

# Memorandum

TO: PLANNING COMMISSION

FROM: Rosalynn Hughey

SUBJECT: File No. GP17-017 General Plan Amendment  
from Mixed Use Commercial Land Use  
Designation to Transit Residential

DATE: December 4, 2018

COUNCIL DISTRICT: 6

## SUPPLEMENTAL

### REASON FOR THE SUPPLEMENTAL

The General Plan Amendment and the supporting CEQA Addendum for the project were due to be heard by the Planning Commission on November 7, 2018, at 6:30 p.m. The law firm of Adams Broadwell Joseph & Cardozo on behalf of Residents for Responsible Development, submitted a comment letter to City Staff and the Planning Commission at 4:30 p.m. on November 7, 2018, via email. The letter was 22 pages long and included four appendices (see attached). The Planning Commission decided to postpone the hearing for this item to December 5, 2018 in order to have time to read the letter, and to allow staff to respond to the comments raised in the letter.

### RECOMMENDATION

Staff recommends that the Planning Commission recommends that the City Council:

1. Consider the Addendum to the Diridon Station Area Plan Final Program Environmental Impact Report in accordance with CEQA.

### ANALYSIS

Staff has reviewed the letter and appendices submitted by Adams Broadwell Joseph & Cardozo and has determined that the comments do not identify any new issues that would result in a potentially significant impact under CEQA that would trigger preparation of a Subsequent or Supplemental EIR as outlined in Sections 15162, *Subsequent EIRs and Negative Declarations*, and 15163, *Supplement to an EIR*, of the CEQA guidelines.

The Addendum to the Diridon Station Area Plan (DSAP) Environmental Impact Report (EIR) prepared for the Dupont Street General Plan Amendment considered the changes in the existing conditions that have occurred since the publication of the DSAP EIR in 2014, as well as the changes that could occur if the General Plan Amendment is approved. The matrix below outlines the changes in existing conditions.

	Existing General Plan and Zoning	Proposed General Plan Analyzed in the Addendum
General Plan Designation	MUC - Mixed-Use Commercial	TR - Transit Residential
Zoning Designation	IP – Industrial Park LI – Light Industrial HI – Heavy Industrial	No change

Please note that while approval of this General Plan Amendment will change the General Plan designation, the zoning designation will not change until a development project is proposed. Under current zoning, no commercial or residential uses would be allowed.

The letter claims that the proposed General Plan Amendment will result in Toxic Air Contaminants (TACs) that would affect nearby residences. TACs potentially generated under existing conditions are higher because the LI – *Light Industrial* and HI – *Heavy Industrial* zoning designations allow manufacturing uses. Manufacturing uses typically have generators, idling trucks and other vehicles, smoke stacks and similar components that are sources of stationary TACs.

The proposed General Plan Amendment will further the General Plan goals and policies and will allow the City to take advantage of the transit improvements that are available and proposed in this area.

Staff has prepared the following responses to the issues raised in the letter. These responses are supported in a detailed response document prepared by the City's CEQA consultant, David J. Powers & Associates, which is attached to this Supplemental Memo.

**Comment 1. City illegally piecemealed the General Plan Amendment from the project**

**Response 1.** Staff has prepared an Addendum to the Diridon Station Area Plan (DSAP) EIR and the Envision San José 2040 (General Plan) EIR. The DSAP EIR and the General Plan EIR are both program-level EIRs. The DSAP EIR was not intended, nor was it required to provide detailed analysis of specific projects in the DSAP area. The DSAP EIR analyzed the proposed Transit Residential land use designation in 2014, and the Council certified the DSAP EIR on June 14, 2014. So CEQA clearance is existing for this Transit Residential designation. The Council voted not to adopt the Transit Residential land use until an Implementation Financing Plan was adopted.

The City completed a Diridon Station Area Infrastructure Analysis in January 2017, that examined the basic infrastructure required for the plan build-out, and the City is in the process of updating the Infrastructure Analysis and adopting a comprehensive financing plan. The Diridon Infrastructure Fee Study is expected to be adopted by the Council in winter 2019. This Addendum to the EIR for the proposed land use designation updates the EIR analysis to account for changes in the environmental setting since the DSAP EIR was adopted in 2014.

Prior to consideration for approval, development-level projects in the DSAP area will be required to undergo project-level environmental review, which will address impacts and measures to reduce impacts associated with the specific project. The specific development project discussed in this comment is not on file with the City at this time, and, therefore, is not the subject of this Addendum.

A previous proposal, Planned Development Zoning PDC17-057, was submitted in December 13, 2017 and was withdrawn on February 22, 2018. Consequently, at the time of preparation of the CEQA document for GP17-017, Dupont Street General Plan Amendment, there was no development-level project on file for analysis under CEQA. The City is unable to speculate about any specific potential for future projects for which there is no application on file. As stated on page 8 of the Initial Study/Addendum for the Dupont Street General Plan Amendment, the Initial Study analyzed the change in land use designation at a program level, and addresses only the impacts of changing the type of land use planned for the parcel. When a specific development is proposed in the future, the City will prepare a new project-specific environmental analysis as required by CEQA, including rezoning as appropriate.

As discussed above, no development project is proposed at this time and only a General Plan Amendment would result as part of the proposed project. Approval of the proposed amendment

to the City's General Plan could facilitate future development on the project site. The methodology for review of the potential development that could result from this General Plan Amendment is discussed below.

As explained in more detail in the transportation section of the Initial Study and the Long Range Transportation Analysis in the Appendix to the Initial Study, to evaluate the incremental change from the existing Mixed Use Commercial land use designation to the proposed Transit Residential land use designation, the middle range or typical range of residential and commercial densities for development under these land use scenarios are assumed for the current and proposed land use designations for the site. The reason that the middle or typical range is used as opposed to the maximum intensities potentially allowed under various General Plan land use designations is that building to the maximum intensities for all General Plan land designations would exceed the total planned growth capacity allocated in the General Plan, and this maximum amount of build-out does not represent typical development patterns. General Plan land use designations allow a wide range of development intensities and types of land uses to accommodate growth; however, development projects are not typically proposed at the maximum densities due to existing development patterns, site and parking constraints, Federal Aviation Administration regulations, maximum allowable height provisions and other development regulations in the San José Municipal Code in Title 20 (Zoning), market conditions, and other factors. To evaluate the incremental changes of the proposed General Plan land use amendments, average residential and commercial densities for development under these land use designations and in the planning areas of the proposed General Plan amendments for San José are assumed for the current and proposed land use designations on each site. Using the middle-range, this proposed amendment could result in 483 additional households (based on a residential density of 50-250 DU/AC with an FAR of 2.0 to 12.0 and buildings ranging from 5 to 25 stories). Based on the travel demand forecast (TDF) modeling results, the Dupont Street General Plan Amendment could result in 214 AM and 241 PM peak hour trips.

The City's trip thresholds for requiring a site-specific GPA transportation analysis are presented in the City of San José Transportation Analysis Handbook, April 2018. With the exception of GPA sites located within the North San José, Evergreen, and South San José subareas, a proposed land use amendment that would result in a net increase of more than 250 peak hour trips would be required to prepare a site-specific GPA transportation analysis. Because the Dupont Street General Plan Amendment does not exceed the 250-trip threshold, a site-specific long-range traffic analysis is not required.

Any future development projects would be required to complete a near term traffic analysis and possibly other technical reports at the time of future development application submittal. The analysis of all other impacts in this Initial Study is also based on the 483 household project size (483 households  $\times$  3.06 persons per household = 1,478 residents).

**Comment 2. City must prepare a Subsequent or Supplemental EIR**

**Response 2.** As stated in the CEQA Guidelines Sections 15162 and 15163, a Subsequent or Supplemental EIR is prepared only when substantial changes to the previous EIR are required based on the identification of new information of substantial importance, or new or more severe impacts.

As the Initial Study in support of the Addendum to the Diridon Station Area Plan (DSAP) EIR clearly states on Page 1, the proposed change in General Plan designation to Transit Residential under this proposed General Plan Amendment was already identified and analyzed in the DSAP EIR.

The Addendum for the proposed project was prepared as part of the subsequent environmental review process to evaluate the proposed project in terms of the overall development envisioned in the DSAP and the General Plan. The CEQA analysis in the Addendum/Initial Study did not find any new or more substantial impacts than those that were analyzed in the DSAP EIR.

**Comment 3. City failed to identify all relevant Hazardous Waste sites within one mile of the project site**

**Response 3.** Contaminants in groundwater dissipate over time and distance. Groundwater flows in a northeasterly direction and, thus, all cases north and east of the project site are downgradient and would have no impact on the project site. The commenter lists seven open cases within a 1,000-foot radius in the DSAP, six of which are identified in Table 4.6-1 of the DSAP EIR. Of the seven sites noted by the commenter, five of the sites are north of the project site, one is southeast of the project site, and one is due east of the project site. Due to the location of these sites relative to the project site and the direction of groundwater flow, none would have the potential to impact the project site because contaminated water would flow away from the project site.

The Addendum for the proposed project (on pages 39 and 40) identified four sites up-gradient from the project site, of which four are closed and one is open and in the process of completing remediation. The analysis clearly states that specific requirements for future development projects would be determined during the subsequent environmental review when a development proposal is submitted (see Detailed Responses to Selected Comments attached).

**Comment 4. Inadequate analysis of significant impacts**

**Response 4.** The analysis in the Addendum is adequate given that the City does not have a specific development-level project proposal to analyze. CEQA Guidelines Section 15151, *Standards for Adequacy of an EIR*, states that an evaluation of environmental effects of the proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. The courts have looked for adequacy, completeness, and a good-faith effort at full disclosure.

The analysis in the Initial Study analyzed the changes in land use under the proposed General Plan Amendment as explained in Response 1. The analysis did not identify any new significant impacts and did not identify the need for any new mitigation measures.

The analysis in the Initial Study/Addendum identified the following significant impacts that would be the same as those identified in the approved documents (the DSAP EIR, the General Plan EIR and the Supplemental General Plan EIR):

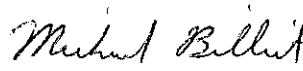
- Air Quality: Operational criteria pollutants—Significant and Unavoidable
- Air Quality: Operational Toxic Air Contaminants—Less than Significant with Mitigation
- Greenhouse Gas Emissions Impacts: Significant and Unavoidable

The analysis and mitigation measures identified for these impacts in the DSAP EIR, the General Plan EIR, and the Supplemental General Plan EIR would apply to the Dupont Street General Plan Amendment.

**Comment 5. The Addendum fails to comply with CEQA's requirements for Program-level environmental review (pertaining to Air Quality, Energy and Noise impacts).**

**Response 5.** The DSAP EIR correctly analyzed impacts at a program level in keeping with CEQA Guidelines Section 15146, *Degree of Specificity*. This section states that a project such as the adoption or amendment of a comprehensive zoning ordinance or local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction project that might follow.

Regulations and technology are constantly changing. Future projects will be evaluated based on the specific development proposals, and the regulations and technology available at that time.

  
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Planning, Building and Code Enforcement

For questions please contact Reema Mahamood, Environmental Planner, (408) 535-6872

Attachments:

- Detailed Responses to Selected Comments
- Revisions to the text of the Dupont Street General Plan Amendment Initial Study
- Adams Broadwell Joseph & Cardozo Letter and Attachments
  - Attachment A – Clark Comments
  - Attachment B – Application
  - Attachment C – Emails
  - Attachment D – Environmental Evaluation Application