



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 2, 2007

Approved

Date

10/9/07

COUNCIL DISTRICT: City-Wide
SNI AREA: All

**SUBJECT: PROPOSED FRAMEWORK FOR PRESERVATION
OF EMPLOYMENT LANDS**

RECOMMENDATION

Planning staff recommends:

1. Adopt the proposed *Framework for Preservation of Employment Lands*.
2. Direct the Administration to initiate General Plan text amendments for Discretionary Alternate Use Policies to allow, without the requirement of a change in a General Plan land use designation on a site, commercial uses or a combination of commercial and industrial uses on sites designated exclusively for industrial uses if specific criteria are met and to delete text in the General Plan for Discretionary Alternate Use Policies that currently allows non-employment uses on land designated for Light Industrial or Heavy Industrial uses.

OUTCOME

Adoption of the Proposed *Framework for Preservation of Employment Lands*

Adoption of the proposed *Framework for Preservation of Employment Lands* (see Attachment 1, Preservation Framework) would replace and supersede the *Framework, as a Guideline, to Evaluate the Proposed Conversions of Employment Lands to Other Uses* (see Attachment 2, 2005 Framework). The new Preservation Framework would contain criteria based on the motion approved by City Council as set forth in a memorandum from Mayor Reed dated May 15, 2007 (see Attachment 3) and summarized below:

1. No net loss of total employment capacity as the result of any amendment to the San José 2020 General Plan.
2. No net loss **from non-employment land use conversions** of Light Industrial or Heavy Industrial acreage or building area **square footage** on land that has the General Plan land use designation of Light Industrial or Heavy Industrial.
3. Applications for conversions to support public infrastructure may be accepted only after the infrastructure has been designated by the City Council **as public infrastructure intended to be supported by increases in non-employment uses.**
4. Extraordinary Economic Benefit conversions must meet the above criteria and shall be limited to those instances where there will be an increase or retention of jobs, and a significant increase in revenue to the City, or a significant capital contribution for investments in economic development like the Catalyst fund or the Economic Development Reserve.
5. Changes in areas with mixed use overlays shall not decrease the amount of land available for religious assembly uses.

Initiate General Plan text amendments for Discretionary Alternate Use Policies

The initiation of General Plan text amendments for Discretionary Alternate Use Policies would provide clarity for employment lands in two ways. First, staff is proposing a new Discretionary Alternate Use Policy that would allow commercial uses or a combination of commercial and industrial uses on sites designated exclusively for industrial uses if specific criteria are met. This policy flexibility would address circumstances on small or unusually configured remnant sites. Second, staff is proposing the deletion of text in the General Plan for Discretionary Alternate Use Policies that currently allows non-employment uses on land designated for Light Industrial or Heavy Industrial uses. The initiation of these text amendments would begin the outreach process as well as analytical work needed prior to Council consideration.

BACKGROUND

The City of San José has strategies, goals, and policies in the *San José 2020 General Plan*, in the City's *Economic Development Strategy*, and in other significant policy documents and City programs to support and encourage economic development and job creation in San José. A key component of these endeavors is the preservation of the City's inventory of employment lands.

Employment lands are defined as non-residentially designated lands supporting private sector employment. (Sites designated Public/Quasi-Public in the San José 2020 General Plan Land Use/Transportation Diagram are not considered employment lands for the purposes of the Preservation Framework.) The loss of employment lands is a major issue for the City of San José. Employment lands (industrial and commercially designated parcels) make up 15% of the City's total land supply, yet they generate approximately 60% of the City's total revenues. The

continued structural imbalance between General Fund revenues and expenditures requires the City to maximize revenue from employment lands.

Loss of Employment Lands through General Plan amendments from 1983 through 2006

Individual General Plan amendments have cumulatively greatly reduced the City's inventory of employment lands. Beginning in the 1980s, the City attempted to maintain its inventory of industrial lands through land swaps that allowed the conversion of employment land to non-employment uses in one area of the City in conjunction with the conversion of non-employment land to employment land in another area of the City. In the 1990s and through the present, however, the conversion of industrial land to non-employment uses accelerated, resulting in continued net loss of the City's industrial land inventory.

Since 1990, San José has converted approximately 1,400 acres, equal to 9% of all employment lands, to other uses. The conversion rate nearly doubled from 1990 to 2000, at 68.6 acres/year to 2001-2006, at 119.7 acres/year. The consequences include:

1. Loss of jobs and job capacities;
2. Loss of tax base and revenue for City services;
3. Restrictions for adjacent industrial companies limited by incompatible residential development; and
4. Loss of potential large-scale commercial retail opportunities.

Employment lands not only generate jobs for residents, but also tax revenues to pay for services for residents. Communities with a greater share of employment lands are more likely to have budget resources to meet the service expectations of their citizens.

2005 Framework

On April 6, 2004, the City Council approved the *Framework, as a Guideline, to Evaluate the Proposed Conversions of Employment Lands to Other Uses* (2005 Framework) to address the cumulative loss of employment lands, and in particular, land designated for industrial uses (industrial lands), through incremental conversions resulting from General Plan amendments. The intent of the 2005 Framework was to identify employment subareas within the City where conversion should be discouraged, and identify other subareas where conversion of industrial land to other uses could be considered on a case-by-case basis depending on consistency with key criteria listed in the 2005 Framework. The 2005 Framework was modified on November 15, 2005 (see Attachment 2). Despite these modifications, the 2005 Framework has not been successful in stemming the tide of industrial land conversions. Since 2004, the City has lost approximately 120 acres of industrial land per year through conversion to other uses.

Retail Strategy

In 2004, the City completed the *San José Neighborhood Retail Model Summary Report* (Retail Study) that identified significant retail sales leakage out of San José. In particular, this was due to

the lack of retail uses in many areas of the City, especially areas within the Berryessa community and North San José. In response to the conclusions of the Retail Study, the City is proactively identifying sites that have the potential to provide retail opportunities. Some of these sites will require General Plan land use amendments or re-zonings prior to consideration of development proposals for retail uses. Initiation of these actions is being considered under a separate Council agenda item entitled “San José Retail Strategy,” cross-referenced from the Community and Economic Development Committee Meeting of September 24, 2007. For these reasons, City staff recommends that the City now include criteria for the preservation of lands designated for industrial or commercial uses, and criteria for converting industrial to commercial land in the Preservation Framework.

Council Direction to Change the 2005 Framework

On March 29, 2007, as part of a presentation to the City Council during a study session on Economic Development and Employment Lands, City staff provided extensive data on the relationship between land use and revenue to the City, demonstrating serious potential fiscal impacts related to the conversion of employment lands to non-employment uses. In this presentation to Council, staff defined employment lands as industrial and commercial lands supporting private sector employment.

Staff suggested that the Council consider an update to the 2005 Framework and identified three possible directions that update might reinforce: 1) prohibiting any further conversions of industrial lands; 2) strengthening the 2005 Framework to limit conversions to projects of “Extraordinary Economic Benefit”; or 3) continuing to use current policies without modification. Staff recommended that the Framework be strengthened per the second option.

In response to the information presented at the March 29, 2007 study session, the City Council gave direction to staff to conduct public outreach on proposed changes to the 2005 Framework and to return to the City Council with an update to the Framework in advance of the City Council’s consideration of the Evergreen*East Hills Vision Strategy (EEHVS) General Plan amendments.

Framework Update

Acting on Council direction, on May 15, 2007, City staff recommended to the City Council that the 2005 Framework be updated and strengthened to limit industrial conversions to projects of “Extraordinary Economic Benefit”. In response, Council provided direction to staff to prepare an updated Framework that emphasizes the Preservation of Employment Lands (Preservation Framework), and that incorporates policies to discourage the conversion of employment lands— industrial and commercial lands— to non-employment uses, while maintaining the flexibility to consider special or unique proposals with clear benefit to the City towards the achievement of overall City goals for economic development including retail opportunities and other strategies for increasing revenue to the City’s General Fund.

ANALYSIS

Applicability

The Preservation Framework will replace the 2005 Framework and apply to any General Plan amendment, including currently all pending General Plan amendments (“pipeline projects”), that includes:

1. The conversion of any category of employment lands, including industrial or commercial lands, to non-employment uses; or
2. The conversion of employment lands to a mix of uses that includes both employment and non-employment uses.

Examples of conversions include, but are not limited to:

- Land designated exclusively for employment uses changed to land designated for a mix of uses that includes non-employment uses; and
- Land designated exclusively for Light or Heavy Industrial uses changed to land designated for other industrial or non-industrial uses.

The Preservation Framework does not apply to conversions of Light to Heavy Industrial acreage or vice versa, and does not apply to conversions of commercial to industrial land.

Strategies for Preservation

In contrast to the 2005 Framework, the Preservation Framework focuses on strategies for preserving employment lands instead of identifying criteria or subareas where conversion can be facilitated. The maintenance of an adequate supply of a variety of employment lands is essential to San José’s economic development. Production is increasing again as part of the new industrial economy focused on clean technology, and the City needs to maintain an adequate inventory of Light and Heavy Industrial lands to accommodate these demands. The specific measures for the preservation of employment lands are discussed in the Preservation Framework (Attachment 1).

EVALUATION AND FOLLOW-UP

If the City Council chooses to accept City staff’s recommendations, then Council would adopt the proposed *Framework for Preservation of Employment Lands* and the new Framework would be effective immediately. One year after Council adoption, City staff can provide Council with a status report on the effectiveness of the *Framework for Preservation of Employment Lands*, with recommendations for improvements as needed.

The proposed modifications to the General Plan Discretionary Alternate Use Policies would be brought forward for Council consideration in Fall 2007 or Spring 2008 depending on the extent

of analysis and documentation needed for environmental clearance.

POLICY ALTERNATIVES

Alternative 1. The City Council may decide not to adopt the Preservation Framework, and, instead, maintain the 2005 Framework, as is.

Pros: The City Council can facilitate conversion of employment lands in identified subareas while continuing to discourage conversion of employment lands in other subareas.

Cons: The City may continue to lose employment lands.

Reason for not recommending: The City may lose employment lands that are vital to the City's economy.

Alternative 2. The City Council may decide to adopt a moratorium on Light and Heavy Industrial conversions in addition to, or instead of, the Preservation Framework.

Pros: The City Council can preserve Light and Heavy Industrial lands.

Cons: The City may lose some flexibility to address other City priorities, such as planning for increased BART ridership.

Reason for not recommending: By not adopting a moratorium on Light and Heavy Industrial conversions, the City retains more flexibility to address the City's other priorities.

Alternative 3. The City Council may decide to adopt a modified Preservation Framework that excludes commercial lands from being subject to the Framework.

Pros: The City Council can preserve industrial lands.

Cons: The City may lose opportunities to preserve or increase the City's inventory of commercial lands for unmet retail needs and additional sales tax revenue.

Reason for not recommending: The City may lose opportunities to address retail needs.

Alternative 4. The City Council may decide to adopt a modified Preservation Framework that excludes "No Net Loss of Light or Heavy Industrial Acreage" as a criterion.

Pros: The City Council can facilitate redevelopment of Light and Heavy Industrial sites with other uses.

Cons: The City may lose Light and Heavy Industrial designated acreage.

Reason for not recommending: The City may lose Light and Heavy Industrial lands that are vital to the City's economy.

Alternative 5. The City Council may decide not to adopt the Preservation Framework, and, instead, address the preservation of employment lands through the General Plan Update.

Pros: The City Council can address the preservation of employment lands comprehensively and on a parcel-by-parcel basis through changes to the General Plan Land Use/ Transportation Diagram and through modifications to the General Plan text.

Cons: Although land use changes to support the preservation of employment lands are likely to occur through the General Plan Update, the City may continue to lose employment lands in the interim, while the General Plan Update is in progress.

Reason for not recommending: The City may lose employment lands that are vital to the City's economy while the General Plan Update is in progress.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Public notification followed the City's Public Outreach Policy and included announcements on the City's website and to the Developers Roundtable and Neighborhood Roundtable e-mail distribution lists. Staff presented recommendations to the City Council in memorandum to Council discussed in a public hearing held on May 15, 2007. In response to staff recommendations, the Council provided staff with direction for criteria to include in the Preservation Framework in a Council memo on May 15, 2007. Staff presented the memo from Council on the Framework to the Developers Roundtable and discussed the potential implications for General Plan amendment hearings on June 1, 2007. Staff also informed applicants with pending General Plan amendments about the Council direction in the memo.

The Draft Preservation Framework was presented to the Developers Roundtable on August 24, 2007, to the Neighborhood Roundtable on September 11, 2007, to the City's Housing and Community Development Commission on September 13, 2007, to the Silicon Valley Leadership Group (SVLG) Housing Action Coalition on September 14, 2007, and to the SVLG Land Use and Housing Committee on October 1, 2007. On September 10, 2007, developers and business representatives met with upper management from the City Manager's Office, Department of Planning, Building and Code Enforcement, the Office of Economic Development, and the Mayor's Office to discuss the Draft Preservation Framework. Issues raised by the public and staff responses are summarized in an attachment to this memorandum (see Attachment 4 and public correspondence in Attachment 5).

The Preservation Framework is intended to improve the financial/economic vitality of the City. This memorandum will be made public and will be posted on the City's website and e-mailed to the Developers Roundtable and Neighborhood Roundtable distribution lists. Staff is convening another meeting with the business and development community prior to Council consideration and is available to respond to questions from the public.

COORDINATION

The preparation of this memo was coordinated with the City Attorney's Office, the City Manager's Office, the Redevelopment Agency, the Housing Department, and the Office of Economic Development.

FISCAL/POLICY ALIGNMENT

This Framework is consistent with applicable General Plan Major Strategies, goals, and policies.

COST SUMMARY/IMPLICATIONS


Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

The proposal is covered by Reuse of the San José 2020 General Plan Final Environmental Impact Report, certified by the City Council on August 16, 1994, Resolution No. 65459.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti at 408-535-7901.

Attachments:

1. a. Proposed *Framework for the Preservation of Employment Lands*
b. Map of Key Employment Areas (Coyote, North San José Evergreen, Edenvale, Monterey Corridor, and Downtown Core)
2. a. *Framework, as a Guideline, to Evaluate the Proposed Conversions of Employment Lands to Other Uses* (2005 Framework)
b. 2005 Framework Map
3. Council Memo on the Framework from Mayor Chuck Reed dated May 15, 2007
4. Discussion of Issues raised by the Public
5. Correspondence received on the Preservation Framework including updated Table of Revenues from Various Land Uses

ATTACHMENT 1

1.A. TEXT

1.B. MAP

ATTACHMENT 1.a.

DRAFT

FRAMEWORK FOR PRESERVATION OF EMPLOYMENT LANDS

BACKGROUND

2005 Framework

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Retail Strategy

In 2004, the City completed the *San José Neighborhood Retail Model Summary Report* (Retail Study) that identified significant retail sales leakage out of San José. In particular, this was due to the lack of retail uses in many areas of the City, especially areas within the Berryessa community and North San José. In response to the conclusions of the Retail Study, the City is proactively identifying sites that have the potential to provide retail opportunities. For these reasons, the *Framework* includes criteria for the preservation of lands designated for industrial or commercial uses, and criteria for converting industrial to commercial land.

Council Direction to Change the 2005 Framework

On March 29, 2007, as part of a presentation to the City Council during a study session on Economic Development and Employment Lands, City staff provided extensive data on the relationship between land use and revenue to the City, demonstrating serious potential fiscal impacts related to the conversion of employment lands to non-employment uses. In this presentation to Council, staff defined employment lands as industrial and commercial lands supporting private sector employment.

Staff suggested that the Council consider an update to the 2005 Framework and identified three possible directions that update might reinforce: 1) prohibiting any further conversions of industrial lands; 2) strengthening the 2005 Framework to limit conversions to projects of “Extraordinary Economic Benefit”; or 3) continuing to use previous policies without modification. Staff recommended that the Framework be strengthened per the second option.

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DEFINITION OF EMPLOYMENT LANDS

Employment lands are defined as non-residentially designated lands supporting private sector employment. Sites designated Public/Quasi-Public in the San Jose 2020 General Plan Land Use/Transportation Diagram are not considered employment lands for the purposes of the Preservation Framework.

PURPOSES OF PRESERVATION FRAMEWORK

To maintain a viable economy and provide services to residents at levels consistent with City of San José policies, the City has a strong interest in preserving the City's remaining employment land acreage and building floor area capacity for various business operations. Purposes of preserving and enhancing the City's remaining employment land capacity include:

1. Bringing revenue to the City;
2. Providing jobs to residents;
3. Providing a variety of types and sizes of sites for employment opportunities for the City to remain competitive internationally;
4. Identifying and facilitating the development of sites for retail to serve individual neighborhoods, larger community areas, and the Bay Area region; and
5. Accommodating future demand for land for employment uses through 2020.

As per the Council Memo from Mayor Reed dated May 15, 2007, and adopted by the City Council, the Preservation Framework is intended to achieve the following outcomes:

1. No net loss of total employment capacity as the result of any amendment to the San José 2020 General Plan.
2. No net loss from non-employment land use conversions of Light Industrial or Heavy Industrial acreage or building area square footage on land that has the General Plan land use designation of Light Industrial or Heavy Industrial.
3. Applications for conversions to support public infrastructure may be accepted only after the infrastructure has been designated by the City Council as public infrastructure intended to be supported by increases in non-employment uses.
4. Extraordinary Economic Benefit conversions must meet the above criteria and shall be limited to those instances where there will be an increase or retention of jobs, and a significant increase in revenue to the City, or a significant capital contribution for investments in economic development like the Catalyst fund or the Economic Development Reserve.
5. Changes in areas with mixed use overlays shall not decrease the amount of land available for religious assembly uses.

APPLICABILITY

The Preservation Framework applies to any General Plan amendment that includes:

1. The conversion of any category of employment lands, including industrial or commercial lands, to non-employment uses; or
2. The conversion of employment lands to a mix of uses that includes both employment and non-employment uses.

Examples of conversions include, but are not limited to:

- Land designated for exclusively employment uses changed to land designated for a mix of uses that includes non-employment uses; and
- Land designated for exclusively Light or Heavy Industrial uses changed to land designated for other industrial or non-industrial uses.

The Preservation Framework does not apply to conversions of Light Industrial acreage to Heavy Industrial acreage or vice versa, and does not apply to conversions of commercial land to industrial land.

Strategies for Preservation

In contrast to the 2005 Framework, the Preservation Framework focuses on strategies for preserving employment lands instead of identifying criteria or subareas where conversion can be facilitated. The maintenance of an adequate supply of a variety of employment lands is essential to San José's economic development. Production is increasing again as part of the new industrial economy focused on clean technology, and the City needs to maintain an adequate inventory of Light and Heavy Industrial lands to accommodate the new industrial demands.

The specific measures for the preservation of employment lands are discussed below:

1. Maintain No Net Loss of Light or Heavy Industrial Acreage

Heavy and Light Industrial lands have had the lowest vacancy rates of all employment lands even during the recent economic downturn. It is essential to retain Light and Heavy Industrial lands for production-related jobs, many of which do not require 4-year college degrees. Examples of such businesses include cabinetry, auto repair, home improvement warehouses, garbage and recycling operations, and concrete and asphalt production.

Many Light and Heavy Industrial businesses cannot function in smaller, vertical spaces because their operations require large horizontal spaces and outdoor storage areas. Examples include composting, garbage truck parking, auto wrecking yards, and recycling.

Ideally, existing Light and Heavy Industrial acreage should be preserved. If it is not feasible to preserve the acreage and job capacity of existing Light or Heavy Industrial employment lands, then changing non-employment, or other employment, acreage to Light or Heavy Industrial acreage should offset the impacts of conversion of Light or Heavy Industrial acreage to other uses so that there is no net loss. The challenge is to find viable sites in suitable locations for this type of offset.

By way of example, the area bounded by East Trimble, Zanker, and Brokaw Roads, and Interstate 880 could be a viable location for such offsets. This area is designated Industrial Park on the General Plan, but is zoned LI-Light Industrial or HI-Heavy Industrial and may contain existing LI and HI businesses.

An applicant requesting an offset should demonstrate to City staff the viability of the offset proposal. Based on this information and staff's analysis, staff would make a recommendation to Council. The City Council may approve General Plan amendments to change land use designations on such sites to allow exclusively Light or Heavy Industrial uses, thereby creating acreage for these uses. This new acreage could then offset the loss of other acreage proposed to convert from Light Industrial or Heavy Industrial to other designations.

These re-designations would be most successful in protecting industrial lands, if they met all of the following criteria:

1. The site is adjacent to viable Light or Heavy Industrial designated land.

2. The site is currently zoned to allow Light or Heavy Industrial uses.
3. The site currently contains legal Light or Heavy Industrial businesses.
4. The site is at least five acres in area.

Another way to create Light or Heavy Industrial land capacity is by the removal of an overlay that allows a mix of uses such as a Mixed Industrial Overlay or a Transit/Employment Residential Overlay, on a site with a base land use designation of Light or Heavy Industrial. In situations where an overlay that allows a mix of uses is removed from a site, it should be demonstrated that such a removal does not decrease the amount of land available for religious assembly uses.

A third way to create Light or Heavy Industrial acreage is by changing sites designated Combined Industrial/Commercial to an exclusively Light or Heavy Industrial land use designation.

The project proponent should coordinate with City staff to determine an appropriate area in which to look for a site for an appropriate offsetting conversion to a Light or Heavy Industrial land use designation. The project proponent should then work with the appropriate property owners to obtain their support for such a proposal, and then submit to the Planning Division a privately-initiated General Plan amendment application with environmental clearance and appropriate fees paid.

Land Use Planning to Support Public Infrastructure Projects: In some cases, a special public infrastructure project may warrant land use changes. Specifically, the extension of the BART system to San José requires such a significant investment of public resources that it is appropriate for the City to consider the conversion of employment lands to viable mixed commercial-residential uses, or, where clearly not marketable, even purely residential uses in order to support the project. Such conversions may be supported if they provide the highest possible density of new residential development with adequate incorporation of open space, retail, and other services to support the new residential development. In these situations, it may not be feasible to maintain no net loss of employment capacity; however, no net loss of Light or Heavy Industrial acreage should be maintained through the acquisition and conversion of other lands in the City of San José to Light or Heavy Industrial uses. The “no net loss of Light or Heavy Industrial designated acreage” criterion may not be applicable to publicly owned land used by a public agency for public purposes related to the public infrastructure project.

2. Discourage Conversion to Non-Employment Uses in Key Employment Areas

Conversion of employment lands to non-employment uses are discouraged in key employment areas including Coyote Valley, North San José, the Evergreen industrial area, the Edenvale Redevelopment Project Area, the Monterey Corridor Redevelopment Project Area, and the expanded Downtown Core. Conversion of employment lands to non-employment uses in a key employment area may be supported by the Framework only if there is no net loss of employment capacity in the subject key employment area as a result of the conversion, and if an Extraordinary Economic Benefit accrues to the City as a result of

the conversion. Please refer to the map for these areas that is incorporated into this Framework document.

The North San José Development Policy Area is not eligible for intensification from the transfer of employment square footage from sites outside of the boundaries of the North San José Development Policy Area. This is because such a transfer would result in a net loss of employment square footage to the City. Sites within the North San José Development Policy Area already have the potential for higher density development (greater than a Floor Area Ratio of .35) given the adopted North San José Area Development Policy, so that the square footage in question is lost. A total of 26.7 million square feet is allowed by the North San José Area Development Policy regardless of transfer of square footage from outside the North San José Development Policy Area.

In the recently expanded Downtown Core, the Downtown Strategy 2000 Plan provides for a balance of residential and commercial uses. Nothing in this Framework limits the development of residential uses consistent with the Downtown Strategy 2000 Plan in the Downtown Core.

3. Intensify to Retain Job Capacity on Sites Currently Designated for Industrial Park or Combined Industrial/Commercial

In situations where conversion does not involve Light Industrial or Heavy Industrial land uses, retention of employment capacity on site by intensification of the development's Floor Area Ratio (FAR) may be feasible. Sites located within North San José and the Downtown Core are eligible for intensification on site as a strategy to preserve employment uses if the proposed General Plan amendment involves conversion of one employment land use designation (e.g., Industrial Park) to another employment land use designation (e.g., Combined Industrial/Commercial). For example, a proposal could combine ground floor retail uses with second-story office uses.

Non-employment uses may be added to a site by retaining the existing job capacity through intensification on the remainder of the site for properties located outside of Coyote Valley, North San José, the Monterey Corridor Redevelopment Project Area, and the Evergreen industrial area. Minimum FARs to achieve this should be at least .35. For sites located within 2000 feet of existing or planned Light Rail Transit stations, or within 3000 feet of future BART stations, the minimum FAR for existing employment uses to be maintained prior to intensification with other uses should be .40.

As part of the City's Retail Strategy, the City continues to consider adding potential retail sites to the City's inventory based on specific criteria for a property's size, shape, access to transportation, and connection to neighborhoods. This strategy includes considering sites for retail uses that are currently designated for exclusively industrial employment uses. Vertical intensification of employment uses can accommodate the retention of existing industrial employment capacity on a site while adding new retail employment capacity. This approach works well for Industrial Park/Research and Development types of businesses that can locate in buildings with multiple stories. The Vision 2030 Plan for North San José and the approved

General Plan amendment and zoning changes for the Hitachi site are good examples.

In situations where it is not feasible to add retail capacity to an existing site while maintaining the original industrial employment capacity on the site, the original industrial employment capacity may be forsaken if the project proponent can document to the satisfaction of the City that a net addition of sales tax revenue to the City of San José will result from the conversion.

4. Maintain Employment Lands for Non-Residential Uses

Land designated for a mix of employment uses that was previously designated for exclusively industrial uses should not be converted to allow residential uses. If a conversion is proposed at a later date, any conversion that occurred less than ten (10) years previously to the proposed conversion shall be reviewed and considered as if the land is designated for exclusively industrial uses.

5. Retain Citywide Job Capacity

Sites in areas of the City other than Coyote Valley, North San José, the Monterey Corridor Redevelopment Project Area and the Evergreen industrial area, may be eligible to convert from employment to non-employment uses only if there is no net loss of total job capacity within the City and there is an Extraordinary Economic Benefit (see below for further discussion) provided by the conversion of the site to non-employment uses. When land designated for employment uses is converted to land designated for exclusively non-employment uses, such as residential uses, there should be no net loss of job capacity in the City of San José. Intensifying job capacity on other lands designated for employment uses in the City of San José or concurrently converting equivalent acreage from exclusively non-employment uses to acreage designated for employment uses within the City are possible methods of maintaining the criterion of no net loss of job capacity Citywide.

6. Discourage New Residential Development on Sites Converted from Industrial to Commercial Land Use Designations

The Combined Industrial/Commercial land use designation should be selected to allow commercial and industrial uses on sites converted from exclusively industrial uses. The Combined Industrial/Commercial land use designation excludes residential uses.

Extraordinary Economic Benefit from Conversion

For an Extraordinary Economic Benefit to occur when employment lands are converted to other uses, the City must receive significant off-setting fiscal benefits, such as revenues, beyond those required or expected from a project that does not result in the net conversion of employment land to other uses. Provision of affordable housing, parks, and related infrastructure improvements are an ordinary component of new development and do not qualify as an Extraordinary Economic Benefit.

The Extraordinary Economic Benefit should be defined by a Development Agreement or similar mechanism at the same time as the proposed General Plan amendment is considered so that the Council can evaluate the merits of the actual development project with the proposed General Plan land use designation.

1. Capital Contribution for Investments in Economic Development

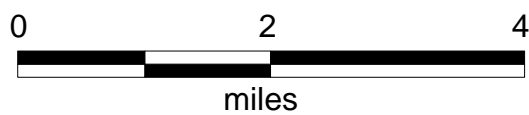
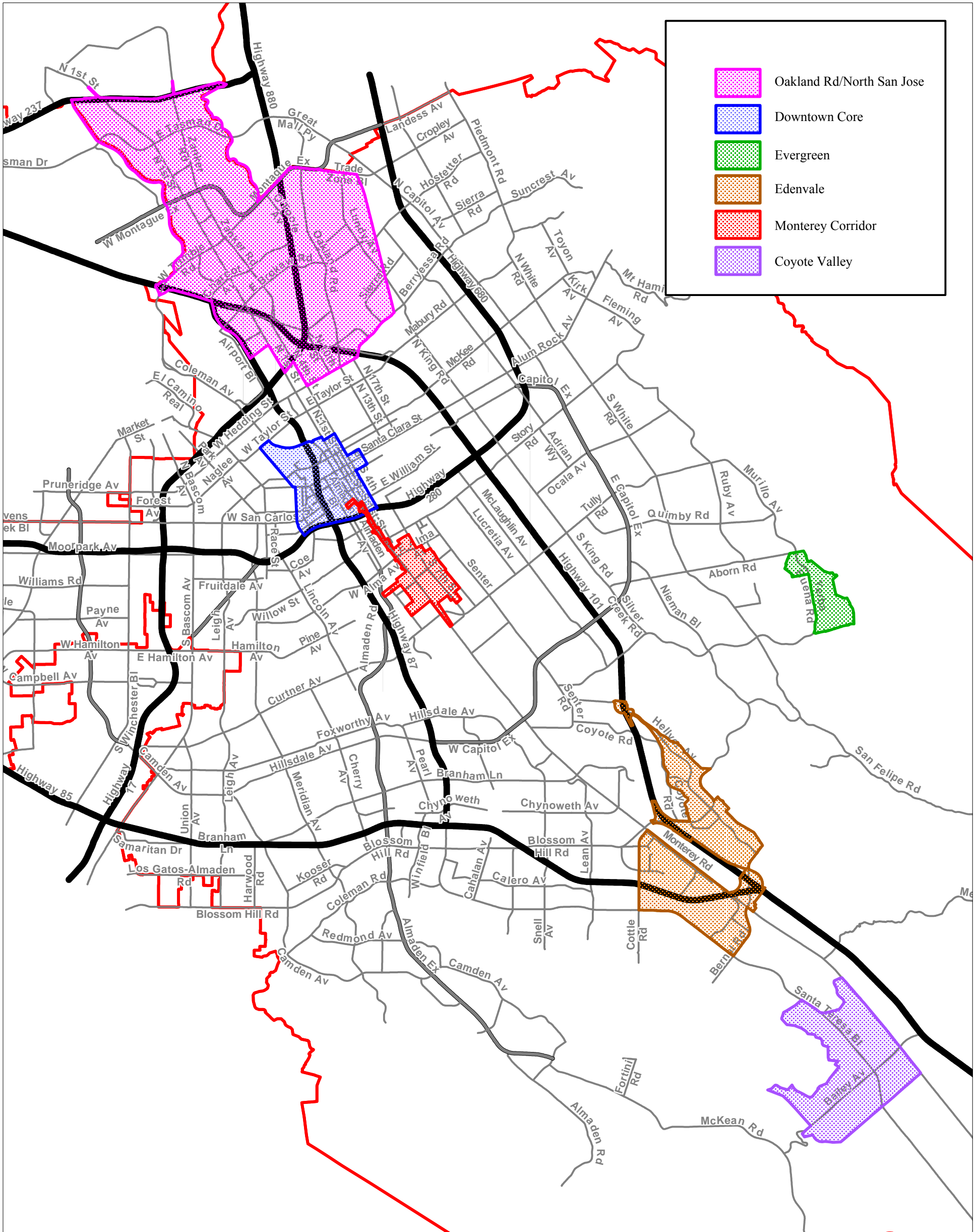
Contributions of capital in the City's programs for economic development may provide an Extraordinary Economic Benefit to the City. Proposals will be considered on a case-by-case basis. Examples of programs include the City's Economic Development Catalyst Program and the Economic Development Reserve fund. These two programs are described below:

- Through the City's Economic Development Catalyst Program (EDCP) the City of San José will provide up to \$3 million over the next four years to leverage substantial venture capital investment in private small businesses located in the City of San José. The EDCP leverages City funds at a 6 to 1 ratio. In addition to increasing the direct impact of City funds, the EDCP is anticipated to make equity investments that will enhance job creation, expand the local tax base, and facilitate the integration of other programs and services targeted to the small business community.
- The City Manager has proposed establishing a fund that would be available to provide incentives for extraordinary and unanticipated economic development opportunities to create jobs in San José, such as the recent success of securing CleanTech solar company Nanosolar. The account would only be utilized for unanticipated and extraordinary projects that may require financial incentives to ensure the creation of new jobs in San José and a corresponding increase in City revenues. To determine whether a given economic development opportunity meets the threshold of "unanticipated and extraordinary," the Office of Economic Development will consider the following:
 - a. Does the company meet the City's definition of a driving industry (Computer technology, Bioscience, CleanTech, Nanotech, Informatics, etc)?
 - b. Does the company have the potential to create from 10 to 100 jobs within the next two years?
 - c. Will the company's headquarters be located in San José?
 - d. Does the business activity of the company have the potential to generate significant revenues for the City?
 - e. Does the company have significant location options (regionally, nationally, or internationally) and require assistance to ensure that the site selected is in San José?

2. Mitigation Fee

In the future, the City may propose a mitigation fee program. Such a program should provide a methodology to quantify the economic impact of a proposed conversion and assess a fee that can be used to offset the impact. The Office of Economic Development is working with a consultant to investigate the feasibility of such a program and will further address its implementation if it is determined to be viable.

Key Employment Areas



Scale: 1:96,000 1 in = 8000 ft



Note: San Jose has important employment land interspersed throughout the City. All employment lands in the City of San Jose's Sphere of Influence that are proposed for General Plan amendments are subject to analysis under the Framework for the Preservation of Employment Lands.



Map prepared by City of San Jose, Planning Division 10/01/2007

ATTACHMENT 2

2.A. TEXT

2.B. MAP



Framework, as a Guideline, to Evaluate Proposed Conversions of Employment Lands to Other Uses (Originally Approved by the Mayor and City Council on April 6, 2004 and Modified on November 15, 2005)

Purpose

The Framework should be used as a guideline to evaluate proposed conversions of employment lands to other uses. The intent of the Framework is to create more certainty and predictability in the review of employment land conversion proposals while retaining flexibility to respond to changing conditions, information, and policy considerations.

Framework Elements

1. Subareas to promote or facilitate conversion to housing, retail, mixed use, or other Household-Serving Industries.

- *Downtown Core Subarea:* Continue to facilitate a vibrant mix of housing, civic, retail, and employment uses.
- *Downtown Frame Subarea:* Continue to facilitate a mix of housing, civic, retail, and employment uses, however, the Julian-Stockton portion of this subarea should not include housing.
- *Midtown portion of Central San Jose 1 Subarea:* Consider additional opportunities for housing, retail, civic, and/or employment uses (beyond existing and planned land uses) to support the Downtown, transit investments, and West San Carlos Neighborhood Business District.
- *Story Road Subarea (Olinder Redevelopment Area):* Consider for conversion to retail uses, but not housing, given the existing, well-established retail uses.

2. Subareas to consider for conversion to housing, retail, mixed use, or other Household Serving Industries only in certain circumstances.

- As the employment areas intensify in North First Street and Edenvale 1, respectively, then opportunities for intensive development of supportive uses may be considered in the following subareas:

North First Street
North San Jose 2
North San Jose 3

North San Jose 4
North San Jose 6
Edenvale 1

- *North San Jose 5 subarea (east of I-880):* Consider housing, retail, or other Household Serving Industries only in areas that are close to existing residential areas and areas that could be integrated into a neighborhood framework.

- *Northeast San Jose subarea (east of Coyote Creek)*: Consider housing near the Berryessa BART station consistent with our Transit Oriented Development policies.
- *Portion of Central San Jose 1 Subarea (west of the railroad tracks and north of I-880)*: Consider conversion to housing, consistent with the existing neighborhood, the BART Station Node policies, and compatibility with the City of Santa Clara's conversion to housing.
- *Evergreen Industrial Area*: Consider uses only if recommended through the Evergreen Smart Growth Strategy process.
- *Coyote Valley*: Consider uses only if recommended through the Coyote Valley Specific Plan process.

3. Subareas to preserve for Driving and Business Support Industries.

- *North San Jose 1*
 - *Airport*
 - *Central San Jose 2*
 - *Northeast San Jose (west of Coyote Creek)*
 - *North San Jose 5 west of I-880 (i.e., North San Jose 4)*
 - *Monterey Corridor 1*
 - *Monterey Corridor 2*
 - *Monterey Corridor 3*
 - *Monterey Corridor 4*
 - *Edenvale 2*
- Potential conversions should generally be discouraged, and only be considered for approval in subareas where conversions of industrial lands may:
 - Complete a transition to existing neighborhoods within or adjacent to the subarea, or
 - Buffer and provide uniformity to existing neighborhoods within or adjacent to the subarea, or
 - Further the City's smart growth policies, or
 - Aid in revitalizing declining neighborhoods within or adjacent to the subarea.

4. Criteria for the evaluation of proposed conversions to housing, mixed use, retail, and/or other Household-Serving Industries.

- Conversion to Residential or Mixed Residential/Commercial Use
- A. Economic contribution of the subarea:** What is the economic contribution of the subarea to the San Jose and Silicon Valley economy and job base? How is the subject site currently occupied and used? Is the subject site currently used to its full potential for contributing to the San Jose economy or job base? How would this economic contribution be enhanced or reduced by the proposed conversion?
- B. Consistency with City Policies and Strategies:** How does the proposed conversion and specific proposed use(s) and intensities advance the City's policies and strategies as contained in the General Plan, Specific Plans, and other strategic documents?

- C. Proximity to existing neighborhoods and areas in transition:** How would the new residential/mixed use knit with adjacent existing or planned residential and/or retail uses, and/or fill-in gaps in areas already partially converted or transitioning to residential use? Does the proposed conversion eliminate small islands or peninsulas of industrially designated/zoned land that would be suitable for conversion to residential to make them consistent with surrounding uses?
- D. Proximity to incompatible employment uses (e.g., manufacturing, recycling, etc.):** Where are the nearest incompatible industrial areas which might generate impacts due to hours of operation, deliveries, noise, odors, hazardous materials, etc.? How might the new residential use put pressure on the existing industrial uses to modify their operations?
- E. Potential inducement of additional conversions to residential use?** How might the proposed residential use induce or pressure adjacent or nearby properties to convert to residential use?
- F. Proximity to transit service:** Is the proposed housing site within 3000 feet of a planned BART Station or 2000 feet of an existing, funded or planned Light Rail Station?
- G. Proximity to compatible employment uses (e.g., office/R&D):** Where are the nearest existing or planned employment areas with compatible land use characteristics, thereby creating potential alternate commute (walk/bike to work) opportunities?
- H. Availability of neighborhood services, and residential and commercial mixed use drivers:** Where are the nearest existing and/or planned neighborhood serving retail, parks, libraries, schools, open space/trails, etc.? How would the proposed conversion potentially enhance city services (e.g., by creating or improving neighborhood parks)? How would the proposed residential conversion potentially strengthen neighborhood and general commercial uses in the area by adding resident population? Does the proposed conversion involve a mixed residential and commercial development on the site?
- I. Public Benefit:** Does the proposed conversion offer or facilitate a unique and significant public benefit (e.g., the delivery of or significant contribution toward public facilities, public improvements, infrastructure, or affordable housing beyond what would be required to serve the proposed development associated with the conversion)? Would the conversion result in improvements to a blighted area or contribute to the variety of housing types, including rental or ownership, in areas that have predominantly one or the other? Are there other any means to obtain this extraordinary public benefit without the conversion?
- J. Adequacy of Fire/Police service levels:** What are the anticipated service levels or other public safety performance measures to serve the proposed housing area?
- K. Utilization of bicycle and pedestrian facilities, and promote pedestrian access:** Where are the nearest existing and planned bicycle and pedestrian facilities? How does the

proposed residential/mixed use development support nearby jobs and commercial lands by promoting pedestrian access and minimizing vehicle trips?

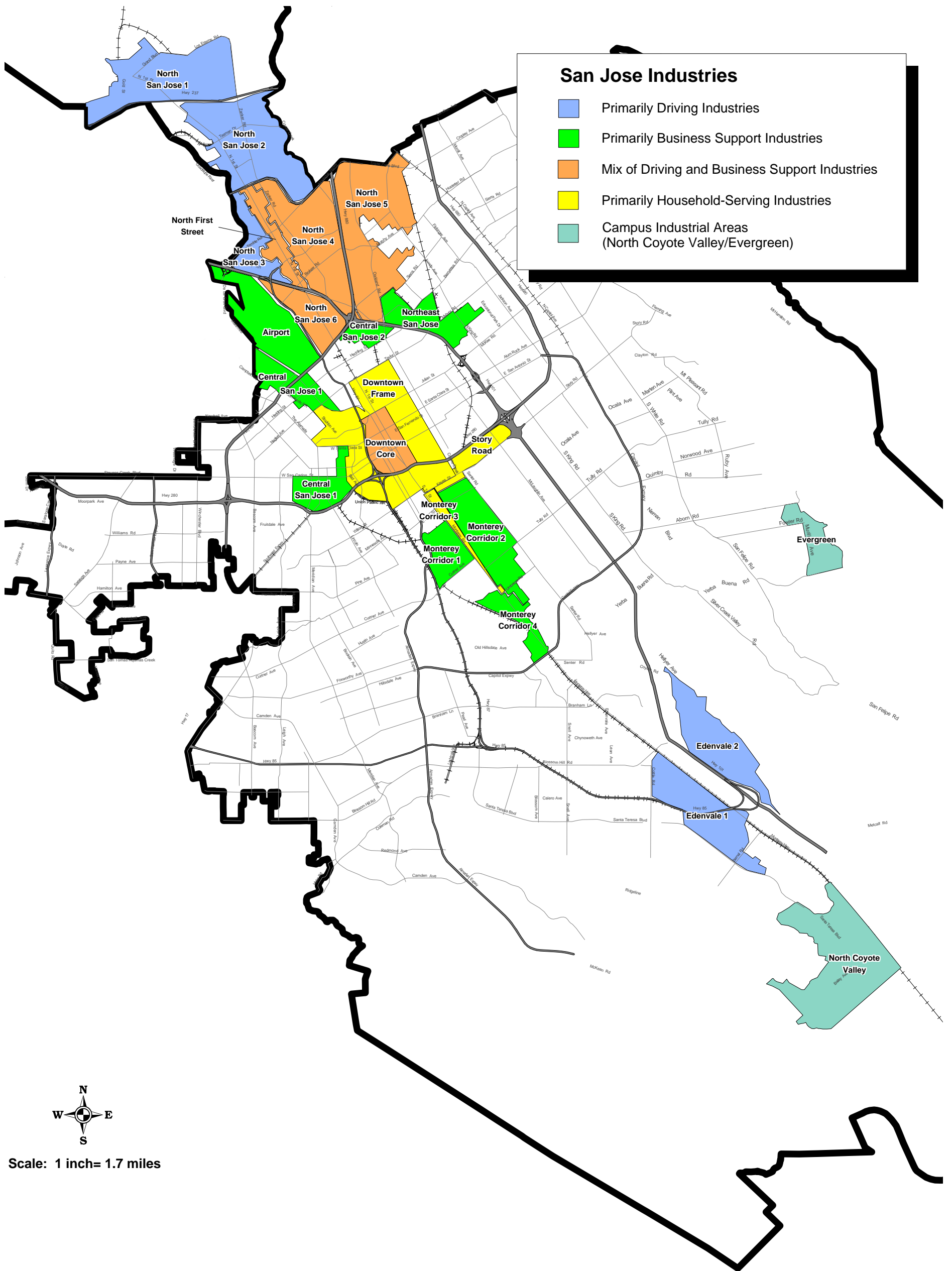
- L. Potential environmental impacts and mitigation measures, including adequacy of other public infrastructure:** What are the potential environmental impacts and are mitigation measures included in the proposal? What public improvements are necessary to serve the new housing area?
- M. Potential fiscal impact:** What is the potential fiscal impact on City revenue and service costs?
- Conversion to Commercial and Other Household-Serving Industries
 - A. Economic contribution of the subarea:** What is the economic contribution of the subarea to the San Jose and Silicon Valley economy and job base? How would this economic contribution be enhanced or reduced by the proposed conversion?
 - B. Consistency with City Policies and Strategies:** How does the proposed conversion and specific proposed use(s) and intensities advance the City's policies and strategies as contained in the General Plan, Specific Plans, and other strategic documents?
 - C. Fulfilling the City's retail needs:** How does the proposed commercial retail meet the City's need for community-serving and/or neighborhood-serving retail?
 - D. Adequacy of major street access:** What streets directly serve the proposed site?
 - E. Potential to influence/encourage conversion of adjoining properties:** How might the proposed commercial use induce or pressure adjacent or nearby properties to convert to commercial use? How might the proposed conversion create a transition, thereby protecting existing industrial lands from additional conversions?
 - F. Potential negative impact to other planned commercial development areas (e.g., Downtown):** How would the proposed commercial development affect other planned commercial areas?
 - G. Adequacy of transit, bicycle, pedestrian facilities:** Where are the nearest existing and planned transit, bicycle and pedestrian facilities? How does the proposed commercial use support transit or hinder its use? How does the introduction of proposed commercial uses promote pedestrian activity and minimize vehicle trips?
 - H. Incorporation of mixed use development:** How does the proposed development incorporate a mix of compatible uses?
 - I. Potential environmental impacts and mitigation measures:** What are the potential environmental impacts and are mitigation measures included in the proposal?

J. Net fiscal impact on the City of using this parcel for retail instead of the current use:
What is the potential fiscal impact on City revenue and service costs?

Framework Application

- The Framework should be applied as early as possible in the development review process, including as part of Comprehensive Preliminary Review applications.
- Evaluation of the fiscal impact of the conversion on City revenues and service costs must be the highest priority.
- All conversion proposals would be evaluated against the criteria.
- The criteria are not in rank order. They are not scored to a point system and the weight of the individual criterion may vary by site based on individual circumstances and changing background information.
- Conversions that present opportunities for development of significant new sources of revenue may be considered in any subarea in which the development would be compatible with existing or planned uses in the subarea.
- The criteria would identify the key issues for the analysis of conversion proposals; however, there may be other criteria or factors to consider in the evaluation of individual proposals.
- The “Towards the Future” report would be one source of background information for answering the questions posed by the criteria.
- Other background information may include, but is not limited to, reports on the Silicon Valley economy, office vacancy trends, etc.
- In areas of the City that are not included in a “subarea” identified in the Strategic Economics’ report and have a long term regional planning effort that includes industrial areas, Council approved triggers and requirements are still applicable. When the planning efforts’ vision and land use plans are adopted and it shifts into the implementation phase, General Plan conversions must balance the overall goal of that planning area with creative smart growth opportunities.
- Staff shall provide an annual report and evaluation on the progress, outcome and impact of the Framework for Evaluating Proposed Conversions of Employment Lands.

City of San Jose Employment Subareas Typology



Scale: 1 inch= 1.7 miles

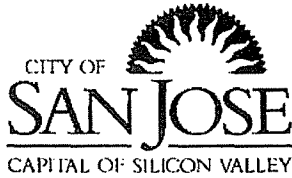
Data Source: Strategic Economics

Map Prepared by: City of San Jose, Planning Services Division, April 2004

ATTACHMENT 3

ATTACHMENT 3

Council Meeting: 5/15/07
Agenda Item: 4.3



Memorandum

Chuck Reed

TO: City Council

FROM: Mayor Chuck Reed

SUBJECT: Framework to Evaluate
Proposed Conversions of
Employment Lands

DATE: May 15, 2007

Approved

Date

RECOMMENDATION

Accept staff recommendation as modified by adding the following limitations to the framework:

- 1) There shall be "no net loss" of total employment capacity as the result of any amendment to the General Plan.
- 2) There shall be "no net loss" of acreage or square footage within the light or heavy industrial designations.
- 3) Applications for conversions to support public infrastructure may be accepted only after the infrastructure has been designated by the Council.
- 4) "Extraordinary Economic Benefit" conversions must meet the above criteria and shall be limited to those instances where there will be an increase or retention of jobs and a significant increase in revenue to the city, and/or a capital contribution for investments in economic development like the Catalyst fund or the Economic Development Reserve.
- 5) Changes in areas with mixed use overlays shall not decrease the amount of land available for churches.

BACKGROUND

Since 1990, San Jose has converted 9% of all employment lands, or 1,400 acres of prime developable land to other non-industrial land uses. Almost 120 acres have been lost in the 5 years between 2001 and 2006 alone, costing our residents between 68,000 and 110,000 jobs.

Our role should be one that aggressively encourages the preservation of employment lands, and discourages conversion of prime space based on current market demand or pricing. It is time to send the message clearly and concisely that our land use and economic development strategies

are long-term opportunities, and that San Jose's economic vitality is dependent upon efforts to provide development options across industry sectors and building types.

The Framework to Evaluate Proposed Conversions of Employment Lands to Other Uses, first approved by the City Council in April 2004, sets forth guidelines on how to evaluate potential conversions of employment lands.

At our Council Study Session on this topic on March 29, 2007, you gave staff direction to return to Council with an update to the Framework. Staff has submitted its findings and recommendations in a memo dated April 27, 2007, in preparation for a May 15, 2007 City Council hearing on this matter.

My recommendation above is an attempt to further strengthen and limit the criteria that allows for a sound evaluation of potential conversions that will be before us in the years ahead.

Your support of these adds to staff recommendations is appreciated.

ATTACHMENT 4

ATTACHMENT 4

DISCUSSION OF ISSUES RAISED BY THE PUBLIC

1. *The timeline for responses is inadequate. The public needs at least a 30-day response period prior to finalizing the Council Memo. Although the direction was given in May, the specific proposal was only recently presented with only a few days to respond.*

Discussion: A 30-day lead time from presentation at the Developers Roundtable on August 24 to the targeted City Council hearing on September 25 was provided. In response to phone and e-mail requests, staff extended the time for inclusion of responses in the Council Memo and scheduled the Council hearing for October 16, 2007. Staff also has received comments since May 15, 2007 from individual applicants with pending General Plan amendments, and from developers' representatives since the Developers Roundtable meeting in June 2007.

2. *For pending applications the 2005 Framework rules should apply. Projects currently on file that were submitted under the existing Framework rules should be "grandfathered" and allowed to be analyzed under the existing rules. In some cases, staff stated support under the existing rules.*

Discussion: Applicants with pending General Plan amendments can modify their proposals or explain their position to the City Council when their General Plan amendment is considered during the Council hearing on General Plan amendments involving employment land conversions planned for Spring 2008.

3. *Let the 2005 Framework rules apply for pending applications, particularly commercial to residential conversions, and allow those proposed amendments to be heard by the Council in the Fall 2007.*

Discussion: Discussion of reverting to an annual review of the General Plan was presented publicly when the new Council came into office, and was explained as a likely schedule to applicants in the fall of 2006 through the time of adoption of the General Plan text amendment in 2007.

4. *The 2005 Framework is working. Maintain it, and address Employment Land Inventory through the General Plan Update.*

Discussion: The General Plan Update will address the citywide employment land issue; however, the 2005 Framework has not been successful in preventing conversion of Employment land to non-employment uses. The Update is likely to be at least a two-year process given CEQA requirements alone, and a two-year waiting period to address the preservation of the remaining employment lands is not recommended given the City of San José's current and projected fiscal needs.

5. Industrial zoned sites that have non-Industrial General Plan land use designations should not be discouraged from being rezoned to be consistent with existing non-Industrial land use designations.

Discussion: The Preservation Framework presents additional options, not constraints. There is no intent or provision proposed to discourage re-zoning to be consistent with the existing land use designation on a site. Where appropriate, such situations do provide an opportunity, but not a requirement, for another option: to change the land use designation to an Industrial designation.

6. BART Station Area Nodes and Light Rail Transit Corridors should be encouraged to be developed with high density residential uses.

Discussion: The City encourages intensification of Transit-Oriented Development areas to include a mix of uses including employment uses and residential uses that will provide transit ridership and benefit from it. The scale of investment in transit infrastructure is justified if the City reaps a future monetary return on it. The best way to achieve this goal is by preserving and creating land uses that attract riders to each station area in San José as a destination where dollars are spent, not just as a point of departure to other jurisdictions.

7. The Extraordinary Economic Benefit is ambiguously and inflexibly defined. Why exclude affordable housing in non-Redevelopment Areas when employers need it? How can we guarantee sales tax revenue from lands converted from Industrial to Retail use?

Discussion: There are many ways a proposal can demonstrate that an Extraordinary Economic Benefit is provided. One clearly demonstrable way is by documenting expected sales tax revenue from a retail use, but there are many other methods, such as investments in City programs intended to support business creation and retention in San José. The intent of this provision is to provide a flexible means to allow creative and customized proposals. Affordable housing is needed throughout the County and Bay Area. The City of San José continues to do its fair share by meeting its Regional Housing Needs Allocation, and now needs revenue to provide adequate services and amenities to its residents. Affordable housing on its own does not provide an Extraordinary Economic Benefit.

The City remains committed to the production of housing for all economic segments of the community. This commitment is articulated in the Housing Element and in the ongoing implementation of a wide range of housing plans and programs. For the most recent Regional Housing Needs Allocation period through 2006, the City provided 110% of its regional housing requirements. In 2006, the City Council approved General Plan amendments and related land use policy changes that resulted in a significant increase in the residential holding capacity of the General Plan, estimated at approximately 75,000 dwelling units in December 2006. General Plan amendments

comprising approximately 55 acres, approved between July 2005 and June 2006, added approximately 1,168 units to the General Plan residential holding capacity.

As a result of previous City Council actions that expanded the Greater Downtown Core Area boundaries and increased the maximum building height in this area, the potential number of housing units that can be built within proximity to Light Rail Transit, Bus Rapid Transit, and future BART stations in the Downtown have increased. In June 2005, the City Council approved an update to the North San José Area Development Policy that includes an addition of 24,700 new housing units to the City's General Plan capacity for the North San José area, including the potential conversion of 285 acres of existing industrial land to residential use. These units were added to the North San José area to provide housing opportunities in close proximity to existing job centers and to support their future growth. Virtually all of these new units will be located within a Redevelopment Project Area and are subject to a 20% requirement for below market rate units. The Policy includes a phasing plan designed to coordinate the timing of the new industrial, commercial, and residential development with construction of \$519 million in planned infrastructure improvements. Eight thousand residential units are included in the first phase, and the City has thus far received development applications for approximately 8,000 new residential units in the area.

8. *The Preservation Framework is too rigid and unrealistic. Get rid of formulas and “no net loss” requirements. The Framework is biased against residential development. It also may be extremely difficult to find replacement acreage for HI/LI uses.*

Discussion: As stated above, the City has created housing opportunities and converted industrial land to other uses at the rate of approximately 120 acres a year since the 2005 Framework was adopted. The Preservation Framework is intentionally restrictive to preserve the City's remaining inventory of Light Industrial and Heavy Industrial acreage.

9. *Job capacity retention without acreage retention is not enough. Make the Framework acreage neutral, and facilitate live-work as an option.*

Discussion: Live-work is an option for land that is already designated in the General Plan for a mix of residential and commercial uses. To provide some assurance of revenue to the City and improve the City's jobs/housing balance the remaining employment land should be preserved in a manner that ensures that it will truly be used for employment uses.

10. *Job capacity is different for different uses. It is not all equal.*

Discussion: The preservation of employment lands is intended to provide a variety of employment uses to maintain a healthy and resilient economy and provide a range of job opportunities to residents in the City.

11. Define “viable” Light or Heavy Industrial acreage.

Discussion: Based on the current vacancy rate, which is below 5% for Light and Heavy Industrial lands in San José, the assumption is that these lands are viable. Beyond vacancy rates, other factors to consider could include how long the land has been designated for Light or Heavy Industrial use, whether it has ever been developed with those uses, whether it is less than one acre in size, and whether it is completely surrounded by sites used and designated for non-employment uses.

12. Do reverse conversions have to be filed and analyzed concurrently or can we bank them? Do they need to be in the same vicinity or Council District or can they be Citywide? Why or why not Citywide?

Discussion: Staff recommends to Council that reverse conversions do have to be filed and analyzed concurrently to facilitate analysis of the proposals. The sites should be within the same employment area in order to maintain the economic viability and integrity of the employment area.

13. How can the City justify what is an adequate inventory of industrial land and adequate off-setting revenue?

Discussion: This can be done on a case-by-case basis, with individual proposals and fiscal analysis. The Council will ultimately decide whether off-setting revenue is adequate.

14. The Framework should not apply to remnant properties.

Discussion: As currently proposed, the Framework applies to all sizes and shapes of sites. If the City Council directs the Administration to initiate a General Plan text amendment to revise Discretionary Alternate Use Policies, staff proposes, by discretion on a case-by-case basis, to allow commercial uses on industrially designated properties that are “remnant” properties through application of Discretionary Alternate Use Policies. The text amendment would define a remnant site is.

15. Market forces determine whether or not employment land is viable. The City can not regulate market demand.

Discussion: Through proactive land use planning, the City provides opportunities to facilitate economic development and respond to existing and projected market forces in the Bay Area for industrial uses. Regionally and long-term, studies conducted by the City and by other cities nationwide conclude that there is a market for the remaining inventory of employment land for industrial and commercial uses. The City has a number of priorities to address to achieve an adequate jobs/housing balance and a sustainable community, and therefore plans for a variety of land uses.

16. The table labeled “Revenues from Various Land Uses” needs to be updated to include a single-story industrial park building as suggested by Myron Crawford in his previous comment letter.

This updated table is provided on the next page. A single-story industrial park building provides revenue equivalent to approximately 14 dwelling units per acre, provides employment capacity, and creates fewer costs for the City to provide services.

ATTACHMENT 5

ATTACHMENT 5

August 29, 2007

Justin Fried
City of San Jose Planning Department
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

RE: Response to Policy Regarding Preservation of Employment Lands in the City of San Jose

Dear Justin and Members of the Planning Department Staff:

We support the City in its efforts to preserve Employment Land in San Jose; however, we do have some concern over the proposed policy framework details:

With regards to transit station proximity, we feel that all sites within a 3,000 square foot radius from any existing or future BART or Light Rail station should be planned for high-density, residential uses. In doing so, it will ultimately ensure that more people will live within a feasible riding distance from their jobs, helping alleviate some of the cost pressures on today's Silicon Valley home buyers. A greater housing supply around transit station areas is both a stipulated condition of BART's expansion into the South Bay as well as an integral part of the current efforts of both the City of San Jose and the City of Santa Clara's plans for future station districts. As a developer, we hear consistently from businesses that one of the biggest road blocks to doing business in our area is the high cost of living. We very much encourage the provision of affordable housing and transit options for the business workforce. This is a definitive "must" in order to sustain Silicon Valley's place at the fore of technology and computer related industries and to continue to attract new and varied business ventures. It is an undeniable shame that areas in and around transit locations be developed with anything less than the maximum capacity of housing units per acre.

Furthermore, we cannot help but feel that the proposed changes create a state of limbo for those projects whose General Plan Amendment applications have already been filed prior to policy proposal. These projects with applications are already on file will be forced to entirely reappraise their applications and start from square one to conform to the new

policy. To do such would necessitate a great amount of additional time and effort on the part of staff and prove a discouraging factor to private investment in the area. It is only fair that any sites that have General Plan Amendment applications on file with the City prior to May of 2007 (the time this policy was proposed) should continue to be assessed per the existing standards. Filing an application of this sort requires a tremendous amount of staff time and private expenditure and it would prove obstructive to any continued symbiotic relationship between the public and private spheres.

For example, we have a site located at 1185 Campbell Avenue that has had a General Plan Amendment application on file since 2005. At time of application, the 30 day response, and even as recent as the Santa Clara Station Area Plan discussions, we have received positive feedback from Staff on our land use change application changing the site to Transit Corridor Residential. Continuing to assess our site under the old standards would not only comply with the explicitly stated aims of both the City of San Jose and the City of Santa Clara, it would also allow for greater expedience in our ability to augment staff's plans for the future station area.

As far as the employment land conversion policy is concerned, it is important for staff to clarify the framework within which the no net loss system will operate. What will be the starting point in terms of date for any future credit and debit system used to track conversions? How will such conversions be measured, credited, and ultimately used? Will developers be able to accrue credits or debits in a favorable market and then withdraw or make conversion payments when market forces for building residential or commercial/industrial properties become more preferable? Can credits be traded between an industrial/commercial developer and one specializing solely in residential development? These questions all need be satisfactorily answered before the policy is implemented.

Moreover, it is imperative that the definition and delineation of requirements for use intensification on pre-existing sites be clearly defined. Will a currently vacant industrial site be nominally the same as one developed to its maximum capacity? The very issue of capacity puts the onus on developing residential land into commercial and industrial uses rather than developing vacant tracts currently zoned for light or heavy industrial uses.

With further regard to intensification of currently existing commercial/industrial sites and uses, our site located at 696 East Trimble Avenue is an obvious example. Currently zoned for Industrial Park, will we be able to receive credit for intensifying commercial and/or retail uses on such an IP zoned site while retaining existing industrial capacity? Could the existing rule that allows only 10% maximum commercial use on such sites potentially be waived? Would there be any credit gained for switching such an IP zoned site to Light Industrial? With the significant number of transactions Barry Swenson Builder participates in on an annual basis in mind, clarity in these concerns is an issue of paramount importance when it comes to our ability to develop commercial, industrial and residential uses in this area.

This letter summarizes some of the practical concerns we have come up with to date. As longtime members of this community, we understand very much the values of smart growth and the obvious need to retain employment sources in a level commensurate with housing supply. However, we feel a blanket policy that ignores some of these concerns may sacrifice smart growth to foster greater employment uses; a policy that may prove fruitful in the short term but will ultimately hinder San Jose's efforts in both commercial/industrial and residential development and fostering long term employment numbers. To that end, we will continue to stay engaged in the process and we will provide further feedback. We do hope that Staff and the City Council consider our concerns and continue to work together with landowners and applicants to address outstanding issues and questions.

Sincerely,

BARRY SWENSON BUILDER

Barry Swenson
President

Jessie Thielen
Project Manager

Michael Bordoni
Project Manager

BARRY SWENSON BUILDER

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CONTRACTORS LIC. 94377

August 29, 2007

Justin Fried
City of San Jose Planning Department
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

RE: Response to Policy Regarding Preservation of Employment Lands in the City of San Jose

Justin and Members of the Planning Department Staff:

We support the City in its efforts to preserve Employment Land in San Jose; however, we do have some concern over the proposed policy framework details:

With regards to transit station proximity, we feel that there should be a common policy amongst council and staff that any sites lying in existing or developing transit area plans are exempt from the new conversion policy. This allows for little misunderstanding between the city, the general public, and private interests while simultaneously preventing a situation where council members are forced to decide between the potentially opposed opinions of city policy, planning staff recommendation and public sentiment. In doing so, it will ultimately ensure that transit areas are residentially developed to high densities and that more people will live within a feasible riding distance from their jobs. High density development begets affordable living through increased supply and public transit options, helping alleviate some of the cost pressures on today's Silicon Valley home buyers. A greater housing supply around transit station areas is both a stipulated condition of BART's expansion into the South Bay as well as an integral part of the current efforts of both the City of San Jose and the City of Santa Clara's plans for future station districts, in particular the Santa Clara Station Area Plan. It is an undeniable shame that areas in and around transit locations be developed with anything less than the maximum capacity of housing units per acre, and yet there exists a potential conflict as many of these transit areas are currently in under-utilized areas and necessitate conversion to make the planning area viable.

Furthermore, we cannot help but feel that the proposed changes create a state of limbo for those projects whose General Plan Amendment applications have already been filed prior to policy proposal. These projects with applications already on file will be forced to entirely reappraise their applications and start from square one to conform to the new policy. To do such would necessitate a great amount of additional time and effort on the part of staff and prove a discouraging factor to private investment in the area. It is only

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A DIVISION OF GREEN VALLEY CORPORATION

fair that any sites that have General Plan Amendment applications on file with the City prior to May of 2007 (the time this policy was proposed) should continue to be assessed per the existing standards.

Moreover, it is imperative that the definition and delineation of requirements for use intensification on pre-existing sites be clearly defined. Will a currently vacant industrial site be nominally the same as one developed to its maximum capacity? Will industrial intensification in Industrial Park zones allow similar commercial use intensification (possibly beyond even the established 10%)? The very issue of capacity puts the onus on developing residential land into commercial and industrial uses rather than developing vacant tracts currently zoned for light or heavy industrial uses whereas increased flexibility to expand and intensify these areas undoubtedly fosters employment uses while .

As far as the employment land conversion policy is concerned, it is additionally important for staff to clarify the framework within which the no net loss system will operate. What will be the starting point in terms of date for any future credit and debit system used to track conversions? How will such conversions be measured, credited, and ultimately used? Will developers be able to accrue credits or debits in a favorable market and then withdraw or make conversion payments when market forces for building residential or commercial/industrial properties become more preferable? These questions all need be satisfactorily answered before the policy is implemented.

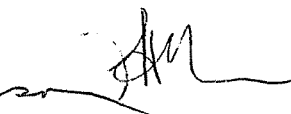
This letter summarizes some of the practical concerns we have come up with to date. As longtime members of this community, we understand very much the values of smart growth and the obvious need to retain employment sources in a level commensurate with housing supply. However, we feel a blanket policy that ignores some of these concerns may sacrifice smart growth to foster greater employment uses; a policy that may prove fruitful in the short term but will ultimately hinder San Jose's efforts in both commercial/industrial and residential development and fostering long term employment numbers. To that end, we will continue to stay engaged in the process and we will provide further feedback. We do hope that Staff and the City Council consider our concerns and continue to work together with landowners and applicants to address outstanding issues and questions.

Sincerely,

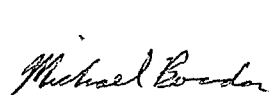
BARRY SWENSON BUILDER



Barry Swenson
President



Jessie Thielen
Project Manager



Michael Bordoni
Project Manager

From: Beverley Bryant [mailto:bbryant@hbanc.org]
Sent: Monday, August 27, 2007 1:42 PM
To: 'Nusbaum, Jenny'
Subject: RE: DRAFT Framework

Jenny:

Thanks very much for sending this information all of us. The Home Builders Association of Northern California (HBANC) is very concerned about these issues, and wants to provide coherent comments

However, I must let you know that the quick turnaround time frame (only 2 working days) you have gave us is almost impossible to meet. Because your email did not arrive on our desks until Monday of the week right before the Labor Day Holiday, many of our members are on vacation and will not return until mid-week next week. You probably noticed the relatively low builder attendance at last Friday's meeting.

My request, therefore, is for more time for HBANC as an organization to make a response. If you are ok with it, I will send you a reply from HBANC by Close of Business (5p.m.) on Thursday, September 6th. That way I am able to discuss the Draft Framework with our Southern Division Board of Directors and our key San Jose builders.

I appreciate your help with this important issue. Please let me know if this is ok with you.

Thanks, in advance, for your help.

Beverley

From: Nusbaum, Jenny [mailto:Jenny.Nusbaum@sanjoseca.gov]
Sent: Friday, August 24, 2007 5:36 PM
Subject: DRAFT Framework

Attached is the DRAFT Framework and list of alternatives so far. Until the Council Memo is signed, we can't distribute the Memo (not even a draft) to the public, but the list of alternatives is excerpted from it.

As was discussed in the Developers Roundtable today, City staff intends to recommend that Council initiate General Plan amendments to create additional retail sites. These amendments would be subject to the Framework, so staff would look at adding mixed use land use designations or overlays on some sites (e.g., Industrial Park with Mixed Industrial Overlay), and removing existing mixed use designations or overlays on other sites to create exclusive industrial land (e.g., removing the Mixed Industrial Overlay on sites that currently have it).

Please provide comments to me by Tuesday August 28, 2007, by 5:00 PM. Please note that Planning staff is taking a conservative approach, in line with the last Council direction we received on 05/15/07. Your input and suggestions will be summarized in our memo to the Council, and all written correspondence will be attached to the Council Memo.

<<Framework 08-24-07 DRAFT for E-mail.doc>> <<Framework Alternatives List 08-14-07 DRAFT.doc>>

Here is the link to the 05-15-07 Staff memo to CC and the Mayor's Memo on the Framework:

Staff memo to CC 05-15-07

http://www.sanjoseca.gov/clerk/Agenda/051507/051507_04.03.pdf

Mayor's memo to CC 05-15-07

http://www.sanjoseca.gov/clerk/Agenda/051507/051507_04.03att.pdf

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Comments on the Draft Framework for Preservation of Employment Lands

On page 1, there is a list of five purposes of preserving employment lands, but there is no prioritization of these items and there is no data analysis regarding each of these items. For example, how much revenue does the City want to gain from these lands? How many jobs does the City want to provide from these lands? What is the commercial/industrial balance that the City wants to achieve in terms of conversions? What is the future demand projection for industrial lands through 2020? In order to determine whether conversions are necessary and desirable, it would be beneficial to have hard data.

If the City is interested in preserving employment lands, then it would be logical to extend this framework to all conversions. The City should look at the cost/benefit of all types of conversions. On page 1, it states that the framework "does not apply to conversions of light industrial acreage to heavy industrial acreage or vice versa, and does not apply to conversions of commercial land to industrial land." Does this mean that only two types of conversion are being addressed - industrial to commercial or industrial to residential? Why are other types of conversion excluded? Are they revenue neutral?

On page 2, there is discussion of offsets in paragraph #1. Are there clear requirements concerning offsets, or can offsets be used anywhere in the City? Are there geographic parameters for offsets - if you lose net acreage in Edenvale, for example, can it be offset in North San Jose? Who chooses the offsets - the city or developer?

Some employment lands are more desirable in terms of proximity to workforce, transit corridors, freeway access, and therefore offsets must be roughly balanced in terms of these factors as well as acreage.

On page 3, it states that conversion is discouraged in Coyote, North San Jose, Evergreen, Edenvale and Downtown Core, but there is no differentiation between these areas. In the original map presented at the study session, these areas were differentiated by red, orange and yellow colors. Subareas to promote commercial were designated in blue. This was an attempt to show that the potential conversion areas have different values to the City. Could this idea be incorporated into the Draft? For example, Evergreen industrial lands are less desirable because they are far away from transit corridors, freeways, and the hub of other industrial areas in San Jose. Is there any data concerning whether companies will choose to locate in certain areas? What is the likelihood of use for each industrial area?

On page 4, when does the ten-year restriction begin? Does it begin when the land is converted to mixed employment uses from its previously designated industrial use? Can there be any changes in the land-use during the ten-year period as long as there is no residential use?

On page 4, the document specifies that 50% of industrial capacity can be forsaken in exchange for a certain dollar value of sales tax revenue per acre to the City. Is this the only offset required in this case? Does this type of project not require acreage offsets? What guarantees does the City have concerning this sales tax revenue; is there a legal requirement on the part of the developer? If the City does not get the predicted sales tax revenue, then can the land revert to its original land-use designation?

On page 4, it says that certain sites of the City are eligible for conversion if "there is no net loss of total job capacity within the City and there is an

extraordinary economic benefit." Do both of these requirements need to be fulfilled in all cases of conversion in areas other than Coyote Valley, North San Jose, and Evergreen? So this means that any conversion in the Downtown Core and Edenvale must meet both requirements?

On page 4, extraordinary economic benefit needs to be clearly defined. The document discusses off-setting benefits such as revenues, but could there be other types of benefit? Does extraordinary economic benefit pertain to the city as a whole or to the adjacent community/neighborhood? In the Lew Wolff case, the offsetting benefit is a soccer stadium on another part of the city with no additional benefit to the neighborhood surrounding the I-Star site. It seems logical that the community should benefit as well as the city. Is there a specific criterion for determining extraordinary economic benefit, or is it flexible and discretionary for the Council? It says that "provision of affordable housing" etc. should be considered an ordinary component of new development and should not qualify as an Extraordinary Economic Benefit. Affordable housing is only required as an ordinary component of development in redevelopment areas. If an industrial conversion occurs outside of redevelopment areas, then affordable housing will not be required. Therefore, in areas outside of redevelopment zones, affordable housing should be considered an extraordinary economic benefit under the guidelines of this new framework.

Here are a few additional general questions:

Is retail development better at the city's edges? Edge commercial development is useful since it draws revenue from customers in adjacent cities like Cupertino, Morgan Hill, or Milpitas. If this is the case, then the City might want to convert to commercial in these areas rather than in the center of the city.

What is the opportunity cost of vacant industrial land? It is logical that the city wants to retain industrial land in order to accommodate future demand through 2020, but what is the opportunity cost of keeping industrial land in areas that are not desirable at the present time (ie. Evergreen)? What is the opportunity cost for land vacancy for five, ten, fifteen and twenty years into the future?

From: Chris Neale [mailto:cneale@thecorecompanies.com]
Sent: Tuesday, September 04, 2007 4:37 PM
To: Nusbaum, Jenny; Klein, Nanci
Subject: RE: DRAFT Framework for Preservation of Employment Lands 08-23-07

Dear Jenny and Nanci,

I am writing in response to the DRAFT Framework for Preservation of Employment Lands 08-23-07 that was discussed at the Developer Roundtable Friday, August 24th.

I am concerned that the Draft Framework is not a balanced policy but is rather absolute in its nature and broad in its application to the detriment of San Jose's goals.

The city of San Jose has many important objectives including but not limited to the preservation of jobs producing land. In many cases, the city has conflicting policies where it must rely on city staff to evaluate the costs and benefits to determine what is in the best interest of the city.

As the current Draft Framework is written, it does not permit the evaluation of conflicting and competing city policies but rather defines the preservation of jobs producing land as paramount and goes further to define the only benefit of merit is an 'Extraordinary Economic Benefit'.

Secondly, the policy treats all like jobs producing lands equally which is not true. The current uses, potential uses and capacity of each parcel varies depending upon multiple factors including its location, its surrounding properties and its competing city policies. Treating all jobs producing lands alike is inaccurate. Likewise it fails to consider the demand variables for various types of "jobs producing land" such as office space requirements for software engineering firms vs. warehouse space requirements for fruit packing operations.

There are many redevelopment area goals and strong neighbor initiative goals that have been fully developed and may conflict with the Draft Framework. It is premature to absolutely render them ineffective whenever they come into conflict with the Draft Framework. Many worthy, well supported projects may not even receive consideration if this Framework gets accepted as written.

For example, we are working on an eight acre, mixed use project that is located in both the Martha Gardens Specific Plan (MGSP) and the Spartan Keyes Neighborhood Improvement Plan (SKNIP) area. This project has the potential to act as a catalyst for the redevelopment of the neighborhood by meeting many of the Plans' goals including providing an elementary school, providing retail along Keyes Street, adaptively reusing the Herbert Packing Building and providing a range of owner occupied and rental,

affordable and market rate, apartments, condos and townhomes. In fact, the neighborhood is opposed to, “the expansion or new development of light or heavy industrial uses within the Spartan Keyes area.” (Goal 13 in the Spartan Keyes Neighborhood Improvement Plan, Chapter VI – Action Plan page 53). The DRAFT Framework as written would prohibit this project and its many benefits from proceeding.

Sincerely,
Chris Neale
The Core Companies

From: Craig Iverson [mailto:civerson@mindspring.com]
Sent: Monday, August 27, 2007 1:29 PM
To: jenny.nusbaum@sanjoseca.gov
Subject: DRAFT Framework for the Preservation of Employment Lands

Ms. Nusbaum

I object to the portion of the Draft framework suggestions in the following section:

Planning to Support Public Infrastructure Projects

In some cases, a special public infrastructure project may warrant land use changes. Specifically, the extension of the BART system to San José requires such a significant investment of public resources that it is appropriate for the City to consider the conversion of employment lands to viable mixed commercial-residential uses, or, where clearly not marketable, even purely residential uses in order to support the project. Such conversions may be supported if they provide the highest possible density of new residential development with adequate incorporation of open space, retail, and other services to support the new residential development.

I do not believe special infrastructure projects such as the BART extension should override conversion of Industrial or Commercial lands to mixed commercial-residential uses, or purely residential uses, if the development design and density conflicts with local existing residential neighborhoods. In this instance, supporting the highest possible density of new residential development directly impacts the quality of life for current residents in a negative way and does not support similar architecture of the new project to "blend" with the old neighborhood into a cohesive areawide plan.

This kind of "Planning to Support Public Infrastructure Projects" is a loophole allowing the continuation of piecemeal per lot planning which avoids local area and infrastructure improvements associated with high density additions, especially availability of overflow parking spaces and traffic flow for vehicles, bicycles, and pedestrians. Access to retail and the new BART facility are critical and piecemeal planning sidesteps the areawide planning coordination which will make the mass transit option successful.

Locality to BART alone does not merit high density residential conversion from Industrial or Commercial parcels. Lower densities should be considered when development areas are adjacent or across the street from pre-existing residential neighborhoods.

The "highest possible density of new residential development with adequate incorporation..." statement above should be stated "highest possible density of new residential development to match current local residential densities in the area with adequate incorporation...".

Maximizing residential densities of parcels exempted from the Preservation of Employment Lands is an admirable goal but it should not warrant bad areawide planning. I support the BART extension and Smart Planning. I welcome new neighbors and want them to have a good quality of life too.

Best Regards

Craig Iverson
1078 Delno Street
San Jose, CA 95126
Member of Newhall Neighborhood Association (NNA)

From: Eric Morley [mailto:eric@mhginc.com]
Sent: Tuesday, August 28, 2007 4:11 PM
To: Nusbaum, Jenny; **Subject:** RE: DRAFT Framework

Hi Jenny:

Per my voice mail today, I am surprised by the fact that while the Council provided direction on this item more 3 months ago, the DRAFT was presented to the Developer's Round Table for the first time last Friday and we have 48 hours to respond to you with comments on this comprehensive change to the Employment Lands Framework. While I applaud your efforts to balance housing and employment lands, this response timeframe is totally unworkable and inconsistent with the spirit and intent of the City's Community Outreach Policy. We all recognize that the City Administration is under new requirements to submit staff reports earlier; however, it is essential that those new schedules account for appropriate notice, delivery of proposed policies and reasonable timeframes and opportunity for stakeholders to comment so that your staff report captures stakeholder input which you noted was the goal in your email below. I will provide initial observations in the next couple of days; however, more detailed comments will require additional time. I recommend that consideration of this item by the City Council be delayed by at least 30 days so that there is ample time for stakeholders in the business and development community to review, consider and comment on the Draft Framework.

We look forward to working with you collaboratively on this policy review.

Best Regards,

Eric

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V: 408.977.7010
F: 408.904.7530
E: eric@morleybros.com
W: www.morleybros.com

From: Nusbaum, Jenny [mailto:Jenny.Nusbaum@sanjoseca.gov]
Sent: Friday, August 24, 2007 5:36 PM
Subject: DRAFT Framework

Attached is the DRAFT Framework and list of alternatives so far. Until the Council Memo is signed, we can't distribute the Memo (not even a draft) to the public, but the list of alternatives is excerpted from it.

As was discussed in the Developers Roundtable today, City staff intends to recommend that Council initiate General Plan amendments to create additional retail sites. These amendments would be subject to the Framework, so staff would look at adding mixed use land use designations or overlays on some sites (e.g., Industrial Park with Mixed Industrial Overlay), and removing existing mixed use designations or overlays on other sites to create exclusive industrial land (e.g., removing the Mixed Industrial Overlay on sites that currently have it).

Please provide comments to me by Tuesday August 28, 2007, by 5:00 PM. Please note that Planning staff is taking a conservative approach, in line with the last Council direction we received on 05/15/07. Your input and suggestions will be summarized in our memo to the Council, and all written correspondence will be attached to the Council Memo.

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Mayor's memo to CC 05-15-07

http://www.sanjoseca.gov/clerk/Agenda/051507/051507_04.03att.pdf

Jenny Nusbaum
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e-mail: jenny.nusbaum@sanjoseca.gov

August 27, 2007

Mr. Joseph Horwedel
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

RE: Framework for Employment Land Conversions

Dear Joe:

We, of course, are very cognizant of the City's objectives in protecting employment lands. However, it seems that the proposed policy as drafted is overly rigid and does not present a balanced approach to land use. The policy will significantly reduce the investment in residential in-fill developments that are critical to promote neighborhood revitalization, increase transit ridership, create market demand for neighborhood retail, provide housing opportunities and eliminate blighted properties.

With this in mind, we propose the following three approaches for the City Council's consideration:

1. Provide an allowance for "pipeline" projects to be heard at the Nov./Dec. 2007 General Plan Review and to be evaluated based upon the adopted Framework at the time the application was filed. This would allow for an appropriate lead time and a reasonable transition to the new policy implementation for those projects that have worked in good faith with the City for the past year.
2. Keep the flexibility of the "Two-Acre Rule". This Framework policy would pre-empt the City's General Plan and eliminate the benefits of the Discretionary Alternate Use Policies, including the Two-Acre Rule. Investment in new housing on small in-fill sites is a critical tool for neighborhood revitalization and establishing market demand for neighborhood retail and transit ridership. The City should retain the flexibility of the Two-Acre Rule and continue to evaluate such proposals based upon the merits of individual projects and individual sites.
3. Retain the housing opportunities in the Specific Planning Areas. This Framework policy would pre-empt the envisioned new housing within adopted Specific Plans, such as Jackson-Taylor and Midtown. These Plans allow and encourage new housing, however many of the housing sites are currently zoned industrial or commercial. The Framework policy should not supersede and invalidate the adopted Specific Plans.

We are hopeful that the City Council will work to strike a better balance between employment land protection and other policy objectives, such as housing production, neighborhood revitalization, transit ridership and business district vitality. The current draft Framework falls significantly short of this goal.

Please let us know if there are any additional opportunities for community and stakeholder input. If you would like to discuss the above ideas, please do not hesitate to give us a call at (408) 947-7774.

Thanks for your consideration.

Sincerely,

ERIK E. SCHOENNAUER

From: GSchoennau@aol.com [mailto:GSchoennau@aol.com]
Sent: Wednesday, August 29, 2007 9:52 AM
To: Jenny.Nusbaum@sanjoseca.gov
Cc: joseph.horwedel@sanjoseca.gov; Laurel.Prevetti@sanjoseca.gov;
Debra.Figone@sanjoseca.gov
Subject: Re: DRAFT Framework

This needs to be deferred for a minimum of 30 to 60 days for a complete review of the staff draft that would turn San Jose's planning goals upside down. We would request a meeting with Joe and Laurel as soon as possible to discuss these draconian proposals. Gary

Gary J. Schoennauer, FAICP
The Schoennauer Company, LLC
2066 Clarmar Way, Suite D
San Jose, CA 95128
408 947-1234
FAX 408 295-0632

Get a sneak peek of the all-new AOL.com.

From: GSchoennau@aol.com [mailto:GSchoennau@aol.com]
Sent: Tuesday, August 28, 2007 4:52 PM
To: Meera.Nagaraj@sanjoseca.gov
Cc: joseph.horwedel@sanjoseca.gov; Laurel.Prevetti@sanjoseca.gov;
Jenny.Nusbaum@sanjoseca.gov; Debra.Figone@sanjoseca.gov
Subject: Re: FW: DRAFT Framework for the Preservation of Employment Lands

Meera, this draft has major unworkable proposals and we all need more than just a couple of days for review. This whole item needs to be delayed for a minimum of 30 to 60 days. Thank you for the referral. Gary

Gary J. Schoennauer, FAICP
The Schoennauer Company, LLC
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408 947-1234
FAX 408 295-0632

Get a sneak peek of the all-new AOL.com.

From: harveydarnell@earthlink.net [mailto:harveydarnell@earthlink.net]
Sent: Tuesday, August 28, 2007 3:59 PM
To: Nusbaum, Jenny
Cc: Ed Rast; Ed Rast
Subject: Re: DRAFT Framework for the Preservation of Employment Lands

Dear Jenny,

Please consider this email to be a response from both myself and Ed Rast whose internet connection would not connect in the Council Chambers.

We recommend that City Council adapt the proposed **DRAFT Framework for Preservation of Employment Lands 08-23-07 with the following changes:**

1) No net loss of industrial or commercial "**employment land acreage**" rather than the staff recommendation in "*Discourage Conversion to Non-Employment Uses in Key Employment Areas* to "**no net loss of employment capacity**". San Jose has converted over 1400 acres of employment land to residential resulting in significant loss of employment lands and the related local jobs and city tax revenues. Some of this employment land loss can be made up by higher density or taller buildings for office, research and certain types of services businesses. However, many types of local businesses especially those employing non college educated industrial or vocational employees will be lost without preserving the net "employment land acreage" since the higher density building costs will eventually price these businesses and jobs out of San Jose's economy.

It is very important for San Jose's diverse residents, economic and employment to preserving the net "**employment land acreage**".

2) We agree it is important to retain or increase employment capacity on site by intensification of the development's Floor Area Ratio (FAR) but it is equally as important to retain the net "**employment land acreage**".

3) The definition of Extraordinary Economic Benefit when employment lands are converted to other uses need to be clearer and more fully defined to off set the 3 costs to the city: a) future loss of significant city revenues, b) increased city service costs and c) increased infrastructure capital costs for converting "**employment land acreage**".

4) Small businesses are the economic engine of Silicon Valley and San Jose and many of them in economic downturns or even when the economy is fail due to increased rental costs. Any Proposal for preserving "**employment land acreage**" should have language which would allow for the creation of "Live-work" condominium space which would give these small businesses an opportunity to grow equity in the land on which the growing business sits. This would give them an equity stake in a San Jose location from which they might better weather economic downturns or exponential upturns in the economy which drive rents through the roof.

I hope these comments are helpful.

Harvey Darnell

897 Delmas Av

San Jose Ca 95125

Ed Rast

1007 Spencer Av

San Jose Ca 95125

From: Beverley Bryant [mailto:bbryant@hbanc.org]

Sent: Thursday, August 30, 2007 1:16 PM

To: Jenny Nusbaum; Jeannie. Hamilton; Laurel Prevetti

Cc: 'Beverley Bryant'; Arminta Jensen; Brad Durga; Charles McKeag; Craig Champion; Dan Worsley; Dave Van Atta; Doug Blackwell; Erika Salum; Greg Pinn; John Franco; Jonel Jackson; Ken Connors (E-mail); Kevin.Ebrahimi@Lyonhomes.com; Mark Tersini; Melissa Holmes; Michael Van Every; Mike Sheehy; Paul Van Every; Ray Panek; Susan Mineta (Susan Mineta); Tim Steele; Tom Armstrong; Tom Sweeney (Tom Sweeney); Alan H. Loving; Assistant Art Clausen (Assistant Art Claussen); Brandon Au; Chris Davenport; Dave Best; Gerry De Young; Jeff Shetterly; Jim Pollart (Jim Pollart (E-mail)); John Bruno; John Moniz; Josh LoBue; Kim Diamond; Lisa Portale; Mark Robson (E-mail); Rob Oneto (Rob Oneto); Rocke Garcia (GlenrockDevel@aol. com); Shawn Milligan; Steve Delva; Steve LeVine; Steven Bull; Trang Tu-Nguyen

Subject: HBANC Preliminary Comments: SJ Draft Framework for Employment Lands Preservation

Importance: High

Home Builders Association of Northern California (HBANC)

Preliminary Comments (8/29/07)

DRAFT Framework for Preservation of Employment Lands 08-24-07

Introduction:

The comments below are made in response to the Draft Framework Document that was sent from Jenny Nusbaum, Senior Planner, by email on Friday, August 24th at 5:36 p.m.

Please note that the members of our association are very concerned about the short time that was given for response to the Planning Department's document. Although hard copies were distributed (and received by a few of our members) who happened to attend the Developer Round Table meeting on Friday, August 24th; the online version of the document was not released to the Roundtable list until after close of business on that day. Therefore, most of our members did not see the Draft Framework until Monday morning, August 27th. The fact that comments from those most severely impacted by these changes (the development community) were requested by 5:00 p.m. the next day (Tuesday, August 28th), is, in our view, not acceptable practice in this time of "sunshine and open government."

Because there has been inadequate time to make a full response, please regard the questions and issues raised below as a preliminary response from HBANC. Additional comments will be made when more information and subsequent Staff Memos are issued concerning this issued.

HBANC Preliminary Comments:

1. The City of San Jose currently has an operating industrial residential conversion policy. HBANC and its members believe that this policy should remain in place until further discussion of the entire issue of "Presentation of Employment Lands" is undertaken as part of the work of the Envision 2040 San Jose General Plan Task Force

- a. It is important that there be much more detailed consideration of this issue; to make decisions of this import at a City Council meeting is not good public policy
 - b. The General Plan Task Force will be given data that will inform the process much more fully than is presently available (detailed maps, locations, updated information about changes that have taken place since the last planning maps were drafted)
2. HBANC believes that most, if not all, land use decisions must be made on an individual basis, using broad guidelines which the Staff and the builder can interpret and apply to each situation
 - a. The best guidelines are clearly thought out, broad in scope and readily applied in a variety of situations within which the development details can be presented
 - b. Every site is different, and circumstances dictated by the timing of the development. This fact makes it imperative that there is room for creativity and flexibility
 - c. To make formulas (as suggested by the Draft Framework) concerning the balance of retail and other uses will not yield good planning or viable development products
 - d. Good guidelines should permit site-specific decision making that is dictated by good planning techniques, builder input, and informed advice from the neighborhood and other interested parties
3. The “no net loss of jobs” requirement is too strict and does not permit higher level thinking about how a site might be best used:
 - a. For instance, a proposal for a site conversion that is in an area near a proposed BART station or near a light rail or other major transit route might produce an initial reduction in the number of jobs
 - b. However, the loss might be counterbalanced by the fact that other jobs are created nearby because of the housing and transit mix that has results from the new construction
 - c. In addition, there should be consideration that the construction of housing near rapid transit will satisfy another important objective for the city which is to reduce traffic congestion
 - d. There may be areas of the city which will remain at low to declining use (in the MidTown area, for instance) because of the ‘no net loss of jobs’ formula
 - e. If given a chance to construct new retail along with housing, new jobs would be created that would, in time, replace the jobs lost; in addition, the retail will generate new sales tax revenue, and the creation of other jobs
4. What is meant by “Extraordinary Economic Benefit:” accrues to the City as a result of the conversion?

The draft policy states: “For an Extraordinary Economic Benefit to occur when employment lands are converted to other uses, the City must receive significant off-

setting benefits, such as revenues, beyond those required or expected from a project that does not result in the net conversion of employment land to other uses”

- a. Does this mean that the developer must make a direct financial contribution to the city in order to build?
- b. Will the City of San Jose selling its land to the highest bidder?
- c. Will the Council decide and demand that something be done in return for permission to grant the developer the authority to convert?
- d. Does such a statement change the level of the development playing field?

5. HBANC opposes setting percentages and perhaps exact dollar figures for returns:

- a. HBANC believes that it is not good public policy to set an exact dollar figure, or even a percentage, that might be coming to the city from sales tax revenues for any particular project.
- b. An initial project might promise high retail tax revenues; however, retail projects routinely fail, and the sales tax revenue might be lower (or higher) with subsequent retail uses in the same location

6. What is meant by “Provision of affordable housing, parks, and related infrastructure improvements should be considered an ordinary component of new development and should not qualify as an Extraordinary Economic Benefit?”

- a. “Provision of affordable housing:”
 - i. Does this phrase imply that inclusionary zoning requirements will be made on each project, no matter the location? This is not currently city policy
- b. “Parks, and related infrastructure improvements”
 - i. If a builder exceeds the requirements of the PDO/PIO, would this not be considered “extraordinary” (that is above the requirements)?
 - ii. What about the construction of a school that is not a regular “requirement”
 - iii. What about the construction of additional playground facilities or other public improvements that are not “required” by the PDO/PIO ordinances?
 1. It would seem that these could be considered as providing “extraordinary economic benefit”

Beverly B. Bryant, Ph. D.
Executive Director, Southern Division
Home Builders Association of Northern California
675 North First Street, #620
San Jose, CA 95112
Phone: 408-977-1490
FAX: 408-977-1493
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Helen Chapman
1556 Hester Av
San Jose CA 95126-2519
408-279-8668

October 1, 2007

Jenny Nusbaum, Senior Planner
Planning Division- PBCE
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

Dear Ms. Nusbaum,

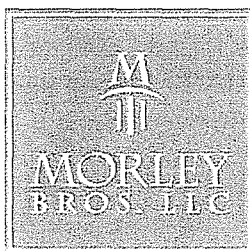
Thank for you for the opportunity to comment on the Draft Framework for Preservation of Employment Lands and list of alternatives. I fully support the intention of the planning department to create additional retail sales and well as support services from our small businesses for not only the purpose of increasing much needed tax revenue, but also to allow for fully balanced communities within our city. Every effort should be made to encourage thriving neighborhood business districts not only for economic priority but reduced travel time is key to larger environmental needs and smart growth.

From my experience of serving the City of San Jose as a Park Commissioner, I have seen first hand the results of imbalance in terms of the dollars needed to support our critical infrastructure services. We must consider as we continue to develop and infill our city that these services such as streets, parks, affordable housing, etc. are elevated to a mandatory requirement when approving development proposals and the every consideration be given to requiring the needed funding to complete the infrastructure necessary. New development should never be a burden to existing services.

I would fully support any strategy that would look at alternatives to policies in effect today that would enhance funding levels for our critical needs such as mitigation fees or assessment districts. I look forward to continued participation as this process moves forward.

Sincerely,

Helen Chapman
Shasta Hanchett Neighborhood Association



September 20, 2007

The Honorable Chuck Reed, Mayor
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

**RE: Comments on DRAFT Framework for Preservation of
Employment Lands 08-23-07**

We are writing to provide initial feedback on the **DRAFT Framework for Preservation of Employment Lands** originally presented to the Developer's Roundtable on August 24, 2007. While we applaud the City's efforts to balance housing and employment, there are numerous negative consequences, many likely not intended, that may result from adoption of the Framework in its current form. We have summarized our initial comments and suggestions for improvement below for the Council's consideration.

1. **The comment period is unrealistic and not consistent with the City objective of open government and community outreach.**

We were surprised that even though the Council provided high level direction on this item more three months ago, the DRAFT Framework was only presented to the Developer's Round Table for the first time on August 24, 2007 and stakeholders were given just 48 hours to respond to staff with comments on this comprehensive change to the Employment Lands Framework. The response timeframe originally required by the professional staff was totally unworkable and inconsistent with the spirit and intent of the City's Community Outreach Policy and the City's interest in open government.

We appreciate the professional staff's recognition of this timing problem and decision to convene a first stakeholder meeting with the business and development community to initiate discussions on the proposed revisions. Although there has been some discussion about this topic prior to the drafting of the proposed Framework, the real dialogue on issues of this magnitude, as you know, can begin only after specific language is proposed and the public has something substantive to comment on.

Morley Bros., LLC
99 Almaden Boulevard, Suite 720 San Jose, CA 95113
Phone: 408.977.1090 **Fax:** 408.904.7530 **Web:** www.morleybros.com

Given the sweeping changes proposed by the professional staff, it is imperative that there is ample time for the community and stakeholders to review, consider and comment on the Draft Framework. We look forward to more stakeholder meetings.

2. **Unique consideration should be given to industrial sites near BART/Light Rail, NBD's, SNI's and those that are remnant employment properties.**

Unique consideration should be given to redevelopment of employment sites, without a "no net loss" requirement, in the following areas to support important General Plan Transit Oriented Development (TOD) and neighborhood revitalization goals and objectives:

- **BART and existing/future LRT stations.** Locating higher density housing near transit nodes is a fundamental tenant of the City's General Plan and is critical to City objectives to achieve BART to San Jose and secure funding for this and other critical light and heavy rail infrastructure. According local, national and international studies, residential uses generate four (4) times the ridership of employment uses. Locking in low intensity uses near major rail infrastructure sends the wrong message to the Metropolitan Transportation Commission, the State and the Federal government about San Jose's commitment to intensification along rail corridors and likely could jeopardize important funding.
 - **Neighborhood Business Districts (NBD's), Strong Neighborhood Initiative Areas (SNI's) and Specific Plan Areas.** One of the driving factors in creating NBD's, SNI's and Specific Plans in San Jose is to revitalize neighborhoods through redevelopment of functionally obsolete buildings and properties. The renaissance of The Alameda, Mid-Town, Japantown and many other areas in the City would no have occurred without the specific redevelopment of industrial sites to residential uses. The new residential communities in and around these areas have driven and supported their revitalization.
 - **Remnant industrial sites in existing residential neighborhoods.** There is a significant opportunity to create clean lines of demarcation between residential and employment uses in neighborhoods throughout the City by cleaning up remnant industrial sites that are surrounded or adjacent to residential, by redeveloping them to residential use.
3. **The concept of "no net loss" in jobs capacity might work on very large sites, such as the Hitachi Transit Village, where there is a significant amount of land to intensify uses and "move the pieces around", but it is problematic and unrealistic to implement for smaller sites.**

Establishing a "no net job loss" requirement on small sites, where intensification and/or a combination of uses cannot be achieved, will displace important City objectives like locating

housing near significant public infrastructure such BART and LRT. Further, the idea of a developer going out and identifying a site to be converted to industrial from residential or another use in order to match the acreage or job generating potential of one being proposed for conversion to residential is overly burdensome and may have unintended consequences. This approach will likely lead to significant additional time, energy and money spent by applicants, the community, and the City to identify, review, consider and debate multiple conversions to various uses, potentially in numerous neighborhoods throughout the city. In addition, establishing a Framework that might encourage conversion of residential lands in transitioning residential neighborhoods (with a mix of residential and industrial) back to industrial uses would be counter productive to neighborhood and community building and revitalization. This balancing act is better considered on a city-wide basis.

4. **The DRAFT Framework is overly formulaic and proscriptive.**

Dictating the specific percentage of retail on a site or job retention (square footage or land area) at the policy level is overly simplistic and too specific. Each individual site needs to be evaluated based on its specific site conditions, size, geometry and surrounding uses and context.

5. **The recommendation to require a direct, undefined financial contribution to the City in order to obtain a conversion could be perceived as "zoning for sale" or "zoning to the highest bidder".**

The recommended approach and its undefined nature would create uncertainty by infusing a lack of predictability and more risk into the development review process which ultimately leads to a reduction in capital investment in San Jose. We do not support a new fee on business for redevelopment of property. If the City were to pursue such an approach, then there would need to be a nexus study, a pipeline exemption for applications on file and a defined fee to create certainty for the market place. If the City is going to require "benefits" for conversions beyond what there is presently a nexus for under established city requirements then "community benefits" (schools land, parks, public space, etc.) should be included (not just economic benefits) in the list of potential benefits. These are important public amenities that may benefit the community well beyond those residents living in a given development and should be considered as such.

6. **The Draft Framework should only apply to General Plan Amendments.**

The City Council makes the long term policy decision about the proper use for a particular piece of land at the General Plan stage. The zoning application simply implements the Council's earlier policy decision about the appropriate land use. It is irrational, not to mention unfair, to impose a new standard and requirements like those in the Draft Framework

Mayor Chuck Reed
September 20, 2007
Page 4

for properties that already have a General Plan designation and applicants who are pursuing applications consistent with the Council's prior policy determination.

7. **The Draft Framework is incredibly confusing to understand and difficult to apply.**

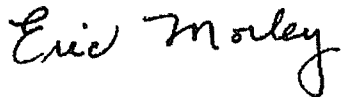
We are well versed in San Jose land use policy and have participated in discussions associated with this Draft Framework and the existing Framework over a number of years. While we have reviewed the Draft Framework on multiple occasions, we still find it hard to understand the basic logic of certain elements of the document and what certain sections reasonably mean. It is even more difficult to apply the draft policy language to actual examples of possible conversions as it is not particularly user friendly. This is due in part to the fact that there appears to be a number of actual inconsistencies in the draft language and potential inconsistencies in its application. The lack of clarity and logic in the Draft Framework could also be a result, in part, of staff's apparent effort to craft a new Framework that supports current projects the City administration is advancing which may not comport with the existing Framework or larger employment land preservation goals and others they may continue to oppose despite past Council action.

We very much appreciate the opportunity to comment on the proposed Framework and may offer additional or revised comments after more time for review. In our humble opinion, the City Council should not make any hasty decisions about a revised Framework before addressing the potential negative consequences the current Draft presents. We believe it would be most appropriate to refer this matter to the General Plan Update process. In any event, whatever Framework is ultimately adopted, the City should be held to the same standards, as is required of the private sector, for all City-owned parcels and City initiated conversions.

Please don't hesitate to contact me if you have questions or need additional information. I can be reached at 408.497.9722.

Sincerely,

Morley Bros., LLC

A handwritten signature in black ink that reads "Eric Morley". The signature is written in a cursive, slightly slanted style.

Eric Morley

From: Pat Sausedo [mailto:psausedo@susedocompany.com] **On Behalf Of**
psausedo@naiopsiliconvalley.com
Sent: Wednesday, September 05, 2007 1:23 PM
To: 'Nusbaum, Jenny'; **Subject:** RE: DRAFT Framework
Importance: High

Jenny,

As Executive Director of NAIOP Silicon Valley I would request a 30 day deferral to agendize the DRAFT Framework for Preservation of Employment Lands allowing reasonable time for the NAIOP Organization to review the proposed DRAFT Framework and prepare comments. The document is complex and has the potential to directly affect the future land use for all industrial/commercial property within the city of San Jose for years to come. Under the city's new transparency/outreach policies allowing the public the opportunity to thoroughly review, digest and generate thoughtful question and comment would appear to be in the spirit of the city's current outreach mottos. I recognize the city staff may have had the opportunity to review the proposed policy over these past weeks during preparation but the DRAFT document however, the document has only been available since last Friday, August 31st (a holiday weekend) by the industrial/commercial stakeholders of this community.

A collaborative process is one where all stakeholders can communicate and develop workable policies that best reflect the needs of all within the community. NAIOP looks forward to working with you in a spirit of collaboration as we go forward on the DRAFT Framework for Preservation of Employment Lands.

Regards,

Patricia E. Sausedo, Exec. Director
NAIOP, Silicon Valley Chapter
PH: 408.294-5682
FAX: 408.294-5672



August 29, 2007
Job No. 3501.00
Page 1 of 2

Ms. Jenny Nusbaum, Senior Planner
City of San Jose Planning
200 East Santa Clara St. Third Floor
San Jose, CA 95113

Re: Draft Framework for Preservation Of Employment Lands 8/23/07

Dear Jenny:

We are drafting this letter on behalf of our client, Alan Mirzaei, who is the owner of property located at 650 North King Road (APN254-54-023, 24). Mr. Mirzaei's property is also the subject of a General Plan Amendment currently filed with the City of San Jose (City file #GP05-03-07).

As indicated by many of my colleagues in the private sector we are concerned that there is very little time for us to make meaningful comments in with such a short turn-around time. Be that as it may, we will make some initial comments in this letter and then follow up with more comments at a later date.

- 1) How do the Alternate Use Policies play into this new framework? Are project sites less than two acres able to convert?
- 2) What is meant by "viable" Light or Heavy Industrial designated land? How and who determines what is viable or non viable?
- 3) What are some other examples of "Public Infrastructure"?
- 4) Better Define "Extraordinary Economic Benefit". Is it simply the soccer stadium provision? Is "Capitol Contribution" simply funding for programs and will there be a set amount of funding related to the size of conversion?
- 5) What would the logistics be of converting non-employment lands to employment lands at the same time as proposing a conversion from employment lands to non-employment lands? Are they concurrent GP Applications? Do the properties need to be in the same vicinity, same council district?

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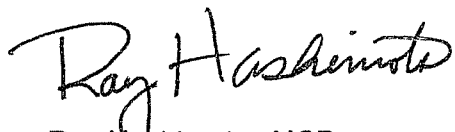
GILROY
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August 29, 2007
Jenny Nusbaum
Page 2 of 2

Let me know if there are any questions on our comments. As I mentioned before there will be other comments forthcoming after we have had a little more time to review the draft framework.

Very truly yours,

HMH ENGINEERS

A handwritten signature in black ink that reads "Ray Hashimoto". The signature is written in a cursive style with a large, prominent "R" and "H".

Ray Hashimoto, AICP
Senior Planning Manager

cc:

Meera Nagaraj
Rechel Roberts
Planning Services Division
200 East Santa Clara Street
City of San Jose, CA 95110

RE: Response to Framework for Preservation of Employment Lands and General Plan Amendment File No. GP05-02-02

Dear Meera, Rechel and City Council Members:

While we support the effort the City Council is making toward Preservation of Employment Lands, we do have concerns specifically related to existing General Plan Amendment applications.

After reviewing the Draft Framework for Preservation of Employment Lands we have found that it did not address existing applications. It would be unjust to simply implement the proposed Framework to existing applications. In many cases, such as ours, the Applicant has spent many years, large sums of money and numerous hours, with the guidance and encouragement of the City Staff Members working toward a General Plan Amendment and Rezoning. It would be a devastating loss in many ways to the Applicant.

We would suggest that any new Framework only be applicable to new applications. Furthermore, existing applications shall be reviewed following the old guidelines. Thus, the new Framework should not affect the existing application whatsoever.

We look forward to working together with the City Staff and City Council toward a smooth and just transition.

Respectfully submitted,
Barry Swenson Builder

Bill Ryan
Vice President

Susie Sosebee
Project Manager

August 30, 2007

Writer's Direct Contact
650.813.5857
TRuby@mofocom

By Telefacsimile and Mail

Jenny Nusbaum, Senior Planner
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Re: Draft Framework for the Preservation of Employment Lands

Dear Jenny:

On behalf of our client, KT Properties, I would like to thank you for the opportunity to submit comments regarding the Draft Framework for the Preservation of Employment Lands dated August 23, 2007 (the "Draft Framework"). While the purposes of the proposed Draft Framework are laudable, there are several serious issues that need to be addressed.

California's planning and zoning laws generally require a city's zoning ordinances to be consistent with its general plan. This is based on the concept that the general plan is a higher-level document, the "Constitution" of land use, and as such reflects major policy decisions that the city has already made. The Draft Framework ignores this principle in circumstances where the General Plan allows non-employment uses, but the zoning ordinance does not, by prohibiting rezoning that would conform to the General Plan. In addition, it appears to prohibit the approval of other, even lower-level land use entitlements if they would result in the conversion of employment uses to non-employment uses, even if the approval would be consistent with the General Plan and/or zoning. This stands the traditional land use hierarchy practiced throughout California on its head.

Additionally, the Draft Framework does not provide sufficient flexibility for transit-oriented developments along transit corridors and BART nodes. This lack of flexibility is inconsistent with several General Plan policies intended to facilitate transit-oriented development and, at least arguably, industrial development of these areas also would be inconsistent with these General Plan policies. Not only does the Draft Framework lack sufficient flexibility for transit-oriented development in these areas, but it discourages and makes such development less feasible by requiring in Section C(2)(b) a minimum FAR for

Jenny Nusbaum, Senior Planner

August 30, 2007

Page Two

industrial uses that is higher than the minimum FAR the Draft Framework would require for such uses in areas further from transit nodes. The Draft Framework's failure to facilitate transit-oriented development, including residential development, near transit corridors and BART nodes is also contrary to land use planning policies to combat climate change that are beginning to emerge. *See, e.g., California Energy Commission, The Role of Land Use in Meeting California's Energy and Climate Change Goals, Draft Staff Paper (June 26, 2007).*

The Draft Framework also does not sufficiently account for areas that are already in transition from industrial uses to residential and other non-industrial uses. For instance, in the Midtown area the KB Homes and Sobrato projects represent a significant transition from industrial uses. As such, existing incompatibilities and nuisances related to conflicts between industrial and residential uses will arise and continue in this and other areas. The consequence of this proposed framework is that the City may be ignoring some of the most appropriate locations for the development of new housing.

The "no net loss" policies regarding industrial acreage and employment capacity also are extremely problematic. These policies appear to require the developer of residential or mixed use projects within industrial areas to seek general plan amendments and rezoning to redesignate additional acreage for industrial uses. It may not be feasible to find available land that can be redesignated and rezoned for industrial uses without causing conflicts with neighboring uses or environmental problems.

The inflexible nature of the Draft Framework, in all of the respects described above, will make it increasingly difficult for the City to meet its ABAG housing requirements, as mandated by California law.

The requirement of an "Extraordinary Economic Benefit" in order for employment uses to be converted to other uses appears to violate the nexus requirement for impositions on a development program that has been established in the U.S. Supreme Court's *Nollan* and *Dolan* decisions, as requiring some other benefit beyond affordable housing, parks, and other infrastructure improvements typically required of other housing development projects likely would not be necessary as a result of the impacts of the project at hand.

Finally, the framework establishes a bias against residential construction. The framework erroneously concludes that only employment lands generate revenue for the City. The number one concern of Silicon Valley CEOs is the cost of housing. Because we live in a knowledge based economy, the ability to attract and retain human capital is of paramount importance. Companies created in the "garage" here will not expand here unless there is a corresponding increase in the supply of market driven affordable housing.

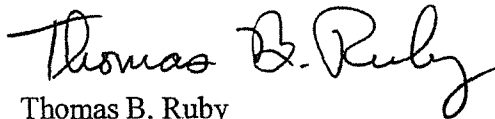
Jenny Nusbaum, Senior Planner

August 30, 2007

Page Three

We respectfully request that the Draft Framework be amended to address all of the problems we have identified. Please feel free to contact me at your convenience, as I would be glad to discuss any of these issues in detail with you in order to help the City achieve its policy goals of preserving its industrial and employment uses in a manner that is equitable and consistent with the law.

Very truly yours,

A handwritten signature in black ink that reads "Thomas B. Ruby". The signature is written in a cursive style with a large, prominent "T" and "R".

Thomas B. Ruby

cc: Mark Tersini
Shawn Milligan

From: Tai, Allen
Sent: Thursday, September 20, 2007 1:11 PM
To: Nusbaum, Jenny
Subject: FW: Here are Walter Cohen's comments on the framework

Jenny, FYI.

From: McMorrow, Licia
Sent: Thursday, September 20, 2007 10:58 AM
To: Tai, Allen
Subject: Here are Walter Cohen's comments on the framework

Hey Allen-

I said I'd send these a long time ago and kept forgetting. I don't necessarily agree with everything, but here they are:

- This policy doesn't protect the small industry we are saying we want to protect. We're still letting industrial suppliers exit the market, and only the market can control that.
- The Mayor isn't interested in staff rubberstamping his ideas. He wants staff's professional opinion on where Council could be wrong.
- The document seems punitive. There should be a preamble to all of this saying that we want to encourage industrial development, not discourage conversion.

Ok, that's all.

Licia McMorrow
Planner II
Planning Division, City of San Jose
200 East Santa Clara Street, 3rd. Floor Tower
San José, CA 95113-1905
Phone (408) 535-7814
licinia.mcmorrow@sanjoseca.gov

Subject: RE: Today's SVLG Housing Committee

Some of their comments:

- Heavy Industrial uses are disappearing from the economy (made by the representative of Cargill)
- Clarify what we expect in terms of jobs from HI and LI lands and why conversion between them isn't a concern if LI has many more jobs than HI.
- The Framework should differentiate between vacant and occupied employment lands
- Need to provide for infill near transit
- Impact on other Cities (which may adopt similar policies further contributing to the 'housing problem')
- Should focus more on revenue impact than jobs/housing balance
- What exactly is the \$ amount equal to extraordinary benefit?
- If housing can pay for itself, why do we need to be concerned (how will we respond to the HBA data that says housing pays its own way)

Estimated Revenues to City for Various Uses of 1 Acre

1 Acre of Employment Use	Assessed Value	Tax Rate	Property Tax Total	Property Tax to City	Sales Tax	Utility Tax	Total
Office Tower- Non Headquarter (1 acre)	\$ 30,000,000	0.011682	\$ 350,460	\$ 37,499	\$ 5,000	\$ 21,000	\$ 63,499
Campus Industrial Park (1 acre)	\$ 5,100,000	0.011682	\$ 59,578	\$ 6,375	\$ 18,000	\$ 8,000	\$ 32,375
Single Story Industrial Tilt Up (1 acre)	\$ 1,400,000	0.011682	\$ 16,355	\$ 1,750	\$ 15,000	\$ 4,000	\$ 20,750
Industrial Use (Auto Dealer)	\$ 1,300,000	0.011682	\$ 15,187	\$ 1,625	\$ 90,250	\$ 1,250	\$ 93,125
Neighborhood Retail	\$ 1,200,000	0.011682	\$ 14,018	\$ 1,500	\$ 5,553	\$ 821	\$ 7,873
Big Box Retail	\$ 721,000	0.011682	\$ 8,423	\$ 901	\$ 65,000	\$ 3,000	\$ 68,901

One Acre of Residential Use	Assessed Value	Property Tax Total/ Unit	Property Tax to City/Unit	Sales Tax/ Unit	Utility Tax	Number of Units per Acre	Total Revenues per Acre
Single Family	\$1,400,000	\$16,355	\$1,750	\$246	\$267	7 houses	\$15,841
Condominiums	\$700,000	\$8,177	\$875	\$123	\$276	20 units	\$25,480
Apartments	\$400,000	\$4,673	\$500	\$123	\$184	30 units	\$24,210
Mid-Rise Condos	\$500,000	\$5,841	\$625	\$170	\$184	55 units	\$53,844
Hi-Rise Condos	\$540,000	\$6,308	\$675	\$170	\$184	150 units	\$154,348