



# Memorandum

**TO:** Planning Commission

**FROM:** Chu Chang, Acting Planning Director

**SUBJECT:** SEE BELOW

**DATE:** May 5, 2021

## SUPPLEMENTAL

**SUBJECT:** File Nos. GP20-008 and C21-001: General Plan amendments associated with the Berryessa BART Urban Village (BBUV) Plan, adoption of the BBUV Plan, and Conforming Rezoning

**File No. PDC17-051: A Planned Development Zoning (“The Flea Market southside rezoning”), from the A(PD) Planned Development Zoning District to CP(PD) Planned Development Zoning District, to allow up to 3,450 residential units and up to 3.4 million square feet for commercial uses on approximately 61.5-gross acre site located at 1590 Berryessa Road (Assessor Parcel Numbers 254-17-052, 053, 007, 084, 095)**

**Location:** The Berryessa BART Urban Village (File Nos. GP20-008 and C21-001) is generally located in the north-east area of the City of San José with the US Hwy 101 to the south, Interstate 680 to the east, and Interstate 880 to the west. The Flea Market southside rezoning (File No. PDC17-051) is located south of Berryessa Road between the BART tracks alignment to the east and Coyote Creek to the west (1590 Berryessa Road).

## REASON FOR SUPPLEMENTAL

At its March 24, 2021 meeting, the Planning Commission continued the hearing on items 8.a (File Nos. GP20-008 and C21-001) and 8.b (File No. PDC17-051) on its agenda – the adoption of the Berryessa BART Urban Village Plan with associated General Plan amendments and the Flea Market South rezoning respectively – to its May 12, 2021 meeting. The Commission also directed staff to return on May 12 to report on the feasibility of a “community benefit agreement” (CBA) to potentially address the future displacement of the Flea Market vendors.

This Supplemental Memorandum provides information to the Planning Commission about the nature and process for negotiating and entering into a CBA and requirements for development agreements. This Memorandum also provides additional information on the relationship between the Flea Market site’s existing land use entitlement and the proposed rezoning, which the

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Planning Commission could consider as it deliberates over a recommendation to City Council. Furthermore, this Memorandum provides information on an educational event hosted by Catalyze SV on April 15, 2021, between the March 24 hearing and continued hearing on May 12, related to the proposed Flea Market South rezoning.

## **BACKGROUND**

Several speakers at the March 24, 2021 Planning Commission meeting urged the City to enter into a CBA with the Flea Market developer or require the developer to enter into such an agreement. Some of the speakers also stated that the City is entering into a CBA with Google for the Downtown West development proposal as an example of what the City or developer could do with the Flea Market South project. Public comments at the meeting were primarily concerned with the eventual closure of the Flea Market and the impact that such a closure would have on the vendors' businesses, income, families, and employees. Although the speakers suggested a CBA, there were no specifics mentioned about agreement terms or any related negotiations between the vendors and the Flea Market property owner. When asked by the Chair whether any of the vendor representatives had approached the property owner, one of the representatives responded that they had not approached the owner to discuss their concerns. The vendors were asked by the Commission Chair to do so before the May 12, 2021 continued hearing. The Planning Commission also directed staff to report on the feasibility of a (CBA) to potentially assist with the future displacement of the Flea Market vendors.

## **ANALYSIS**

### *Community Benefit Agreements*

A CBA is a contract signed between a community group or groups and a real estate developer that requires the developer to provide specific amenities and/or compensation to the local community. Typically, negotiations between a CBA group or coalition and a developer begin after a project application has been filed but prior to governmental approval.

The successful negotiation of a CBA relies heavily upon a community-based organization or coalition to adequately express the concerns and desires of the community they serve along with a developer who is motivated and agrees to negotiate the terms of such an agreement. The organizations representing various community interests in the negotiation of CBAs have generally included community, environmental, faith-based, and labor organizations.

CBAs are private, contractual agreements. Because a CBA is intended as a legally binding contract between a community group or groups and a developer, it can be enforced only by the parties that signed it. To date, staff is aware of no case law regarding the validity and enforceability of CBAs.

Government agencies may play a role in CBA negotiations if asked to do so by the parties. Government officials may, for example, facilitate CBA negotiations and encourage cooperation between the community groups and the developer. As stated previously, the CBA is an agreement negotiated and entered into voluntarily by a community group(s) and a

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developer/landowner that should reflect the unique interests and resolution of issues by the private parties.

### *Development Agreements*

Occasionally, there are terms that would benefit a community or neighborhood that would generally be included in a CBA that can be incorporated as part of a development agreement with a city. California state law authorizes development agreements as two-party agreements between a developer and/or landowner (those with an equitable interest in the real property; hereinafter collectively “developer”) and a local government agency (Government Code sections 65864-65869.5).

In California, development agreements are recognized primarily as a method by which local governments can provide that, upon approval of a project, the developer may proceed in accordance with existing policies, rules, and regulations, and subject to conditions of approval. Such an approval is intended to strengthen the planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development (Government Code section 65864).

Government Code section 65865(c) states in relevant part: “Every city... shall upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.”

The required contents of development agreements are specified in Government Code section 65865.2 and include duration of the agreement, permitted uses of the property, density or intensity of use, maximum height and size of buildings, and the reservation or dedication of land for public purposes. Government Code section 65865.2 also states that development agreements may include conditions, terms, restrictions, and requirements for subsequent discretionary actions so long as such conditions do not prevent development of the land for the uses at the density or intensity set forth in the agreement, and may specify the time within which the project or phases of the project must be commenced and completed. The development agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

Chapter 18.02 of the San José Municipal Code (SJMC) establishes the City’s process for the consideration of applications for development agreements by developers and property owners (those with an equitable interest in the property). SJMC section 18.02.020 specifies: “The City of San José may, at its sole discretion, enter into a binding development agreement with any qualified applicant for the development of such property pursuant to and in accordance with these regulations.”

In sum, development agreements are an agreement that is requested and applied for by a developer. It is an entirely voluntary and negotiated agreement between the developer and the local agency. In the development agreement process, the developer and the local agency negotiate an exchange of benefits and obligations to satisfy the various needs and desires of both parties. Development agreements are the only mechanism under California law where there is no nexus to the impacts of the development required for the conditions of development and benefits from the developer. Development agreements are not required to be entered into by the parties if

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they do not agree on terms. Rather, they are negotiated and executed by both parties and, if both parties reach agreement, the agreement is adopted by ordinance of the City Council and executed by both parties.

Because the Flea Market owner has not applied to the City to negotiate a development agreement, this avenue for the possible negotiation of provisions that may address community benefits including the vendors' concerns is not currently available.

#### *Further Consideration on the Existing and Proposed Flea Market Zoning*

As the Planning Commission deliberates its recommendation to Council on the proposed Flea Market South zoning, it is important to understand the entitlement history of the property, the conformity with General Plan goals, and Council direction to rezone the Flea Market property to further support the BART investment, and the implications of not rezoning the property and allowing the 2009 zoning to remain.

The Flea Market was first rezoned by the City Council in 2007 (PDC03-108). This zoning was for the entire Flea Market, including both the portions on the north and south side of Berryessa Road. The rezoning allowed up to 2,818 dwelling units and 365,622 square feet of commercial development. The 2007 zoning did not plan for the retention of the Flea Market use on the property, but it was anticipated that build out of the site would occur over many years allowing the Flea Market to continue operation for some time. Since approval of this rezoning, only the portion on the north side of Berryessa road has been redeveloped. This 2007 rezoning was approved when BART was still in the planning phases and 13 years from completion. This rezoning allowed residential densities that were too low to fully support BART ridership at the Berryessa Station. Furthermore, the rezoning did not allow significant high intensity commercial uses such as offices, which would contribute the most towards BART ridership. It has been well documented in planning research that high intensity employment uses, within a short walk of transit, generate the highest level of transit use of any land use.

In 2009, the City Council approved a subsequent rezoning of the entire Flea Market property (PDC09-006), which replaced the Council approved 2007 zoning. This 2009 zoning retained the commercial and residential development capacities of the 2007 zoning, but removed the prohibition on vehicle related uses and detached and attached single family homes that was included in the 2007 zoning. This zoning change allowed for the development of the single family detached and attached homes that now reside on the northern portion of the former Flea Market property.

In November of 2011, the City Council approved the Envision San Jose 2040 General Plan. Recognizing that the 2009 rezoning approved by Council for the Flea Market did not allow the intensity and mix of uses that supported the planned BART investment, the General Plan included Land Use Policy LU-2.4, which states:

*“To accomplish the planned intensification of employment and residential uses at the Berryessa BART station, reconsider existing entitlements to expand the area planned for employment uses and to increase the density of employment and residential areas within the BART Station Village area if the developer/ property owner has not accomplished significant infrastructure improvements on the respective side of Berryessa Road within 5 years of the adoption of the Plan.”*

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No significant infrastructure improvements have been constructed on the south side of Berryessa Road since adoption of the Envision San José 2040 General Plan in 2011. In 2016, the property owner submitted a new rezoning (PDC16-001) to modify the land uses on the north side of Berryessa Road. The impetus for this rezoning was that the school district determined that it no longer needed an elementary school site within the Flea Market property, so the property owner wanted to redistribute the location of residential and public park land uses on the site. Consistent with General Plan Policy LU 2.4 above, the City Council approved the proposed rezoning with a condition requiring the property owner to subsequently rezone the Flea Market site south of Berryessa Road to allow between 1.5 and 2.2 million square feet of commercial/retail/industrial space.

The current proposed rezoning (PDC17-051) is consistent with Council direction in 2016 and implements General Plan Policy LU 2.4. The proposed rezoning significantly increases the intensity of development and the amount of commercial development to further support BART ridership at the recently opened Berryessa Station. The proposed rezoning would increase the planned residential development approved in the existing zoning from 2,468 units to 3,450 units and would increase the commercial development from 315,022 sq. ft. to up to 3.4 million sq. ft. with a minimum of 1.5 million sq. ft. required. As discussed in the March 24, 2021 Planning Commission staff report, the proposed rezoning is also consistent with the proposed Berryessa BART Urban Village plan which plans for high intensity commercial office development adjacent to the BART station, with high density residential development surrounding this commercial development.

The zoning of the Flea Market property currently remains the Planned Development zoning approved by the City Council in 2016. While the existing zoning is not consistent with current General Plan policies nor the proposed Berryessa BART Urban Village Plan, the developer can build according to the existing rezoning because it is already entitled (approved by the City Council). The existing zoning does not include the retention of the Flea Market use or address its relocation. Furthermore, the existing zoning allows average residential densities of 55 du/ac, which is lower than the minimum 75 du/ac recommend by BART's guidelines for transit supportive development at its stations. So, if the proposed rezoning of the Flea Market South site were denied by the Council, the developer could construct less residential and commercial on the site in accordance with the 2016 zoning.

#### *Catalyze SV Berryessa Flea Market Educational Event*

On April 15, 2021, Catalyze SV held an informational meeting regarding the proposed Flea Market rezoning, titled *Development without Displacement: A Future for All at the Berryessa Flea Market*. Speakers included Kurt Wheeler, Project Manager at Project for Public Spaces, Julian Gross with Renne Public Law Group; James Chang, Chief of Staff for City of Berkeley Councilmember Ben Bartlett; Jeffery Buchanan, Director of Public Policy at Working Partnerships USA; and recorded testimonials from Flea Market vendors.

James Chang spoke about his experience with the Berkeley Flea Market located at the Ashby BART station park-and-ride lot. Mr. Chang stated that when development was proposed at the Ashby BART station through BART's Transit Oriented Development program, the City worked

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with the property owner (BART) to enter into a Memorandum of Understanding (MOU) which established a process for the City of Berkeley and BART to cooperatively pursue transit oriented development at the Ashby BART station.

The MOU established a framework for development of the Ashby BART station, which included the City of Berkeley's Adeline Corridor Specific Plan. The Adeline Corridor Specific Plan, adopted by the Berkeley City Council in December 2020, includes objectives for redevelopment of the Ashby BART station parking lot to incorporate a large civic plaza that could be designed and programmed to accommodate the Berkeley Flea Market.

Unlike the San Jose Flea Market, the Berkeley Flea Market has about 100 vendors, and is located on public land that is owned by BART. This public land is a 4.4-acre surface parking lot used by the Berkeley Flea Market only on weekends; the land is not used on a permanent basis by the Berkeley Flea Market. This allows the lot to be used by BART commuters during the weekdays. There are no existing entitlements for development at the Ashby BART station site. The type of land ownership (publicly-owned), as well as the size and frequency of the Berkeley Flea Market operation, offered specific opportunities for its continued function as part of the Adeline Corridor Specific Plan.

While both the Berkeley and San José Flea Markets are culturally, ethnically, and economically significant assets, their conditions differ in terms of size, operation, land ownership, and development entitlement status, which effect relocation or permanency opportunities. In contrast to the Berkeley Flea Market, the San José Flea Market is located on private land adjacent to the Berryessa/North San José BART station which began operation in 2020. The San Jose Flea Market operates Wednesday through Sunday in what is left of the original 120-acre site — the 60.5-acre site south of Berryessa Road that is the subject of the proposed rezoning. The San Jose Flea Market occupies approximately 18 acres of net area within the 60.5-acre larger site. Approximately 700 vendors occupy these 18 acres. Outside the 18 acres of business operation, approximately five acres of parking, and the open space corridors of Penitencia and Coyote Creek, the balance of the site is largely an underutilized surface parking lot that remains empty most of the time.

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## **SUMMARY**

The above information on Community Benefits Agreements was provided at the request of the Planning Commission. Staff then provided additional information on the existing and proposed Flea Market zoning, as well as information on the Berkeley Flea Market. The information in this memo is provided to assist the Planning Commission in making a recommendation on the proposed Flea Market rezoning (PDC17-051) to the City Council.

/s/

Chu Chang, Acting Planning Director  
Planning, Building, and Code Enforcement

For questions, please contact Charla Gomez at (408) 793-5543 or [charla.gomez@sanjoseca.gov](mailto:charla.gomez@sanjoseca.gov)



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** PDC17-051

**DATE:** March 24, 2021

**COUNCIL DISTRICT:** 4

<b>Type of Permit</b>	Planned Development Zoning
Demolition	Surface parking lot, Flea Market vendor structures
Proposed Land Uses	Mixed-Use Residential and Commercial
New Residential Units	Up to 3,450 units
New Commercial Square Footage	Up to 3,400,000 square feet
Additional Policy Review Items	US-101/Oakland/Mabury Transportation Policy
Tree Removals	NA
<b>Project Planner</b>	Charla Gomez
<b>CEQA Clearance</b>	Final Environmental Impact Report (EIR)
<b>CEQA Planner</b>	David Keyon

## RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take all of the following actions:

1. Adopt a resolution certifying the San Jose Flea Market Southside Rezoning Environmental Impact Report and make certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and a related Mitigation Monitoring and Reporting Program, all in accordance with the California Environmental Quality Act;
2. Approve an ordinance rezoning (File No. PDC17-051) an approximately 61.5-gross acre site located at 1590 Berryessa Road (Assessor Parcel Numbers 254-17-052, 053, 007, 084, 095) from the A(PD) Planned Development Zoning District to CP(PD) Planned Development Zoning District to allow up to 3,450 residential units and up to 3.4 million square feet for commercial uses;
3. Approve an ordinance repealing Section 14.30.035 of Chapter 14.30 of Title 14 of the San José Municipal Code to apply the US-101/Oakland/Mabury Traffic Impact Fee to the current project;
4. Adopt a resolution adopting the amended US-101/Oakland/Mabury Transportation Development Policy to provide a credit to the current project's Traffic Impact Fee obligation.



**PROPERTY INFORMATION**

<b>Location</b>	1590 Berryessa Road
<b>Assessor Parcel No.</b>	254-17-052, 053, 007, 084, 095
<b>General Plan</b>	Urban Village
<b>Growth Area</b>	Berryessa BART Urban Village (BBUV) Plan
<b>Zoning</b>	A(PD) Planned Development Zoning (PDC16-001)
<b>Historic Resource</b>	San Jose Flea Market, eligible as a historic resource
<b>Annexation Date</b>	June 20, 1967 (Orchard No. 44)
<b>Council District</b>	4
<b>Acreage</b>	61.5-gross acre
<b>Proposed Density</b>	Minimum 150 DU/Acre on average

**SURROUNDING USES**

	<b>General Plan Land Use</b>	<b>Zoning</b>	<b>Existing Use</b>
<b>North</b>	Residential Neighborhood	A(PD) Planned Development	Single-Family Detached Residential
<b>South</b>	Light Industrial	LI Light Industrial	DOT Service Yard
<b>East</b>	Light Industrial, and Urban Village	A(PD) Planned Development, IP Industrial Park	Berryessa BART station facility
<b>West</b>	Heavy Industrial	LI Light Industrial and HI Heavy Industrial	Graniterock (asphalt plant), recycling yard

**REZONING PROJECT LOCATION AND CONTEXT**

The Flea Market southside (object of this rezoning) is located south of Berryessa Road between the BART tracks alignment to the east and Coyote Creek to the west. The existing uses of the site include the San Jose Flea Market, its ancillary buildings, and a parking lot north of Mabury Road (see Exhibit “A” Vicinity Map). The area surrounding the site is developed with multi-family buildings, townhomes, and a commercial site to the north across Berryessa Road, the North San Jose/Berryessa BART station, BART tracks, and related facilities to the east, and Coyote Creek to the west. Across Coyote Creek there are heavy industrial uses, including the Graniterock asphalt/gravel plant, a metal reclamation yard, asphalt recycling and warehouses. The City of San José’s Mabury storage yard is southerly of the site, south of Mabury Road.

**PROJECT BACKGROUND**

The Flea Market Planned Development Zoning (File No. PDC09-006) was adopted by City Council on November 3, 2009. That zoning allowed up to 365,622 square feet of industrial/commercial uses and up to 2,818 residential units in the 120-gross acre site of the San Jose Flea Market, including the north and south sides of Berryessa Road. The subsequent Master Planned Development Permit (File No. PD08-025) effectuated the zoning district and approved the design, construction and phasing for public improvements.

On June 2, 2015, the City Council amended the *US-101/Oakland/Mabury Transportation Policy* (“TDP”) (Agenda Item 4.3) by adopting a resolution to align the San José Flea Market site’s transportation mitigation payment (“Traffic Mitigation Payments”) schedule with both the US-101/Mabury Road Interchange project schedule and the phased development of the Flea Market Site. In conjunction with those actions, Council directed staff to return to Council with a recommended approach to increase employment-generating development on the Flea Market site beyond the 365,622 square feet currently approved, specifically on the south side of Berryessa Road.

On May 10, 2016, (Deferred from 4/19/16 - Item 11.2), the City Council approved a Conforming Rezoning (File No. PDC16-001) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District in the Flea Market north site, to eliminate a school land use and redistribute the location of residential and public park land uses on the approved Land Use Map (File No. PDC09-006) for a 1.9 gross acre area located on the north side of Berryessa Road. City Council recommended approval of the Conforming Rezoning with a condition requiring the property owner to rezone the Flea Mart site south of Berryessa Road to include a range of commercial/retail/industrial space between 1.5 and 2.2 million square feet. This condition also required significant improvements constructed on the site by November 1, 2016.

Per General Plan Land Use Policy LU-2.4, the City can reconsider existing entitlements to expand the area planned for employment uses and to increase the density of employment and residential areas within the BART Urban Village area if the developer/ property owner has not accomplished significant infrastructure improvements on the respective side of Berryessa Road within 5 years of the adoption of the Plan. No significant improvements were constructed on the south side of Berryessa Road by November 1, 2016 under the existing entitlements.

On January 18, 2018, the City received an application for rezoning of the Flea Market south site located south of Berryessa Road—this is the remaining land of the large 120-acre Flea Market site. This rezoning application is the subject of this staff report. The application requests approval for up to 3,450 residential units and up to 3.4 million square feet for commercial uses. This proposed rezoning is fully enclosed within the Berryessa BART Urban Village (BBUV) Plan boundary, and is designated with an Urban Village land use designation. On February 16, 2018, the City issued a 30-day response letter for this application which provided guidance about three possible options to process the rezoning. Option 1, the Berryessa BART Urban Village (BBUV) Plan Adoption; Option 2, Signature Project; and Option 3, 100% affordable housing units. A response letter from the applicant stated that Option 1, the BBUV Plan adoption, was the preferred option to pursue. Per the Urban Village policies in the General Plan Policy, entitlements and rezonings for market rate residential development can not occur in an Urban Village prior to Council approval of an Urban Village Plan, unless a proposed project is approved through the Signature Project process.

On August 30, 2018, the City initiated the planning process for the preparation of the Berryessa BART Urban Village Plan (BBUV) Plan. The rezoning application for the Flea Market South side was processed concurrently with the preparation of the BBUV Plan. The BBUV plan has goals and policies for land use, circulation, parking, open space, placemaking, sustainability, and other planning topics that informed all aspects of the final recommendations for this rezoning application. Most importantly, the BBUV plan has urban design standards and guidelines used to formulate the development standards of this PD zoning. The Planning Commission and City Council hearings for the rezoning application and BBUV Plan adoption will occur concurrently.

## PROJECT DESCRIPTION

The proposed rezoning would allow up to 3,450 residential units and up to 3.4 million square feet for commercial uses on an approximately 61.5-acre site where the existing San Jose Flea Market operates today. The proposed land use plan for the project allocates commercial land uses on approximately 16.3 acres (26.5%), residential land uses on approximately 13.1 acres (21.3%), riparian corridor/open space land uses on approximately 17.1 acres (27.8%), public open space/privately owned, publicly accessible open space 5.0 acres (8.1%), and public street right-of-way dedication on approximately 10 acres (16.3%), for a total of 61.5 acres (See Exhibit “B”). The project’s proposed residential density ranges between 150 DU/acre to 260 DU/acre, which supports between 1,700 and 3,450 dwelling units. The proposed commercial Floor Area Ratio (FAR) is 3.5 to 5.2, which supports between 1.5 and 3.4 million square feet (msf) of commercial development. In addition, the proposed project provides between 7,960 and 14,250 parking spaces.

## ANALYSIS

The proposed Rezoning was analyzed with respect to conformance with:

- 1) Envision San José 2040 General Plan
- 2) Draft Berryessa BART Urban Village Plan
- 3) Title 20 of the Municipal Code (Zoning Ordinance)
- 4) City Council Policy 6-34 and Habitat Plan Riparian Setbacks
- 5) California Environmental Quality Act (CEQA)

### Envision San José 2040 General Plan

The proposed rezoning is consistent with the following General Plan Major Strategies, Goals and Policies:

**Major Strategy #3 - Focused Growth:** Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. Focusing new growth into the Growth Areas will help to protect the quality of existing neighborhoods, while also enabling the development of new Urban Village areas with a compact and dense form attractive to the City’s projected growing demographic groups (i.e., an aging population and young workers seeking an urban experience), that support walking, provide opportunities to incorporate retail and other services in a mixed-use format, and support transit use. Planning such sites for higher, not lower, density residential development acknowledges their value as a finite land resource and enables the City to provide housing growth capacity consistent with demographic trends and the community objectives of the Envision San José 2040 General Plan.

*Analysis:* This project is located within the Berryessa BART Urban Village (BBUV) Plan. Urban Villages are areas of focused growth in the City of San Jose. The project is consistent with this Strategy in that it will facilitate the maximum number units allowed under the zoning to be constructed, further supporting transit ridership at BART Station currently in operation, as well as providing more housing options in the community. The proposed project also concentrates a significant amount of commercial uses immediately adjacent to the BART station. The proposed commercial uses are consistent with the vision of the BBUV plan regarding employment generation, particularly office and Research and Development (R&D) land uses. Employment opportunities adjacent to the BART station are also important to support transit ridership. Overall, the project proposes a combination of residential and commercial development in a horizontal mixed-use development pattern that supports the goals of the BBUV Plan. This development pattern fosters the creation of more complete neighborhoods with services and more land use options that meet the daily needs of a diverse population within walking distance from the BART station.

## General Plan Major Strategy #5 - Urban Villages

This strategy promotes the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goal.

*Analysis: This site is located within the Berryessa/BART Urban Village (BBUV) Plan and is consistent with this Major Strategy. The Berryessa BART Urban Village (BBUV) Plan include goals, policies, standards, guidelines and action items to guide new development and private and public investment to achieve the Urban Village's vision. The BBUV Plan concentrates the planned capacities in larger opportunity sites called sub-areas or Districts. These Districts can accommodate the planned capacities adequately while preserving the surrounding established single-family neighborhoods and other areas in the Urban Village that have been recently developed (i.e. Flea Market north site).*

*The proposed rezoning is fully contained within the Flea Market South District of the BBUV Plan. The rezoning proposes a balance of commercial and residential development in a horizontal mixed-use development pattern. This development pattern facilitates the construction of residential and commercial projects independent from each other, yet close to each other, consistent with BBUV's vision for a mixed-use development that can support BART ridership adequately. The proposed rezoning is also consistent with the BBUV Plan because the balance of commercial and residential uses supports the fiscal and social benefits of shifting to a more compact and dense urban form, by encouraging new commercial and residential development at specific areas at higher residential densities and job intensities. The horizontal mixed-use approach of the proposed rezoning fosters the creation of more complete neighborhoods with services and more land use options that meet the daily needs of a diverse population within walking distance from the BART station.*

**Implementation Policy IP-1.6:** Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram, and advance Envision General Plan Vision, goals and policies.

*Analysis: Consistent with this policy, the proposed rezoning advances the General Plan's Vision, goals and polices by focusing high density and intensity development within an Urban Village adjacent to a BART station. The allowance of up to 3.4 million square feet of commercial will further the City's Regional Job Center Strategy and, together with the up to 3,450 residential units permitted by the zoning, will support BART ridership and reduce Vehicle Miles Traveled. The proposed zoning is also consistent with the proposed Land Use Diagram and goals in policies in the Draft BBUV Plan which will be considered by the Council prior to consideration of this rezoning.*

**Land Use Policy LU-2.4:** To accomplish the planned intensification of employment and residential uses at the Berryessa BART station, reconsider existing entitlements to expand the area planned for employment uses and to increase the density of employment and residential areas within the BART Station Village area if the developer/ property owner has not accomplished significant infrastructure improvements on the respective side of Berryessa Road within 5 years of the adoption of the Plan.

*Analysis: This policy states that the City should reconsider existing entitlements on the subject site if the property owner has not accomplished significant infrastructure improvements on the south side of Berryessa Road within five years of the adoption of the General Plan. The Plan was adopted on November 1, 2011. The last conforming rezoning was approved in May 10, 2016 and no significant improvements have occurred in the Flea Market south site.*

*The proposed rezoning would significantly increases the amount of residential and commercial development that would be allowed on the Flea Market site above what was allowed under the previous Planned Development Zoning. The proposed zoning would allow up to 3,450 housing units and up to 3.4 million square feet of commercial uses. In contrast the original A(PD) Planned Development Zoning District (File No. PDC09-006) only allowed up to 2,818 dwelling units and up to 365,622 million square feet of commercial development.*

*Consistent with Land Use Policy LU-2.4, City Council recommended approval of the most recent Conforming Rezoning (File No. PDC16-001) with a condition requiring the property owner to rezone the Flea Mart site south of Berryessa Road and increase the commercial/retail/industrial space from 365,222 up to 2.2 million square feet. The proposed zoning is consistent with the direction provided by the Council on May 10, 2016 because the rezoning includes a minimum of 1,500,000 square feet of commercial development.*

### **Draft Berryessa BART Urban Village Plan**

The subject site is located within the Berryessa BART Urban Village (BBUV) boundary. In the Envision San José 2040 General Plan, this Urban Village is in Horizon I. Until the BBUV Plan is adopted, the subject site has the Urban Village land use designation in the General Plan Land Use/Transportation Diagram. The Berryessa BART Urban Village (BBUV) Plan will be considered before but concurrently with the proposed rezoning application. The section evaluates the proposed zoning's conformance with the proposed BBUV Plan. Adoption of this rezoning is contingent on the approval of the BBUV by the City Council. Any changes made to the BBUV by the Council may necessitate modification to this proposed zoning and a continuation of this item to a future Council Hearing.

When adopted, the BBUV land use plan will have two land use designations on the subject site: Transit Residential and Transit Employment Center (TEC) (See Exhibit "C", BBUV land use map). The proposed rezoning is analyzed for its conformance with the Transit Residential and Transit Employment Center (TEC) land use designations of the BBUV land use plan because the adoption of the BBUV Plan precedes the approval of the rezoning application.

For residential development, the proposed site plan of the rezoning allocates approximately 13.1 acres (21.3% of the site) to residential land uses. The proposed amount and location of residential land in the rezoning closely aligns with the amount of Transit Residential allocated in the BBUV land use plan. The residential density allowed in the Transit Residential land use designation in the BBUV Plan is 95 - 500 Du/Acre. The densities of the Transit Residential land use designation in the Flea Market south site support between 2,145 residential units and 7,150 units. The proposed residential density range in the rezoning is 150 to 260 DU/acre, which supports between 1,700 and 3,450 dwelling units, on 13.1 acres of land.

In addition, and consistent with the BBUV Plan, the Transit Residential designation of the General Plan authorizes new high-density, residential, or mixed-use residential development in sites located within walking distance of mass transit, such as the Berryessa/ North San José Station. Transit Residential is typically associated with high-density residential development, with vertical integration of commercial retail on the first floor, which supports a pedestrian-oriented environment. The land designated as residential in the rezoning application land use map and associated residential land use intensities are consistent with the land uses supported in the Transit Residential land use designation in the General Plan. Therefore, both the proposed residential densities and proposed residential land uses in the rezoning are consistent with the BBUV Plan, as an extension with the Envision San Jose 2040 General Plan.

The proposed rezoning allocates approximately 16.3 acres (26.5% of the site) to commercial land uses. The proposed amount and location of commercial land in the rezoning aligns with the amount of Transit Employment Center (TEC) allocated in the BBUV land use plan. The commercial Floor Area Ratio (FAR) allowed in the TEC land use designation for the Flea Market Property in the BBUV is 3.5 to 10 FAR. The proposed commercial FAR range in the rezoning is 3.5 to 5.2, which supports between 1.5 and 3.4 million square feet of commercial development, on 16.3 acres of land.

Within this Urban Village plan, the Transit Employment Center designation is applied to areas within walking distance of the Berryessa/ North San José BART Station, which are envisioned for intensive job creation. Uses allowed in this designation include retail and service commercial uses on the first two floors, office, research and development (R&D), as well as other supportive commercial uses such as personal services. In particular, this Urban Village Plan envisions types of businesses with high employee densities that would place a premium on being adjacent to the BART Station and would support BART ridership. The land designated as commercial in the rezoning application land use map and the associated commercial land use intensities are

consistent with the TEC land use designation proposed for the Flea Market site in the BBUV.

### **Zoning Ordinance Conformance**

The project site is in the original A(PD) Planned Development Zoning District (File No. PDC09-006). This existing A(PD) Planned Development Zoning District would not permit the proposed development, as the current zoning allows up to 2,818 dwelling units and up to 365,622 square feet of commercial development. Also, the existing A(PD) Planned Development Zoning District requires different setbacks, heights, open space, parking, and other development standards that do not support the proposed building design and development of the proposed rezoning.

The site is proposed to be rezoned from an A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. General Plan Implementation Policy IP-8.5 allows the Planned Development Rezoning process to be utilized if the Planned Development Rezoning process would better conform to the General Plan goals and policies than a conventional zoning district. The Commercial Pedestrian (CP) is the default zoning district in Urban Village areas in the municipal code so it is the recommended base district for this rezoning and best conforms with the Berryessa BART Urban Village (BBUV) plan goals, policies, standards, and guidelines. Therefore, if approved, the rezoning shall be modified from an A(PD) Planned Development Zoning District to CP (PD) Planned Development Zoning District.

Section 20.120.510 General Development Plan Requirements of Title 20 of the San Jose Municipal Code establishes the criteria for development standards in Planned Development (PD) zoning districts. Sub-section 2 states that a PD zoning district must include and specify certain requirements that are individually designed to meet the needs of the territory so zoned. The proposed rezoning application includes a full draft of the applicable PD zoning standards to this rezoning (See Attachment B Draft Development Standards). The proposed PD zoning standards are consistent and make reference to the Berryessa BART Urban Village (BBUV) Plan goals, policies, standards and guidelines and other requirements in the Plan.

For residential areas, the PD standards permit land uses consistent with the Commercial Pedestrian (CP) zoning district and the R-M Multiple Residence zoning district of the San Jose Municipal Code. The Commercial Pedestrian (CP) is the base zoning district for Urban Village plans. The R-M Multiple Residence zoning district permit uses associated with high-density multi-family development. For commercial areas, the PD standards allow land uses consistent with the Commercial Pedestrian (CP) zoning district and offices / research and development (R&D). The Commercial Pedestrian (CP) is the base zoning district for Urban Village plans. Commercial uses associated with the office / research and development (R&D) are consistent with jobs density and employment capacity envisioned in the BBUV Plan. The PD standards also restrict, prohibit or condition uses as necessary in order to be consistent with the vision and goals of the Berryessa BART Urban Village (BBUV) Plan, such as car-centric land uses that do not support the vision of the BBUV Plan as an employment-rich, transit-oriented Urban Village.

### **Parking**

The Zoning Ordinance describes parking ratios required for multi-family and commercial developments. The parking ratios for multifamily are: 1.25 spaces for studios/ one bedroom unit, 1.7 spaces for a two-bedroom unit, and 2 spaces for a three-bedroom unit. The proposed rezoning does not include a specific residential program for the total number of one-, two-, or three-bedroom units. The proposed rezoning assumes 1.2 stalls/dwelling unit parking ratio, on average, for the total maximum of 3,400 dwelling units, totaling 4,125 parking stalls. For commercial development, the proposed rezoning is for up to 3,400,000 million square feet. The proposed rezoning assumes a 3/1,000 square feet parking ratio, on average, for a total of 10,125 parking spaces. The total maximum amount of parking proposed for both commercial and residential uses is 14,250 spaces. A reduction of 50% of parking would represent 7,960 parking spaces.

Projects located in an Urban Village plan are eligible for up to 50% reduction of parking pursuant to [Section 20.90.200](#) of the Zoning Ordinance. The rezoning has a request for reduction of parking for up to 50% consistent with what is allowed in Urban Village planning areas. The zoning ordinance requires the implementation of Transportation Demand Management (TDM) measures to justify parking reduction.

The rezoning has a PD standard for parking. The PD standards states that motor vehicle parking supply, parking management, and parking reduction for each subsequent Planned Development Permit shall be governed by the goals, strategies, and parking polices described in the Berryessa BART Urban Village Plan parking chapter. The proposed parking calculations for the purposes of this rezoning are conceptual. Specific parking supply, parking management and parking reduction at the Planned Development Permit level shall be regulated by the goals, strategies, and parking polices described in the Berryessa BART Urban Village Plan parking chapter. For purposes of design and planning of parking (including the type of parking such as electric vehicles), approved parking at the Planned Development Permit level shall be regulated by Title 20 of the municipal code, as amended. The PD standards of this rezoning discuss this last provision.

The BBUV Plan also contains an appendix with the Berryessa TDM Plan that is adopted together with the Plan. The Berryessa TDM Plan includes a list of “required or mandatory” and “additional” TDM measures that projects can select to pursue parking reduction. The City supports parking reduction up to 50% as proposed in this rezoning consistent with the parking reduction policy of the BBUV and corresponding Berryessa BART TDM Plan. An additional appendix in the BBUV Plan include a Preliminary Business Plan for the formation of a Transportation Management Association (TMA) which discusses the specifics of how the TMA will be formed and funded.

### **City Council Policy 6-34 and Habitat Plan Riparian Setbacks**

City policies and regulations, including the Envision San José 2040 General Plan, the Zoning Code, and the City Council-adopted Habitat Plan include measures to limit development and protect sensitive riparian resources. [City Council Policy 6-34](#) provides guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. The policy indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor defined by the outer edge of riparian vegetation.

#### City Council Policy 6-34

*Analysis: On the project site, the City’s riparian setback extends 100 feet landward from the outer edge of the riparian canopies of Coyote Creek and Upper Penitencia Creek. The setback is applicable to all proposed development with the exception of the proposed bridge crossings over Upper Penitencia Creek, which are required to cross the riparian corridor; the stormwater outfalls, which need to be located within the setback; and the trails, which are allowable uses in a riparian setback. These project features are exempt from the riparian setback requirements. In contrast, urban development, including new hardscape and landscaping associated with the proposed recreation area and arterial road that parallels Coyote Creek along the southwestern edge of the site, is not exempt from riparian setback requirements.*

*Per the proposed rezoning site plan, the entire 100-foot riparian setback (10.08 acres) would be modified in some way. Currently, this area is composed of urban-suburban (i.e., asphalt; 7.52 acres) and golf course/urban park (2.56 acres) habitats that are highly disturbed by human activity. Most of the 100-foot riparian setback would be used as open space (including trails), but a total of 1.36 acres of other urban uses are also proposed in the setback along Coyote Creek. These urban uses, which include a small portion of a recreation area and an arterial road that parallels Coyote Creek along the southwestern edge of the site, would consist of 1.02 acres of new hardscape and 0.34 acres of landscaping.*

*Development under the proposed rezoning would result in the construction of 1.42 acres of new hardscape within the 100-foot setback. Of this acreage, 0.40 acre of new hardscape would result from trail construction in areas that are not currently hardscaped (allowed under Policy 6-34), and 1.02 acre would result from other urban development and would require a riparian setback exception. However, the project would also remove 5.52 acres of existing hardscape (i.e., asphalt) from within the 100-foot riparian buffer and replace it with vegetated open space, resulting in a substantial net decrease (4.10 acres) in impervious*

*surface within the setback, a beneficial impact. In addition, construction of two bioretention basins which would implement post-construction measures for stormwater treatment, consistent with the requirements for an NPDES Permit would improve the quality of runoff entering the creeks from the project site over existing conditions. The replacement of hardscape with vegetated open space would also improve the quality of the habitat within the setback for use by wildlife.*

### **Santa Clara Valley Habitat Conservation Plan Riparian Setbacks**

The proposed arterial roadway along the west side of the project (Sierra Road) would also encroach into the 100-foot riparian setback required under Condition 11 of the Santa Clara Valley Habitat Conservation Plan (Habitat Plan). A total of about 1.36 acres of non-exempt development would encroach into this setback, including 1.02 acres of new hardscape and 0.34 acres of landscaping, all associated with the proposed recreation area and the new Sierra Road. A portion of a proposed roundabout would also encroach into the minimum 35-foot setback required under Condition 11 of the Habitat Plan. The proposed bridge crossings, stormwater outfalls, and trails are allowable uses in riparian setbacks and are exempt from Condition 11 setback requirements.

#### Analysis

*According to Condition 11 of the Habitat Plan, riparian setback exceptions for development adjacent to Category 1 streams should not reduce the setback to less than 100-feet for flat sites, with the potential to reduce this setback down to a minimum of 35 feet from the top of bank or edge of riparian vegetation (whichever is most restrictive) for previously developed areas.*

*According to City Council Policy 6-34, the City would consider a reduction in the riparian setback requirement under specific circumstances, including the following that apply to the project site:*

- *Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.*
- *The existence of legal uses within the minimum setback. In considering whether to grant a setback reduction, the City considers whether a project meets some or all of the following conditions.*

*There is no reasonable alternative for the proposed riparian project that avoids or reduces the encroachment into the setback area.*

*The City conducted an analysis based on the BBUV overall project design and objectives. The City considered relocation of the Sierra Road encroachment and concluded that it was not feasible to maintain appropriate circulation and encroachment without significantly affecting land massing and development capacity envisioned in the BBUV Plan, which the zoning conforms to. Under the proposed rezoning, a minimal encroachment of Sierra Road within the 35-foot setback per the Habitat Plan allows for more efficient use of the site and facilitates more development capacity through better configured blocks. The exception for the setback is for a roundabout on Sierra Road (not for blocks or buildings, which fully meet the Riparian setback requirements). In response to public comments on the Draft EIR, the applicant revised the roundabout design to minimize encroachment into the 35-foot minimum Habitat Plan setback by removing sidewalks and non-riparian supporting landscaping. With the revised design, approximately 100 square feet of the roundabout would encroach into the 35-foot minimum Habitat Plan setbacks. However, this encroachment would be offset by improvements in riparian habitat along Coyote and Upper Penetencia Creeks of approximately 10 acres, including the removal of 5.52 acres of hardscaping for the Flea Market parking lot, within 100-feet of the riparian corridors, and restoration with native trees and shrubs appropriate to the area per Mitigation Measure BIO-2.2 in the Draft EIR.*

*A strict conformance with the 100-foot riparian setbacks required under Policy 6-34 and Habitat Plan*



*Condition 11, including relocation of Sierra Road outside of the setback, would result in a reduction of approximately three to five acres of developable land, which would substantially diminish the development capacity on the site and in the BBUV Plan.*

*The reduced setback will not significantly reduce or adversely impact the riparian corridor.*

*In limited areas along Coyote Creek, the project would reduce the riparian setback compared to existing conditions by constructing Sierra Road and associated landscaping in areas that are currently unpaved but are not riparian habitat.. This encroachment of hardscape and landscaping may adversely affect a portion of the Coyote Creek corridor by removing potential habitat that could be used by riparian-associated species and introducing vehicle traffic closer to the riparian corridor. This encroachment would not result in any direct loss of riparian habitat. A proposed recreation area near the confluence of Coyote Creek and Upper Penitencia Creek would encroach a short distance into the riparian setback; however, this limited encroachment would not result in substantial adverse effects to the riparian corridor. No buildings are proposed within the riparian setback. Overall, the project would improve habitat conditions within the riparian setback along the remainder of the Coyote Creek and Upper Penitencia Creek segments at the site. The project proposes to remove asphalt and restore vegetation in most of the area within the riparian setback, resulting in a 4.10-acre net decrease in impervious surface and increase in vegetated area within the setback.*

*The proposed uses are not fundamentally incompatible with riparian habitats.*

*Under existing conditions, animals make some use of the golf course/urban park area along Coyote Creek, where project construction of the arterial road and associated landscaping would encroach into the riparian setback. However, based on the Biological Resources Report prepared for the project by H.T. Harvey & Associates (Appendix C to the Draft EIR), the value to riparian plant and animal communities of the area where encroachment would occur is low due to the absence of trees, scarcity of shrubs, dominance by non-native vegetation, and intensity of disturbance. Although the replacement of portions of this area with hardscape and landscaping would reduce the ability of riparian animals to use that habitat, the effect of such encroachment on any one species or community would be low. No buildings are proposed within the 100-foot riparian setback. The benefits to riparian communities from the removal of asphalt and revegetation with native species throughout most of the riparian setback would be substantial. Overall, considering both the encroachment and enhancement, the proposed land uses within the setback would be more compatible with riparian habitats than the existing conditions. The proposed uses would collectively benefit the riparian corridor and would not be fundamentally incompatible with riparian habitats.*

*There is no evidence of stream bank erosion or previous attempts to stabilize the stream*

*banks that could be negatively affected by the proposed development within the setback area.*

*Per the Draft EIR, there is no evidence observed of substantial stream bank erosion on or immediately downstream from the project site. Encroachment into the riparian corridor is not expected to cause or exacerbate any erosion, as the encroachment along Coyote Creek would occur on a flat site well above the elevation of the creek, in an area that is currently exposed to creek flow very infrequently. Therefore, no adverse impacts of the features that would encroach within the setback area on stream bank erosion or previous attempts to stabilize the stream banks are anticipated.*

*The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.* Although the project would reduce the setback along a segment of Coyote Creek, this setback reduction would not affect adjacent properties. Even when reduced, the setback on the project site would still be greater than the setback immediately upstream from the site along Coyote Creek, where industrial land uses encroach to the edge of the riparian corridor. The project site is also separated from upstream properties by Mabury Road. The project would not result in flow-related impacts to properties upstream

*from the project site. Granting a riparian setback exception would not be detrimental or injurious to adjacent properties across Coyote Creek, nor it would be detrimental or injurious to downstream properties.*

*The project will result in a net improvement in riparian habitat compared to existing conditions. Despite some encroachment into the 100-foot setbacks required by the Policy 6-34 and Condition 11 of the Habitat Plan, the project will restore approximately 10 acres of hardscape or disturbed land to open space with native landscaping appropriate to the area, as described in Mitigation Measure BIO-2.2 in the Draft EIR. For further discussion of the project's impacts to the riparian corridor, please see Section 3.4 of the Draft EIR, the supporting Biological Resources Report (Appendix C to the Draft EIR), and the First Amendment to the Draft EIR, which can all be found at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/the-san-jose-flea-market-southside-rezoning>.*

## **PROPOSED AMENDMENT TO THE US 101/OAKLAND ROAD TDP**

### **Background**

On December 18, 2007, the City Council adopted Resolution No. 74195, which created the TDP. The TDP is intended to help manage traffic congestion associated with the development in the area by implementing a Traffic Impact Fee (TIF) to partially fund the improvement of the existing US-101/Oakland Road interchange and construct a new US-101 interchange at Mabury Road. The TDP identifies these two interchanges as necessary improvements in order to provide adequate access to the US-101 freeway for new development and the future Berryessa BART Station.

On June 2, 2015 the City Council adopted the latest amendments to the US-101/Oakland/Mabury TDP to restructure the transportation mitigation payment schedule for the Flea Market development to align with the US-101/Mabury interchange project schedule. Specifically the update: (1) required mitigation payments in lieu of the developer performing engineering study and/or design work, (2) revised maximum unit counts per phase to better reflect the current proposed build-out of the site north of Berryessa Road consistent with the approved zoning and related PD permit approvals, and (3) advanced \$800,000 from Phase III to Phase II to support the City's continued efforts towards the PSR/PR and EIR for the US-101/Mabury Interchange. The policy update did not alter the total amount of required Traffic Mitigation Payments (total \$16 million in 2008 dollars).

### **Proposed TDP Amendment**

Since the 2015 TDP amendment, the San Jose Flea Market project has constructed 1,000 units and 118,580 square-feet of commercial space on the northside of Berryessa Road from a total of 2,818 residential units and 265,000 square-feet of commercial space that was zoned under PDC03-108 for both the north and south sides of the Flea Market. Consistent with the 2015 TDP, the Flea Market has paid \$11,400,000 (in 2008 dollars) of the total \$16 million obligation with Building Permits for construction on the northside, which equates to 71% of the required traffic mitigation payments. The Flea Market developer has requested that the City provide a credit to be applied against the Flea Market South's TIF due under the Traffic Impact Fee program and the TDP. The credit is based on the difference between the Traffic Mitigation Payments made in accordance with the 2015 TDP and the actual buildout of residential and commercial units on Flea Market North. The Traffic Mitigation Payments paid in accordance with the 2015 TDP is in excess compared to the actual buildout of residential and commercial units on Flea Market north.

The proposed policy amendment is highlighted below:

Current: The TDP does not contain provisions allowing the City to provide credits to the Flea Market development for the Traffic Mitigation Payments. The TDP also does not address new land use approvals for the Flea Market Site, which under the TDP and Traffic Impact Fee program are new development required to pay the TIF.

Proposed: The TDP amendment specifically includes a calculation methodology to determine a trip credit to be applied to the Flea Market South TIF. The proposed trip calculation methodology is shown below in Table 1.

**Table 4. Trip Credit Calculation**

Flea Market Traffic Mitigation Payment Obligation (2015 TDP)	\$16M
Flea Market Traffic Mitigation Payments Made (as of January 2020)	\$11.4M
Flea Market Traffic Mitigation Payments (Percentage of Total)	71%
Original Flea Market Zoning Trips to Mabury Road Interchange	730
Equivalent Trips Paid by Flea Market Traffic Mitigation Payments	518
Trips Produced by Flea Market North using City's Travel Demand Model	327
Number of Trips to be Credited to Flea Market South Zoning TIF	191

Approval of this modification is consistent with the TDP in that it continues to:

1. Support the City's current strategy of focusing on the US-101/Mabury Interchange project via defined payments from the Flea Market development; and
2. Encourage greater density within the BART Station area.

The proposed update to the TDP was analyzed with respect to conformance with: 1) the Envision San Jose 2040 General Plan; and 2) the California Environmental Quality Act (CEQA).

In order to apply the US-101/Oakland/Mabury Traffic Impact Fee to the current Flea Market Southside project, the City Council will need to approve an ordinance repealing Section 14.30.035 of Chapter 14.30 of Title 14 of the San José Municipal Code. The current Section 14.30.035 excludes the Flea Market project from Traffic Impact Fees. Including the Flea Market development is consistent with the TDP and other developments.

#### Envision San Jose 2040 General Plan Conformance

The project was analyzed for consistency with the following General Plan goals and policies:

- Transportation Policy TR-1.4: Through the entitlement process for new development, fund needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.
- Infrastructure Policy IN-1.4: Give priority to the development of infrastructure within identified Growth Areas to support the amount, type and location of new development planned through the Land Use/Transportation Diagram and other General Plan goals

*Analysis: The Flea Market site is located in the Berryessa BART Station Growth Area. The Flea Market project provides funding to help build out the City's transportation network along the US-101 transportation corridor, as defined in the General Plan's Land Use/Transportation Diagram. The US-101/Mabury Road interchange included in the TDP provides needed capacity for the BART station located adjacent to the Flea Market site.*

- Transportation Policy TR-3.3: As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

*Analysis: The Flea Market project is within the 5-mile radius of the Berryessa BART station. The Planned Development Zoning includes land use densities to promote transit ridership and multimodal connections to the BART station.*

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)****Environmental Analysis for Proposed Rezoning**

The City of San José, as the lead agency for the proposed project, prepared a Draft Environmental Impact Report (DEIR), which was circulated for public review and comment from October 2, 2020 to December 1, 2020. In response to public requests, the City extended the initial 45-day public circulation period that ended on November 16, 2020 by 15 additional days. The City prepared a First Amendment to the DEIR that provides responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project. The following discussion outlines the environmental impacts discussed in the DEIR.

***Identified Significant Unavoidable Impacts***

The DEIR found that the project would result in the following significant and unavoidable impacts:

- 1) Impact AIR-2: Operational air quality. Operational period air emissions would exceed Bay Area Air Quality Management District (BAAQMD) thresholds for Reactive Organic Gases, Nitrogen Oxide, and Particulate Matter (PM<sub>10</sub>).
- 2) Impact CUL-1: Cultural resources - demolition of San Jose Flea Market: The project would demolish the Flea Market structures and open space, which are eligible for listing in the California Register of Historical Resources (CRHR) and eligible for local listing as a City Landmark.

The DEIR includes mitigation measures to address these impacts. Mitigation MM AIR-2.1 addresses operational air quality by requiring approval of a Transportation Demand Management (TDM) program prior to Planned Development Permit issuance. Mitigation MM CUL-1.1 addresses demolition of the San Jose Flea Market by requiring documentation of the culture and use of the site. However, neither of these mitigation measures would reduce these impacts to a less than significant level.

Statement of Overriding Considerations in the proposed CEQA resolution finds that benefits of the project outweigh its significant adverse environmental impact. Specifically, it finds that the significant, unavoidable impacts of the project are acceptable because: i) the project would develop high-density commercial and residential uses adjacent to the Berryessa BART station, leveraging the proximity to high-frequency transit increase transit use and reduce per-capita vehicle miles traveled (and in turn per-capita GHG emissions) for residents and uses of the site; and ii) the project will be consistent with the vision, goals, and policies of the Berryessa BART Urban Village (BBUV) Plan and advance Envision San Jose 2040 General Plan goals for complete communities, with high-density residential in close proximity to existing and future commercial/retail uses.

***Environmental Impacts and Mitigation Measures***

In addition to the significant and unavoidable impacts described above, the DEIR identified the following impacts that would be reduced to a less than significant level with the implementation of mitigation measures:

- Impact AIR-1: Construction period air quality, particularly from construction equipment, dust, and volatile organic compounds on exterior architectural coatings
- Impact BIO-1: Impacts to special-status fish from dewatering and modification or reconstruction of outfalls
- Impact BIO-2: Encroachment into Santa Clara Valley Habitat Conservation Plan riparian corridor setbacks
- Impact BIO-3: Invasive plant species impacts on riparian habitat
- Impact BIO-4: Increased bird strikes due to glass facades and interior/exterior lighting for the proposed buildings
- Impact BIO-5: Tree removal
- Impact BIO-6: Impacts to nesting migratory birds during the breeding season during construction
- Impact CUL-2: Potential impacts to sub-surface archaeological resources during construction
- Impact HAZ-1: Potential soil contamination from underground and aboveground storage tanks

- Impact HAZ-2: Potential impacts from the disposal of existing hazardous materials on site
- Impact HAZ-3: Potential impacts from contaminated soil imported to the project site
- Impact HAZ-4: Impacts from encountering residual concentrations of chemicals during construction that could expose construction workers, neighboring uses, and the environment to hazardous materials
- Impact HAZ-5: Construction and operation of the project could uncover groundwater monitoring wells, historic water supply wells, and septic systems associated with previous development
- Impact NOI-1: Construction noise would impact adjacent residents for a period greater than one year

As part of the certification of the Final EIR, the City Council will need to approve a related Mitigation Monitoring and Reporting Program (MMRP) for the proposed project. A copy of the signed MMRP is attached to the proposed CEQA resolution.

### ***CEQA Alternatives***

As required under CEQA, the DEIR evaluated three alternatives, including a no project alternative. These alternatives are summarized as follows:

**No Project Alternative:** No redevelopment of the project site and continued operation of the San Jose Flea Market in its current configuration.

**Existing Entitlement Alternative:** This alternative would develop the remaining development permitted on the site under the approved Planned Development zoning (PDC03-108). The remaining development capacity for the project site is 1,818 residential units and 247,042 square feet of commercial development. This alternative would include demolition of the San Jose Flea Market.

**Reduced Footprint Alternative:** This alternative would retain the San Jose Flea Market and develop only 16-acres on the southern portion of the site with up to 395 residential units and up to 1.875 million square feet of commercial office development.

### ***Circulation and Public Comments***

The DEIR circulated for public review and comment from October 2, 2020 to December 1, 2020. Comments were submitted by several individuals and the following agencies and organizations: the California Department of Transportation (Caltrans), County of Santa Clara Roads and Airports Department, Bay Area Air Quality Management District, County of Santa Clara Parks and Recreation, Santa Clara Valley Transportation Authority, Valley Water, Hispanic Chamber of Commerce of Silicon Valley, Santa Clara Valley Audubon Society, SOMOS Mayfair, Soft Lights, Albertson's Companies, and the Pacific Gas & Electric Company. Issues raised in these comment letters include, but are not limited to the following:

- Adequacy of notification and public outreach efforts for the project and environmental review process, especially to the San Jose Flea Market vendors;
- Encroachments of the proposed roadway network and improvements into the 35' riparian corridor setback required by the Santa Clara Valley Habitat Conservation Plan and reductions in riparian setbacks in the City's Riparian Corridor Protection and Bird-Safe Design Policy;
- Adequacy of alternatives evaluated, including recommended design alternatives for preserving at least a portion of the San Jose Flea Market operations or off-site relocation;
- Requests for an analysis of transit delay due to traffic congestion from the project;
- Requests for additional mitigation measures during construction de-watering to avoid pollutants from entering adjacent creeks or groundwater;
- A request for an economic impact analysis to evaluate impacts of the project on the San Jose Flea Market vendors and surrounding community;
- Concerns about light and glare impacts, especially to the adjacent riparian habitat;

In response to comments concerning encroachment into the riparian setback, the applicant modified the conceptual project design to remove permanently disturbed areas within the 35' Santa Clara Valley Habitat Conservation Plan setbacks except for an approximately 110 sq. ft. portion of a roundabout.

The City responded to all comments received on the DEIR and incorporated them into the First Amendment to the DEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the project page on the City's Active EIRs website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/the-san-jose-flea-market-southside-rezoning>.

### ***EIR Recirculation Unnecessary***

The comments received do not identify substantive inadequacies in the DEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an DEIR is not "significant" unless the DEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the DEIR for the project includes written responses to all comments received during the public review period for the DEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the DEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the DEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the DEIR; therefore, the EIR does not need to be recirculated.

### **Environmental Analysis for Proposed TDP Amendment**

The City conducted project level CEQA analysis of the US 101/Oakland/Mabury TDP in 2007 through preparation of the Final Environmental Impact Report for the King and Dobbin Transit Village and US-101/Oakland/Mabury Transportation Development Policy Environmental Impact Report (Resolution No. 74195.1). Subsequent to this action, a TDP amendment on June 2, 2015 was adopted by City Council (Resolution No. 77365). The Addendum concluded that the implementation of the proposed update to the US-101/Oakland/Mabury Transportation Development Policy would not result in any new significant impacts, impacts that are cumulatively considerable, or will directly or indirectly cause substantial adverse effects on the environment beyond those disclosed and evaluated in the Final EIRs. As part of this project, the TDP will be further amended to include a trip credit for the Traffic Mitigation Payments already received under the previous land use entitlements. No changes to physical improvements anticipated in the King and Dobbin Transit Village and US-101/Oakland/Mabury Transportation Development Policy Environmental Impact Report and Addenda are proposed as part of this fee credit. Therefore, the fee credit is consistent with the Final EIR of the TDP. Based on the analysis above, the City prepared a Determination of Consistency with the US 101/Oakland/Mabury/Transportation Development Policy and Addenda thereto (Resolution no. 74195.1).

## **PUBLIC OUTREACH**

Staff followed [Council Policy 6-30: Public Outreach Policy](#) to inform the public of the proposed project. A notice was posted on the property, and staff created a webpage to provide information and updates on the project, <https://www.sanjoseca.gov/index.aspx?nid=6161>. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### **Community Meeting**

A community meeting for the rezoning and Environmental Impact Report (EIR) scoping meeting was held on August 16, 2018, at the Vinci Park Elementary School where approximately 50 members of the public attended. Those in attendance were generally supportive of the project but expressed concerns with the scale of the proposed development and associated impacts in various issues from traffic to building heights. City staff stated that those issues would be analyzed and addressed over the course of the BBUV Plan preparation, which would inform the size and scale of the development in the proposed rezoning. The BBUV Plan addressed comments from the community regarding the proposed rezoning application, as discussed below.

### **Community Outreach and Engagement for the BBUV Plan**

The proposed rezoning was analyzed as part of planning process for the BBUV Plan. The City conducted extensive community outreach and civic engagement during the BBUV Plan preparation. The City held three community workshops with the community at three key milestones of the planning process. The first workshop was held on November 15, 2018 and discussed the Plan goals and objectives. The second workshop was held on May 2, 2019 and discussed the concept plans and proposed development strategies. The third workshop was divided on a series of three Zoom webinars held on October 15, 2020, October 22, 2020, and October 26, 2020, due to Covid-related restrictions for hosting community meetings. The third workshop discussed the final BBUV Plan draft. The vast majority of the comments and community feedback received in all three workshops was of broad support for the BBUV Plan and the proposed development included in the rezoning as part of the Plan.

### **Correspondence with existing Flea Market Vendors**

Attached to this report are the information provided by the applicant regarding meetings with the existing tenants or vendors of the San Jose Flea Market. The applicant held an open house with the vendors on December 6th, 2020 during which vendors could stop by and learn about planning around the BART Station, the proposed rezoning, and discuss the future of the Flea Market. A flyer was distributed to each vendor to advertised December 6th and December 20<sup>th</sup>, 2020. The applicant was available from 10am to 1pm and a Spanish translator was available to answer questions. Approximately 80 people stopped by during the 3-hour period. Another open house with the same format was held from 8am to 10am on December 20th. The open house meetings were held at different location within the San Jose Flea Market grounds.

The City also provided the applicant with the copies of formal notices for the Planning Commission and City Council hearings of this rezoning to be distributed to the Flea Market vendors. Per City's policy, the applicant also installed large boards on the property, in all major roads or entrances, regarding the proposed rezoning application. The boards were installed in 2018 when the City began to analyze the proposed rezoning and they remain on site today.

The City reached out to the project's applicant to confirm whether or not there is a formal agreement between the City, the property owner, and the vendors regarding relocation and notification to the vendors. The applicant confirmed that such formal agreement does not exist. The applicant states that the Flea Market ownership (for 15 years) has made the public commitment to the vendors and to the City Council that ownership will provide at least one-year advance notice to the vendors if the Flea Market is going to close or relocate. The applicant states that such commitment stands today. The applicant also states that they have communicated with the vendors continuously regarding this commitment as they meet with them. The applicant states that there is no timeline for future development currently, therefore, the one-year notification has not occurred yet. The applicant states that the Flea Market ownership is working hard to keep the market successful through 2021 and beyond.

**Project Manager:** Charla Gomez

**Approved by:** /s/ , Deputy Director for Rosalynn Hughey, Planning Director

<b>ATTACHMENTS:</b>	
Exhibit A:	Vicinity Map
Exhibit B:	Proposed Land Use Map
Exhibit C:	General Plan Map
Exhibit D:	Draft Zoning Ordinance
Exhibit E:	Draft Development Standards
Exhibit F:	Planned Development Zoning Plan Set
Exhibit G:	Draft CEQA Resolution and MMRP
Exhibit H:	Draft Ordinance Repealing Section 14.30.035 of Chapter 14.30 of Title 14
Exhibit I:	Draft Resolution Amending US-101/Oakland/Mabury TDP
Exhibit J:	Proposed Amendment to US-101/Oakland/Mabury TDP
Exhibit K:	Public Correspondence

<b>Owner:</b>	<b>Applicant:</b>	<b>Applicant's Representative:</b>
Berryessa FM Development LLC. The Flea Market Inc. 1590 Berryessa Rd San Jose, CA 95133	Berryessa FM Development LLC. The Flea Market Inc. 1590 Berryessa Rd San Jose, CA 95133	Erik E. Schoennauer, THE SCHOENNAUER COMPANY, LLC. 2051 Junction Ave., Suite 100 San Jose, CA 95131



## **PDC17-051 List of Attachments**

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[Correspondence Received After March 17, 2021](#)

[Correspondence Received After March 24, 2021](#)

[Attachments Received After March 24, 2021](#)