



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 28, 2021

COUNCIL DISTRICT: 4

SUBJECT: FILE NOS. GP20-008 AND C21-001: CITY-INITIATED BERRYESSA BART URBAN VILLAGE (BBUV) PLAN ADOPTION TO FURTHER THE URBAN VILLAGE STRATEGY OF THE ENVISION SAN JOSE 2040 GENERAL PLAN, AND CITY-INITIATED CONFORMING REZONING OF PROPERTIES WITHIN THE EAST DISTRICT AREA OF THE BBUV PLAN BOUNDARY.

FILE NO. PDC17-051: 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 OF COMMERCIAL USES ON AN APPROXIMATELY 61.5-GROSS ACRE SITE LOCATED AT 1590 BERRYESSA ROAD (BERRYESSA FM DEVELOPMENT LLC., OWNER).

RECOMMENDATION

The Planning Commission voted 5-1-1 (Commissioner Garcia opposed; Commissioner Caballero absent) to recommend that the City Council take the following actions on the proposed Berryessa BART Urban Village Plan (BBUV) (GP20-008 and C21-001) and the proposed Flea Market Southside Rezoning (PDC17-051):

BBUV (GP20-008 and C21-001)

1. Consider the Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and the Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution 77617) and Addenda thereto in accordance with CEQA;
2. Adopt a resolution approving the following:
 - a. General Plan Amendment (GP20-008) to the Envision San José 2040 General Plan to amend the “Planned Job Capacity and Housing Growth Areas by Horizon” table in

Appendix 5 and make changes to the Land Use/Transportation Diagram for properties within the boundaries of the Urban Village planning area as shown on the Berryessa BART Urban Village Land Use Diagram;

- b. Adoption of the Berryessa BART Urban Village Plan as the guiding policy document for new development and identified public improvements within the urban village area; and
3. Approve an ordinance rezoning certain real property of approximately 28.9 gross acres (C21-001) located in the East District area of the Berryessa BART Urban Village Plan area generally bounded by Berryessa Road to the north; Penitencia Creek, Salamoni Court and Berryessa Station Way to the east; Mabury Road to the south; and Santa Clara Valley Transportation Authority right-of-way to the west from the A(PD) Planned Development zoning district and IP Industrial Park zoning district to the PQP Public/Quasi-Public zoning district (APNs 254-17-008 and 254-17-110), from the A(PD) Planned Development zoning district to the CP Commercial Pedestrian zoning district (APN 254-17-111), from the IP Industrial Park zoning district to the PQP Public/Quasi-Public zoning district (APN: 254-17-083), and from the IP Industrial Park zoning district to the CP Commercial Pedestrian zoning district (APNs 254-17-112 and 254-17-113).

Flea Market Southside Rezoning (PDC17-051)

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 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; and
4. Adopt a resolution amending the US-101/Oakland/Mabury Transportation Development Policy to provide a credit to the current project's Traffic Impact Fee obligation.

The Planning Commission also recommends the following to City Council:

1. That the City Council make modifications necessary to the BBUV Plan and PDC 17-051 to expand the BART Plaza and Central Open Space to five acres for an urban market as proposed recently by the applicant within the Flea Market Southside property; and
2. That Planning staff, as part of its presentation at the Council Hearing, identify the process for implementation of the five-acre urban market expansion of the BART

Plaza for the urban market that would occur if Council approves the Flea Market Southside rezoning.

OUTCOME

Should the City Council adopt the BBUV Plan as recommended by the Planning Commission, any new proposed development within the Berryessa BART Urban Village boundary would be analyzed for conformance with the goals, policies, standards, and guidelines of the Urban Village Plan. Should the City Council adopt the recommendations of the Planning Commission for PDC 17-051, the applicant will be allowed to develop the property with up to 3,450 dwelling units and up to 3.4 million square feet (MSF) of commercial development. Should the City Council approve the recommendations from the Planning Commission for changes in the BBUV Plan and the rezoning, and consistent with the most recent rezoning submittal, the applicant could develop a permanent five-acre Urban Market as a land use in the rezoning.

Should the City Council approve an ordinance repealing Section 14.30.035 of Chapter 14.30 of Title 14 of the San José Municipal Code and adopt a resolution amending the US-101/Oakland /Mabury Transportation Development Policy, a credit to the current project's Traffic Impact Fee obligation from the Flea Market Northside development would be applied to the Flea Market Southside project.

BACKGROUND

The Planning Commission held a public hearing on March 24, 2021, and continued the hearing to May 12, 2021, to consider the proposed BBUV Plan (GP20-008 and C21-001) and Flea Market Southside Rezoning (PDC17-051).

March 24, 2021 Planning Commission Hearing

Staff provided an overview of the Berryessa BART Urban Village (BBUV) Plan, including the goals, policies, principles, guidelines, and development standards. Staff stated that all new development approved as part of the BBUV Plan would be analyzed for consistency with the Plan, including the Flea Market Southside rezoning.

Erik Schoennauer, representing the applicant for PDC17-051, made a presentation of the 13-year planning and development history of Flea Market properties north and south of Berryessa Road. He stated that the Flea Market Southside proposed rezoning is consistent with City Council direction provided to his client in the most recent rezoning of the Flea Market Northside in 2016. The 2016 rezoning was approved by Council on the condition that the applicant would rezone the south side of Berryessa Road and accommodate between 1.5 and 2.2 MSF of commercial development. Mr. Schoennauer stated that pursuant to staff recommendation and consistent with the proposed BBUV Plan, the Southside rezoning is proposing up to 3.4 MSF of commercial development.

The Planning Commission received public comment from approximately 50 speakers regarding the future of the San Jose Flea Market. Primary concerns from the public focused on the eventual closure of the Flea Market and the impact that such a closure would have on the vendors' businesses, families, and employees. This public testimony also focused on what the Flea Market represents for the City of San Jose as a cultural, ethnic, and economic asset. Most of the speakers stated that neither the BBUV Plan nor the rezoning have addressed the impacts of the Flea Market closure and urged the Planning Commission to recommend denial of both.

The Planning Commission also received public comment in support of the BBUV Plan and the rezoning from the Silicon Valley Leadership Group and the Bay Area Council. Speakers from these two organizations stated that the proposed BBUV Plan and rezoning would support the investment in BART by locating intensive residential and employment uses adjacent to the station, and address affordable housing challenges. The Planning Commission also received formal letters in support of the BBUV Plan and rezoning from the Valley Transportation Authority (VTA), Bay Area Council, Silicon Valley Leadership Group, and Silicon Valley at Home.

The Planning Commission discussion focused on the potential closure of the Flea Market and the resulting impacts to the vendors and the City as a whole. The Commission discussed potential solutions including a Community Benefit Agreement.

Commissioner Oliverio made a motion to recommend approval of the staff recommendations for both the BBUV and PDC17-051 with a suggestion to the City Council that it use federal funds to assist in the relocation of the Flea Market vendors or find another solution to retain the Flea Market. The motion failed for a lack of a second.

Commissioner Bonilla then made a motion to continue the hearing on both items to the Planning Commission meeting on May 12, 2021 and reopen the public comment period. The motion was seconded by Commissioner Torrens. Commissioner Casey asked for a friendly amendment to return with a community benefits agreement that would provide some benefits to the vendors that would be impacted by the redevelopment of the Flea Market property. The Senior Deputy City Attorney asked for a clarification of the friendly amendment and stated that staff could return to the Commission with information on the feasibility and process to establish a community benefits agreement. The friendly amendment was clarified as requested. Commission Chair Caballero asked whether any representative of the vendors had met with the property owners and, upon receiving a response that they had not, requested that the property owners meet with the Flea Market vendors prior to the hearing being continued on May 12, 2021.

Commissioner Garcia then made a substitute motion to recommend denial of the staff recommendation on the both the BBUV and PDC17-051; the motion was seconded by Commissioner Oliverio. The motion failed 3-4 (Commissioners Casey, Lardinois, Oliverio, and Caballero opposed). The Commission then voted to approve Commissioner Bonilla's motion to continue the hearing to May 12, 2021 with Commissioner Casey's clarified friendly amendment. The motion was approved (6-1; Commissioner Oliverio opposed).

May 12, 2021 Planning Commission Hearing

After a brief staff's presentation, the applicant's representative, Erik Schoennauer, presented a proposal for a new Urban Market to address the public concerns raised in the March 24 hearing regarding the closure of the San Jose Flea Market. The applicant stated that a new five-acre Urban Market will be located on two areas designated as dedicated parkland in the proposed rezoning land use map. These two areas are the proposed BART Plaza and the Central Open Space that would radiate out from the Plaza. The applicant stated that the Urban Market could also be expanded during the weekends to include the private main streets in front of the central open space. The applicant stated that the area would accommodate most, but not all, of the existing Flea Market vendors in proposed Urban Market. The applicant stated that there are currently approximately 430 vendors (holding leases) at the Flea Market.

Approximately 85 members of the public spoke at the May 12 hearing. The majority of the speakers were vendors, the family members of vendors, and community members who spoke in opposition to the proposed BBUV Plan and rezoning. The testimony also focused on the conceptual urban market proposed by the applicant. Most speakers stated that this urban market would be inadequate in terms of size and therefore could not accommodate the same number of vendors operating in the Flea Market today. Questions were also raised about the rents that would be charged and whether the existing vendors could afford them.

Some public testimony was given in support of the BBUV Plan and rezoning. This testimony came from existing residents within or adjacent to the BBUV Plan area, as well as from the organizations that offered support in the March 24 hearing. Many of the surrounding residents said that they looked forward to the new urban development planned within the BBUV and the amenities that it would bring. A few speakers stated that the Flea Market has created parking and trash issues in their neighborhood and that they looked forward to its closure.

At the May 12 hearing, several Commissioners asked staff for clarifications regarding the existing entitlements on the Flea Market Southside site. Staff stated that the 2007 zoning did not plan for the retention of the Flea Market on the property. Staff stated that buildout of the site was anticipated to occur over many years allowing the Flea Market to continue operation during that time. Staff also stated that development allowed under the existing entitlements for the site (PDC16-001) could move forward, even if the proposed rezoning or the BBUV Plan is not approved.

Commissioners also asked staff for clarifications regarding the information regarding Community Benefits Agreements as described in the Supplemental Memorandum. The City Attorney provided clarifications and stated that preparation of a Community Benefits Agreement or the negotiation of a Development Agreement typically occur well in advance of a Planning Commission or City Council hearing on the project and are agreements entered into voluntarily by the various parties as explained in more detail in the Supplemental Memorandum to the Planning Commission.

Commissioner Bonilla reminded the Commissioners of the importance of making a recommendation to City Council regarding both the BBUV Plan and the Flea Market rezoning, and that this was the last opportunity to do so before a City Council hearing.

Commissioner Oliverio made a motion to recommend that the City Council approve the staff recommendation with the following additional recommendations:

1. Recommend that City Council make modifications as needed to the proposed Berryessa BART Urban Village (BBUV) Plan and the Flea Market Southside PD zoning to accommodate and allow the operation of a five-acre Urban Market as presented by the applicant.
2. Direct Planning staff to outline and include in its City Council hearing presentation the next steps in the process for creating the five-acre Urban Market on the Flea Market Southside site.

Commissioner Torrens seconded the motion. The motion passed 5-1-1 (Commissioner Garcia opposed; Commissioner Caballero absent).

ANALYSIS

Since the May 12 Planning Commission hearing, the applicant has resubmitted plans for the Flea Market Southside Rezoning to allow for a five-acre Urban Market, as presented in concept by the applicant during the May 12 hearing. The analysis below is focused on changes required in the BBUV Plan and the proposed changes to the Flea Market Southside Rezoning to allow the permanent operation of a five-acre Urban Market. A full analysis of the proposed BBUV Plan and Flea Market Southside Rezoning, absent the change in the five-acres proposed at the May 12 Planning Commission meeting, is included in the attached Planning Commission staff reports for each item.

Changes to the BBUV Plan

One of the principles of the BBUV Plan is placemaking. Placemaking refers to land uses that enhance the pedestrian-oriented experience and neighborhood character in an Urban Village as generally described in the Envision San Jose 2040 General Plan. An Urban Market, understood as a form of public market that operates outdoors, meets the intent and vision for placemaking in the BBUV Plan. Staff recommends allowing the Urban Market use in the Open Space chapter of the BBUV Plan which discusses placemaking. Attachment 2 includes the redlined proposed changes to the BBUV Plan Open Space Chapter that specify the location and operation of a five-acre Urban Market. The BBUV Open Space chapter contains an open space “system” for the Plan with interconnected parks designated as public parkland. This parkland is separate from the natural open space corridors of Penitencia and Coyote Creeks. The Flea Market South District is a sub-area of the BBUV Plan that contains designated parkland as part of the BBUV Plan open space system. The designated parkland in the Flea Market South District has three components: BART Plaza, central open space, and recreational open space adjacent to Coyote Creek.

The BART Plaza is envisioned in the Plan as an active space with an anticipated 25,000 transit riders entering/exiting the BART station by 2030. The BART plaza in the Plan envisions “activating” or placemaking uses such as those proposed for an Urban Market. An Urban Market use is consistent with the vision and intent of placemaking in the BART plaza. The size of BART plaza envisioned in the Plan is smaller (approximately 1.95 acres) compared to the proposed area for the Urban Market in this plaza presented by the applicant (3.39 acres), but the size of the BART plaza in the Plan is conceptual. Therefore, the BART plaza in the Plan could accommodate the 3.39-acre portion of the Urban Market proposed by the applicant for the Flea Market Southside Rezoning.

The central open space in the Flea Market South District would be the other portion that could accommodate the Urban Market as proposed by the applicant for the Flea Market Southside Rezoning. This central open space in the Plan is approximately 1.61 acres and it was also envisioned in the Plan with “activating” and placemaking uses such as those proposed in the Urban Market. The character of the central open space is envisioned in the Plan as less pedestrian-intensive compared to the character of the BART Plaza; however, both the BART plaza and the central open space are envisioned in the Plan with placemaking uses. Therefore, a permanent allowance for an Urban Market located on both the central open space and the BART Plaza would be consistent with the vision, intent, and purpose of the open space system as described in the BBUV Open Space chapter. In total, the Plan can accommodate both portions, the 3.39-acre BART plaza and the 1.61-acre central open space, to complete the proposed 5-acre Urban Market in the rezoning.

The BBUV Plan also discusses land uses related to the existing and/or “temporary” land uses to support the San Jose Flea Market today. The BBUV Plan discusses and defines such land uses in the Land Use chapter as “Interim Land Uses,” not permanent. The “temporary” presence of the San Jose Flea Market as it exists today in its current location is allowed in the Plan as an interim land use.

The BBUV land use chapter (Attachment 3) includes proposed modifications to allow the permanent Urban Market use, which could accommodate Flea Market vendors. However, the Urban Market would not be in the existing Flea Market location and configuration but under the new configuration described in the open space system of the BBUV Open Space chapter. The existing location and configuration of the existing San Jose Flea Market covers approximately 15 acres, shaped as a rectangular area in front of the BART station. The proposed five-acre Urban Market would be a “T” shaped area designated as open space, privately-owned, publicly-accessible as part of the open space system in the BBUV Open Space chapter.

Because the primary intent of the new Urban Market is placemaking and not job creation, the BBUV plan would allow for such use under the Open Space Chapter. Also, the Plan would allow some of the proposed Urban Market uses to occupy the formal ground-floor retail space that is planned on the Flea Market site.

Proposed changes to the Flea Market Southside Rezoning (PDC17-051)

The applicant resubmitted the plan set for File No. PDC17-051 on May 21, 2021, to allow the integration of an Urban Market as conceptually presented to the Planning Commission on May 12. The Land Use Plan in this resubmittal includes the expanded 3.39-acre BART plaza that can accommodate a portion of the new Urban Market. This portion of the Urban Market encroaches slightly into the allocated commercial land as described in the Land Use Plan (Sheet 2.0) of the original rezoning submittal. The most recent plan set submittal includes a modified Land Use Plan (Sheet 2.0) that shows the extent of the encroachment. This encroachment is about 1.44 acres which will be deducted from the total of 16.3 acres allocated to commercial uses pursuant to the previous Land Use Plan (Sheet 2.0). With the new expanded BART plaza, the commercial land use allocation would be reduced to 14.9 acres, and the 1.44 acres would be added to the area designated for public open space/privately owned, publicly accessible open space. This 1.44 acreage addition would increase the total acreage of this open space to 6.4 acres or 10.4% of the total site area; of this 6.4 acres, five acres would be for the proposed Urban Market and the balance of 1.4 acres would be parkland adjacent to Coyote Creek. The net difference in commercial land allocation between the original land use plan and the new land use plan represents 2.3% of the gross 61.5-acre site.

The most recent plan set submittal also includes the proposed Urban Market in concept, including renderings that show modified office towers to accommodate the Urban Market in the BART plaza. To maintain the amount of office commercial development planned in the Flea Market South District of the Plan, the concept plan adds two floors to each of the two office buildings or towers framing the BART plaza. Pursuant to applicant calculations, each of those two towers in the concept plan have a floorplate of 44,000 square feet without the Urban Market proposal. With the proposed changes to expand the BART plaza, the conceptual building floorplates would be modified to 38,800 square feet. Staff has also modified the Draft Planned Development (PD) standards to allow the Urban Market as a permitted use in the “public open space/privately owned, publicly accessible open space” uses permitted (Attachment 4).

The incorporation of a five-acre Urban Market in the rezoning as proposed by the applicant is consistent with the vision, principles, and placemaking purposes described in the BBUV Plan. The proposed 1.61-acre portion of the Urban Market aligns with the area allocated for a central open space in the Flea Market South District of the Plan. The proposed 3.39-acre portion of the Urban Market in the BART plaza only requires the reallocation of 1.44 acres of land designated for commercial as originally envisioned in the BBUV Plan. Because the allocation of land for the central open space and BART plaza was conceptual, accommodating the proposed Urban Market in the rezoning fits within the land use framework of the Plan, while also supporting placemaking goals.

Overall, both the BBUV Plan and Flea Market Southside Rezoning required minor modifications to accommodate the Urban Market, without fundamentally changing the vision, principles, and placemaking intent of the Plan or the planned commercial capacity in the rezoning. Therefore,

staff supports the changes in the Plan and the rezoning to accommodate the proposed five-acre Urban Market.

The Department of Parks, Recreation and Neighborhood Services (PRNS) had provided a preliminary parks obligation to the applicant which stated that a total of 3.05 acres provided in the rezoning would likely count as allocated parkland. Specifically, the 1.61-acre central open space and the 1.44-acre recreational park adjacent to Coyote Creek comprised the 3.05 acres as part of the obligation for parkland. Because the proposed Urban Market would not effectively meet the intent for open space as part of the parkland obligation, PRNS would not provide credit for the 1.61-acre central open space or the original 1.95-acre BART plaza (total 3.56 acres) towards the parkland obligation. Therefore, the applicant would have to re-negotiate with PRNS on the final parkland obligation for this rezoning.

CONCLUSION

Adoption of the BBUV Plan as recommended by the Planning Commission and with the proposed changes described in this memorandum will guide all new development within Urban Village boundary. All proposed projects in the Plan area will be analyzed for conformance with the goals, policies, standards, and guidelines of the Urban Village Plan.

Approval of the Flea Market Southside Rezoning (PDC 17-051) as recommended by the Planning Commission and with the proposed changes described in this memorandum will allow the owner of the Flea Market property to develop the property with up to 3,450 dwelling units and up to 3.4 MSF of commercial development.

Should the City Council approve the recommendations from the Planning Commission for changes in the BBUV Plan and the Flea Market Southside rezoning, the applicant to create a five-acre Urban Market as part of the proposed land uses in the rezoning. The proposed changes to accommodate the five-acre Urban Market in the BBUV Plan are consistent with the vision and intent for placemaking in the Plan stated in the open space chapter. The proposed changes in land allocation in the Land Use Map of the Flea Market Southside Rezoning (Sheet 2.0) to allow the location of a five-acre Urban Market are consistent with the changes in the BBUV open space chapter. The proposed Urban Market would be allowed as a permitted use in the “public open space/privately owned, publicly accessible open space” of the Planned Development standards of the Planned Development Zoning. The amount of commercial space that is planned and could be accommodated in the Flea Market South District of the BBUV would also not change.

EVALUATION AND FOLLOW-UP

Berryessa BART Urban Village Plan

If the proposed resolution, as redlined to incorporate changes allowing for the five-acre Urban Market on the Flea Market Southside site, for GP20-008 is adopted, the land use designations depicted on the Plan's Land Use Diagram will be incorporated into the Envision San José 2040 General Plan Land Use/Transportation Diagram, and the BBUV Urban Village Plan will be approved. Should the ordinance (C21-001) be adopted, approximately 28.9 gross acres in the East District of the BBUV area will be rezoned to align the affected properties' zoning with their General Plan land use designations.

If the BBUV Plan is adopted as recommended by the Planning Commission, property owners within the Berryessa BART Urban Village boundary would be able to file development permits with the Planning Division to implement uses consistent with the BBUV Plan.

Flea Market Southside Rezoning

If the Flea Market Southside Rezoning (PDC17-051) is approved as recommended by the Planning Commission with the changes allowing the five-acre Urban Market on the Flea Market Southside site, the applicant will be allowed to develop the property with up to 3,450 dwelling units and up to 3.4 MSF of commercial development, including the five-acre Urban Market. Project level details of the five-acre Urban Market, along with other components of the project (residential and commercial uses) would be fully incorporated in the next step of the development and permitting process, which is the Planned Development permit process.

If the ordinance is approved repealing Section 14.30.035 of Chapter 14.30 of Title 14 of the San José Municipal Code and the resolution is adopted amending the US-101/Oakland/Mabury Transportation Development Policy, a credit would be provided to the current project's Traffic Impact Fee obligation to be applied to the Flea Market Southside project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The Berryessa BART Urban Village (BBUV) Plan contains a sustainability chapter with goals and policies that help implement Climate Smart San Jose, as follows:

- Encourages development projects to go above and beyond the requirements of the City's Reach Energy Code, thus reducing energy consumption and promoting energy efficiency.
- Promotes the use of community-scale renewable energy, consistent with the carbon neutrality goals of Climate Smart.
- Supports the City's Vehicle Miles Traveled (VMT) policy, by targeting the Single-Occupancy Vehicle (SOV) mode-split target of 34% that effectively reduces greenhouse

gas (GHG) emissions from transportation, above and beyond the General Plan's requirements.

- Supports 5,100 dwelling units and residential densities up to 500 DU/acre, and plans for 4.2 million square feet of commercial development (approximately 14,000 jobs), in close proximity to the Berryessa / North San Jose BART station, fostering development intensities that support transit-oriented development and greenhouse gas reduction goals.

Future development permits approved as part of the Flea Market Southside rezoning shall follow the goals and policies of the sustainability chapter in the Berryessa BART Urban Village (BBUV) Plan that was prepared to implement Climate Smart San José.

PUBLIC OUTREACH

Staff followed Council Policy 6-30 Public Outreach Policy for the Berryessa BART Urban Village (BBUV) Plan preparation and the Flea Market Southside rezoning. Both the BBUV Plan and rezoning are considered "Significant Community Interest Proposal" for purposes of community engagement and outreach—they have a high degree of interest either at a local or citywide level. As such, public notice for public hearings and community hearings was distributed to the owners of all properties located within 1,000 feet of the Urban Village boundary which includes the 1,000 feet requirement for the rezoning.

BBUV Plan

City staff conducted outreach on the BBUV which included information on the Flea Market rezoning. Flyers for meetings were posted at various business locations in the BBUV planning area and within the Flea Market site. The flyers included information in Spanish, Chinese, and Vietnamese. In addition, the City prepared door hangers which were distributed in the area by staff of former Councilmember Lan Diep's District 4 office. The door hangers included information in Spanish, English, and Vietnamese.

The public engagement for the preparation of the BBUV Plan included three community workshops. The first workshop was held on November 15, 2018 and over 130 participants (approximately 95 community members and 35 staff and community partners) participated. The second workshop was held on May 2, 2019 and more than 80 people attended. The third workshop was held online via Zoom conferencing due to the COVID-19 pandemic. City staff offered three Zoom webinars on October 15, October 22, and October 26, 2020, averaging 100+ participants attending on each webinar.

In addition to the workshops, City staff conducted an online survey for the second workshop, launched a website for the Plan which provided regular updates of the BBUV planning process, used social media tools to engage the public, and offered public presentations at SPUR and San Jose State University. To discuss BBUV parking strategies and policies, City staff conducted Community Working Group meetings with key stakeholders.

Notices for Planning Commission and City Council hearings were published in a local newspaper, the Post Record, and staff has been available to respond to questions from the public. Both the March 24 and May 12, 2021 Planning Commission hearings included simultaneous interpretation services in Spanish, Vietnamese, Chinese. This memorandum will be posted on the City's Council Agenda website for June 8, 2021.

Flea Market Southside Rezoning

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 and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

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. The BBUV Plan addressed comments from the community regarding the proposed rezoning application.

The applicant conducted outreach to the Flea Market vendors. A flyer was distributed to each vendor to advertise the open houses in 2020 where vendors could stop by and learn about planning around the BART Station, the proposed rezoning, and discuss the future of the Flea Market. The open houses rotated to different locations within the Flea Market site. The applicant indicated that approximately 80 people participated. Planning staff also provided the applicant with the copies of public notices for the Planning Commission and City Council hearings of the rezoning to be distributed to vendors.

COORDINATION

Preparation of the BBUV plan and the processing of the Flea Market Southside rezoning were conducted in parallel as they inform each other across all technical disciplines. Coordination was conducted among several City departments including the Department of Transportation, Office of Economic Development, City Attorney's Office, Department of Public Works, and PRNS. In addition, City staff conducted regular coordination meetings with Valley Water regarding environmental and other issues pertaining Penitencia and Coyote Creeks. City staff coordinated with VTA on policy and development issues on VTA-owned land in the BBUV Plan area, and a BART planner also participated in project coordination meetings.

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

CEQA

Berryessa BART Urban Village Plan (GP20-008 and C21-001)

The environmental impacts of the Berryessa BART Urban Village Plan are addressed in an Initial Study/Addendum to the Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and addenda thereto.

The Berryessa BART Urban Village Plan, and as described in the Initial Study/Addendum, does not create any of the conditions described in Section 15162 of the CEQA Guidelines that call for the preparation of a subsequent EIR. No new significant impacts would occur, and no previously examined significant effects would be substantially more severe than shown in the Envision San José 2040 General Plan EIR and SEIR. Thus, an Addendum to the adopted EIRs is the appropriate environmental documentation to analyze the potential environmental impact.

The Initial Study/Addendum is posted to the City's "Active EIRs" website at: www.sanjoseca.gov/activeeirs. The Envision San José 2040 General Plan EIR and SEIR can also be found at www.sanjoseca.gov/activeeirs.

Flea Market Southside Rezoning (PDC17-051)

Environmental Analysis for Flea Market Southside 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 (PM₁₀)
- 2) **Impact AIR-C: Operational air quality cumulative impact.** The Project would result in cumulatively considerable criteria pollutant emissions impacts.
- 3) **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 and cumulative air quality impacts 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, these mitigation measures will not reduce these impacts to a less than significant level.

The Statement of Overriding Considerations in the proposed CEQA resolution finds that the benefits of the project outweigh the significant adverse environmental impacts explained above and in the EIR. Specifically, the resolution includes findings that the significant, unavoidable impacts of the project are acceptable because: 1) 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; 2) 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; 3) the project will provide significant parks and open space, including open space along the Coyote Creek and Penetencia Creek; and 4) the project will provide up to 3,400 housing units in a General Plan-identified growth area.

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 which specifies the various required mitigation measures for this 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: 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 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-foot 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-foot Santa Clara Valley Habitat Conservation Plan setbacks except for an approximately 110 square foot 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>.

Changes to the Project Description since DEIR Circulation - Urban Market

Subsequent to circulation of the DEIR and posting of the First Amendment to the Draft EIR, the applicant proposed changes in the project plans to incorporate an Urban Market in some of the plazas and open space. These changes were made in response to concerns raised from the community during EIR circulation and at the March 24, 2021 Planning Commission hearing about the displacement of existing Flea Market vendors. This change does not represent significant new information requiring recirculation of the DEIR under CEQA Guidelines 15088.5 because the proposed Urban Market will encompass about 110,000 square feet of retail, which is within the 150,000 square feet of planned retail in plazas and the ground floor of new buildings already evaluated in the DEIR. Therefore, incorporation of the Urban Market into this space would not result in any new significant impacts nor result in an increase in the severity of previously identified significant impacts. However, as the Urban Market will be substantially different than the configuration of the existing Flea Market, the significant and unavoidable impact identified in the DEIR to cultural resources due to the demolition of the Flea Market, a Candidate City Landmark and a resource eligible for listing in the California Register of Historic Resources, would remain unchanged.

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 Transportation Development Policy (TDP) in 2007 through preparation of the Final Environmental Impact Report for the King and Dobbin Transit Village and US-101/Oakland/Mabury TDP 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 TDP 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 TDP 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/TDP and Addenda thereto (Resolution no. 74195.1).

/s/

CHU CHANG, Acting Secretary
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, at michael.brilliot@sanjoseca.gov.

Attachments:

1. Planning Commission Staff Report and associated attachments
2. Draft BBUV Plan, Open Space Chapter with proposed redlined changes

HONORABLE MAYOR AND CITY COUNCIL

May 28, 2021

Subject: Berryessa BART Urban Village (BBUV) Plan Adoption and Flea Market Southside rezoning

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3. Draft BBUV Plan, Land Use Chapter with proposed redlined changes
4. Draft Flea Market South PD Zoning standards with proposed redlined changes
5. Rezoning Plan Set submitted May 21, 2021.