow for 102, 100% affordable, multi-family residential units on the subject site.

BACKGROUND

On November 4, 2009, the Planning Commission held a public hearing to consider the proposed General Plan Amendment. The Director of Planning, Building and Code Enforcement recommended no change to the General Plan Land Use/Transportation Diagram for the reasons stated in the attached staff report. The staff report acknowledged that the employment land offsets required for this land use change were in place, and that if the Commission were to recommend the change, that this action would not signal future employment land conversions in the Monterey Corridor or in other areas of San Jose. The project was on the evening's public hearing calendar.

The applicant, Jonathon Noble, with Charities Housing, spoke on the item. He stated that approval of the proposed General Plan Amendment would allow for the replacement of an existing affordable housing, a Single Room Occupancy (SRO) facility, with a new affordable housing project. The property has an affordable housing deed restriction until the year 2049. The approval of this amendment is a critical step in a series of steps that the City Council has already taken to develop affordable housing on the subject site.

Jennifer Nicolas, CEO of EHC Life Builders, spoke in favor of the land use change. She stated that EHC serves 10,000 homeless people in San Jose every year and that the sale of the subject site is critical in EHC being able to continue to provide services to the homeless in San Jose. Commissioner Zito questioned the speaker about the condition of the existing building and the deed restriction. Jennifer responded by saying that the building is run down and in need of many repairs and will not last until 2049 when the deed restriction for affordable housing ends. The deed restriction may be broken, but they must repay HUD approximately 7 million dollars in that event.

Cary Krinden, a neighbor spoke in favor of the land use change and that the development would be an enhancement and that more residents would bring more shoppers to The Plant.

The Assistant Director of the Housing Department, Jackie Morales, then spoke in favor of the land use change. She stated that as stated in their memorandum attached to the staff report, the City Council has already taken the actions to move this project forward and it does not make sense to put a new SRO right next to an existing SRO. An affordable family housing project makes sense given the circumstances of the site and supports the applicant's request.

The Planning Commission then closed the public hearing and a motion was made to approve the General Plan Amendment to change the Land Use/ Transportation Diagram designation from Combined Industrial/Commercial to High Density Residential (25-50 DU/AC).

Commissioner Platten then spoke on the motion and stated that he made the motion to approve the General Plan Amendment request solely because of the actions taken by the City Council. The Commission has been zealous in not recommending the conversion of employment lands, but that this is an exception. Commissioner Zito spoke on the motion and stated that because of the deed restriction, the fact that Charities Housing would be developing the site, and there were not really any other options, he would support the motion. Commissioner Kamkar spoke on the motion stating that he would support it because the site is directly across from shopping at The Plant and because of the deed restriction. Commissioner Cahan spoke in favor of the motion because this would be a fiscal impact to the City and that the loss of EHC would be a detriment to the citizens of San Jose. Commissioner Campos added that site is adjacent to an existing SRO and across from a shopping center. He doesn't see any driving industry jobs moving to the site and agreed that this site is the exception to the rule.

The Planning Commission voted 5-0-2 (Commissioner Do absent and Commissioner Jensen recused) to recommend approval of the General Plan amendment as proposed by the applicant.

ANALYSIS

A complete analysis of the issues regarding this project is contained in the attached staff report.

EVALUATION AND FOLLOW-UP

The applicant would be required to file subsequent development permits with the Planning Division in order to implement the increased density on the subject site.

POLICY ALTERNATIVES

Not Applicable

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)**
- ☐ **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 1,000 feet of the project site and posted on the City website. The General Plan Amendment 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.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This amendment has been evaluated for its consistency with the San Jose 2020 General Plan as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

The environmental impacts of this project were addressed by a Mitigated Negative Declaration adopted for File Nos. GP08-07-04 and PDC09-015 on May 27, 2009. The Mitigated Negative Declaration states that no significant impacts will result from the subject project.

FOR JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Lesley Xavier, Project Manager at 408-535-7852.

Attachments:
General Plan Amendment Staff Report
Letter from the applicant, Charities Housing

CHARITIES HOUSING

November 2, 2009

Thang Do,
Chair of the Planning Commission
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

RE: Request for Recommendation for Approval of GP08-07-04 at 2112 Monterey Road

Dear Planning Commissioner,

Thank you for your consideration of our request to Recommend Approval of GP08-07-019, which would change the existing General Plan designation at 2112 Monterey Road in San Jose to High-Density Residential (25-50 du/acre). You will find a summary of the request as well as some background on the project below.

Should you have any questions, please do not hesitate to contact Jonathan Noble, Senior Project Manager, at (408)550-8310 or via email at jnoble@charitieshousing.org.

REQUEST:

For the Planning Commission to Recommend Approval of the General Plan Amendment for 2112 Monterey Road (GP08-07-04).

Support will:

1. **Allow the currently dilapidated SRO units to be replaced by new, affordable family apartments that will serve over 100 households in conformance to existing deed restrictions on the property that run through 2040;**
2. **Enable EHC LifeBuilders to retire significant debt and to continue providing critically needed homeless programs;**
3. **Remove neighborhood blight and foster additional redevelopment efforts along Monterey Road; and**
4. **Protect the City's investment in the property of approximately $3.9 million (includes direct City investment and CDBG funds), as well as the County's investment of $125,000.**

BACKGROUND:

Markham Terrace is a blighted property located at 2112 Monterey Road with older residential buildings that were converted from hotel use to SRO units in 1995 and are in substantial need of repair. A Physical Needs Assessment commissioned by the City of San Jose's Housing Department concluded that the current units are in such disrepair that renovation is impractical and complete demolition, redesign and reconstruction of the

buildings are required. In addition, the restaurant on site has contributed to security problems in the area. The proposed General Plan Amendment and pending Planned Development Zoning is necessary to replace the existing affordable SRO units with new, affordable family apartments in conformance to deed restrictions on the property.

Redevelopment of the property is restricted to extremely and very low income housing due to recorded affordability restrictions that dictate that it be used as such through the year 2040. The restrictions stem from EHC's prior acquisition and development of the property and the associated financing. Public investment includes approximately $3.6 million in 20% and $294,000 in CDBG rehabilitation funds from the City of San Jose Housing Department as well as $125,000 of County funds.

Sale of the site to Charities Housing was envisioned to allow EHC to pay debts owed to Comerica, Bank of the West and the Veterans Administration, protect the City's $3.9M financial interest in the property, and provide new affordable housing for families. The transfer of the property, which is scheduled to occur by the end of the year, will enable EHC to strengthen its financial position and continue its mission to provide homeless shelter and services in San Jose.

Revitalization of the site is critical and will augment other redevelopment efforts in the area, including the adjacent Markham Plaza, a new 300-unit SRO project completed in 2003, and The Plant, a large retail center in the final stages of construction across the street. The City has initiated several actions in an effort to revitalize the site, protect current public investment in the property, and improve EHC's financial ability to provide homeless services.

As outlined in November 24, 2008 memo from the City of San Jose's Housing Department, without the redevelopment of the site and the associated ability of EHC to pay off its outstanding debt, senior lenders of the Markham property could foreclose on the property, wiping out the City's loans. Alternatively, EHC could declare bankruptcy, which could have a similar result for the City's investment and also result in the loss of affordable units. The City has initiated several steps to strengthen EHC's financial position and protect the public investment in their properties over the past year.

<u>City Actions to Date:</u>

On January 27th, 2009, the Council approved for the Director of Housing to negotiate and execute an agreement between EHC LifeBuilders and its creditors and other related actions, including funding a $500,000 predevelopment loan for design and planning efforts and $2,500,000 for tenant relocation activities. These actions created the road map for EHC's efforts with their creditors and supported on-going revitalization of the area.

On May 27th, 2009, the Planning Director approved the Mitigated Negative Declaration / Initial Study (MND/IS) to provide environmental clearance for the pending GP Amendment and PD Zoning, as well as acquisition funding from the City of San Jose Housing Department.

On August 4th, 2009, the Council approved acquisition funding in the amount of $6,280,000 for the purchase of 2112 Monterey Road by Charities Housing. The transfer from EHC LifeBuilders to Charities Housing will close by the end of 2009, a critical step in strengthening EHC's financial position.

By November 3rd, 2009, the previously approved relocation efforts are anticipated to be completed; enabling revitalization of the dilapidated site. As of October 15th, the restaurant has been relocated as well as 80% of the tenants. As a result, the current owner, EHC, will no longer be receiving revenue and will need to start withdrawing funds from their own accounts to pay current creditors. Acquisition is critical to relieve EHC of this obligation and allow them to pay-off outstanding loans on the property.

Charities Housing Activities to Date

Over the past year, Charities Housing has been working with neighbors, the Planning Department, and the Housing Department to design and eventually construct high quality family housing that continues to provide homes for extremely low and very low households. A community meeting occurred December 17th, 2008, to discuss the general plan amendment and revitalization of the site, and the proposal was well received by the stakeholders who attended. A second community meeting was held to discuss the current design on September 2nd, 2009. Neighborhood stakeholders in attendance continued to be very supportive of the redevelopment of the site, both of the proposed use as well as design direction.

The currently proposed design calls for 2-4 story buildings forming a u-shape around the center of the site. A two-story garage is located along the back of the site, providing a buffer between the rail line and residential units as well as maximizing the separation between the new, mid-rise development and the existing mobile home park. By pushing the development to the edges of the site, the development is able to offer a large amount of open space for future families and their children. Creating a high-quality environment for the residents of this community drives the current design.

Policy Framework:

The community supported General Plan Amendment is necessary to allow revitalization of the site and the construction of new, affordable family apartments on the site. While SRO's are allowed under the current General Plan and zoning, and SRO development would be consistent with the existing deed restrictions on the site; it is widely acknowledged that adding additional SRO units to the 300 SRO's on the immediately adjacent parcel would have detrimental impacts on the marketability of both developments as well as creates an undesirably high concentration of such units in one location. Neither the Housing Department nor the elected Council representative for the area supports additional SRO units in this location.

While SRO development faces substantial opposition here, the site remains well suited for residential in light of its location adjacent to housing (the adjacent studio apartment (SRO) development and a mobile home park border the site on two sides) and within a short

walking distance of services and retail and job opportunities at The Plant (a large retail center across the street) and throughout the Monterey Corridor. Transit access to job centers in Downtown and North San Jose can be easily accessed via bus routes along Monterey Road. An elementary school and medical clinic are within a short walk or drive of the site.

The General Plan Amendment (GP08-07-019) necessary to facilitate revitalization of the site was submitted October 23rd, 2008. The site's location near existing residential uses and the proposed 100% Affordability housing proposed appeared to conform to the Discretionary Alternate Use Policies of the General Plan (consistent with the 2008 findings on the PD Rezoning for SRO housing on the site); however, Planning Staff determined that the application was subject to the Employment Conversion Framework.

Accordingly, an off-set site was identified by Planning Staff and the Housing Department submitted a General Plan Amendment February 13th, 2009 and paid the associated fees of $21,000. This application was never processed by the Planning Department; instead, Planning recommended proceeding ahead without the off-set General Plan Amendment as there were sufficient industrial/commercial credits available from other pending or recently approved general plan amendments to off-set the Markham general plan amendment.

After further evaluation, Planning Staff determined that they could not recommend approval of the 2112 Monterey Road application utilizing the credits without Council approval. As a result, the preliminary recommendation coming before Planning Commission and the City Council is for No Change to the General Plan designation, while outlining the policy framework whereby the general plan amendment could be approved.

Conclusion

As approval of the General Plan Amendment is a critical step in redeveloping affordable housing on the site consistent with the existing deed restrictions, strengthening EHC's financial position and ability to continue to provide homeless services, continuing the revitalization efforts along Monterey Road, and protecting public investment in the site, Charities Housing is requesting that the Planning Commission recommend approval of the General Plan Amendment with the appropriate findings outlined by staff.

P.C. Agenda: 11-4-09
Item: 6.a.

STAFF REPORT
PLANNING COMMISSION

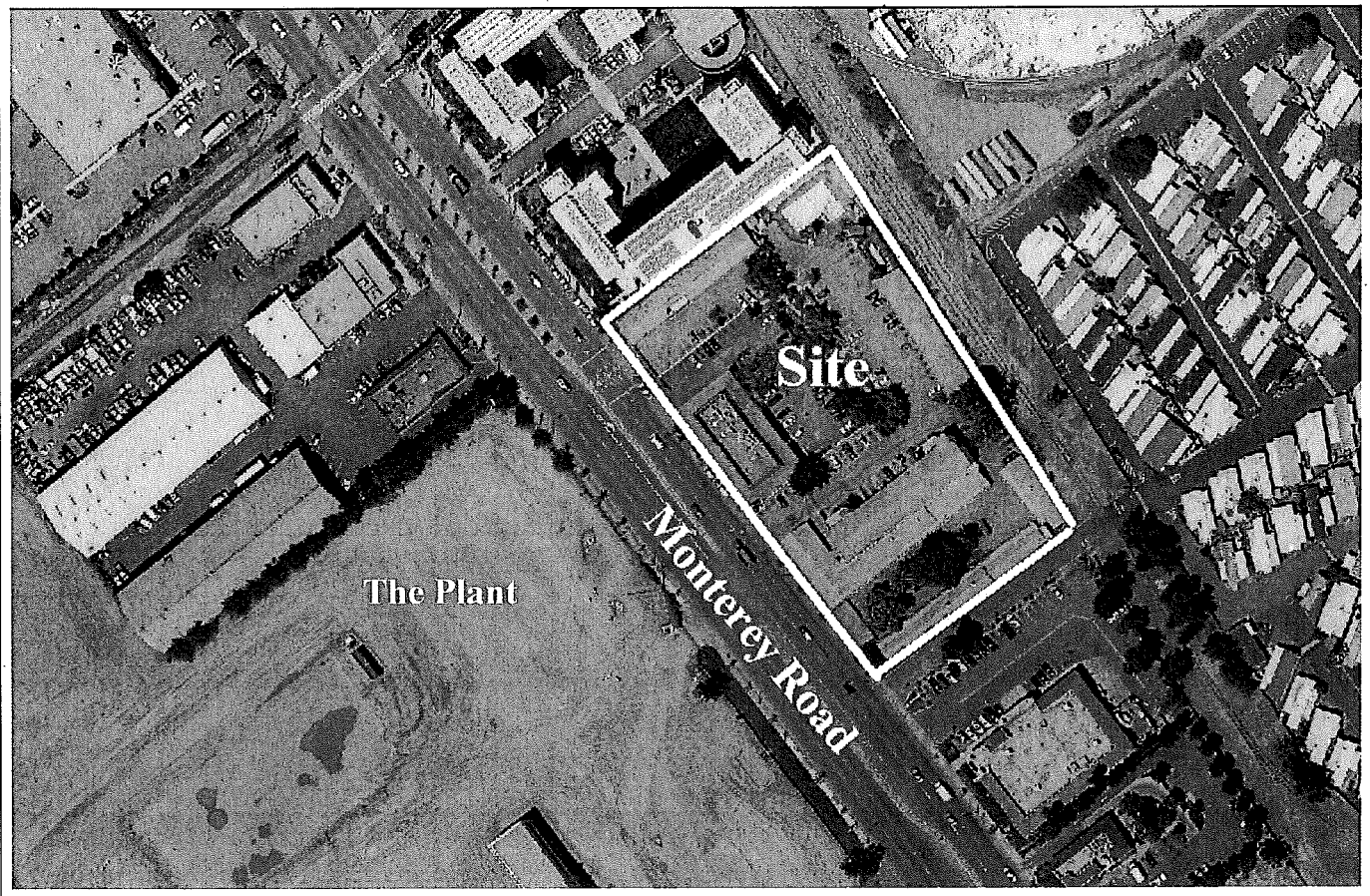
FILE NO.: GP08-07-04 **Submitted: October 14, 2008**

PROJECT DESCRIPTION:
General Plan Amendment request to change the Land Use/ Transportation Diagram designation from Combined Industrial Commercial to High Density Residential (25-50 DU/AC) on a 2.9 acre site.

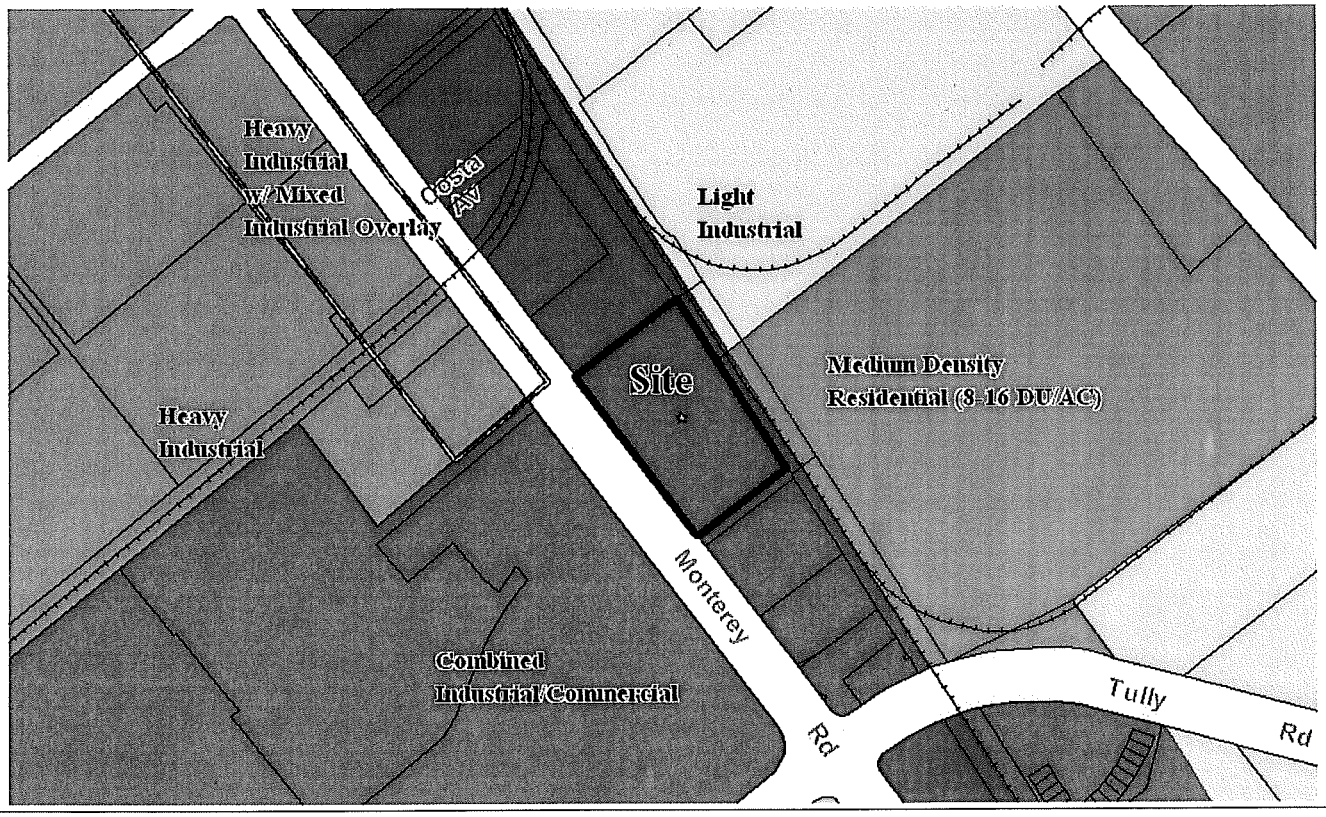
LOCATION:
East side of Monterey Road, approximately 700 feet northerly of Tully Road.

Existing Zoning	A(PD) Planned Development
Proposed Zoning (Pending)	A(PD) Planned Development (File No. PDC09-015)
Existing General Plan	Combined Industrial/Commercial
Proposed General Plan	High Density Residential (25-50 DU/AC)
Council District	7
Annexation Date	August 23, 1994 (Monterey Park No. 102)
SNI	N/A
Redevelopment Area	Monterey Corridor
Specific Plan	N/A

Aerial Map N ↑



GENERAL PLAN



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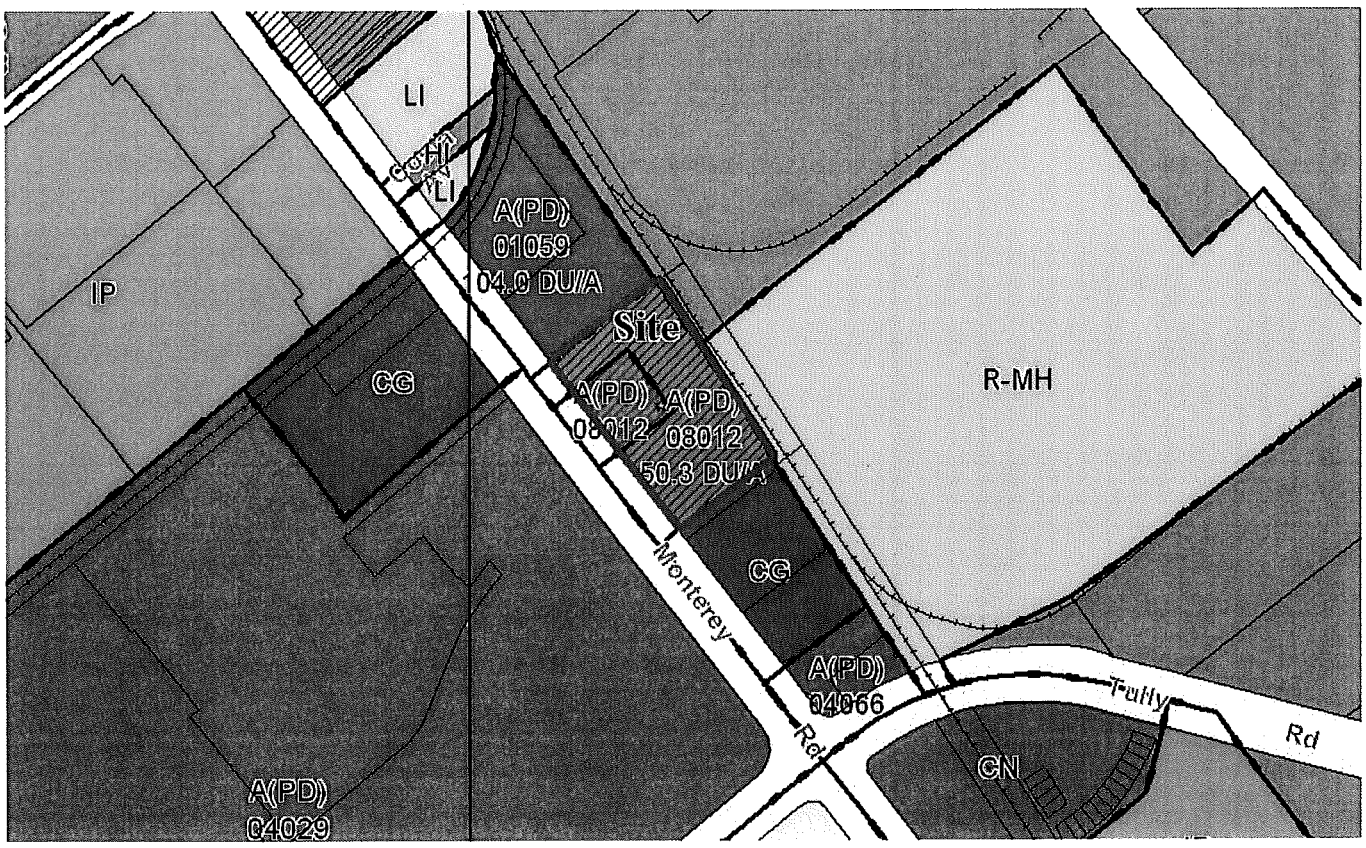

RECOMMENDATION

Planning staff recommends no change to the San Jose 2020 General Plan Land Use/Transportation Diagram land use designation on a 2.88-acre site. Employment land offsets are available to facilitate the change to High Density Residential (25 – 50 DU/AC), if recommended by the Commission.

If the Commission recommends and/or the Council approves the land use change to residential, it should be clear that the decision is based on prior City financial commitments for affordable housing on this site, and is not a signal that the Monterey Corridor or other employment lands are now available for conversion.

BACKGROUND AND DESCRIPTION

This is a privately initiated General Plan Amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Combined Industrial/Commercial to High Density Residential (25-50 DU/AC) on a 2.9-acre site located on the east side of Monterey Road, approximately 700 feet northerly of Tully Road.

An associated Planned Development Rezoning (File No. PDC09-015) has been filed on this site to allow for a 100% affordable family apartment development of up to 102 multi-family attached residences, including studios, one, two, and three bedroom units, at a density of 35.2 DU/AC. This zoning application proposes three, 3-story buildings, and one, 2-story parking garage. The new construction would replace an existing Single Room Occupancy facility and restaurant. The proposed zoning would be presented in a staff report to Planning Commission and City Council at a future date, assuming the proposed General Plan Amendment is approved.

In August 2008 and again in Spring 2009, the City of San Jose approved a financial plan for the Emergency Housing Consortium (EHC) which included a $6.2 million loan to Charities Housing to acquire the subject site with the intent of building affordable family housing. The property has a 40-year affordable housing deed restriction.

Site and Surrounding Land Uses

The subject site is currently developed with a 95-unit Single Room Occupancy (SRO) facility known as EHC Markham Terrace and a restaurant. The subject site was prezoned from Unincorporated County to A(PD) Planned Development Zoning District (File No. PDC94-010) when it was annexed in 1994. This zoning allowed the conversion of a motel into a 95-unit SRO facility with a restaurant on the same site.

The subject site is surrounded by another SRO facility to the north, a mobile home park across the abandoned Southern Pacific Railroad spur to the east, a Smart & Final retail building to south, and The Plant, a commercial shopping center, to the west across Monterey Road. There are four major bus routes that operate along Monterey Road (Route numbers 66, 68, and 304) and one along Curtner Avenue /Tully Road (Route 26).

The SRO development located to the north of the subject site was approved under a Planned Development Rezoning in December of 2000. This SRO site has a General Plan land use designation of Combined Industrial/Commercial. This SRO project and the one that exists on the subject site were found in conformance with the General Plan under Housing Policy No. 5 that encourages SRO developments as they are a necessary component of the City's affordable housing stock. One of the Discretionary Alternate Use Policies was employed for Land Use/Transportation Diagram purposes.

In addition, an SRO use is permitted with the approval of a Conditional Use Permit in the Commercial Pedestrian, CN – Commercial Neighborhood, and the CG – Commercial General Zoning Districts because the use is considered to be more commercial in nature and similar to a hotel use. The two SROs were not approved with Conditional Use Permits, but with Planned Development zonings because of a need to modify development standards from what is permitted in a conventional zoning district. Charities Housing is now pursuing an affordable family development, necessitating the General Plan land use change for the subject site.

ANALYSIS

Land Use Designations

The site's existing Combined Industrial/Commercial land use designation is intended for commercial, office, or industrial developments or a compatible mixture of these uses. As shown on the General Plan map, located on page 2 of this report, this designation makes up a majority of the land uses in the surrounding area.

The proposed High Density Residential (25-50 DU/AC) land use designation is typified by three-to four-story apartments or condominiums over parking. The designation also provides the ability for mixed use development, particularly for locations within a reasonable walking distance of passenger rail stations. The subject site is located beyond 2,000 feet from the Curtner Light Rail Station.

Monterey Corridor Redevelopment Area

The subject site is located within the Monterey Corridor Redevelopment Area. The Monterey Corridor is the third largest industrial area by employment and project area size, has one of the largest concentrations of employers in San Jose, and currently enjoys the lowest vacancy rates of all the City's employment areas.

Businesses located in the Monterey Corridor include both heavy and light industrial uses as well as business support and people-serving industries, such as recycling, roofing, auto services, cement manufacturing, tile manufacturing, sheet metal fabrication, transportation services, and other general contractor firms that are suppliers to the residential and industrial construction companies operating in the Monterey Corridor. Some retail and hotel businesses are also located within Monterey Corridor. The Plant contains major retail uses, providing a shopping destination to neighborhoods outside the Corridor and generating sales tax for the City.

General Plan Goals and Policies

The proposed change in land use from commercial/industrial to residential on the subject site is inconsistent primarily with the Economic Development Major Strategy. The purpose of the Economic Development Major Strategy is to make San Jose a more balanced community by encouraging more commercial and industrial growth to balance existing residential development by creating and retaining job centers. The proposed land use change to residential would work against balancing the existing residential development as there would be less land dedicated to job generating uses.

The proposed land use change would facilitate the development of a 100% affordable housing project, which is consistent with the General Plan's Housing Goal to increase housing opportunities for lower income families; however, the location is not an ideal livable environment for families, another General Plan Housing Goal. The subject site is located on Monterey Road, a State Highway, with no direct access or connection to an existing neighborhood, and it is within a largely industrial and commercial area. The

Housing Goal also states that the City's housing supply should be increased through the development of vacant land and underutilized properties that are already designated for residential use. A change in land use from commercial/industrial to residential does not support this goal.

Framework for Preservation of Employment Lands

On October 23, 2007, the City Council adopted the "Framework for Preservation of Employment Lands" to preserve remaining industrial and commercial lands in the City of San José. This policy, together with a memorandum from the Mayor and a couple of Council members, provide the criteria to maintain no net loss of employment capacity on lands designated in the San José 2020 General Plan for commercial or industrial uses.

The proposed General Plan Amendment is requesting to change designated employment lands and is therefore subject to the criteria in the Framework. One of the key provisions is to maintain no net loss of light or heavy industrial acreage. In order to maintain no net loss of light industrial acreage, which is an intended use under the Combined Industrial/Commercial land use designation, a General Plan Amendment for a reverse conversion would be required to offset the loss of employment acreage. Recently, Council has approved land use amendments that converted non-employment land to an industrial land use designation. These recent amendments were not associated with the conversion of other employment lands to residential use, resulting in a bank of acreage that could be used to offset the conversion of the subject site to residential. Using the "banked" acreage would satisfy this criterion of the Framework.

While a reverse conversion was initially contemplated, that reverse conversion General Plan amendment application was withdrawn (GP09-06-01). The majority of the fees paid for that application are in the process of being refunded to the Housing Department.

The remaining Framework criteria seek to protect key employment areas for employment uses, maintain employment lands for non-residential uses, and retain or increase job capacity. The subject site is located within the key employment area of the Monterey Corridor. If the proposed amendment is approved, future residential development would need to be carefully designed so as not to negatively impact other businesses within the Corridor, resulting in a loss of jobs and a pressure to convert additional acreage.

Financial Commitments

The Council's decisions to assist EHC with its financial situation served to benefit an important partner in the fight against homelessness. Details about these commitments are contained in the attached Housing Department's memorandum.

The funding decisions were not land use decisions. The Department of Planning, Building and Code Enforcement did not participate in the Council discussion of financing decisions and the potential pressure they would place on future land use considerations.

Conclusion

Now, the item before the Commission, and ultimately the Council, is the land use question.
Prior to and upon the filing of this General Plan amendment, Planning staff clearly communicated to the Housing Department and others in the City Administration the concern about family housing on Monterey Road. Specifically, staff explained that the amendment would need to comply with the Employment Lands Framework, demonstrating that there is a level playing field for private housing proposals and those affiliated with the City. The staff recommendation on the proposed land use change is consistent with these communications.

Until very recently, the City of San Jose was faced with many proposals to convert industrial land to housing. If the Commission recommends and/or the Council approves the land use change to residential, it should be clear that the decision is based on financial arrangements and is not a signal that the Monterey Corridor or other employment lands are now available for conversion.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration (MND), which was adopted on May 27, 2009, states that the proposed General Plan Amendment and Planned Development Rezoning will not have a significant effect on the environment.

The primary issues addressed in the Initial Study include the potential impacts of the physical development of the site on biological resources and noise. The MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. The mitigation measures will be included in the development standards of the Planned Development Zoning. The entire MND and Initial Study are available for review on the Planning web site at: www.sanjoseca.gov/planning/eir/MND.asp

PUBLIC OUTREACH/INTEREST

The property owners and occupants within a 500-foot radius were sent public hearing notices for the Planning Commission and City Council hearings. This staff report has been posted on the City's web site. Signage has been posted at the site to inform the public about the proposed change. Staff has been available to discuss the proposal with interested members of the public.

On December 17, 2008, a community meeting was held at the Hampton Inn & Suites on Old Tully Road. Three people were in attendance. Those in attendance were concerned about the safety of the driveway on Monterey Road, but generally supported housing on the site.

General Correspondence

In addition, one e-mail was received from an adjacent business owner who opposes a residential use as there are problems with the residents at the existing SRO.

A memorandum from the Housing Department is attached providing additional background on the funding commitment and other information.

Tribal Consultation

This General Plan amendment is subject to the State of California Tribal Consultation Guidelines and was referred to the tribal representatives. To date, no comments from tribal representatives on the subject General Plan amendment request have been received.

Project Manager: Lesley Xavier **Approved by:** Laurel Prevetti **Date:** 11-2-09

Owner/Applicant:	Attachments:
Owner: Emergency Housing Consortium 507 Valley Way Milpitas, CA 95035 Applicant: Charities Housing 465 S. 1st Street San Jose, CA 95113	Housing Department Memorandum

PC AGENDA: 11-4-09
ITEM: 6.a.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PLANNING COMMISSION **FROM:** Leslye Krutko

SUBJECT: SEE BELOW **DATE:** October 28, 2009

Approved Date

COUNCIL DISTRICT: 7
SNI AREA: N/A

SUBJECT: GP08-07-04. MARKHAM TERRACE GENERAL PLAN AMENDMENT TO CHANGE THE SAN JOSE 2020 GENERAL PLAN LAND USE/ TRANSPORTATION DIAGRAM DESIGNATION FROM COMBINED INDUSTRIAL/COMMERCIAL TO HIGH DENSITY RESIDENTIAL (25 - 50 DU/AC) ON A 2.88-ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD APPROXIMATELY 700 FEET NORTH OF TULLY ROAD

REASON FOR SUPPLEMENTAL

The Housing Department was recently informed that Planning staff intended to recommend denial of the proposed General Plan Amendment. The Housing Department is providing supplemental information to the original Planning Department staff report to ensure that the Planning Commission is aware of all the consequences of a denial. Please see the BACKGROUND and ANALYSIS sections below for further information.

RECOMMENDATION

The Director of Housing recommends the Planning Commission approve the proposed General Plan Amendment for the following reasons:

1. In 2008, the City Council approved a Planned Development Zoning for the site to allow rehabilitation or reconstruction of the existing 95 SRO units, and determined the PD Zoning conforms to the General Plan using the *Discretionary Alternate Use Policy for Location of Projects Proposing 100% Affordable Housing.*
2. In 2009, the City Council authorized the Director of Housing to negotiate and execute a forbearance agreement between EHC Lifebuilders and its creditors, and other related actions to enable the subject site to be sold for affordable housing along with eight other properties to strengthen EHC's financial position.
3. In 2009, the City Council approved a funding commitment of up to $6,280,000 of Low and Moderate Income Housing Funds (20% funds) to Charities Housing Development Corporation (Charities Housing) to acquire the subject site from EHC Lifebuilders (EHC) so it could be redeveloped for affordable housing.

4. Denial of the General Plan Amendment would result in non-compliance with the Forbearance Agreement. This would ultimately result in foreclosure by private lenders on the Markham Terrace site and other scattered site properties in San José owned by EHC - seriously jeopardizing the continued viability of EHC.
5. A repayment obligation by EHC and/or the City of $4.68 million due to HUD because non-housing uses would violate the terms of HUD's previous funding, for which no payment source exists.
6. Denial of the Amendment would result in an additional loss to the City of $7.8 million in 20% Housing funds for site acquisition, tenant relocation, and predevelopment funding that have been committed or spent on this project.

OUTCOME

Approval of the recommended action would enable EHC to strengthen its financial position by selling the subject site to Charities Housing so EHC could continue its mission to provide homeless shelter and services in the City. It would also preserve the existing number of affordable units on the site by facilitating the replacement of 95 dilapidated single-room occupancy (SRO) living facility units with 102 new, affordable residences. The recommended action would also preserve the City's investment in affordable housing on the site totaling approximately $7.8 million.

BACKGROUND

The 2.88-gross acre site contains an existing restaurant and an existing single-room occupancy (SRO) living unit facility containing 95 units. In 1994, the City Council prezoned and annexed the subject site to allow the conversion of an existing motel constructed in 1960 to an SRO. The SRO provides affordable housing to Extremely Low Income households earning up to 30% of the County Area Median Income (AMI). The subject site has a 55-year affordability restriction that requires affordable housing be provided on the site until 2049.

The City Council has taken several recent actions to allow the site to be sold and redeveloped for affordable housing so that (1) EHC can strengthen its financial position and continue to provide homeless shelter and services, (2) the existing number of affordable units on the site could be maintained, and (3) the City's investment of approximately $8,880,000 in the site could be protected. The background to date includes:

- On June 17, 2008, the City Council adopted an ordinance to approve the existing A(PD) Planned Development Zoning District for the site to allow (1) subdivision of one parcel into two lots, and (2) rehabilitation or reconstruction of the existing 95 SRO units on the subject site. Council determined the PD Zoning conforms to the General Plan using the *Discretionary Alternate Use Policy for Location of Projects Proposing 100% Affordable Housing.*
- On October 14, 2008, Charities Housing Development Corporation filed the subject General Plan Amendment file no. GP08-07-04. The Planning 30-day letter directed the

applicant to file an offset General Plan Amendment to comply with the *Framework for the Preservation of Employment Lands.*

- On January 27, 2009, the City Council authorized the Director of Housing to negotiate and execute a forbearance agreement between EHC and its creditors, and other related actions including (1) Approving the Relocation Impact Statement and Last Resort Housing Plan for EHC's Markham Terrace property at 2112 Monterey Road, (2) Authorizing the Director of Housing to expend up to $2,100,000 for the relocation of tenants at the Markham Terrace site, and (3) Authorizing the Director of Housing to negotiate and execute a $500,000 predevelopment loan to Charities Housing, or its designated affiliate, for the redevelopment of the Markham Terrace site.
- On February 13, 2009, the Housing Department filed an offset General Plan Amendment from Medium High Density Residential (12-25 DU/AC) to Combined Industrial/ Commercial on a four-acre site located at the northwest corner of Lincoln Avenue and Lonus Street. The Director of Planning agreed to initiate the General Plan Amendment, or otherwise be the applicant. Planning staff has not processed the application despite receiving $21,534 in filing fees from the Housing Department.
- On March 26, 2009, Charities filed Planned Development Zoning file no. PDC09-015 from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District on the subject site to allow removal of the existing restaurant and five SRO buildings, and development of up to 102 affordable multifamily attached residences on the subject site.
- On May 26, 2009, the Director of Planning adopted a Mitigated Negative Declaration for both the General Plan Amendment file no. GP08-07-04 and the Planned Development Zoning file no. PDC09-015.
- On August 4, 2009, the City Council approved a funding commitment of up to $6,280,000 of Low and Moderate Income Housing Funds (20% funds) to Charities Housing, or its legal affiliate, for a land acquisition loan to acquire the Markham Terrace site from EHC.
- On October 1, 2009, Planning staff informed the Housing Department that it intended to recommend denial of the proposed General Plan Amendment.
- On November 3, 2009, relocation of all existing tenants, at a cost of approximately, $1,000,000, is scheduled for completion on the subject site.

ANALYSIS

Connection to EHC Forbearance Agreement

As stated above, the City Council has authorized the Director of Housing to negotiate and execute a forbearance agreement between EHC and its creditors in lieu of foreclosure of eight properties in addition to Markham Terrace. A total of nine properties owned by EHC, including Markham Terrace, must be sold to avoid foreclosure so that EHC can strengthen its financial position.

The City Council also approved a relocation plan for the Markham Terrace tenants. It authorized the Director of Housing to expend up to $2,100,000 for the relocation of tenants at the Markham

Terrace site. To date, the City has spent approximately $1,000,000 to relocate the existing tenants. The relocation is scheduled to be completed by November 3, 2009.

The City Council also authorized the Director of Housing to negotiate and execute a $500,000 predevelopment loan to Charities Housing, or its designated affiliate, for the redevelopment of the Markham Terrace site with 102 affordable housing units. Predevelopment costs have already been incurred and disbursement from this loan to reimburse Charities Housing will occur in November 2009.

On May 26, 2009, environmental clearance was completed for the project. On August 4, 2009, the City Council approved a funding commitment of up to $6,280,000 of Low and Moderate Income Housing Funds (20% funds) to Charities Housing, or its legal affiliate, for a land acquisition loan to acquire the Markham Terrace property from EHC.

Denial of the General Plan Amendment would result in (1) potential foreclosure on the Markham Terrace site and other scattered site properties in San Jose owned by EHC, and (2) a loss to the City of:

- $1,000,000 for relocation of tenants at Markham Terrace;
- $500,000 for a predevelopment loan to Charities Housing for redevelopment of the Markham Terrace site with affordable housing;
- $6,280,000 of 20% funds for land acquisition of the Markham Terrace site, as there would be no construction loan to serve as a takeout for this acquisition loan obligation.

Necessity to Reconstruct the Existing Housing

The five existing SRO buildings on the subject site were converted from an old motel constructed in 1960. The buildings have significant deferred maintenance issues such as deteriorated foundations, framing, fixtures, and siding. In 2008, the Housing Department had a physical needs assessment prepared to evaluate the structural work and associated costs necessary to rehabilitate the buildings. The report concluded the cost of rehabilitating the existing units was nearly equivalent to the cost of redeveloping the site with new affordable housing units.

As a result, the Housing Department concluded it would be more cost-effective to pursue replacement of the affordable units than to rehabilitate the existing buildings that were never designed to function as permanent multifamily residences. The Housing Department also determined that a mix of affordable units would be preferable to replacing the 95 existing SRO units because there are 300 existing SRO units located adjacent to the project, and that adding 95 new SRO units would not be in the best interest of the surrounding neighborhood.

Compensation Required

The subject site contains a long-term affordability restriction that requires it to be used for affordable housing until 2049. The Housing Department believes it would be economically infeasible to convert the site to an industrial or commercial because to do so would require the

developer to reimburse the City for approximately $7.8 million invested in the site to date for land acquisition costs, tenant relocation, and predevelopment costs.

If the subject site were not used for eligible affordable housing, in violation of federal restrictions already recorded on the site, EHC would be required to reimburse the U.S. Department of Housing and Urban Development (HUD) a total of $4.7 million in principal and interest. There are no sources for repayment of this obligation so the liability would likely fall on the City as federal funding recipient.

Further, were the site to not house affordable residences, the City would be required under law to replace nearly 100 units of affordable housing *on another site* in the City with non-20% funds. This would be extremely difficult as there is no other funding source with sufficient funds that could be used to satisfy this obligation.

Project Consistency with the Framework for the Preservation of Employment Lands

On October 23, 2007, the City Council approved the *Framework for the Preservation of Employment Lands* (Framework), as recommended in the Council memo from Mayor Reed and Council members Nguyen, Pyle, and Williams, to maintain the City's supply of non-residentially designated lands supporting private sector employment. The Framework is intended to preserve the City's remaining employment land acreage and floor area capacity for various business operations to maintain a viable economy so that the City can provide municipal services to its residents.

The Framework applies to any General Plan Amendment that proposes the conversion of any category of employment lands, including industrial or commercial lands, to non employment lands. It contains strategies to preserve employment lands that (1) maintain no net loss of Light or Heavy Industrial acreage, (2) discourage conversion to non-employment uses in key employment areas, (3) intensify uses to retain job capacity on sites currently designated for Industrial Park, Combined Industrial/Commercial, or other employment uses, (4) discourage new residential development on sites converted from Industrial to Commercial land use designations, and (5) retain citywide job capacity.

The City Council could approve the proposed General Plan Amendment in a way that conforms to the Framework by (1) utilizing credit for previously approved offset or "reverse conversion" General Plan Amendments totaling 2.88 acres that the Director of Planning said are currently available, and (2) finding that approval of the General Plan Amendment would result in the following outcomes:

- The sale of the subject site from EHC to Charities Housing would strengthen EHC's financial condition so that it could continue to provide homeless shelter and services in the San José;
- The existing 100% affordable housing units on the subject site would be maintained as legally required until at least 2049, or until 2065 if the City Council approves a loan of affordable housing funds to redevelop the site for 102 new affordable housing units;
- The City's $7.8 million investment in the subject site would be protected.

- A total of $4.7 million in principal and interest would not need to be reimbursed to the U.S. Department of Housing and Urban Development (HUD) if the subject site is used for eligible affordable housing; and,
- The City would incur no cost for moving the affordability restrictions in accordance with California Redevelopment Law.

POLICY ALTERNATIVES

Alternative #1: Deny the proposed General Plan Amendment so there is no change in the General Plan.

Pros: The existing Combined Industrial/Commercial land use designation would be maintained on the 2.88-acre site so that it could be used for industrial or commercial land uses.

Cons: The City would lose approximately $7.8 million invested in the site to date. The City would also be required to move affordability restrictions for 95 units onto another site in the City that could not be funded with 20% funds. In addition, the developer or the City would be required to reimburse the U.S. Department of Housing and Urban Development (HUD) a total of $4.7 million in principal and interest if the subject site were not used for affordable housing.

Reason for not recommending: The Housing Department believes it is economically infeasible to reimburse the City's and HUD's investment in affordable housing on the site, and to move the existing affordable restrictions on the subject site so that it could be used for an industrial or commercial use.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 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)**
- ☐ **Criterion 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 for Pending Land Use and Development Proposals* by holding community meetings and publishing notice in appropriate newspapers as described in the Planning staff report.

COORDINATION

The Housing Department coordinated the preparation of this memorandum with the City Attorney's office.

FISCAL/POLICY ALIGNMENT

The San Jose 2020 General Plan Housing Major Strategy overall objective is to provide a wide variety of housing opportunities to meet the needs of all the economic segments of the community in neighborhoods which are stable and adequate urban services. The recommendation to approve the proposed General Plan Amendment furthers the Housing Major Strategy in that it would 102 affordable housing units for singles, couples, and families on an infill site where adequate urban services are available.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Mitigated Negative Declaration, GP08-07-04, PDC09-015

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Director, Housing Department

For questions please contact Leslye Krutko, Director, 535-3851