

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 22, 2023

COUNCIL DISTRICT: 4

SUBJECT: FILE NOS. PDC18-036, PD21-009, PT21-030 AND ER21-113. REZONING OF A 13.05-GROSS-ACRE SITE FROM THE LI LIGHT INDUSTRIAL AND A AGRICULTURAL ZONING DISTRICTS TO THE R-M(PD) AND CP(PD) PLANNED DEVELOPMENT ZONING DISTRICTS. PLANNED DEVELOPMENT PERMIT TO ESTABLISH A MASTER PLAN FOR A GENERAL SITE LAYOUT, PUBLIC AND PRIVATE STREET LAYOUT, GRADING AND DRAINAGE PATTERNS, AND UTILITY LAYOUT TO ALLOW THE FUTURE CONSTRUCTION OF UP TO 455,000 SQUARE FEET OF COMMERCIAL SPACE, AN APPROXIMATELY 0.92-GROSS-ACRE PARK, AND UP TO 850 RESIDENTIAL UNITS, INCLUDING ON-SITE AFFORDABLE UNITS, AND THE CONSTRUCTION OF THE FIRST PHASE (BLOCKS A, B, AND C, INCLUDING 24 DETACHED SINGLE FAMILY HOMES AND 24 ATTACHED TOWNHOME UNITS), INCLUDING THE DEMOLITION OF AN EXISTING LIGHT INDUSTRIAL FACILITY (9,740 SQUARE FEET) AND SURFACE PARKING LOT, AND THE REMOVAL OF 47 ORDINANCE-SIZE TREES AND 56 NON-ORDINANCE TREES. VESTING TENTATIVE MAP TO MERGE THREE PARCELS INTO ONE AND SUBDIVIDE UP TO THIRTY-TWO LOTS AND UP TO 590 CONDOMINIUM UNITS ON THE PROJECT SITE, LOCATED AT THE NORTH SIDE OF BERRYESSA ROAD, APPROXIMATELY 1,100 FEET WESTERLY OF LUNDY AVENUE (1655 BERRYESSA ROAD).

RECOMMENDATION

The Planning Commission voted 9-0-1 (Garcia absent) to recommend that the City Council take all of the following actions:

- (a) Adopt a resolution certifying the Final Environmental Impact Report prepared for the Berryessa Road Mixed-Use Development Project, and making certain findings concerning significant impacts, mitigation measures and alternatives, and adopting a mitigation monitoring and reporting program, all in accordance with the California Environmental Quality Act (CEQA), as amended.

- (b) Approve an ordinance rezoning certain real property of approximately 13.05 gross acres situated on the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road from the LI Light Industrial and A Agricultural Zoning Districts to the R-M(PD) and CP(PD) Planned Development zoning districts.
- (c) Adopt a resolution approving, subject to conditions, a Vesting Tentative Map to merge three parcels into one parcel and subdividing the one parcel into thirty-two parcels and up to 590 condominium units on the approximately 13.05-gross-acre Project Site.
- (d) Adopt a resolution approving, subject to conditions, a Planned Development Permit to establish a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000 square feet of commercial space, an approximately 0.9-gross-acre park, and up to 850 residential units, including on-site affordable units, and construction of the first phase (Blocks A, B, and C, including 24 detached single-family homes and 24 attached townhome units), including the demolition of an existing light industrial facility (9,740 square feet) and surface parking lot, and the removal of 47 ordinance-size trees and 56 non-ordinance trees (124 replacement trees) on the Project Site.

SUMMARY AND OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the applicant would be allowed to demolish an existing light industrial facility (9,740 square feet) and surface parking lot, remove 47 ordinance-size trees, and 56 non-ordinance-size trees, and construct the first phase of the project, including Blocks A, B, and C, 24 detached single-family homes and 24 attached townhome units, on the approximately 13.05-gross acre subject site. The approval would also establish a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000 square feet of commercial space, an approximately 0.92-gross-acre park, and up to 850 residential units, including on-site affordable units on the Project Site.

BACKGROUND

On May 10, 2023, the Planning Commission held a Public Hearing to consider the Final Environmental Impact Report (EIR), Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit. Commissioner Casey made a motion to approve the recommendation. Commissioner Young seconded the motion. The motion passed 9-0-1 (Garcia absent). The Planning Commission recommended that the City Council certify the EIR pursuant to CEQA and approve the Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit.

ANALYSIS

Analysis of the proposed CEQA clearance, Vesting Tentative Map, Planned Development Zoning and Planned Development Permit, including conformance with the General Plan, Municipal Code, Design Guidelines, and City Council Policies, are contained in the attached staff report.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more Climate Smart San José goals. It increases the density of new development (persons/jobs/acre) and facilitates job creation within City limits by providing up to 850 units and up to 455,000 square feet of commercial space. It reduces Vehicle Miles Traveled (VMT) and facilitates the choice of mobility choices other than single-occupancy, gas-powered vehicles by placing residential units and commercial space close to a BART station.

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution certifying the Final Environmental Impact Report, adopt the ordinance approving the Planned Development Zoning, and adopt the resolutions approving the Vesting Tentative Map and Planned Development Permit, the applicant would be allowed to develop the project as described above.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals, Policy 6-30. The required on-site sign has been posted at the site since March 15, 2021, to inform the neighborhood of the project. A community meeting was held to discuss the project on August 12, 2021, via Zoom webinar. Approximately six members of the public were in attendance at the meeting. There was one member of the public who spoke during the meeting, and he was in support of the project.

Additionally, we received emails from one member of the public who was concerned about the loss of industrial lands and the resulting loss of jobs. City staff responded by stating that with the adoption of the Berryessa BART Urban Village Plan in June 2021, the site is no longer

designated for industrial use. A 3.0 floor area ratio to 5.0 floor area ratio of job-generating commercial use was implemented as a requirement to create jobs at the site, which is likely to generate a greater number of jobs than the previous light industrial use at the existing site.

Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. City staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

The project was heard at the Planning Commission hearing on May 10, 2023, on the Public Hearing portion of the agenda, as follows:

Staff Presentation

Laura Meiners, Planning Project Manager, provided an oral presentation of the proposed project that included an overview of the project's conformance with the General Plan, Berryessa BART Urban Village Plan, San José Municipal Zoning Code, Citywide Design Guidelines, and City Council Development Policies. Tina Garg, Environmental Planning Supervisor, provided an oral presentation regarding the environmental review process and project conformance with CEQA.

Applicant Presentation

The applicant's representative, Erik Schoennauer, presented the details of the project, including the project history, site layout, project design and phasing, provision of affordable housing, public infrastructure improvements, and conformance with the Berryessa BART Urban Village Plan.

Public Hearing

Chair Oliverio opened the public comment portion of the agenda. Twelve members of the public spoke on the proposed project. The comments of the speakers are summarized below:

- A private citizen was concerned that the single-family and townhome buildings are in the first phase. There is much more need for the multifamily units. While every housing unit is needed, single-family housing is not enough.
- The president of the Berryessa Flea Market Vendors Association asked for creative ways to use the future commercial space for vendors being displaced by the ongoing Flea Market project. There should also be a higher density of housing here since it's so close to the BART station.
- A neighbor said that he would like the park to be constructed at the same time as the construction of the housing units. He said it's because the other parks in the neighborhood were not constructed until much after the construction of the housing units.

- A resident said that there are people with disabilities living on the street who need the Americans with Disabilities Act Standards for Accessible Design accessible affordable housing, and schoolteachers, members of the police, and veterans all need affordable housing. We need more affordable housing more than we need single-family homes right now.
- Silicon Valley Residents for Responsible Development said that the CEQA document did not adequately address significant environmental impacts, including mitigation requiring Tier 4 construction equipment and hazardous materials mitigation. They are in opposition to the project and urge the Planning Commission to vote no on the project until a legally adequate EIR can be prepared.
- A resident stated that this project is fine from a housing perspective, but he has concerns about the bicycle and pedestrian connectivity aspects, in particular from Krebs Court and Aschauer Court to the north of the project site. The Berryessa BART Urban Village plan calls for these connections to provide access to the BART station. The project does not include connections to these streets.
- Field Rep with the NorCal Carpenter's Union stated that specific labor standard language should be added to permits, including for apprentices, health care, and local hiring practices to improve the lives of construction workers.
- One member of Local 483 Union and one apprentice, both residents of San José, stated separately that the project could help expand the career horizon of people in the construction apprenticeship program. This project has chosen to hire a general contractor who does not guarantee the hire of local union workers, paying substandard wages and no benefits.
- A professor of Real Estate Development at San José State University commended staff for the clarity of the Staff Report but has concerns that we're approving single-family homes so close to the BART station, which is San José's only BART station in the city. She realizes that it might be too late to go back and revise the Berryessa BART Urban Village Plan, but we should encourage these developers to build high-density multifamily homes this close to the BART station.
- A resident said that he agrees with Alex Shoor's comments and the Flea Market Vendors Association's comments. There needs to be involvement with the vendors for the construction of the commercial building. He recently learned about the concepts of mixed-income developments that will be mandated by 2029 and asked if we can start applying those concepts now.
- A homeowner in the Berryessa Villa Community on the opposite side of the BART track, wants the project to plant trees adjacent to the tracks to provide privacy.

Chair Oliverio closed the public comment portion of the agenda and invited the applicants to respond to comments or provide any closing statements. Erik Schoennauer of the applicant team responded to the comments to build the multifamily first, stating that the applicant's goal is to build all the buildings as fast as possible. The for-sale single-family homes and townhomes will

pay for the infrastructure that would enable the development of the rest of the residential units. That's why the sequence must be in that order.

Mr. Schoennauer next replied that the applicants are permitted by the Berryessa BART Urban Village Plan to include the single-family homes and townhomes at the edge as a transition to the existing adjacent single-family homes. The applicant is bringing forth a project to implement the Urban Village Plan.

As to the comment from the Flea Market Vendors Association, Mr. Schoennauer stated that the project has never been a part of the Flea Market development or operations, but they understand the request that when the future commercial space is built if there is an opportunity to place storefronts that Flea Market vendors can move into, they would consider that option. But as of today, there is no specific commercial development proposed.

With regards to the public park, Mr. Schoennauer stated that the City Parks, Recreation and Neighborhood Services Department (PRNS) has requested that the project donate the land to the City and provide PRNS the funds to develop the park, so the timing of when the parks get built would be in the hands of the City. The applicant fully intended to build the parks, but the City requested that the land be donated, and the five million dollars be paid for the City to build the park. The same thing happened for the other neighborhood parks that the neighbor referenced. If you look at the Capital Budget, there is funding for Bruzzone Park and funding for Mercado Park, so the assumption is that the City will begin construction of those two parks this fiscal year.

With regard to the connectivity of the streets to the north of the project site, Mr. Schoennauer stated that during the community outreach process for the Urban Village Plan, the neighbors on that side were strongly against the roadways being connected, since they didn't want traffic to cut through their neighborhood. Therefore, the Urban Village Plan that was approved by the City Council does not connect the existing roads to the north of the project site to the new roadway network.

Mr. Schoennauer, in response to comments about union labor, stated that workforce standards are not land use issues. It's not appropriate to address them in land use decisions.

Staff responded to the question about the commercial building, that when it is constructed, it will be required to have ground-floor retail pursuant to the Urban Village Plan requirements.

Commissioner Discussion

Chair Oliverio began the discussion by asking Mr. Schoennauer if there were pedestrian or bicycle connections along the northern portion of the project site. Mr. Schoennauer replied that the Urban Village Plan did not anticipate having any connections – pedestrian, bicycle, or vehicle. Chair Oliverio stated that then the decision-making process is based on the current approved urban village plan. Mr. Schoennauer replied that the applicant must present a project that's consistent with the plan adopted by the City Council.

Chair Oliverio asked if it was correct to state that once you walk out of the development, you can go left or right and cross Berryessa at a signalized intersection to get to the BART station. Mr. Schoennauer replied that for the residents of the subject development, they have direct pedestrian access to the BART station, but the existing residents to the north of the project site would first have to walk from Sierra Road to Berryessa Road to get to the BART station, which is out of the way and would add 0.4 miles to the route as compared to having direct access through the development.

Chair Oliverio asked Mr. Schoennauer to confirm if it's the case that since there are 24 single-family homes and 24 townhomes proposed in phase one, then there will be 802 multifamily units proposed at a later time since the maximum number of units is 850 units. Mr. Schoennauer clarified that the units that are certain are the 24 single-family homes and the 24 townhomes. The rest of the units will be multifamily podium development, but the exact unit counts are not yet determined. This entitlement has a maximum of 850 units.

Commissioner Lardinois asked for additional information about the Housing Department conditions of approval, which references the applicant providing a bond to cover the in-lieu fees and the bond would be returned within five years if the applicant provides affordable units to meet the Inclusionary Housing Ordinance (IHO) requirements. He asked staff to clarify if this would be on-site or off-site affordable units. Darius Brown from the Housing Department responded that the applicant selected the Alternative Method compliance option, which allows developers to propose alternative ways to meet the IHO to benefit the city. In this case, the developer is taking the provisions of the Partnership for Cluster Units compliance option. The base requirement for that option is for 15% of the total units to be affordable, which results in a minimum of 128 on-site affordable units to achieve the IHO requirements based on the 850 total units proposed. The developer included a total of 697 affordable units on the Housing Compliance Plan, which is above and beyond the requirement. This is not a City-funded development, and the developer is seeking their own financing, but the Housing Department still wanted to work with the developer to provide as much benefit to the City as possible. The surety bond is to provide insurance for the City, since the project is being built in phases, and Housing wanted to make sure that the IHO requirements weren't a barrier to the development. The bond will be required to be submitted prior to the first Certificate of Occupancy for the first unit in the first phase. Once the affordable housing phase is submitted, the units will be deed restricted for 99 years per the IHO. If the affordable unit phase does not move forward in five years, then the bond for the in-lieu fees will be transferred into the IHO account to be used to fund other affordable projects within the City of San José.

Commissioner Lardinois followed up by asking if the proposed 697 affordable units will be on-site or off-site. Mr. Schoennauer responded that the units will be proposed on-site. Parcels A, B, and C are market-rate single-family homes and townhomes. Parcel D will be for-sale market-rate condominium units. Parcels H, F, and G will be proposed as on-site affordable units. The applicant's base commitment is to provide the required 128 affordable units on-site per the IHO requirements. The bigger goal is to make all of Parcels H, F, and G affordable at 80% AMI or lower with varying bedroom counts. The applicant understands that the bond for the in-lieu fees

is needed because of the project phasing. He reiterated that for-sale homes will fund the construction of the roadway infrastructure to create the blocks where the affordable housing will be built, which means there will be a slight lag time between when the for-sale market-rate units will be built, and when the affordable units will be built. The current IHO says that you have to build them at the same time, which would not be feasible for this project. The Housing Department is saying that since there is a lag time, the developer has to provide a bond to ensure that the affordable homes get built, and if they aren't built, then the City has the right to take the bond as the in-lieu payment instead.

Commissioner Lardinois asked Mr. Schoennauer to further clarify if it's the case that there would be three possible scenarios. The first option would be that no affordable units get built and the bond is surrendered to the City. A second option would be that 697 affordable units get built on-site across Parcels H, F, and G, in which case the applicant would get the bond back. A third option was that fewer than 697 affordable units would be built, then a portion of the bond would be returned. Mr. Schoennauer responded that that is yet to be determined. The applicant has come to an agreement with the Housing Department with their intent. Prior to the issuance of the first building permit for the first unit under the Planned Development Permit, an Affordable Housing Agreement must be made between the City and the applicant stating all the details of the affordable housing agreement, and then that agreement gets recorded against the property. This will occur after Planning approvals and prior to building permit issuance. Commissioner Lardinois thanked the applicant's representative and staff for working creatively to address the issue.

Commissioner Young stated that he drove out to the area and was trying to look at the parcel. He asked Mr. Schoennauer to orient the Commissioners as to where this project site is in relation to the BART Station. Mr. Schoennauer showed the site plan and the overall Urban Village Plan and explained the orientation of the site, which is across Berryessa Road from the existing Flea Market site along the track alignment to the north of the BART station. The site has a short frontage, so it's not noticeable. Commissioner Young asked Mr. Schoennauer to verify that the residents of this project will then only need to cross the street at Berryessa Road to get to the BART Station. Mr. Schoennauer agreed.

Commissioner Young stated that he thinks that this is a wonderful project and is exactly what we should be building in an Urban Village, particularly near transit. It's great that a significant amount of the units will be affordable. The location of the commercial building looks like it would be attractive to tenants. Referring to page 4 of the Staff Report, he asked staff to clarify what "Flex office space with a large plate format" means. Staff responded that that section is referring to the Transit Employment Center designation of the Berryessa BART Urban Village Plan and the sentence with that description referred to the future commercial building. In this case "flex office space with a large plate format" is referring to movable walls with few permanent separations. Mr. Schoennauer added that the floor plate means the square footage of each individual floor. Tech offices today have preference to have a more open floor plan, with floor plates as big as 40,000 to 50,000 square feet on each floor.

Commissioner Cantrell stated that the project looks great, and he does understand the financing issue, but he has a question about the phasing. He asked Mr. Schoennauer to clarify what portion of the project would be next in the phasing. Mr. Schoennauer responded that the phasing of 48 homes along the perimeter of the site will be first because they generate the revenue to build the rest of the infrastructure. Additionally, single-family homes don't need financing. The developer will build them with cash generated from the sale of the homes. Whereas the blocks with the affordable units, Blocks H, F and G, are subject to complicated financing processes, including Tax Credits and other programs where the applicant may have to apply two or three times over a number of years in order to secure the funds.

Commissioner Cantrell expressed his appreciation that the solution to the project's compliance with the IHO is a creative solution regarding the requirement for future affordable housing units. He asked Mr. Schoennauer to make the best guess as to what development would come next after the 48 housing units in the current project description. Mr. Schoennauer responded that until the applicant obtains this entitlement that is before the City, the applicant can't move to the next step. So, getting the PD Rezoning, the Vesting Tentative Map, and the PD Permit for the first phase is the first step. The next step is to work with the two development partners for the project, one that will build market-rate housing units and one that will build affordable housing units. The applicant has those partners in place, waiting to see what the City does with this approval, and assuming there are no conditions of approval that are detrimental to the plan, they will then proceed with the design of the rest of the buildings and the submittal to the City for the appropriate permits. Once the design is approved, then they will have an established project that they can then move through financing. So, the next steps are design, entitlement, then financing.

Commissioner Cantrell expressed his understanding of the process. He stated he knows how complicated it is to get affordable housing financed and built. He asked Mr. Schoennauer to confirm if Parcel D would be market-rate or affordable housing units. Mr. Schoennauer confirmed that Parcel D would be market-rate, for-sale condominiums. Commissioner Cantrell asked if Parcel D would then be the next logical phase. Mr. Schoennauer replied that they cannot be sure. They could get lucky if their partner on the affordable blocks is wildly successful in securing the financing. If that is the case, there's no reason why the affordable blocks wouldn't be able to go before Parcel D. The applicant has been very proactive with affordable housing, and already has an affordable housing partner in place. They will be ready when the financing comes through.

Commissioner Cantrell reiterated that he was trying to find out if there could be some priority in the phasing for the affordable units. It seems like if things work out, it could actually happen that way. Mr. Schoennauer confirmed that yes, it could happen, depending on the financing. Relatedly, the commercial block will most likely lag the most. In today's economic climate, with commercial banking and commercial financing, the applicant is not seeing any interest in the commercial space as of today.

Chair Oliverio reminded the commissioners that financing for commercial buildings is currently difficult. He used the example of the recently approved project at the old Fry's Electronics. The owners of that site are now renting out the space for warehouse use because they can't get

financing to build the project. For all these entitlements, the Planning Commission is just one step of the process, and in some cases, these projects never happen.

Commissioner Barocio asked Mr. Schoennauer to confirm if Parcels H, F and G are affordable. Mr. Schoennauer replied that yes, that is the current plan. Commissioner Barocio commented that the presentation shared by the applicant might have a typo, because it indicates that Parcels F and G are for market-rate housing units. Mr. Schoennauer apologized and said yes, it's an old graphic he used that should be updated.

Commissioner Barocio then asked about the communities that do not want any right-of-way connection into the project. He asked Mr. Schoennauer to confirm if Shore, Mercado, and DeRome will connect to the existing community. Mr. Schoennauer said yes, they do connect and integrate with the existing neighborhood. The existing streets Shore, Mercado, and DeRome are part of a development that the Bumb Family, the owners of the Flea Market, constructed. They connect to this development by design. The existing neighborhood to the north expressed they didn't want the connection to Krebs Court and Aschauer Court. During the extensive community outreach process to design the Urban Village Plan, the adjacent neighbors were very protective of their existing neighborhood. Commissioner Barocio commented that it would also require the existing homeowners to give up a sliver of their land for the connection. Mr. Schoennauer confirmed that it would definitely take up land on the project site to provide the connection.

Commissioner Barocio commented that he loves Parcel E, the public park. He asked Mr. Schoennauer if it was possible to push the public park to the middle of the site so it is surrounded by more units and more people. Mr. Schoennauer responded that PRNS wants it in the proposed location, and the Urban Village Plan also calls out the park in this location. The park was explicitly put in this location to buffer the tallest residential buildings on the project site from the existing neighborhood, in addition to the proposed single-family homes.

Commissioner Rosario said that putting single-family homes where we could potentially put denser housing is contrary to the spirit of Urban Villages. His understanding of Urban Villages is that all buildings have to be a minimum of four or more stories. He asked Mr. Schoennauer to confirm that the single-family homes are there to provide a buffer between the existing single-family neighborhood and the four-story buildings. Mr. Schoennauer replied that the multifamily residential buildings are allowed to be a maximum of 90 feet in height, which is a seven-story building. Parcel H along the BART tracks can be 160 feet high, which is a twelve-to-fourteen-story building.

Commissioner Rosario stated that putting a buffer of single-family homes to buffer against single-family homes didn't make a lot of sense. Mr. Schoennauer replied that the buffer would be to existing single-family residences. It's a community engagement process and a lot of community input went into coming up with this plan, and the City Council adopted it. All the developer can do is submit a plan that is consistent with the plan that the Council adopted. Commissioner Rosario responded that since this is adjacent to the BART station, and we are only getting three BART stations in San José, we should be trying to get more high-density housing.

Commissioner Ornelas-Wise had a question specifically about the zone change. There's only a little bit of land that is zoned LI Light Industrial in the city, and this is a 13-acre site. She believes that housing supersedes, but she wants to know how we are replacing the loss of light industrial lands. Staff responded that as far as the use itself, the intent of the Urban Village Plan was to replace the jobs, not the use, so the commercial lot would provide up to 455,000 square feet of commercial use, equivalent to approximately 5.0 floor area ratio, which means that the jobs generated by the commercial use will far exceed the number of jobs that are currently at the light industrial use.

Commissioner Ornelas-Wise stated that she's heard that some people want to do light manufacturing in the commercial area. Since we're changing the base zoning to CP Commercial Pedestrian, she asked staff to confirm if there be any opportunities for people to do light manufacturing. Staff responded that no, light manufacturing would not be consistent with the zone, and additionally, since the General Plan designation was also changed with the Berryessa BART Urban Village Plan process, light manufacturing would also be inconsistent with the General Plan/ Urban Village designation.

Commissioner Ornelas-Wise commented that the Planning Commission should think holistically about the city, the loss of light industrial land, and the opportunity for other types of jobs that are created and done here, whether light industrial or light manufacturing. This is a concern, but we also need housing. She hopes that the applicant gets the financing to build the 697 affordable units. She also agrees with her fellow commissioners about the single-family housing, but she understands that because of the neighborhood compatibility, the neighborhood really wanted lower density adjacent to the existing neighborhood. She thinks that the applicant could have done a better job at maximizing the density, maybe by doing rooftop gardens. Regarding the vendors of the Berryessa Flea Market, there are a lot of examples of indoor swap meets in L.A. with several floors and the vendors just come in and sell their wares. So that would be an idea for some of the Berryessa Flea Market vendors being displaced.

Commissioner Ornelas-Wise stated that overall, she thinks that the amount of housing is great, but one question she has was about the amount of trees being removed, and if the applicant is considering paying the in-lieu fee or will be replacing the trees. Chair Oliverio stated that he doesn't think that there are very many trees since this is a developed industrial site. Mr. Schoennauer replied that when an area of the city shifts from suburban, with big open parking lots and open areas, to urban, the amount of space to have trees shrinks by definition. For a project like this, you can't put trees where the buildings are, so the only place to put trees are on the street, in the park, and maybe in some isolated pockets next to buildings. So, it's true that there's going to be a net reduction of trees. The policy requires that the applicant has to meet the tree replacement ratio, which varies based on the size and species of the tree. The replacement ratio is roughly 4:1 for ordinance-size trees and 2:1 for non-ordinance trees. The applicant gets credit for every tree they plant, but if you can't satisfy the full obligation, then you have to pay the fee for any remaining required replacement tree. The in-lieu fee is somewhere around \$800 per tree. The developer's intent is to maximize the trees planted onsite and pay money to plant trees elsewhere in the city.

Deputy Planning Director Robert Manford followed up with a response to Commissioner Ornelas-Wise's question about the loss of light industrial lands. It is something that the City and other cities are grappling with because there's no requirement to replace industrial lands when they are lost. However, if you are downzoning, and it will impact residential uses, state law requires that you must show that there is residential capacity elsewhere. So, because of the new state housing laws, a lot of cities and jurisdictions are feeling powerless in terms of land use control.

Mr. Schoennauer also added that to address Commissioner Ornelas-Wise's question about the Flea Market vendor displacement and the multi-story vendor swap meets, when the Flea Market rezoning was approved by the City Council, there were a couple of conditions in that approval. This has nothing to do with the project being heard tonight, this is a separate project, but one requirement was that five acres of the Flea Market site must be provided as an Urban Market that can accommodate an open-air market adjacent to the station. The Council also directed the developer to analyze the feasibility of multi-story structures within the five-acre Urban Market site to accommodate the displaced vendors. The City Council has now formed the Vendor Advisory Group, and the first meeting of the Advisory Group is coming up on May 17, 2023. The vendors, the owner, and the developers are going to work together with City staff to come up with the best transition plan.

Commissioner Casey stated that he supports the project, and the phasing makes sense. Horizontal development is always going to precede vertical development, and the fact that they can sell single-family homes to finance the infrastructure is going to expedite the process. Commissioner Casey made a motion to recommend the City Council approve the project as recommended by staff. Commissioner Young seconded the motion.

Chair Oliverio said he was voting to support the project but wanted it noted that this is a great lesson in transparency in how developments are financed and how they're made. The applicant was very candid about what it takes to get things done, and we have a situation where we're facing an existing City Council policy that states that developers must conform to the approved plan. He doesn't like the single-family housing either, but that's the policy that allows this project to move forward, and he can't really say no when they're following the rules that the policymakers laid out for them. And if the applicant didn't follow those rules, we would have a lot more people in the audience opposed to this project, saying the developer didn't honor the plan that said that they were going to provide a buffer. So, at the end of the day, as a Commissioner, these are the terms they are working under, and these are the terms that we have laid upon the applicant. He would prefer everything to be 160 feet in height here, but maybe that wouldn't get financed either. The development community would have no problem paving over all the industrial land in the city for housing, but that would result in a worse housing-jobs balance without the revenue to pay for City services and without the revenue to pay City staff, and housing probably still wouldn't be affordable. There's a balance here. That's why the project includes 455,000 square feet of commercial space. He supports the motion, even if he has levels of discomfort. He has to honor what the policy is today.

Commissioner Cantrell said a quick “thank you” regarding the tree inventory. It’s important to know what species and how positive or negative their impact can be on these areas. He hopes to see a tree inventory in future projects.

Commissioner Lardinois stated that there have been a lot of projects reviewed by the Commission, and they’ve had a lot of frustration with developers not being very forthcoming about how they plan to meet the IHO, so thanks to the staff and the applicant for providing clarity on the process and giving more information than they are typically given. The vision for Urban Villages is to build dense housing and jobs along mass transportation lines and other areas. Although he’s not a huge fan of the single-family housing, it is what is called for in the Urban Village Plan, and he also understands that the Urban Village Plan calls for closing this off from the existing single-family neighborhood to the north. He thinks that is a short-sighted decision, but he doesn’t think we can take issue with this project following the Urban Village Plan. This is a lesson we should take for the next time an Urban Village Plan comes before the Commission. To give the Commission some credit, there were some much larger issues when this Urban Village Plan was heard regarding the Flea Market, and details like this slipped under their radar. He encourages the Commission to be cognizant of that in the future. He supports the motion and will be voting yes.

Commissioner Barocio asked the staff to clarify if the Arborist Report is prepared by a third party hired by the developer. What would be the process be to establish a benchmark to require that a Tree Inventory be placed on the plans, which is very beneficial. He asked the staff if that would be something we can make policy or is that something we can only encourage. Planning staff replied that the Arborist Report is usually required as part of the CEQA review. CEQA staff confirmed that if a project requires an Initial Study or CEQA review, then an Arborist Study will typically be required as part of due diligence. Arborist Reports will usually have a Tree Survey and a Tree Inventory with the tree species included. Different arborists may have different information in their reports, but CEQA staff is looking into beginning a process to update the Environmental Design Guidelines, which are guidelines sent to environmental consultants to guide the preparation of the environmental documents, and CEQA staff can include an update with the information they want to see in the Arborist Reports when they are prepared for CEQA review. If a project is exempt from CEQA review, then the guidelines would not apply. There could be a project that is removing a lot of trees that are exempt from CEQA, but they can include certain guidelines for trees in the new guidelines.

Commissioner Barocio stated that that would be a step in the right direction. The more the Commission understands that the trees being removed may be invasive trees and which are native trees, and what the staff can do to balance that out with the replacement trees as a guideline, that would be a huge benefit.

Chair Oliverio called for the vote. The motion passed 9-0-1 (Garcia absent).

CEQA

The City of San José, as the Lead Agency, prepared an Environmental Impact Report (EIR) (State Clearinghouse No. 2021070467) for the Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map (PDC18-036, PD21-009, and PT21-030), for the Berryessa Mixed Use Project in compliance with the requirements of the California Environmental Quality Act. The EIR was circulated from August 11, 2022, through September 26, 2022, and seven comment letters were received during the public review period. Concerns were raised in the public comments, including air quality, noise, wetlands, and consistency with the general plan and BBUV policies. The EIR, including responses to comments received during the public review period, can be found at the following link: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/berryessa-road-mixed-use-development>

The EIR identified relevant mitigation measures for potential impacts to air quality during construction and operation, nesting birds and biological resources, cultural resources, hazards and hazardous materials from past uses on the site, and for construction-related noise and vibration. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for construction-related air quality impacts, tree replacement, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, prehistoric and historic resources, protection of unknown subsurface cultural resources and human remains, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction and operation periods, and best management practices to control noise during construction. Applicable mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) (Exhibit G), and both the mitigation measures and standard permit conditions are made a part of the resolution of this permit. The EIR concluded that the project would not result in any significant and unavoidable environmental impacts with the implementation of identified mitigation measures.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON

Secretary, Planning Commission

HONORABLE MAYOR AND CITY COUNCIL

May 22, 2023

Subject: File Nos. PDC18-036, PD21-009, PT21-030 and ER21-113

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For questions, please contact Deputy Director for Planning, Robert Manford, at (408) 535-7900.

Attachment: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION**FROM:** Christopher Burton,
Director**SUBJECT:** PDC18-036, PD21-009, PT21-030 &
ER21-113**DATE:** May 10, 2023

Approved

Date

COUNCIL DISTRICT: 4**REASON FOR SUPPLEMENTAL MEMO**

This supplemental memo is intended to provide an update to the Staff Report, Resolutions, and Ordinance submitted to the Planning Commission for Item 6.a of the May 10, 2023 agenda for the subject project, specifically regarding the number of housing units anticipated to be provided with the Planned Development Zoning application (from 820 units to 850 units), consistent with the General Plan, Berryessa BART Urban Village Plan, and the Environmental Impact Report (EIR). These changes are reflected in the redlined Staff Report, included as Attachment A, the redlined Ordinance, included as Attachment B, and the redlined Resolutions for the Planned Development Permit and the Vesting Tentative Map, included as Attachments C and D.

The objective of this memo is also to provide an update to the Planned Development Permit and Vesting Tentative Map Resolutions for updated Housing Department conditions of approval per their revised memo dated May 8, 2023, included as Attachment E. The revised memo was updated to reflect the anticipated future planned affordable housing project and to apply the Inclusionary Housing Ordinance accordingly. These changes are reflected in the redlined Resolutions for the Planned Development Permit and the Vesting Tentative Map, included as Attachments D and E.

BACKGROUND

The Planning Commission is scheduled to hold a Public Hearing on May 10, 2023, to recommend to City Council to adopt resolutions to certify the Environmental Impact Report (EIR), and approve, subject to conditions, a Vesting Tentative Map and Planned Development Permit, and to approve an ordinance rezoning the subject site to the R-M(PD) and CP(PD) Planned Development Zoning Districts. The subject project is on the agenda as Item 6.a.

ANALYSIS**Unit Count**

The Staff Report, Ordinance, and Resolutions presented to the Planning Commission included in the agenda package indicate that the total number of housing units anticipated to be constructed

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under the Planned Development Zoning (File No. PDC18-036) would be up to 820 units, based on the target approximate number of units as stated in the Berryessa BART Urban Village Plan. However, based on the actual densities allowed, the applicant has requested to change this to up to 850 units. This is consistent with the EIR, which evaluates the impacts of 850 units, and the General Plan, which, per the Berryessa BART Urban Village Plan, allows for the following densities:

Block	Designation	Max. Density	Total Acres	Units Allowed
Blocks A, B & C	Mixed-Use Residential	30 du/ac	2.06 acres	61 units
Blocks D, F, G & H	Urban Residential	250 du/ac	4.66 acres	1,165 units
Total Maximum Units Allowed				1,126 units

The planned 850 units is consistent with the densities allowed by the General Plan and the Berryessa BART Urban Village Plan and what was evaluated in the EIR.

Housing Department Conditions of Approval

The Housing Department conditions of approval remain the same for Condition #30. a, b, and d of the PD Permit Resolution and Condition #13. a, b, and d. of the Vesting Tentative Map Resolution. Condition #30.c and #13.c respectively have changed as follows:

1. Permittee must strictly comply with the following conditions:
 - a. The security should be either a City performance bond (by a California licensed surety) or a letter of credit using the City forms.
 - b. The Developers will be required to record the IHO agreement prior to the recording of the parcel map, and it will include the following conditions:
 - i. The entire market rate obligation for in-lieu security is due for the entire market rate project prior to the first Certificate of Occupancy for the first unit. The amount of the fee security should be based on the current fiscal year fee when the security is provided. Alternatively, the market rate phase 1 obligations for in-lieu security could be due for the entire market rate project prior to the first C of O for the first phase 1 unit and with the same conditions applying to phase 2. The amount of the fee security should be based on the current fiscal year fee when the security is provided.
 - ii. The fees would be refundable to the payor upon the financing closing and the building permit issuance for the 697-unit restricted affordable project. If this does not occur within five (5) years of the 1st Certificate of Occupancy for the first phase 1 market-rate unit, then the fees would go to the City for the in-lieu obligation.
 - iii. No building permit should issue for Phase 3 except in accordance with the affordability restrictions for that site.

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iv. Required minimum standards and amenities.

As stated above, the project's compliance with the Inclusionary Housing Ordinance would be changed to reflect the anticipated future planned affordable housing project. The project would still meet all other Housing Department requirements.

These changes and the updated information do not result in changes to the conclusions of the Environmental Impact Report (EIR) prepared for the proposed project. The changes were coordinated with the City Attorney's Office, and it was determined that this would not constitute a material change that would cause the project to need to be dropped and re-noticed.

/s/

ROBERT MANFORD FOR
CHRISTOPHER BURTON
DIRECTOR
DEPARTMENT OF PLANNING,
BUILDING AND CODE ENFORCEMENT

For questions, please contact Robert Manford, Deputy Director, at (408) 535-7900.

Attachments:

- 1) Redlined Staff Report
- 2) Redlined PDC18-036 Ordinance
- 3) Redlined PD21-009 Resolution
- 4) Redlined PT21-030 Resolution
- 5) Revised Housing Department Final Memo dated May 8, 2023

PDC18-036, PD21-009, PT21-030 & ER21-113

Links to Attachments 1 - 5

Click on the title to view document

Attachment 1: Redline Staff Report
Attachment 2: Redline PDC18-036 Ordinance
Attachment 3: Redline PD21-009 Resolution
Attachment 4: Redline PT21-030 Resolution
Attachment 5: Revised Housing Department Final Memo dated May 8, 2023