

Input on Items 10.3 & 10.4 of the 6/22 City Council Agenda

Rosa Hernandez-Garcia [REDACTED]

Mon 6/21/2021 9:40 AM

To: es [REDACTED] <[REDACTED]>; ralph [REDACTED] [REDACTED] >; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Gomez, Charla <Charla.Gomez@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Tran, David <david.tran@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Brown, Stacey <Stacey.Brown@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; Groen, Mary Anne <maryanne.groen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

[External Email]

Dear City Council,

I urge you to ensure the redevelopment of the Berryessa Flea Market, a key part of the San Jose community, is as inclusive and vibrant as possible.

As you deliberate on this issue, I'd ask you to consider the points below. In fact, please incorporate them into your motions as conditions of approval before you vote.

1. Enable negotiations with the vendors to build to an agreement: Defer this vote until a true agreement can be reached between the vendors association, property owners & City officials. Right now, they're in the middle of negotiations. Give them time to complete them. Ensure the vendors are always included at the negotiation table. While I want to see this development with new homes, commercial space, and parks move forward, the process must involve the vendors.

2. On the market itself:

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b) Enough stalls: To ensure all existing vendors can sell at the new market, I'd like to see a multi-level market on the BART Plaza site and a plan to close residential streets for additional vendors on weekends studied. If all 430+ vendors can't fit on-site, a replacement site in San Jose needs to be secured.

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3. On the number of homes & building heights:

a) The Berryessa Urban Village is one of the best areas in San Jose for creating a vibrant neighborhood of offices, shops, homes & green space next to a major transit hub. This rare opportunity means we

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Ava Tajally [REDACTED] >

Mon 6/21/2021 10:22 AM

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Let's make this development a quadruple win - for the vendors, the landowners, the City & our broad community!

As you look to approve this development, please ensure the Flea Market vendors are not displaced, and this critical part of our community is maintained.

Thank you for considering my perspective.

Sincerely,

Ava
Sent from my iPhone

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Input on Items 10.3 & 10.4 of the 6/22 City Council Agenda

Mira Karthik <[REDACTED]>

Mon 6/21/2021 10:27 AM

To: es [REDACTED] <[REDACTED]>; ralph [REDACTED] <[REDACTED]>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Gomez, Charla <Charla.Gomez@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Tran, David <david.tran@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Brown, Stacey <Stacey.Brown@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; Groen, Mary Anne <maryanne.groen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

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Sincerely,
Mira Karthik, District 10 Resident

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Input on Items 10.3 & 10.4 of the 6/22 City Council Agenda

Yareli Rivera [REDACTED] >

Mon 6/21/2021 6:07 PM

To: es [REDACTED] >; ralph [REDACTED]; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Gomez, Charla <Charla.Gomez@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Tran, David <david.tran@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Brown, Stacey <Stacey.Brown@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; Groen, Mary Anne <maryanne.groen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

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Sincerely,

Yareli Rivera

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emilyyvonne [REDACTED] [REDACTED] >

Tue 6/22/2021 10:29 AM

To: es [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Gomez, Charla <Charla.Gomez@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Tran, David <david.tran@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Brown, Stacey <Stacey.Brown@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; Groen, Mary Anne <maryanne.groen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

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Thank you for considering my perspective.

Emily Pachoud

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Input on Items 10.3 & 10.4 of the 6/22 City Council Agenda

Zoe Hamblin <[REDACTED]>

Tue 6/22/2021 10:33 AM

To: es [REDACTED] <[REDACTED]>; ralph [REDACTED] <[REDACTED]>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Gomez, Charla <Charla.Gomez@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Tran, David <david.tran@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Brown, Stacey <Stacey.Brown@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; Groen, Mary Anne <maryanne.groen@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

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Sincerely,
Zoe Hamblin

Please these are peoples lives and community and culture

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: Kelly Snider <[REDACTED]>
Date: June 17, 2021 at 6:06:45 PM PDT
To: "Brilliot, Michael" <[REDACTED]>
Cc: "Hart, Jared" <[REDACTED]> "Gomez, Charla" <[REDACTED]> "Burton, Chris" <[REDACTED]> "Hughey, Rosalynn" <[REDACTED]> "Kline, Kelly" <[REDACTED]> Fred Buzo <[REDACTED]> "Chang, Chu" <[REDACTED]> Laxmi Ramasubramanian <[REDACTED]>
<[REDACTED]>
Subject: Re: Please provide Clarification - Mayor Liccardo said you will be SUED??

Thanks, Michael. For the sake of closing the loop, here's what we discussed:

1) The City Council has complete authority to approve, deny, defer, or otherwise request amendments to PDC17-051, and does not have to fear any reprisals, lawsuits, or failure to honor agreements on any side of the issue. Their land use authority is in full effect. [Generally true, except that the Council may not condition the rezoning with conditions for which there is no nexus to the impacts of the development unless there is a development agreement or the developer amends their project application to include such items, or that are otherwise unlawful.](#)

2) The PDC16-001 (aka "the 2007 rezoning") has been in effect since 2016; but it is **not applicable** to the area south of Berryessa. From the city's

"If a planned development permit has been issued, the planned development district may nevertheless be disregarded and property in such territory used as if it were in its base district alone **if such use is confined to part of the subject territory not covered by the permit** and a requirement to make such use of such part is not a condition of such permit. (SJMC §20.60.030 D.) (emphasis added) This is not correct. [The 2016 PD zoning includes both the site north of Berryessa Rd and the site south of Berryessa Rd; the 2016 PD zoning copied the zoning from the 2007 zoning for the south side. The 2016 zoning includes findings of consistency with the 2011 General Plan.](#)

The Ordinance enacting the PDC16-001 PD District clearly stated that the area south of Berryessa Road was not covered by the permit - in fact it was a Condition of Approval that the separate and distinct area south of Berryessa (which was not a part of the permit) **be rezoned** to accommodate more intense uses not even considered in the 2007 zoning (PDC03-108). The intent, language, spirit, and letter of the law is to separate the district north of Berryessa from the district south of Berryessa. You now have the opportunity amend the General Plan further in support of high-density employment, transit, and residential uses by adopting the BBUV - without any record of dissent, protest, or any attempt at issue preservation for purposes of litigation from the very property owner that Mayor Liccardo said publicly has "the right to sue the City." They have the right to file a lawsuit - but they have no chance of prevailing. [This interpretation is incorrect. Again, the 2016 rezoning covered both sides of Berryessa and retained the allowed uses and development capacities of the](#)

2009 rezoning. The City Council did approve a condition with the 2016 rezoning that required that, if no significant improvements have been constructed on the south side of Berryessa Road under the existing entitlements by November 1, 2016 consistent with the 2011 San Jose 2040 General Plan, then the property owner was required to rezone the south side of Berryessa for between 1.5 and 2.2 million square feet of residential development. With the submittal of proposed rezoning PDC017-051, as well as in the needed CEQA analysis for Council consideration, the property owner has met this condition. The property owner does not have the authority to approve this rezoning. This legislative act can only be made by the City Council. The Council has the discretion to deny PDC017-051 zoning application, but, if it does so, this would not negate in any manner the rezoning action in 2016 that applies to both the north and south side.

3) At any time until the "Flea Market South District" is rezoned, whether by city-initiated rezoning or by privately initiated rezoning, the property owner may submit an application for a PD Permit on the Flea Market South District property, which is a discretionary approval issued by the Planning Director with appeal to the Planning Commission. **-No response needed.**

4) The property owner has stated their desire to submit a high-quality application for a state-funded Infill Infrastructure Grant no later than July 12, 2021, and wants to present their application as having the highest value of "project readiness". The primary objective of IIG funding is "to promote infill housing development". **No response needed.**

5) The currently in-effect zoning PDC16-001 allows up to 1,818 residential units, and the city attorney and staff previously made findings sufficient to establish that PDC16-001 is in vertical alignment with the General Plan designation Urban Village. **City Attorney does not make these findings. They are recommended by staff, reviewed by City Attorney, and made by Council.**

6) The property owner therefore can submit a PD Permit application for up to 1,818 units **at any time**, regardless of whether or not PDC17-051 is adopted now, before July 12, or never. That unequivocally demonstrates "project readiness" and site control. **If BBUV plan and the proposed 2021 rezoning ordinance are approved, the owner must comply with those policies and zoning ordinance. If the proposed PDC17-051 zoning is not approved, the existing Urban Village land use designation (established in 2011) and 2016 zoning apply. There is no consideration of "project readiness" and site control that is required for these actions because these criteria are not part of the evaluation by staff of the general plan amendment and zoning amendment. Rather, these appear to be requirements of the applicant for a state grant application.**

7) City officials have NO obligation to approve any PD Permits in the Flea Market South District that conform with the Flea Market South of Berryessa district, based on the false argument that a PD permit was issued for the district north of Berryessa that effectuated PD16-001 zoning district. Again the SJMC:

*If a planned development permit has been issued, the planned development district may nevertheless be disregarded and property in such territory used as if it were in its base district alone **if such use is confined to part of the subject territory not covered by the permit** and a requirement to make such use of such part is not a condition of such permit. (§20.60.030 D.) (emphasis added)*

The first sentence above is incorrect. If a PD permit is submitted under the 2016 zonings for the Flea Market south site, the City is required to consider this PD permit in the same manner as any other land use permit application. The City would be required to consider any applications for Planned Development permits for the site and, in its consideration of the application for issuance of the permit must make a consistency determination with the applicable general plan and applicable zoning in addition to all of the other findings required by San Jose Municipal Code (SJMC) section 20.100.940. If the BBUV Plan were adopted and the Flea Market rezoning were not adopted, the Urban Village Land Use designation applied 2011 by the General Plan and the 2016 zoning would apply for the reasons explained below in the response to #8.

If findings of consistency could not be made, then Planning Director would need to deny the PD permit application, unless the applicant modifies their project to make it consistent. However, if the project is deemed to be consistent with the General Plan and the 2016 zoning, and all of the other findings required by SJMC section 20.100.940, the permit would be required to be approved. The issuance of a permit is a quasi-adjudicative action and requires that the findings be considered and that the decision-maker comply with making the required findings based upon the application and evidence in the record of the proceeding, unlike when the Council makes legislative determinations such as whether to adopt or amend the general plan and zoning.

8) If the Berryessa BART Urban Village Specific Plan is adopted, the General Plan will be amended thus, and a new minimum residential unit count and unit density standard will be part of the General Plan, which is no fewer than 2,145 dwelling units (p. 35 BBUV) and a target of 3,000 dwelling units in the Flea Market South district. [The Berryessa Urban Village Plan may be adopted without adoption of the rezoning for the Flea Market site. In order to comply with Government Code section 65680, which requires that the General Plan and zoning must be consistent, the resolution for the adoption of the BBUV plan specifies that it will not take effect on the Facchino and Flea Market Districts, respectively, until consistent rezonings are approved for those districts. Therefore, if the BBUV plan is adopted without approval of PDC017-051 or another consistent rezoning, the BBUV land use designations and policy framework would not apply to the Flea Market site, and development could proceed under the existing Urban Village land use designation and the 2016 rezoning.](#)

9) If the Berryessa BART Urban Village Specific Plan is adopted, a new minimum FAR for commercial in the Flea Market South District will be established, that is 3.5 - 10.0 FAR, and the ONLY allowed uses in much of the Flea Market South District will be restricted to "Transit Employment Center". [See response to #8 above. This is true only if the BBUV plan is approved and takes effect upon adopting of PDC17-051 or another consistent rezoning.](#)

10) If the City Council fails to replace PDC16-001 with the general development standards proposed in PDC17-051, and the BBUV and General Plan amendments ARE adopted, then any argument that "the effectuated zoning" prevails is again proven false. The 2007 zoning at that point will *not be* vertically

aligned with the General Plan and the state's Housing Accountability Act (as recently amended by AB 3194) would allow the General Plan to prevail, including the requirement that *any* PD Permit application accommodate the full 2,145 minimum units; that any PD Permit application conform to the Transit Employment Center land use category (3.0 - 10 FAR); and all the other requirements of the BBUV, such as open space, circulation, transit plaza, riparian corridor protection, etc. [See response to #8 above](#). Again, because of the GP and zoning consistency requirement of Govt C sec 65680, the land use and development policy framework in the BBUV plan do not take effect for the Flea Market south property until such time that a consistent zoning is approved by Council. If Council does not approve PDC017-051 or another consistent rezoning, the land use designation for the Flea Market site would remain Urban Village, as designated with the adoption the Envision San Jose 2040 General Plan ins 2011, and the zoning would remain as the Council approved 2016 PD zoning. Note that AB 3194 only applies where there is an existing zoning inconsistency with the general plan, but it does not authorize the city to create further inconsistencies between its general plan and zoning in violation of Government Code section 65680.

I hope you will share this information with Mayor Liccardo, CM Cohen, Ms. Nanci Klein, and many others who are on the record numerous times saying "The zoning is effectuated, therefore the Bumbs can build according to the 2007 zoning". That is not true. I further hope you will deny or defer PDC17-051 until a relocation plan for the Flea Market can be planned out.

Thank you,

Kelly



PRESERVATION ACTION
COUNCIL OF SAN JOSE
History Park
1650 Senter Road
San Jose, CA 95112
Phone: 408-998-8105
www.preservation.org

June 22, 2021

VIA EMAIL (city.clerk@sanjoseca.gov)

San José City Council
200 E. Santa Clara Street
San Jose, CA 95113

RE: ITEMS 10.3 & 10.4: BERRYESSA BART URBAN VILLAGE PLAN (GP20-008 and C21-001), SAN JOSE FLEA MARKET SOUTHSIDE REZONING (PDC17-51)

Dear Mayor Liccardo and City Council,

Established in 1960, the San Jose Flea Market is an unquestionably significant historic resource that uniquely embodies the cultural heritage of the City of San José. As the San Jose Flea Market Southside Rezoning project EIR rightly concludes, **the Flea Market site qualifies for listing as a Candidate City Landmark and is eligible for listing on the California Register of Historical Resources.** Not only is the Flea Market one of San José's most dynamic public spaces and vibrant destinations, it is also a critical economic engine for the market's 400+ vendors and customers, the majority of which represent underserved and traditionally marginalized communities. The unmitigated destruction of the Flea Market and the displacement of its current vendors and customers would represent a tragic and unnecessary return to the darkest days of urban renewal and its perpetuation of inequitable, discriminatory land use practices. This unfortunate path is neither necessary nor inevitable, as illustrated by the recent progress made by current vendors, City staff, and the project applicant to include a reconstructed market area in the future redevelopment of the Flea Market parcel. **However, we do not believe these new plans have been adequately vetted by City staff, current stakeholders, or the general public—a process which should be comprehensive, transparent, and inclusive.**

PAC* SJ BOARD

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PAC* SJ strongly opposes a rushed approval of the current development proposal, which has undergone significant changes since the issuance of the project’s EIR First Amendment in March 2021. While we support the *concept* of a reconstructed “Urban Market” as envisioned in the current development proposal and believe it to be a *potentially* appropriate mitigation strategy to offset the loss of a qualified historic resource under CEQA, **we object to the EIR’s total lack of analysis of this project alternative and have significant concerns about its viability as proposed.** Likewise, while we support the *spirit* of the proposed conditions of approval outlined in the 6/18/21 Liccardo/Cohen/Jimenez memorandum outlining a constructive strategy for the development of a reconstructed market, **we have grave concerns that they alone are adequate to avoid the displacement of the market’s current vendors.**

For these reasons, PAC* SJ strongly supports Councilmember Peralez’s 6/22/21 memorandum requesting a deferral of Items 10.3 and 10.4 from today’s (6/22/21) Council Agenda in order to allow for continued analysis of these issues. We also strongly support the additional conditions of approval proposed in Vice Mayor Jones’s 6/21/22 memorandum.

The City of San José has **an incredible opportunity and an imperative responsibility** to get this project right. PAC* SJ applauds the efforts of all involved to preserve the legacy of an **irreplaceable cultural, historic, and economic asset.** Much progress towards this goal has been made in the last weeks and months, but the premature approval of an unvetted plan today, without reasonable assurances that the laudable goals of reversing past inequities and preventing displacement of historically marginalized communities will actually be achieved, represents an unnecessary and dangerous step backwards.

Sincerely,

Ben Leech
Executive Director
Preservation Action Council of San Jose

Fw: Items 10.3 & 10.4

City Clerk <[REDACTED]>

Tue 6/22/2021 4:33 PM

To: Agendadesk <[REDACTED]>

Office of the City Clerk | City of San José200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

*How is our service? [Please take our short survey.](#)***From:** Fred Buzo <[REDACTED]>**Sent:** Tuesday, June 22, 2021 4:32 PM**To:** City Clerk <[REDACTED]>**Cc:** Kohl, Cassidy <[REDACTED]>

Ramirez, Lucas <[REDACTED]>

Tran, David

<[REDACTED]> Brown, Stacey <[REDACTED]>

Arreola, Kiara

<[REDACTED]> Groen, Mary Anne <[REDACTED]>

Kaspar, Nick

<[REDACTED]> McGarrity, Patrick <[REDACTED]>

Hughes, Scott

<[REDACTED]> District 10 <[REDACTED]>

Kline, Kelly <[REDACTED]>

Subject: Items 10.3 & 10.4

[External Email]

Mayor, Vice-Mayor & City Councilmembers:

Over the past year, we have all witnessed fundamental changes in how the world views equity. San Jose, like many local jurisdictions, has made a commitment to view issues using an "equity framework." Make no mistake, this decision will have a significant economic impact on the livelihoods of the mostly immigrant flea market vendors, and cultural and social impact on vendors and patrons that will be felt at the regional level. If saving the Flea Market is a real option, we offer the following recommendations should the council decide to move forward with the rezoning:

1. Adopt item 5 of Councilmember Carrasco's memorandum, item 4 of Vice-Mayor Jones' memorandum, and items 3c, 3d, 3e, 4 & 5 of Councilmember Peralez's memorandum. The Municipal Code allows for the city council to issue PD Permits "as appropriate." Given the significance of this historic/cultural resource and profound equity implications of this decision, we would argue this is clearly an "appropriate" situation. The point here is that the council should have the final say on the timing and details of the demolition, preservation, or relocation of this historic resource.

2. Allow for the onsite-preservation of the Flea Market within the boundaries of the entire Urban Village and not just the Flea Market South District. Knowing the existing Flea Market is much more than just placemaking, there is no reason to limit its on-site preservation to one area of the Urban Village.
3. Explicitly state that off-site relocation of the Flea Market to public or private land is still an option. Again, there is no reason to limit the location of a proven economic engine to the Urban Village.
4. If saving the Flea Market is truly a goal here, follow the guidance of the Historical Resources Assessment and direct staff (including the Office of Racial Equity) to conduct a thorough analysis to determine the size, location, and form necessary for this Flea Market to be preserved or relocated while still maintaining its economic sustainability and cultural integrity.

The communities that currently serve as vendors, customers, and city residents in general deserve to have every avenue explored before the city finalizes the decision that will ultimately result in the demolition of a one-of-a-kind regional attraction. The property owners have indicated they do not anticipate developing the Flea Market site for several years. In the interim and prior to PD Permits being issued, much needed work can be done to help all stakeholders understand the immense impacts of this decision.

Thank you for your time and hard work on this difficult matter.

Fred Buzo (he/him)
San Jose Director | [SPUR](#)



 [SPUR Regional Strategy](#) has landed

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