COUNCIL AGENDA: 02-23-10
ITEM: 11.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: February 11, 2010

COUNCIL DISTRICT: 7
SNI AREA: N/A

SUBJECT: GP09-07-02. GENERAL PLAN AMENDMENT REQUEST TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM DESIGNATION TO ADD MIXED INDUSTRIAL OVERLAY TO AN EXISTING HEAVY INDUSTRIAL LAND USE DESIGNATION ON A 3.95 GROSS-ACRE SITE.

RECOMMENDATION

The Planning Commission voted 5-1-1 (Campos opposed, Kamkar absent) to recommend that the City Council deny the General Plan Amendment request to change the Land Use/Transportation Diagram designation to add Mixed Industrial Overlay to an existing Heavy Industrial land use designation on a 3.95 gross-acre site, as recommended by staff.

OUTCOME

The denial of this General Plan Amendment would result in no change to the Land Use/Transportation Diagram for the subject property.

BACKGROUND

The applicant submitted the proposed General Plan Amendment on September 24, 2009. Planning staff provided the applicant with a letter on October 23, 2009, which identified key initial issues and staff's position on the project. The key initial issues included lack of conformance with the Goals and Policies of the San Jose 2020 General Plan and the City's Framework for Preservation of Employment Lands, as well as requirements for conformance with CEQA. Staff recommended that the application could either be withdrawn or the application could be expeditiously scheduled for the necessary public hearings with a recommendation of denial, which does not require environmental clearance.

When a proposed land use amendment to the San José 2020 General Plan is fundamentally inconsistent with adopted Council policies, the Administration may bring the amendment to the Planning Commission for Early Consideration of a recommendation to the City Council for denial or continued processing. This approach provides an opportunity for the Planning Commission and City

Council to consider identified policy issues to determine (1) whether such an application should be denied based upon those fundamental inconsistencies and inadequacies prior to completion of environmental review, or (2) whether any such application should be directed for complete processing, including environmental review.

On January 27, 2010, the Planning Commission held a public hearing to consider the proposed General Plan Amendment. This application is a result of a compliance order from the Code Enforcement Division, as the applicant has been operating an illegal assembly use within several of the industrial condominiums at the subject site. Events, such as weddings, banquets, quinceaneras, and baptisms, have been held at the site since at least July 15, 2009. These unpermitted uses posed an immediate threat to life and safety to the occupants as well as to the public at-large.

The Commission had questions regarding the types of jobs that would be created by allowing the Mixed Industrial Overlay, how the Overlay would affect future industrial businesses in the area, and would current zoning allow the unpermitted uses that have occurred at the subject property. Staff explained that the addition of the Mixed Industrial Overlay conflicts with the City's Framework for Preservation of Employment Lands , and is not supported by the Economic Development Major Strategy because it would compromise the surrounding employment lands that are also designated Heavy Industrial.

The applicant, Michael Luu, stated that there are no real heavy industrial uses on South 10th Street, and that assembly uses would be held on evenings and weekends as to not impact industrial uses. Mr. Luu also stated that the commercial uses that he wishes to legalize would be temporary because the site would be more valuable when industrial businesses want to move in.

Six members spoke on behalf of the project, stating that building has been an asset to the community, being used for assemblies, banquets, youth leadership development, publishing, and radio broadcasting. It was suggested by one speaker that the City provide better guidance for allowing assembly uses.

Commissioner Jensen made a motion to recommend denial of the proposed General Plan Amendment, followed by Commissioner Kamkar making a motion, that was seconded, to direct staff to continue processing the application and complete environmental review for consideration of the amendment at a later General Plan hearing. There was a vote of 4-2-0-1 (Platten and Do opposed, Zito abstained).

Later in the meeting, Commissioner Jensen realized she had cast her vote contrary to her position due to confusion regarding which motion was being voted on. A motion was then made to reconsider the item and continue it to the February 10, 2010 meeting because the applicant and other interested parties had already left the meeting. The Planning Commission voted in support of the motion to reconsider their vote and continue the item 5-1-0-1 (Kamkar opposed, Zito abstained).

On February 10, 2010, the Planning Commission voted 5-1-1 (Campos opposed, Kamkar absent) to recommend that the City Council deny the proposed General Plan Amendment.

ANALYSIS

For complete analysis, please see original staff report (attached).

EVALUATION AND FOLLOW-UP

None required should City Council deny the proposed General Plan Amendment. Alternatively, Council could direct staff to continue processing the application and complete environmental review for consideration of the amendment at a later General Plan hearing.

POLICY ALTERNATIVES

Not applicable.

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. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. 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 Code Enforcement and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is not consistent with applicable General Plan policies as further discussed in attached staff report.

CEQA

CEQA: The proposed project has not completed environmental clearance as required by CEQA. Pursuant to Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency rejects or disapproves. A CEQA Initial Study would be required to determine the level of environmental clearance required under CEQA for the City Council to consider approval of the General Plan amendment request.

Jean Hamilton

JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Jeannie Hamilton, Planning Division Manager, at 408-535-7850

Attachment

COUNCIL AGENDA: 02-23-10
ITEM: 11.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: **SEE BELOW**

DATE: February 3, 2010

COUNCIL DISTRICT: 7
SNI: None

TRANSMITTAL MEMO

GP09-07-02. General Plan Amendment request to change the Land Use/Transportation Diagram designation to add Mixed Industrial Overlay to an existing Heavy Industrial land use designation on a 3.95 gross-acre site, located at 2159 South 10th Street. CEQA: Incomplete.

The Planning Commission will hear this project on February 10, 2010. 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.

Jean Hamilton

For JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jean Hamilton at (408) 535-7850.

P.C. Agenda: 02-10-10
Item No. 3.a.
Deferred from 01-13-10 & 01-27-10

EARLY CONSIDERATION OF GENERAL PLAN AMENDMENT

STAFF REPORT

PLANNING COMMISSION

File No.: GP09-07-02 **Submitted: 9-24-09**

PROJECT DESCRIPTION: General Plan Amendment request to change the Land Use/Transportation Diagram designation to add Mixed Industrial Overlay to an existing Heavy Industrial land use designation on a 3.95 gross-acre site.

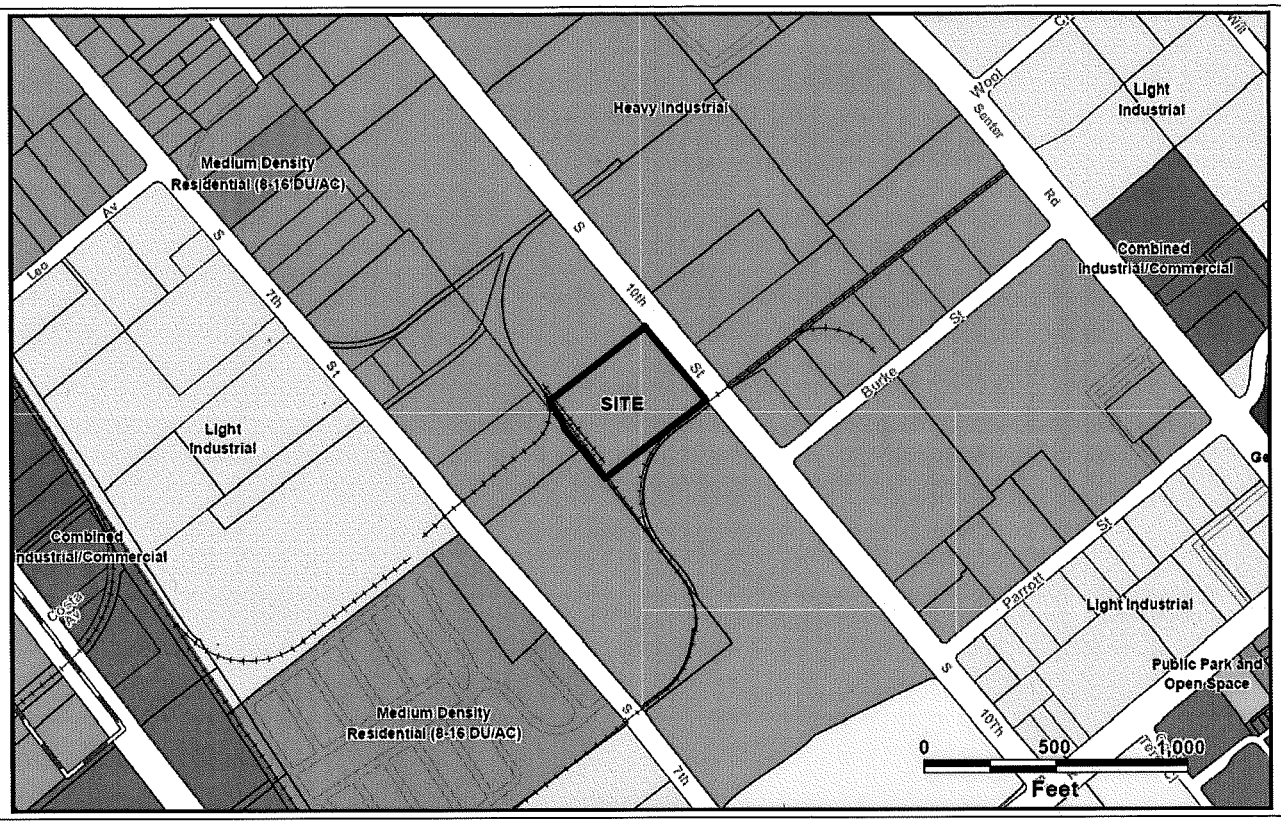
LOCATION: 2119-2159 S. 10th Street

Existing Zoning	HI Heavy Industrial
General Plan	Heavy Industrial
Proposed General Plan	Heavy Industrial with Mixed Industrial Overlay
Council District	7
Annexation Date	January 2, 1957
SNI	N/A
Redevelopment Area	N/A

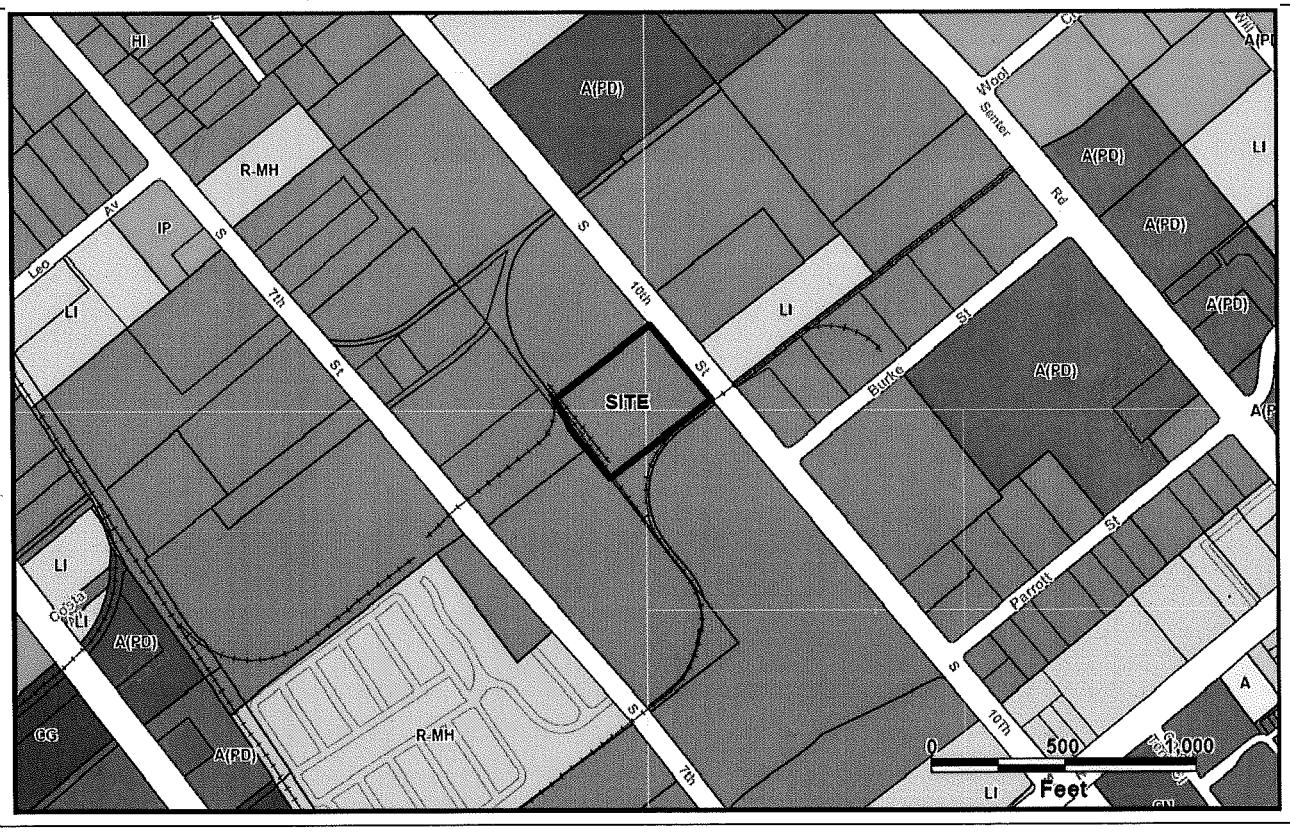
Aerial Map

N

GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends **no change** to the General Plan General Plan Land Use diagram for the following reasons:

1. The proposed General Plan Amendment to add the Mixed Industrial Overlay is not consistent with the Economic Development Major Strategy in the San José 2020 General Plan.

2. The proposed General Plan Amendment is not consistent with the City's Framework, as a Guideline, for Evaluating Proposed Conversions of Employment Lands to Other Uses

3. The proposed General Plan Amendment will compromise the industrial employment lands surrounding the subject property.

The Planning Commission has the following options to recommend to the City Council:

a. Denial of the proposed General Plan Amendment, or

b. Direct staff to continue processing the application and complete environmental review for consideration of the amendment at a later General Plan hearing.

EARLY CONSIDERATION

When a proposed land use amendment to the San José 2020 General Plan is fundamentally inconsistent with adopted Council policies, the Administration may bring the amendment to the Planning Commission for Early Consideration of a recommendation to the City Council for denial or continued processing. This approach provides an opportunity for the Planning Commission and City Council to consider identified policy issues to determine (1) whether such an application should be denied based upon those fundamental inconsistencies and inadequacies prior to completion of environmental review, or (2) whether any such application should be directed for complete processing, including environmental review.

A Planning Commission recommendation and Council direction regarding the continued processing of such amendments could potentially save applicants and the City time and money by providing a decision of denial prior to the applicant's submittal of documents and related expenditures thereon required to complete environmental clearance. A Council decision to direct staff to complete processing for later consideration during a General Plan Amendment public hearing would in no way indicate how the Council might ultimately vote upon that amendment during that hearing – such a decision would indicate only that the Council is not opposed to considering such a proposal with complete environmental review at a later General Plan hearing date.

The applicant submitted the proposed General Plan Amendment on September 24, 2009. Planning staff provided the applicant with a letter on October 23, 2009, which identified key initial issues and staff's position on the project. The key initial issues included lack of conformance with the Goals and Policies of the San Jose 2020 General Plan and the City's Framework for Evaluating Proposed Conversions of Employment Lands to Other Uses, as well as requirements for conformance with CEQA. Staff recommended that the application could either be withdrawn or the application could be expeditiously scheduled for the necessary public hearings with a recommendation of denial, which does not require environmental clearance.

BACKGROUND

This application is a result of a compliance order from the Code Enforcement Division, as the applicant has been operating an illegal assembly use within several of the industrial condominiums at the subject site. Events, such as weddings, banquets, quinceaneras, and baptisms, have been held at the site since at least July 15, 2009. These unpermitted uses posed an immediate threat to life and safety to the occupants as well as to the public at-large.

Code Enforcement received a request from Michael Luu on August 28, 2009 that the City of San Jose allow continued assembly uses at 2139-2143 pending the decision on the Mixed Industrial Overlay application. Code Enforcement advised Mr. Luu that temporary continued assembly use would be considered only if all of the following conditions were met:

- an agreement not to rent or lease any of the other units for any unpermitted use other than those permitted in the Heavy Industrial Zoning District; an agreement not to alter or modify any of the other units without prior Planning or Building Division approval;
- a statement from a licensed engineer that the theatrical lighting standard and mechanical ductwork systems in 2143 are supported and braced correctly;
- elimination of the illegal kitchen;
- and an agreement not to allow occupancy at 2139 S. 10th Street to exceed 49 occupants since this unit did not include required secondary exiting, until a temporary exiting corridor plan was reviewed and approved by the Building Division

Despite that understanding, Mr. Luu subsequently leased 2139 & 2143 S. 10th Street for assembly uses multiple times, in violation of the Zoning Ordinance, and illegally accommodating up to 400 people. Mr. Luu further agreed not to physically modify or alter any of the remaining condominium units without submitting plans to the Building Division. Despite this agreement, Mr. Luu subsequently modified 2127 S. 10th Street, leased this condominium unit for assembly purposes, without the requisite permits from the Planning and Building Divisions. In addition, the unpermitted modifications to 2127 S. 10th Street did not include the required secondary exit. In addition, Mr. Luu was in the process of constructing an exit corridor from 2139 S. 10th Street through an adjoining unit, also without Building or Fire Department review. Code Enforcement explained that continuing the assembly uses posed an immediate health and safety concern to the occupants, as well as the public, and ordered them to cease and desist.

In response to the Code Compliance order issued by the City of San Jose, on September 24, 2009, Mr. Michael Luu of Provident Holdings & Investments, LLC initiated the proposed General Plan Amendment to add the Mixed Industrial Overlay to the subject parcel. The Mixed Industrial Overlay would broaden the list of uses that could be considered with a Conditional Use Permit in the HI Heavy Industrial zoning district.

In a letter dated October 27, 2009 (see attached), Code Enforcement requested of Mr. Luu's attorney that the property owner cease and desist using the subject property for assembly uses by no later than October 30, 2009. The letter informed the attorney that if Mr. Luu continued to use the subject property for assembly uses, the City of San Jose would issue a formal Cease and Desist order, followed by a hearing before the San Jose Appeals Hearing Board.

On November 13, 2009, due to the continued unpermitted use of these condominium units for assembly type uses, Code Enforcement posted condemnation notices at 2127, 2139 and 2143 S. 10th Street in order to prevent any further illegal assembly uses at the subject property. Then on November 14, 2009, Code Enforcement conducted a weekend inspection and found 2127 and 2143 S. 10th Street were both used for banquet hall/assemblies accommodating approximately 350 and 400 people, respectively. Given the

repeated failure to comply with the condemnation order, Cease and Desist Order and continuing violations of the Zoning Ordinance and Building Code. Therefore, on December 10, 2009, the City of San Jose sought and received an Order to Show Cause and Temporary Restraining Order to abate the ongoing nuisances at the subject property.

In the HI Heavy Industrial Zoning District with a Mixed Industrial Overlay or Combined Industrial/Commercial General Plan Land Use Designation, all assembly uses require a Conditional Use Permit. With out the respective General Plan Land Use Designations, no assembly uses are permitted. If the General Plan Amendment were to be approved, a Conditional Use Permit would be required for any assembly use prior to commencement of such use.

The 3.95 acre site is located on the west side of South 10th Street and is currently developed with an industrial building of 128,000 square feet of floor area, which has been subdivided into 12 industrial condominiums. Other uses at the site include warehouses, wholesale establishments, and storage. The surrounding properties have various industrial uses.

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 for Evaluating Proposed Conversions of Employment Lands to Other Uses criteria.

San José 2020 General Plan

The Mixed Industrial Overlay is intended for areas that already contain or are surrounded by areas with a mixture of primarily industrial with compatible commercial or public/quasi-public uses. The addition of the Mixed Industrial Overlay designation to the subject site would compromise the integrity of an area reserved exclusively for industrial uses. To enable the conversion of industrial land in this location would not be consistent with several General Plan Economic development goals and policies, as further discussed below.

Economic Development Major Strategy

The Economic Development Major Strategy strives to make San Jose a more "balanced" community by encouraging more industrial and commercial development to balance existing residential development. More specifically, it is designed to maximize the economic potential of the City's land resources while providing employment opportunities for San José 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-industrial uses, including commercial uses, schools, daycare, or assembly could impact the future retention of the existing adjacent heavy industrial businesses and discourage the siting of other industrial uses in the area.

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 already limited industrial land resources and discourage the continued operation of existing industries and location of new industries from locating in the Heavy Industrial areas surrounding the subject site due to the potential for incompatible activities, as further described in this report.

*Economic Development Policy No. 1 s*eeks to obtain and maintain an improved balance between jobs and workers residing in San Jose. Approval of the proposed General Plan Amendment would likely eliminate future industrial employment opportunities on the subject site, and replace them with lower paying service related jobs, or overall fewer jobs, 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 Jose 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. It would facilitate creation of 3.95 acres of non-industrial uses in the middle of a large, relatively intact industrial area.

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: 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. The introduction of non-industrial uses could deter future industrial businesses from locating in the area.

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 uses, it would add to the cumulative loss of the City's limited supply of industrial land, and increase the potential for the adjacent industrially designated sites to seek conversion to non-industrial uses.

Industrial Land Use Policy No. 14: 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.
Industrial Land Use Policy No.15 states, e*xclusively 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 within an area surrounded exclusively by industrial uses.

Employment Lands 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 *Framework* was updated in 2007 to strengthen the industrial land conversions to projects of "Extraordinary Economic Benefit." The *Framework* further states that, given the limited inventory of industrial lands, San Jose 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.

It has been previously determined by the City of San Jose that it is essential to retain heavy industrial lands for production-related jobs, many of which do not require 4-year college degrees. Where it is not feasible to preserve the acreage and job capacity of existing heavy industrial employment lands, then the impact needs to be offset by converting other property that is non-employment land to light or heavy industrial acreage. The *Framework* states that one method for the creation of heavy industrial land capacity is to remove a Mixed Industrial Overlay from a property. Therefore, the proposal to add Mixed Industrial Overlay to a single property which is completely surrounded by other Heavy Industrial properties is in direct conflict with the *Framework*.

Environmental Review

The proposed project has not completed environmental clearance as required by CEQA. Pursuant to Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency rejects or disapproves. A CEQA Initial Study would be required to determine the level of environmental clearance required under CEQA for the City Council to consider approval of the General Plan amendment request.

CONCLUSION

When recommending a General Plan amendment request, there should be compelling evidence that the change is consistent with the General Plan Major Strategies, Goals & Policies. In the case of this proposed General Plan amendment application, no such compelling evidence has been presented and the proposed amendment conflicts with the General Plan Major Strategies, goals and policies, as stated above.

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)**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public. No correspondence from the general public has been received on this proposed General Plan amendment. In the event that the Council eventually decides to amend the General Plan to add the Mixed Industrial Overlay to the parcel, a community meeting will be held to solicit feedback regarding project-specific conditions, in order to ensure neighborhood compatibility.

Project Manager: Avril Baty **Approved by:** Jean Hamilton **Date:** 1-15-10

Owner/Applicant:	Attachments:
Michael Luu, % Provident Holdings & Investments 5689 Algonquin Way San Jose, CA 95138	Letter from Mike Hannon of Code Enforcement to Barton Hechtman dated October 27, 2009

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

October 27, 2009

Mr. Barton G. Hechtman
Matteoni, O'Laughlin & Hechtman
848 The Alameda
San Jose, CA 95126

Dear Mr. Hechtman,

RE: CODE VIOLATIONS AT 2127, 2139, 2143 S 10TH STREET

Please be advised that I am in receipt of your letter, dated October 22, 2009, and for the reasons stated below, request that Provident Holdings and Investments, LLC and Michael Luu cease and desist using the above-referenced property locations for assembly type uses as described in the compliance order (2127 S. 10th Street has not been issued a compliance order to date), issued by the City of San Jose on September 10, 2009, for the following reasons:

- The Planning Division has advised your client, in a letter dated October 23, 2009 to Gerry DeYoung with Ruth and Going Inc., that the proposed General Plan Amendment application, File No. GP-09-07-02, will not be supported. Specifically, staff advises that, "Staff does not support the proposed General Plan Amendment to add Mixed Industrial Overlay on the subject 3.95 acre with a General Plan designation of Heavy Industrial." Staff further advises that, "The Mixed Industrial Overlay is only appropriate for a mixture of primarily industrial with compatible commercial or public/quasi-public uses, which is not the case for the subject property." (A copy of the Planning Divisions letter dated October 23, 2009 is enclosed).

- A preliminary review of the plans submitted to the Building Division indicates several deficiencies in the information presented for the proposed change of occupancy and structural seismic upgrade. A more detailed summary outlining these deficiencies will be sent to Michael Luu once the Building Division has completed its review.

- In consideration for possible continued temporary assembly uses at 2139 S. 10th Street and 2143 S. 10th Street, Michael Luu agreed, while the General Plan Amendment application was pending, not to rent/lease any of the other condominium spaces for any use that was not permitted in the HI Zoning District. Mr. Luu subsequently rented/leased 2127 S. 10th Street for assembly-type uses, in violation of the HI Zoning District.

- Michael Luu further agreed not to modify or alter any of the remaining condominium units without submitting plans to the Building Division. Mr. Luu has subsequently built an exit corridor from 2127 S. 10th Street, through an adjoining condominium unit, without Building or Fire Department review. In addition, Mr. Luu is in the process of constructing an exit corridor from 2139 S. 10th Street, through an adjoining unit, without Building and Fire Department review.

Therefore, Provident Holdings and Investment, LLC and Michael Luu must cease and desist operating any assembly type uses at the subject property immediately. Continuing these condominium uses as assembly use poses an immediate health and safety concern to the occupants, as well as the public.

Please understand that if Provident Holdings and Investments, LLC and Michael Luu continue to use these condominium units for assembly uses, the City of San Jose will issue a formal Cease and Desist order, followed by a hearing before the San Jose Appeals Hearing Board wherein additional orders will be sought including, but not limited to, a recommendation that the City of San Jose be awarded administrative costs and that administrative penalties in the amount of $2,500 per day, per violation, per property, be ordered since the compliance date of September 15, 2009.

Please confirm that Provident Holdings and Investments, LLC and Michael Luu will discontinue the assembly uses by no later than October 30, 2009.

Sincerely,

Michael Hannon, Code Enforcement Official
Planning, Building and Code Enforcement

MH:sck

Enclosure