

**RESOLUTION NO. 74196**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE KING AND DOBBIN TRANSIT VILLAGE PLANNED DEVELOPMENT ZONING PROJECT, FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

WHEREAS, the King and Dobbin Transit Village Planned Development Zoning Project ("Project") requires the City of San Jose ("City") to approve a zoning (File No. PDC07-015); and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San José has certified that the Final Environmental Impact Report ("FEIR"), for the King and Dobbin Transit Village Planned Development Zoning Project was completed in accordance with the requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended, and state and local guidelines; and

WHEREAS, no appeal of the certification of the FEIR by the Planning Commission was filed with the City of San José; and

WHEREAS, the project analyzed under the FEIR consisted of a Planned Development Zoning (PDC07-015); and

WHEREAS, the City Council of the City of San José is the decision-making body for the King and Dobbin Transit Village Planned Development Zoning Project ("Project"); and

WHEREAS, the City Council of the City of San José intends to approve actions related to the Project as described in the FEIR; and

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

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

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 the Project is described in the FEIR:

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

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### **A. LAND USE**

#### **1. Impact**

The proposed project, due to the introduction of a large residential population, could result in significant land use conflicts and/or new limitations on the existing industrial development south of the project site.

#### **Mitigation**

There are no mitigation measures that would reduce this impact to a less than significant level.

#### **Finding**

The proposed project could result in significant land use conflicts and/or new limitations on the existing industrial development south of the project site. No mitigation measures would reduce this impact and therefore, the impact is **significant and unavoidable** and requires a statement of overriding considerations.

#### **2. Impact**

The proposed residential development could result in exposure of future residents to impacts related to accidental hazardous chemical releases from the surrounding industrial development.

#### **Mitigation**

An emergency and protective action plan shall be prepared for the site to develop measures to protect residents in the event of a catastrophic chemical release

from the Clean Harbors Environmental facility. The emergency and protective action plan shall be prepared in coordination with the project applicant, Clean Harbors Environmental, City of San José Fire Department, Valley Transportation Authority, Caltrans, California Transportation Commission, and Department of Planning, Building and Code Enforcement. The plan shall take into consideration evacuation, sheltering-in-place, the use of ventilation systems and smoke purge fans, and protective masks. The emergency and protective action plan prepared for the project shall be agreed upon prior to the issuance of occupancy permits for units on Parcels A, B, and C.

### **Finding**

The proposed project, with the implementation of the identified mitigation measures, would still be subject to accidental chemical releases from nearby industrial facilities. The creation of an emergency and protective action plan will assist the emergency personnel and residents of the project site in the event of an accidental chemical release at nearby industrial facilities; however, this land use compatibility impact would remain **significant and unavoidable** and requires a statement of overriding considerations.

## **B. TRANSPORTATION**

### **1. Impact**

The proposed project would result in significant LOS impacts to the Oakland Road/Commercial Street, US 101/Oakland Road (N), and US 101/Oakland Road (S) intersection under City of San José standards and the US 101/Oakland Road (N) and US 101/Oakland Road (S) intersections under CMP standards.

### **Mitigation**

The project proposes to pay the applicable traffic impact fees associated with the participation in the proposed US 101 – Oakland/Mabury Transportation Development Policy.

The City of San José is proposing adoption of the US 101 – Oakland/Mabury Transportation Development Policy (TDP) because interchange reconstruction is beyond the scope of most individual projects (refer to *Section 1.3.2* of the Draft EIR), including the proposed PD rezoning. The cost of reconstruction of the US 101/Oakland Road interchange (including the Oakland Road/Commercial Street intersection), is currently estimated at \$20 million. The City has identified adoption of the US 101 – Oakland/Mabury Transportation Development Policy as a source of funding that would ensure the construction of the interchange improvements in the future. In addition to the reconstruction of the US 101/Oakland Road interchange, a new US 101/Mabury Road interchange is

planned as part of the proposed TDP to further alleviate congested conditions at the US 101/Oakland Road interchange.

As proposed, the new TDP would be a trip-based fee program. The applicable traffic impact fee will be paid prior to issuance of Public Works clearance for the proposed parcels. The Project shall not move forward unless and until the applicable traffic impact fee is paid or the Project implements one of the following mitigation measures described below.

The proposed TDP is a formal process to fund the construction of the impacted intersections. Although the exact timing of construction of the improvements is unknown and dependent upon securing full funding, participation in the TDP by the proposed project is considered to mitigate the project's impacts upon the intersections to a less than significant level.

In the event participation by the project in the proposed US 101 – Oakland/Mabury TDP is not available as mitigation, the project could propose to implement one of the following measures:

- Reconstruction of the US 101/Oakland Road interchange, including the Oakland Road/Commercial Street intersection at an estimated cost of \$20 million would reduce the project's intersection LOS traffic impacts by providing additional capacity along this corridor to accommodate increases in traffic as a result of the project.
- Reduce the amount of development proposed on the project site to a level that would not result in significant transportation impacts at any of the three identified intersections (refer to *Section 8.3 Reduced Scale Alternative*).
- Delay development of the site until the necessary intersection improvements are constructed by other projects.

## **Finding**

The proposed PD rezoning, through participation in the proposed Transportation Development Policy and the payment of appropriate fees or implementation of the alternative mitigation measures described above, will mitigate its intersection LOS impacts to a **less than significant level**.

## **2. Impact**

The proposed project will contribute traffic in excess of one percent of segment capacity to four freeway segments already operating at LOS F during either the AM or PM peak hour and cause one freeway segment to operate at LOS F.

## **Mitigation**

Mitigation of significant project impacts on freeway segments would require roadway widening to construct additional through lanes, thereby increasing freeway capacity. Since it is not feasible for an individual development project to bear responsibility for implementing such extensive transportation system improvements, and no comprehensive project to add thru lanes has been developed by Caltrans or the Valley Transportation Authority (VTA) for individual projects to contribute to, the significant impacts on the five freeway segments, US 101 northbound between Oakland Road and I-880 (AM Peak Hour); US 101, northbound between I-880 and Old Bayshore Highway (AM Peak Hour); US 101 southbound between Oakland Road and I-880 (PM Peak Hour); US 101, southbound between I-880 and Old Bayshore Highway (PM Peak Hour); and I-880, northbound between US 101 to Brokaw Road (AM Peak Hour), must be considered significant and unavoidable. There are measures that could help to reduce these impacts; however, they are also infeasible for an individual development project to bear responsibility for implementing. The measures primarily consist of transit improvements and enhancements as outlined below:

- Extension of BART to San José
- Further expansion of the LRT system
- Enhanced bus service

These measures would provide options to commuters within the project study area. An enhanced transit system, with a major improvement such as the BART extension, would reduce auto usage. The reduction in auto usage would be most noticeable on freeways, since most transit trips would originate from outside the project study area.

When project mitigation measures on CMP facilities are not feasible or fail to improve the level of service to the CMP's LOS standard, then a CMP-approved Deficiency Plan must be prepared. According to the CMP TIA guidelines, pending adoption of the Countywide Deficiency Plan, if a project causes a transportation impact that cannot be reduced to a less than significant level, the Lead Agency (the City of San José) must implement, or require the project's sponsor to implement, the "Immediate Actions" listed in Appendix D of the Draft Countywide Deficiency Plan as part of the project's approval.

Implementation of selected items from the "Immediate Implementation Action List" is therefore recommended. A copy of the list is presented in Appendix B of this EIR/EA. The selection of the final items from the list would be determined by the City of San José prior to the issuance of a Planned Development (PD) Permit. With implementation of these items, project mitigation would be in conformance with CMP guidelines.

Measures for a residential development include the following site design guidelines:

- Bike Facilities at Development Projects (G-2);
- Pedestrian Circulation System (G-4);
- Bike Storage (G-5); and
- Multi-Tenant Complex Transportation Demand Measure (TDM) Program.

Although the implementation of a TDM Program could incrementally reduce traffic, it would not reduce the identified impacts to a less than significant level. The project impacts on the five freeway segments, therefore, are **significant and unavoidable**.

### **Finding**

The proposed PD rezoning with the implementation of a TDM program would still result in **significant and unavoidable** LOS impacts on five freeway segments and, therefore, requires a statement of overriding considerations.

## **C. CULTURAL RESOURCES**

### **1. Impact**

Construction of improvements to the PG&E substation may result in impacts to buried cultural resources.

### **Mitigation**

Although no buried cultural resources have been identified on the PG&E substation site, the substation area is considered a sensitive area for buried cultural resources. The following measure would reduce impacts to cultural resources to a less than significant level:

- A qualified archaeologist shall be retained during any grading and excavation at the PG&E substation site to spot-check monitor construction activities into native soils. A report summarizing the results of the monitoring activities will be submitted to the Environmental Principal Planner.

### **Finding**

Implementation of the identified mitigation measure would reduce impacts to buried cultural resources at the PG&E substation site to a **less than significant level**.

## **D. HAZARDS AND HAZARDOUS MATERIALS**

### **1. Impact**

Concentrations of TPHd and TPHmo were detected in groundwater and soil that may require remediation prior to construction on the site at 686 North King Road.

### **Mitigation**

Additional soil and groundwater testing will be required following demolition and removal of concrete and pavement from the site. Based on the findings of the additional investigation specific soil and groundwater remediation measure(s) will be identified.

Soil and/or groundwater removed as part of construction activities shall be appropriately handled and disposed of, in compliance with applicable regulations.

Prior to construction, an evaluation of impacts shall be made with respect to worker safety, and appropriate measures, if necessary, taken to ensure worker protection.

### **Finding**

Implementation of the identified mitigation measures would reduce the soil and groundwater impacts at 686 North King Road to a **less than significant level**.

## **2. Impact**

Concentrations of metals detected in soils in the vicinity of the paint booths on the site exceed ESLs for residential use at 670 North King Road.

### **Mitigation**

Upon removal of the booths and painting equipment, demolition of the building, and removal of foundation and drain system, impacted soil that exceeds target soil concentrations should be excavated and properly disposed. Following equipment removal and demolition activities, inspection and testing of the shallow soil beneath the foundation and around the drain lines shall be performed for chromium, cobalt, and nickel to target specific areas of soil that exceed residential ESL values. Appropriate ESL values that consider direct human exposure by both residents and construction workers would be 110,000 mg/kg for trivalent chromium (Cr III), 1.8 mg/kg for hexavalent chromium (Cr VI) (not expected to be present), 52 mg/kg for cobalt, and 1,000 mg/kg for nickel. Upon completion of soil removal action, if needed to meet these target levels, confirmation samples shall be analyzed and a report submitted for review to the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement and the City's Environmental Compliance Officer prior to approval of grading permits in the sampling area.

Prior to construction, an evaluation of impacts shall be made with respect to worker safety, and appropriate measures, if necessary, taken to ensure worker protection.

### **Finding**

Implementation of the identified mitigation measures would reduce the soil impacts at 670 North King Road to a **less than significant level**.

### **3. Impact**

The former railroad alignment contains several metals exceeding residential ESLs, including arsenic at 1875 Dobbin Drive.

### **Mitigation**

Soils shall be excavated along the width of the former railroad track area (approximately 15 feet) from the area of samples RR-5 to RR-7 (approximately 250 in length) to a depth of one foot (refer to Appendix D) prior to grading or excavation on the site. The contaminated soils will be disposed of in accordance with state and local regulations. Following removal of contaminated soils, confirmation soil samples shall be analyzed and a report submitted for review to the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement and the City's Environmental Compliance Officer prior to approval of grading permits in the sampling area.

Prior to construction, an evaluation of impacts shall be made with respect to worker safety, and appropriate measures, if necessary, taken to ensure worker protection.

### **Finding**

Implementation of the identified mitigation measures would reduce the soil impacts along the former railroad right-of-way to a **less than significant level**.

### **4. Impact**

Groundwater on-site contains petroleum hydrocarbons and soils on-site contain metals exceeding standards for residential use.

### **Mitigation**

DTSC review and approval shall be obtained for specific mitigation measures to address impacted soil and groundwater.

Additional soil sampling shall be completed following building demolition and removal of concrete and paving, inspection and sampling for petroleum impact soil should be performed in the area of the impacted groundwater (southwest portion of building).

Soil and/or groundwater removed as part of construction activities shall be appropriately handled and disposed of to ensure compliance with applicable regulations.

Prior to construction, an evaluation of impacts shall be made with respect to worker safety, and appropriate measures, if necessary, taken to ensure worker protection.

### **Finding**

Implementation of the identified mitigation measures will reduce soil and groundwater impacts at 1875 Dobbin Drive to a **less than significant level**.

## **5. Impact**

Groundwater on the site contains elevated levels of TCE, TPHd, and TPHmo whose source is undetermined.

### **Mitigation**

Additional testing of contaminated groundwater on the site shall be completed prior to approval of a grading permit to determine the source of the contamination. The results of the additional groundwater testing and any mitigation measures necessary to make the site suitable for residential use shall be submitted to the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement and the City's Environmental Compliance Officer prior to issuance of building permits on this portion of the site.

Soil and/or groundwater removed as part of construction activities shall be appropriately handled and disposed of to ensure compliance with applicable regulations.

Prior to construction, an evaluation of impacts shall be made with respect to worker safety, and appropriate measures, if necessary, taken to ensure worker protection.

### **Finding**

Implementation of the identified mitigation measures will reduce groundwater impacts at 1881-1899 Dobbin Drive to a **less than significant level**.

## 6. Impact

Residents of the project site may be impacted in the event a worst-case hazardous materials release occurred from a nearby industrial facility.

### Mitigation

An emergency and protective action plan shall be prepared for the site to develop measures to protect residents in the event of a catastrophic chemical release from the Clean Harbors Environmental facility. The emergency and protective action plan shall be prepared in coordination with the project applicant, Clean Harbors Environmental, City of San José Fire Department, Valley Transportation Authority, Caltrans, California Transportation Commission, and Department of Planning, Building and Code Enforcement. The plan shall take into consideration evacuation, sheltering-in-place, the use of ventilation systems and smoke purge fans, and protective masks. The emergency and protective action plan prepared for the project shall be agreed upon prior to the issuance of occupancy permits for units on Parcels A, B, and C.

The purchase/disclosure documents provided to all homeowners on the project site and contract documents provided to any renters on the project site shall include information regarding the presence of nearby industrial facilities using hazardous materials, and protocols to follow in the event of an accidental release of hazardous materials at the Clean Harbors Environmental facility.<sup>1</sup> This informational document, based on the emergency and protective action plan, shall be prepared by a qualified hazardous materials consultant under contract with the property owner.

The Homeowners' Associations or property managers for the project shall include a safety coordinator who will coordinate with local public safety personnel, as necessary, and inform residents of any updates or alerts regarding hazardous materials incidents.

### Finding

The proposed project, with the implementation of the identified mitigation, will improve emergency response but would not reduce the impact of an accidental chemical release from Clean Harbors Environmental on residents of the project site. The impact from an accidental chemical release would remain **significant and unavoidable** and require a statement of overriding considerations.

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<sup>1</sup> When and if Clean Harbors Environmental (or like users) moves from Lenfest Road this requirement will no longer be necessary.

## **E. NOISE**

### **1. Impact**

Residential uses at portions of the project site would be exposed to exterior noise levels greater than 60 dBA DNL, which exceeds the noise and land use compatibility standards for multi-family residences set forth in the State Building Code. Interior noise levels would exceed 45 dBA DNL without the incorporation of noise insulation features into the project's design.

#### **Mitigation**

Project-specific acoustical analyses are required to confirm that interior noise levels will be reduced to 45 dBA DNL or lower. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation for units proposed in noise environments exceeding 60 dBA DNL, so that windows could be kept closed at the occupant's discretion to control noise. Special building techniques (e.g., sound-rated windows and building facade treatments, STC 30-33) may be required to maintain interior noise levels at or below recommended levels. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit.

#### **Finding**

Implementation of the identified mitigation measure would reduce noise impacts on interior noise levels to a **less than significant level**.

## **F. HYDROLOGY, DRAINAGE, AND WATER QUALITY**

### **1. Impact**

Construction of the project could result in short-term water quality impacts due to sedimentation and pollutants in groundwater and stormwater runoff.

#### **Mitigation**

The following mitigation measures, based on RWQCB Best Management Practices, are included in the proposed project to ensure compliance with NPDES permit requirements to reduce construction related water quality impacts:

- During construction, burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
- During construction, earthmoving or other dust-producing activities will be suspended during periods of high winds.
- During construction, all exposed or disturbed soil surfaces will be watered at least twice daily to control dust as necessary.
- During construction, stockpiles of soil or other materials that can be blown by the wind will be watered or covered.
- During construction, all trucks hauling soil, sand, and other loose materials will be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- During construction, all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites will be swept daily (with water sweepers).
- During construction, vegetation in disturbed areas will be replanted as quickly as possible.
- Prior to construction grading for the proposed land uses, the applicant will file a "Notice of Intent" (NOI) to comply with the General Permit administered by the Regional Board and will prepare a Stormwater Pollution Prevention Plan (SWPPP) which identifies measures that would be included in the amendment to minimize and control construction and post-construction runoff. The following measures would be included in the SWPPP:
  - Preclude non-stormwater discharges to the stormwater system.
  - Effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
  - Coverage of soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
  - Perform monitoring of discharges to the stormwater system.
- The developer will submit a copy of the draft SWPPP to the City of San José for review and approval prior to construction on the project site. The certified SWPPP will be posted at the site and will be updated to reflect current site conditions.

Dewatering required as part of construction activities for below grade parking will be sampled and tested for contaminants. If groundwater contaminant levels are below RWQCB discharge thresholds, the project shall obtain a permit from the City of San José to discharge the groundwater pumped from the site into the City's storm drain system. This permit will specify the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.) and the frequency of ongoing water quality testing. If groundwater contaminant levels are above RWQCB discharge thresholds, the project shall obtain an NPDES permit from the RWQCB prior to discharging the water into the storm drain system. This permit will specify the groundwater treatment measures

and the water quality treatment standards that shall be achieved prior to discharge into the storm drain system, the sediment removal measures to be implemented during dewatering (e.g., settling tank, particulate filters, etc.), and the frequency of ongoing water quality testing.

### **Finding**

Implementation of construction BMPs will reduce short-term water quality impacts to a **less than significant level**.

## **F. BIOLOGICAL RESOURCES**

### **1. Impact**

The proposed PD zoning development could result in direct impacts to nesting raptors.

### **Mitigation**

At the time of site redevelopment, the project shall implement the following measures:

- A qualified ornithologist shall conduct a protocol-level, preconstruction survey for nesting raptors on-site not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (February 1 to August 31).
- If a nesting raptor is detected, an appropriate construction buffer shall be established. The actual size of the buffer will be determined by the project ornithologist and will depend on species and type of construction activity that would occur in the vicinity of the nest.
- A report summarizing the results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of Planning, Building and Code Enforcement.
- All future development on the site would be required to conform to the California State Fish and Game Code and the provisions of the Migratory Bird Treaty Act.

### **Finding**

Implementation of the identified mitigation measures will reduce project impacts on nesting raptors to a **less than significant level**.

### **2. Impact**

The proposed PD zoning may result in the removal of all trees from the site.

## Mitigation

All trees to be removed from the site shall be replaced at the following ratios:

<b>Table BIO-3: Tree Replacement Ratios</b>			
<b>Diameter of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>		<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	
18 inches or greater	5:1	4:1	24-inch box
12-17 inches	3:1	2:1	24-inch box
1-11 inches	1:1	1:1	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building & Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposed to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.
- A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.

Trees proposed for retention or relocation on the site shall be protected under the guidelines contained in the tree report for the project (refer to Appendix H of the Draft EIR) and outlined below.

- Physical barriers such as fencing should be erected around trees to prevent encroachment by construction equipment and avoid root damage. Barriers

- should be placed at least midway between the bole of the tree and the drip line. If construction equipment must pass close to the tree, a bridge should be constructed over the root system by placing a steel plate over railroad ties, which are placed at intervals along the ground as supports.
- Grade changes around trees should be avoided whenever possible. If fill must be placed over the root system of a tree, construction of a tree well will help minimize the impact of the fill. If the grade must be cut, this should be done outside the tree's root system.
  - Prior to the initiation of construction, interfering lower limbs on trees to be saved should be pruned to allow access for construction equipment. Large deadwood also should be removed at this time in order to eliminate a possible safety hazard to construction workers. Trees remaining on the building lot may be pruned to compensate for damage to the root system that inevitably occurs during construction, if they are excessively damaged. The objective is to reduce the size of the crown to a level that the root system can support. If removing live limbs choose sucker growth, competing and conflicting limbs and low, interfering branches. Side branches should be cut back as necessary to further "lighten" the crown if root disturbance is severe. The crown should not be cut back harshly (topped). Corrective pruning can be undertaken either before construction begins or immediately following completion. Any pruning should not remove more than 15% of tree foliage.
  - Trees suitable for relocation, including the two Coast Live Oaks on the site, may be considered for relocation on the site prior to issuance of development permits.

### **Finding**

Implementation of the tree replacement and tree protection measures would reduce impacts to mature trees to a **less than significant level**.

## **G. AIR QUALITY**

### **1. Impact**

Construction activities such as demolition, clearing, excavation and grading operations, construction vehicle traffic and wind blowing over exposed earth on the site and at the PG&E substation would generate fugitive particulate matter emissions that could temporarily affect local air quality.

### **Mitigation**

The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a less than significant level. The following dust control measures shall be implemented by project contractors

during demolition and on-site recycling of materials and shall be reflected as notes on the project plans prior to issuance of demolition permits:

- Water to control dust generation during demolition of structures and break-up of pavement. Concrete crusher should add water to materials at point(s) of entry and whenever materials will be dropped or dumped;
- Cover all trucks hauling demolition debris from the site;
- Use dust-proof chutes to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials;
- All crushing or screening equipment used on site for the recycling of materials will be permitted by the Bay Area Air Quality Management District or the state's portable equipment statewide registration program, and utilize Best Available Control Technology for that type of equipment.

The following construction practices shall be implemented during all phases of construction on the project site and shall be reflected as notes on the project plans prior to issuance of grading or building permits:

- Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non toxic stabilizers or dust palliatives;
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of freeboard;
- Pave, apply water three times daily, or apply (non toxic) soil stabilizers on all parking areas and staging areas at construction sites;
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality;
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets;
- Apply non toxic soil stabilizers to inactive construction areas;
- Enclose, cover, water twice daily, or apply non toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- Replant vegetation in disturbed areas as quickly as possible;
- Minimize idling time (5 minutes maximum);
- Maintain properly tuned equipment;
- Limit the hours of operation of heavy equipment and/or the amount of equipment in use.

## **Finding**

The proposed project, with the implementation of the identified measures, would reduce construction-related air quality impacts to a **less than significant level**.

## **H. PUBLIC SERVICES**

### **1. Impact**

The proposed PD zoning development would result in the need for additional school facilities.

#### **Mitigation**

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. California Government Code Sections 65995-65998, sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property." [§65996(a)]. The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. [§65996(b)]. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would mitigate project-related increases in student enrollment.

## **Finding**

The proposed PD zoning development would increase the number of children attending public schools in the project area, but would mitigate the impact of those students through compliance with state law regarding school mitigation impact fees. With the payment of school mitigation impact fees the impact of the project will be reduced to a **less than significant level**.

## **I. CUMULATIVE IMPACTS**

### **1. Impact**

The proposed project would contribute to a significant cumulative land use compatibility impact.

## Mitigation

No mitigation measures would reduce the cumulative land use compatibility impacts of the project to a less than significant level.

## Finding

The proposed project would contribute to a significant cumulative land use compatibility impact which would remain **significant and unavoidable** and requires a statement of overriding considerations.

## 2. Impact

The proposed PD zoning would have a considerable contribution to a significant cumulative impact at the Oakland Road and Commercial Street intersection during the AM peak hour.

## Mitigation

The project proposes to pay the applicable traffic impact fees associated with the proposed US 101 – Oakland/Mabury Transportation Development Policy to reduce its contribution to cumulative impacts at the Oakland Road and Commercial Street intersection to a less than significant level.

In the event the payment of fees as part of the proposed US 101 – Oakland/Mabury TDP is not available as mitigation for cumulative impacts to the Oakland Road and Commercial Street intersection, the project could propose to implement one of the following measures:

- Reconstruction of the US 101/Oakland Road interchange, including the Oakland Road/Commercial Street intersection at an estimated cost of \$20 million would reduce the project's intersection LOS traffic impacts by providing additional capacity along this corridor to accommodate increases in traffic as a result of the project.
- Reduce the amount of development proposed on the project site to a level that would not result in significant transportation impacts at any of the three identified intersections.
- Delay development of the site until the necessary intersection improvements are constructed by other projects.

The Project will not move forward unless and until the applicable traffic impact fee is paid or the Project implements one of the mitigation measures identified above.

## Finding

Implementation of the identified mitigation would reduce the contribution of the proposed PD zoning to the cumulative traffic impact at the Oakland Road and Commercial Street intersection to a **less than significant level**.

### 3. Impact

The proposed cumulative projects would result in a significant cumulative impact at the 13th Street and Hedding Street intersection during the AM peak hour.

#### Mitigation

The intersection of 13th Street and Hedding Street would operate at an unacceptable LOS E during the AM peak hour under cumulative conditions. The improvements required to mitigate the impact 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. The modification of the southbound approach requires shifting the lanes of both the northbound and southbound approaches and signal modification to accommodate the northbound-southbound left-turns within the intersection. During the AM peak hour these modifications would reduce the increase in average critical delay and critical volume-to-capacity (V/C) below the impact thresholds. This improvement is a condition of approval to mitigate the San José Flea Market Mixed-Use Development.

#### Finding

Implementation of the identified mitigation by the San José Flea Market Mixed-Use Development would reduce the cumulative traffic impact at the intersection of 13th Street and Hedding Street to a **less than significant level**.

### 4. Impact

The proposed cumulative projects would result in a significant cumulative impact at the Commercial Street and Berryessa Road intersection during the AM peak hour.

#### Mitigation

The intersection of Commercial Street and Berryessa Road would operate at an unacceptable LOS F during the AM peak hour under cumulative conditions. The poor level of service would be due entirely to the heavy future westbound right-turn volume. Accordingly, a separate westbound right-turn lane and a second receiving lane on the north leg of the intersection should be constructed in order to allow a free right-turn movement from westbound Berryessa Road onto

northbound Commercial Street which would improve intersection operations to LOS C during the AM peak hour. This mitigation measure shall be incorporated into the proposed TDP and funded through the policy.

### **Finding**

The proposed project does not result in a significant project impact to the intersection of Commercial Street and Berryessa Road, but does contribute to a significant cumulative impact at the intersection. The City could adopt a program by which each project that contributes considerably to a significant cumulative impact is required to fund its fair share of the above mitigation measures, in accordance with CEQA Guidelines Section 15130(a)(3). If the City adopted such a program and collected fair share contributions, then the project's contribution to the cumulative impact would be rendered less than cumulatively considerable and, therefore, less than significant. The identified mitigation will be incorporated into the proposed TDP to reduce this cumulative impact to a **less than significant level**.

## **5. Impact**

The proposed PD zoning would have a considerable contribution to a significant cumulative impact at the Lundy Avenue and Berryessa Road intersection during the PM peak hour.

### **Mitigation**

The intersection of Lundy Avenue and Berryessa Road would operate at an unacceptable LOS E during the PM peak hour under cumulative conditions. The EIR prepared for the Vision North San José project identified mitigation under Phase 4 project conditions which would improve the level of service to an acceptable LOS D during the PM peak hour.

### **Finding**

Implementation of mitigation included in Phase 4 of the Vision North San José project will improve the level of service at this intersection to LOS D. The timing of Phase 4 of the Vision North San José project is unknown at this time and potentially would not occur for several decades. The unacceptable LOS E conditions at this intersection, therefore, would persist until improvements under Phase 4 of the Vision North San José project are completed. The impact at this intersection would be a **cumulatively significant temporary impact**.

## 6. Impact

The proposed PD zoning would have a considerable contribution to cumulative traffic impacts on four freeway segments.

### Mitigation

Mitigation of significant cumulative impacts on freeway segments would require roadway widening to construct additional through lanes, thereby increasing freeway capacity. No comprehensive project to add through lanes has been developed by Caltrans or VTA for the individual cumulative projects to contribute to and since it is not feasible for an individual development project to bear responsibility for implementing such extensive transportation system improvements due to the constraints in acquisition and cost of right-of-way, the project's significant cumulative impacts on the four directional freeway segments identified above would be significant and unavoidable. There are measures, however, that could help to reduce the impacts. The measures, while infeasible for individual development project to implement, primarily consist of transit improvements and enhancements as outlined below:

- Extension of BART to San José
- Further expansion of the LRT system
- Enhanced bus service

These measures would provide options to commuters from the cumulative projects. An enhanced transit system, with a major improvement such as the BART extension, would reduce auto usage. The reduction in auto usage would be most noticeable on freeways, since most transit trips would originate from outside the project study area.

### Finding

The proposed PD zoning would contribute to **significant and unavoidable** cumulative traffic impacts to four freeway segments and, therefore, requires a statement of overriding considerations.

## 7. Impact

The project would result in a cumulatively considerable contribution to a significant cumulative hazardous materials impact.

## Mitigation

An emergency and protective action plan shall be prepared for the site to develop measures to protect residents in the event of a catastrophic chemical release from the Clean Harbors Environmental facility. The emergency and protective action plan shall be prepared in coordination with the project applicant, Clean Harbors Environmental, City of San José Fire Department, Valley Transportation Authority, Caltrans, California Transportation Commission, and Department of Planning, Building and Code Enforcement. The plan shall take into consideration evacuation, sheltering-in-place, the use of ventilation systems and smoke purge fans, and protective masks. The emergency and protective action plan prepared for the project shall be agreed upon prior to the issuance of occupancy permits for units on Parcels A, B, and C.

## Finding

The proposed projects, with the implementation of the above identified mitigation, would still be subject to potential impacts from accidental chemical releases from industrial facilities and, therefore, the cumulative impact remains **significant and unavoidable** and requires a statement of overriding considerations.

## 8. Impact

The proposed project would result in significant cumulative impacts on school facilities.

## Mitigation

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. California Government Code Sections 65995-65998, sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property." [§65996(a)]. The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. [§65996(b)]. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would mitigate project-related increases in student enrollment.

## Finding

The proposed cumulative projects would increase the number of children attending public schools in the project area, but would mitigate the impact of those students through compliance with state law regarding school mitigation impact fees. With the payment of school mitigation impact fees the project's contribution to cumulative impacts will be reduced to a **less than significant level**.

## **II. ALTERNATIVES TO THE PROPOSED PROJECT**

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### **A. NO PROJECT ALTERNATIVE**

#### **1. Description**

The CEQA Guidelines specifically require consideration of a No Project Alternative. The No Project Alternative should address both “the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services.”

#### **2. Comparison to Proposed Project**

The project site is currently developed with warehouse building and light industrial buildings totaling approximately 421,000 square feet, surface parking lots, and landscaping. Under the No Project Alternative, the project site could remain developed with the existing light industrial buildings. This would avoid all of the proposed project's significant impacts. This would also avoid the need for approval of a Transportation Development Policy as proposed by the project. If no TDP were approved then other development in support of the BART extension and other City neighborhood plans (i.e. Jackson Taylor, 13th Street/Luna Park, Japantown), may also not move forward due to the LOS policy restrictions along the US 101/Oakland Road interchange corridor.

Overall, the No Project/No Redevelopment Alternative (assuming continued use of the existing development on-site) would be environmentally superior to the project because it would avoid all of the project's environmental impacts.

#### **3. Finding**

The City finds that this Alternative is infeasible for the following reasons: In general, the No Project/No Redevelopment Alternative would, by definition, not meet the project's objectives as described in the EIR. This Alternative would not achieve the objectives of a mixed-use development on the site or encourage

transit ridership in the Berryessa BART Station Area Node. This alternative would not meet any of the applicant's objectives for the site.

## **B. NO PROJECT/REDEVELOPMENT ALTERNATIVE**

### **1. Description**

The No Project/Redevelopment Alternative would involve development of the site with a different Transit-Oriented Development proposed on the site consistent with the recently approved General Plan Amendment (GPA). A different PD zoning may be substantially larger than the currently proposed PD zoning. Any near-term redevelopment of the site would require approval of an Area or Transportation Development Policy and the delay in approving the TDP, if the currently proposed project is denied, could result in other projects in support of the City's goals including the extension of BART to San José may also be delayed. The site was analyzed in the GPA EIR at a density of 55 dwelling units per acre (DU/AC) and commercial square footage of 248,800. The No Project/Redevelopment Alternative, therefore, assumed the site could be proposed for this amount of redevelopment.

### **2. Comparison to Proposed Project**

Under this alternative, the site would be redeveloped with approximately six percent more residential units and 10 times the commercial space as the currently proposed project. The traffic impacts would be substantially greater to the intersections impacted under the currently proposed project and additional intersections and freeway segments may be impacted. A project of this size would expose more residents to hazardous materials impacts from nearby industrial facilities. This alternative could result in land use impacts to the adjacent residential development if these densities could not be achieved without allowing buildings of greater height across the site. This alternative would have similar impacts to biological resources and public facilities as the project. The No Project/Redevelopment Alternative would expose a larger residential population to the land use compatibility and hazardous materials impacts resulting from the project's location near industrial uses. The No Project/Redevelopment Alternative would not avoid any of the significant impacts of the project analyzed in the EIR/EA.

### **3. Finding**

The City finds under the No Project/Redevelopment Alternative, redevelopment of the site with higher density residential development and more commercial space than currently proposed by the project may result in greater impacts to transportation facilities, land use compatibility, and hazardous materials. Although this Alternative would meet the objectives of the project, it would not

avoid any of the identified impacts of the project and therefore the City finds this alternative infeasible.

## **C. REDUCED SCALE ALTERNATIVE**

### **1. Description**

The goal of a “Reduced Scale” alternative would be to add fewer additional dwelling units to the project site in order to reduce or avoid project impacts. One of the project’s significant unavoidable impacts is due to a worsening of the intersection LOS at US 101/Oakland Road (N). This impact could be avoided if the number of dwelling units proposed by the project did not exceed 240 units. Development of 240 residential units on the site would require a General Plan Amendment (GPA) to change the land use designation on the site to Medium Density Residential (8-16 DU/AC) from the current designation of Transit Corridor Residential (20+ DU/AC). The Medium Density Residential (8-16 DU/AC) land use designation is typified by patio homes, townhouses, and duplexes. This designation would also allow for some single-family residential development on the site, but would not allow for any commercial development.

### **2. Comparison to Proposed Project**

The Reduced Scale Alternative would limit residential development on the site to a maximum of 240 dwelling units. This alternative would require a GPA however, the required amendment would not result in any greater environmental impacts than those identified in the Final EIR for the Dobbin Drive Residential General Plan Amendment (GP06-03-01) approved in December 2006. This Reduced Scale Alternative would avoid the intersection LOS impacts of the project because it would not allow as substantial an increase in daily vehicle trips. This alternative may also reduce the freeway segment LOS impacts of the project to a less than significant level. This alternative would reduce the number of residents exposed to significant land use and hazardous materials impacts due to hazardous materials use and storage in the vicinity of the site, however it would not reduce these impacts. This alternative would also avoid the project’s need for creation of the US 101/Oakland/Mabury Transportation Development Policy. It is likely that the City would pursue the TDP, whether or not the project is proposed, in order to support redevelopment in the Berryessa BART Station Area Node, local business districts, and the Jackson-Taylor Specific Plan area.

The construction air quality and water quality impacts of the project would remain the same with this alternative. The noise impacts related to elevated noise levels on the project site would not be reduced under this alternative. The Reduced Scale Alternative may also avoid biological resource impacts related to the loss of trees from the site. The public facilities impacts of the project would also be

reduced but the project may still require additional school facilities for the Alum Rock Union Elementary School District and East Side Union High School District.

### **3. Finding**

The Reduced Scale Alternative would reduce the traffic impacts of the project. This alternative would also reduce the biological resource since it may avoid the loss of some trees and public facilities impacts of the project due to a reduction in the number of students generated, however, these impacts would also require mitigation to reduce their impacts to a less than significant level. This alternative would not meet the applicant's objectives of providing at least 800 residential units on the site to support transit ridership within the Berryessa BART Station Area Node and is therefore considered infeasible.

## **D. LOCATION ALTERNATIVE – SAN JOSÉ FLEA MARKET SITE**

### **1. Description**

The General Plan land use designations for the San José Flea Market site on the north and south side of Berryessa Road northwest of the project site include approximately 82.9 acres of Transit Corridor Residential (20+ DU/AC). A General Plan amendment (GP06-04-01) on the site was approved on April 24, 2007 and a Planned Development zoning (PDC03-108) was approved August 14, 2007. This site could accommodate development with approximately 1,287 dwelling units and 25,000 square feet of commercial space and may result in fewer environmental impacts. The entire San José Flea Market site is approximately 120 acres in size and includes Medium Density Residential (8-16 DU/AC), Combined/Industrial Commercial, Public Park/Open Space, Floating Park, and Major Collector land use designations.

### **2. Comparison to Proposed Project**

The Flea Market site Location Alternative with the proposed development would result in similar traffic impacts to the US 101/Oakland Road interchange corridor intersections as the proposed project. The Location Alternative would not avoid the need for the Transportation Development Policy to allow the project to proceed. Depending on the location of development on the Flea Market site greater setbacks could be provided from adjacent industrial land uses to reduce land use conflicts and the pressure to convert additional industrial land to residential use. This Location Alternative would also be subject to accidental chemical releases from nearby industrial land uses. Residential development at this Location Alternative may be subject to vibration impacts from the adjacent rail lines to the east of the site, an impact that does not affect the proposed project site. Redevelopment may result in significant air quality impacts due to low levels of existing development on the Flea Market site. This Location Alternative would result in historic resource impacts due to the demolition of the

existing Flea Market. The Location Alternative may also result in greater biological impacts due to two creeks adjacent to the site.

### **3. Finding**

Development of the Flea Market site with approximately 1,287 residential units and 25,000 square feet of commercial uses may reduce some of the environmental impacts of the proposed project. Development of this alternative location, however, may result in some additional or greater impacts (vibration and biology) but it is believed these additional impacts could be mitigated to a less than significant level. This Location Alternative may result in additional impacts to air quality and historic resources. The Location Alternative, therefore, may reduce some of the environmental impacts of the proposed project; however, it would not avoid the need for a Transportation Development Policy for project approval and may result in additional impacts when compared to the proposed project site and therefore the City finds the Location Alternative infeasible.

## **E. CITY-PREFERRED DESIGN ALTERNATIVE**

### **1. Description**

A design alternative to the proposed project, which is preferred by the City staff, would include the same amount of development on the site and a two-acre park versus the one-acre park proposed by the applicant. The impacts of an alternative two-acre park on the project site would result in similar impacts from the project if the proposed maximum number of units on the site is maintained and density limits are increased.

### **2. Comparison to Proposed Project**

Development of a two-acre park on the project site, while maintaining the same unit count, would require greater density and building heights to be shifted further east on the project site in order to meet the maximum number of units on the site. Podium style development may be required along the northern and eastern property lines to meet the desired density on the project site. Greater density adjacent to existing single-family development may be less desirable than the proposed densities since setbacks and height limits would be increased. . The City-Preferred Design Alternative would not avoid or reduce any of the significant impacts of the proposed project.

### **3. Finding**

The City-Preferred Design Alternative would not avoid or reduce any of the significant impacts of the proposed project. However, it conflicts with the applicant's proposal for a one-acre park.

### **III. MITIGATION MONITORING AND REPORTING PROGRAM**

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Attached to this Resolution and incorporated and adopted as part of this Resolution herein, is the Mitigation Monitoring and Reporting Program for the Project. The Program identifies the impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

### **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 unavoidable impacts to land use compatibility (project and cumulative), transportation freeway LOS (project), transportation intersection LOS (cumulative), transportation freeway LOS (cumulative), and hazardous materials (project and cumulative) 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 outweigh the unavoidable adverse environmental impacts, 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 Project will further the City's Smart Growth Policies by being located near public transit and other existing neighborhood services thereby maximizing the existing public infrastructure investments made by the City and other public agencies.
2. The Project will develop an under-utilized, industrial, in-fill property into a mixed-use development that takes advantage of nearby transit facilities.
3. The Project will support investments in current transit by generating more ridership at nearby light rail and bussing stations than the current industrial uses.
4. The Project will support investments in future transit by generating more ridership at the proposed Berryessa BART station than the current industrial uses.
5. The Project will create high-density market rate homes that meet the goals for transit-oriented development to support future BART ridership.
6. The Project will create new job opportunities including near-term jobs in construction and long-term retail jobs onsite.
7. The Project will create a new mix of workforce housing opportunities proximate to employment centers in North San José and Downtown.
8. The Project provides housing to needy and homeless families through the incorporation of the City's only transitional housing shelter.
9. The Project will help address the City's substantial unmet affordable housing demand by providing housing to extremely low income and very low-income families consistent with the General Plan Housing Element goals.
10. The Project will help to revitalize an unused and dilapidated industrial property and help rejuvenate this part of Northeast San José.
11. The Project provides an opportunity to complete an existing residential neighborhood and create uniformity in this community.
12. The Project eliminates blight in a predominantly residential neighborhood by replacing dilapidated light industrial buildings.
13. The Project through its future residents will help support the hundreds of surrounding neighborhood serving businesses.

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

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

**NOES:** OLIVERIO

**ABSENT:** CHIRCO

**DISQUALIFIED:** NONE

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**CHUCK REED**  
Mayor

**ATTEST:**

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**LEE PRICE, MMC**  
City Clerk