

**RESOLUTION NO. 74182**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS, MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE ADDITION OF THE HEDDING/OAKLAND-13<sup>TH</sup> INTERSECTION TO THE LIST OF PROTECTED INTERSECTIONS PURSUANT TO CITY COUNCIL POLICY 5-3, FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED**

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San Jose has certified that the Final Environmental Impact Report for the San Jose Flea Market General Plan Amendment and Planned Development Rezoning (the "FEIR") was completed in accordance with the requirements of the California Environmental Quality Act of 1970, as amended, and related state and local guidelines (collectively, "CEQA"); and

WHEREAS, the certification of the FEIR by the Planning Commission was appealed to the City Council; and

WHEREAS, the City Council held a *de novo* public hearing on the certification of the FEIR on April 24, 2007 pursuant to the provisions of Title 21 of the San Jose Municipal Code at which time the Council received the full record of the entire proceedings, took public testimony, and heard additional City staff response related thereto; and

WHEREAS, on April 24, 2007, the City Council of the City of San Jose certified the FEIR as complete and prepared in compliance with CEQA and adopted Resolution No. 73738 in relation thereto; and

WHEREAS, the addition of the Hedding/Oakland-13<sup>th</sup> intersection to the list of protected intersections pursuant to City Council Policy 5-3 requires the City of San Jose ("City") to approve a resolution modifying the list of protected intersections pursuant to City Council Policy 5-3, which action constitutes a Project under CEQA; and

WHEREAS, the project analyzed and more fully described under the FEIR consisted of a Planned Development Rezoning including the following elements:

The project analyzed in the FEIR included the addition of the Hedding/Oakland/13<sup>th</sup> Street intersection to the list of protected intersections

under City Council Policy 5-3 (the addition of this intersection to the City's inventory of protected intersections is hereinafter referred to as the "Project"). The project analyzed in the FEIR also included changing the General Plan land use designation and rezoning of a 120.3 acre site located on both sides of Berryessa Road, just west of Union Pacific Railroad tracks, east of Coyote Creek and north of Mabury Road ("Flea Market Site") to A(PD) Planned Development Zoning District, which would allow the development of up to 215,622 square feet of industrial and/or commercial building space north of Berryessa, up to 152,700 square feet of commercial space south of Berryessa, and a combined total of 2,818 dwelling units north and south of Berryessa (the "Flea Market Project"). Conversely, the minimum amount of development that could occur on the Flea Market Site is a total of 2,580 dwelling units, 71,874 square feet of industrial and/or commercial building space north of Berryessa and a minimum of 91,000 square feet of commercial space south of Berryessa. The only commercial uses proposed south of Berryessa must be incorporated with residential into a mixed-use configuration.

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed Project, the addition of the Hedding/Oakland-13<sup>th</sup> intersection to the list of protected intersections pursuant to City Council Policy 5-3; and

WHEREAS, the City Council of the City of San José intends to take approval actions related to the Project, specifically the adoption of a resolution modifying the list of protected intersections pursuant to City Council Policy 5-3; and

WHEREAS, CEQA requires that in connection with the approval of a Project for which an environmental impact report has been prepared that identifies one or more significant environmental effects, the decision-making body of a lead or responsible agency must make certain findings regarding those significant effects on the environment identified in the environmental impact report; and

WHEREAS, the City Council of the City of San José hereby adopts this resolution, together with any and all exhibits incorporated herein, in recognition of its responsibilities as a lead agency under CEQA.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL hereby finds that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein including the written and oral comments received at the public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment and analysis of the City of San José as Lead Agency for the Project, and designates the Director of

Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113-1905, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project as each impact is described more fully in the FEIR:

## **I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS**

### **A. TRANSPORTATION**

1. **Impact:** With the proposed addition of the Hedding/Oakland-13<sup>th</sup> intersection to the list of protected intersections pursuant to City Council Policy 5-3, traffic congestion would increase at the intersection such that the LOS at the intersection is predicted to fall to LOS F during the AM peak hours and E during the PM peak hours. The proposed Project would allow the LOS to drop below acceptable levels. **(Significant Impact)**

**Mitigation:** There is no feasible mitigation consistent with the City's level of service policy that reduces or avoids this impact.

**Finding:** The list of protected intersections pursuant to City Council Policy 5-3 are proposed to maintain the existing intersection geometries, including adjacent land uses, and to protect other multi-modal transportation facilities (i.e., sidewalks, bicycle lanes, etc.) at these intersections, instead of only maintaining stable traffic flow in these areas. Protecting the intersection makes infeasible the mitigation measures or project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

### **B. NOISE**

1. **Impact:** Noise levels near non-residential uses constructed on the Project site may exceed City guidelines for residential development.

**Mitigation:** None required.

**Finding:** The addition of the intersection to the List of Protected Intersections would result in a less than significant environmental effect as identified in the FEIR. **[Less than Significant Impact]**

**C. AIR QUALITY**

1. **Impact:** Increased congestion will result in increased exhaust emissions.

**Mitigation:** None required.

**Finding:** The addition of the intersection to the List of Protected Intersections would result in a less than significant environmental effect as identified in the FEIR. **[Less than Significant Impact]**

**III. ALTERNATIVES TO THE PROPOSED PROJECT**

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**A. "NO PROJECT" ALTERNATIVE**

1. **Description**

The No Project Alternative consists of not adding Oakland/Hedding-13<sup>th</sup> to the list of protected intersections pursuant to City Council Policy 5-3. In other words, projects such as the Flea Market Project with significant traffic impacts would be able to mitigate through improvements to and expansion of the Oakland/Hedding-13<sup>th</sup> intersection. The improvements required to mitigate the impact of future development at this intersection to a less than significant level during the AM peak hour are the addition of a separate westbound right-turn lane and conversion of the southbound approach to two left turns, a through lane, and a shared through-right lane.

2. **Comparison to Proposed Project**

This alternative would not forbid intersection improvements that adversely impact or diminish alternative transportation facilities, including incremental and substantial changes to pedestrian, bicycle, and transit facilities. The No Project Alternative would continue to require future development to either mitigate traffic flow impacts at Oakland/Hedding-13<sup>th</sup> or to downsize the proposed development in order to result in a less than one percent traffic volume impact and less than four second critical

delay increase. The No Project Alternative would, therefore, reduce the significant traffic impacts at the Oakland/Hedding-13<sup>th</sup> intersection.

As development pressures increase within infill areas of the City, and as future projects impact the operation of this intersection, the pressure to widen this intersection, even at the expense of other transportation modes and amenities, will increase. Therefore, under the No Project Alternative, mitigating future traffic flow impacts at this intersection could result in impacts to existing private development built adjacent to the intersection and/or other transportation facilities, including transit systems and other improvements. Alternatively, under the No Project Alternative, future high-density, infill development projects along transit corridors and major roadways, which are encouraged by General Plan policies, would have to be downsized or denied to avoid nonconformance with the existing Policy.

Compared to the proposed Project, the No Project Alternative would reduce the significant unavoidable traffic impact to the intersection of Oakland Road and Hedding Street during the AM peak hour to a less than significant level. The Mitigate Oakland/Hedding alternative would not result in any new significant impacts, but it might require the use of eminent domain by the City of San Jose, if the right-of-way could not be acquired from willing sellers.

This alternative is environmentally superior to the proposed Project.

### **3. Finding**

The No Project Alternative would allow vehicular-related capacity improvements to occur at the expense of other transportation-related multi-modal facilities and existing private development built adjacent to the intersections. This alternative would also avoid the significant traffic impacts at the Oakland/Hedding-13<sup>th</sup> that would result from future development. However, the No Project Alternative would also avoid the benefits of protecting other transportation modes at this intersection and would not encourage the use of other modes of transportation. In the long-term, the No Project Alternative could actually discourage the types of high-density, infill development planned for in the City's General Plan and encouraged in General Plan policies. Therefore, this alternative is determined to be inconsistent with the project objectives and is rejected as infeasible.

#### **IV. STATEMENT OF OVERRIDING CONSIDERATIONS**

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The City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project.

##### **A. SIGNIFICANT UNAVOIDABLE IMPACTS**

With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated impacts to transportation, as disclosed in the FEIR prepared for this Project. The impacts would not be reduced to a less than significant level by feasible changes or alterations to the Project.

##### **B. OVERRIDING CONSIDERATIONS**

After review of the entire administrative record, including but not limited to the FEIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the City Council finds that specific economic, legal, social, technological and other anticipated benefits of the Project as described in this Resolution outweigh the unavoidable adverse environmental impacts of the Project, and therefore justify the approval of this Project. The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible (including the incorporation of feasible mitigation measures), and finds that the remaining significant, unmitigated or unavoidable impacts of the Project described above are acceptable because the benefits of the Project outweigh them. The City Council finds that each of the overriding considerations expressed as benefits and set forth below constitutes a separate and independent ground for such a finding. The Project will result in the following substantial benefits, which constitute the specific economic, legal, social, technological and other considerations that justify the approval of the Project:

##### **C. BENEFITS OF THE PROJECT**

1. The Hedding/Oakland-13<sup>th</sup> intersection serves as the gateway to the Luna Park/13<sup>th</sup> Street Neighborhood Business District. The Project will protect the character of the Jackson/Taylor area and the Luna Park/13<sup>th</sup> Street Neighborhood Business District by limiting further expansion of the intersection as a result of LOS impacts from future development.

2. The proposed Project would avoid incremental impacts to alternative transportation facilities that would be inconsistent with the underlying purpose of the Luna Park/13<sup>th</sup> Street Neighborhood Business District. By protecting the Hedding/Oakland-13<sup>th</sup> intersection from iterative capacity-enhancing improvements/widenings/expansions that would disrupt transit lines and conflict with planned intensification along those lines, the Project is consistent with the Neighborhood Business District program and with the General Plan Land Use/Transportation Diagram.
3. By reducing the vehicular traffic flow mitigation requirements at the Hedding/Oakland-13<sup>th</sup> intersection, the Project would encourage infill development in the vicinity of the intersection because it is located along the Luna Park/13<sup>th</sup> Street Neighborhood Business District and near the Jackson-Taylor Planned Residential Community where the City has made explicit provision for infill development in proximity to public transit and other existing infrastructure. The buildout of infill development in these areas, in conformance with the General Plan designations would be consistent with the City's Growth Management Major Strategy and Housing Major Strategy.
4. The elimination of additional vehicular travel lanes would limit conflicts between vehicular improvements and non-automobile transportation facilities. The Project will further the City's General Plan Transportation Goals for increasing the percentage of transit, bicycling, and walking trips and developing a continuous, safe, accessible, interconnected high quality pedestrian environment that promotes walking as a desirable mode of transportation.
5. The proposed Project is designed to be consistent with the trails and pathways goals and policies of the General Plan, and will generate revenues that may facilitate implementation of planned pedestrian and bike trails and pathways within the area surrounding the protected intersection.
6. By adding the Hedding/Oakland-13<sup>th</sup> intersection to the list of protected intersections pursuant to City Council Policy 5-3 and the Transportation Impact (LOS) Policy EIR and as discussed in the FEIR, a development project with significant LOS impacts at this intersection may provide improvements to other parts of the citywide transportation system in order to

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improve transportation-system-wide roadway capacity or to enhance non-auto travel modes in order to conform to the General Plan as described in City Council Policy 5-3.

ADOPTED this 18<sup>th</sup> day of December, 2007, by the following vote:

**AYES:** CAMPOS, CORTESE, LICCARDO, NGUYEN, OLIVERIO,  
PYLE, WILLIAMS; REED

**NOES:** NONE

**ABSENT:** CHIRCO, CHU, CONSTANT

**DISQUALIFIED:** NONE

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**CHUCK REED**  
Mayor

**ATTEST:**

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**LEE PRICE, MMC**  
City Clerk