

# Appendix A

## NOP Comments

## Comment 1: George Simmel

**From:** [Pham, Kieulan](#)  
**To:** [Julie Wright](#); [Hannah Darst](#); [Judy Shanley](#)  
**Cc:** [Keyon, David](#)  
**Subject:** FW: EIR for the San Jose Flea Market South Side Rezoning Project PDC17-051- feedback  
**Date:** Friday, August 31, 2018 9:03:53 AM

---

-----Original Message-----

From: GM Simmel [<mailto:gms3507@gmail.com>]  
Sent: Thursday, August 30, 2018 11:42 PM  
To: Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>; District4 <[District4@sanjoseca.gov](mailto:District4@sanjoseca.gov)>; Gomez, Charla <[Charla.Gomez@sanjoseca.gov](mailto:Charla.Gomez@sanjoseca.gov)>  
Subject: Re: EIR for the San Jose Flea Market South Side Rezoning Project PDC17-051- feedback

Continued from my previous sending (functions on the Gmail platform are a little cranky).

Ideas and goals:

- encourage commercial/retail tenants that cater to providing convenience to commuters that pass through the station (pharmacies, restaurants, retail, and services) and that would also draw in clients from the surrounding neighborhoods;
- encourage tenants in the medical services and sports clubs;
- include opportunities for cultural interchange - farmers market space, art space, educational facilities for children through adults;

The 17-acre open space buffer along Upper Penitencia and Coyote Creeks is a very worthy idea and a potential treasure trove.

Some enhancements that I suggest would include:

- historical information about the area (Ohlone to Missions and Ranchos to fruit orchards and to the Silicon Valley);
- geological information about the area such as how the Upper Penitencia Creek formerly seeped into the ground before reaching Coyote Creek, or how Frenchman's Ditch became the narrow gully the now connects the two creeks;
- natural history of the area before European colonization.

There have been many successful restorations or conversions of creek fronts for recreational activity, and there are a lot of possibilities for building structures that overlook the creek, small scale theater space with the creek as its back drop, or just allow people to walk along a safe path near the water with their friends and families.

This could be a very attractive feature for the Urban Village.

Eating establishments above the Coyote Creek open space would be able to draw in customers who have enjoyed their creek-side activities.

Art and craft fairs along the creek front would be another means of drawing people to the area.

Extensive research conducted by the San Francisco Estuary Institute was summarized in their 2006 report: Coyote Creek Watershed Historical Ecology Study. According to the report, Coyote Creek was a seasonal creek that had steep embankments with sand and gravel islets and sycamore trees on the embankments that may have acted as natural flood preventions. Coyote Creek had a very different reputation for flooding when compared to the Guadalupe river and its willow thickets. The steep embankments are still present in this section of the Coyote Creek, (as are some remnant islets a little further downstream, heavily overgrown) but instead of sycamores we have a lot of invasive species in the overgrowth. Though a complete restoration to Coyote Creek's past may not be feasible, a thorough removal of non-native species and overgrowth is likely to significantly improve flood mitigation and improve on the unsightly mess that is present now.

Other concerns:

Air quality degradation due to increased vehicular traffic and by excessively high population densities; how could the creek environments be leveraged to improve air quality?

Biological resources - the creeks are natural pathways for avifauna and mammals in the area (not just for the homeless); Cultural resources are very limited in the area right now; this is an opportunity to vastly improve.

Hazardous materials - the Flea Market has been on site with relatively limited oversight of chemicals spilt onto the

grounds that would eventually run into the creek. The sand and gravel directly beneath the Flea Market and its parking lot now are likely to be contaminated with automotive and other oils.

Hydrology and water quality - although Upper Penitencia Creek is now physically connected to Coyote Creek by the Frenchman's Ditch, the majority of normal water flow into Coyote Creek is probably still subterranean. Other sources of water that flow into the creeks are from drainage off roads and properties that are on the uphill side east of the property.

Nearby land uses and zoning - the areas that are not part of this rezoning, such as the wedge of land on the north side of Berryessa Road, between the new housing development and the Amtrak rail need to be pulled into the general plan and re-zoning discussion. Similarly, for the area to really reflect the Urban Village idea, the properties to the south of Coyote Creek should, likewise, be re-zoned to be more appropriate.

Noise mitigation - use natural plantings and mitigation methods wherever possible ... rooftop green areas!

Best regards,  
George M. Simmel  
1457 Mercado Way,  
San Jose, CA 95131

On Thu, Aug 30, 2018 at 10:31 PM GM Simmel <gms3507@gmail.com> wrote:

>

> Thank you Charla, Kieulanand Erik, and to your team and broad range of  
> city office representatives that participated in the public scoping  
> meeting on August 16th at the Ed. Park Library. The discussion was  
> lively and informative in a relatively short span of time and led me  
> to appreciate the volume of work required in advance preparation for  
> the rezoning and planning process.

>

> I will try to stay brief about my concerns for the project.

>

> The project is the core part of the Berryessa Station Urban Village  
> and must be thoughtfully integrated with the residential and light  
> commercial units already completed, in construction, and planned on  
> the north side of Berryessa Road. Although Berryessa Road may act as  
> a physical divider, the increase in density of housing and commercial  
> units planned from 1818 to 3450 is a greater than 2-fold increase  
> within the same footprint that does not take into account the space  
> 'lost' to the 50% increase in commercial square footage and office  
> space. Please consider a far smaller increase in density!

>

> Berryessa station will act as the end of the BART line for the time  
> that it takes to achieve the final link to Diridon, therefore, for the  
> next 10~15 years the Urban Village will be a significant transit  
> center with associated increases in traffic and a dramatic shift in  
> the character of the neighborhood.

>

> There are many successful examples of such communities around the  
> world and, likewise many failures here in the USA and elsewhere. The  
> keys for success will be in achieving proper balance as a commuting  
> hub and an attraction for shopping, dining and recreation within a  
> residential surround.

> Some ideas include:

Comment 2: Katherine Perez of the  
Northern Valley of Yokut/Ohlone/Bay  
Miwuke Tribe

**From:** [Pham, Kieulan](#)  
**To:** [Julie Wright](#)  
**Cc:** [Hannah Darst](#); [Judy Shanley](#)  
**Subject:** FW: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project  
**Date:** Wednesday, August 1, 2018 11:32:24 AM

---

Hi Julie,

Will be forwarding you comments on the NOP as they come in.

Kieulan Pham, AICP  
Planner III | Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street, T3  
For general Planning queries, visit [www.sanjoseca.gov/planning](http://www.sanjoseca.gov/planning)

**From:** canutes@verizon.net [mailto:canutes@verizon.net]  
**Sent:** Wednesday, August 1, 2018 11:24 AM  
**To:** Pham, Kieulan <kieulan.pham@sanjoseca.gov>  
**Subject:** Re: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project

Hello Kieulan Pham,

I am in receipt of the notice of preparation of an environmental impact report for the San Jose Flea Market South-side Rezoning Project. We the Northern Valley Yokut/Ohlone/Bay Miwuk Tribe (NVYT) are requesting consultation of the proposed project. We NVYT have been involved in the recovery and repatriation of burials just south of your proposed project site. We the NVYT will be recommending the the proposed project be monitored by our Tribe and a qualified archaeological firm as we strongly believed that your project will yield burials.

Nototomne Cultural Preservation  
Northern Valley Yokut/Ohlone/Bay Miwuk  
Katherine Perez  
P.O Box 717  
Linden, CA 95236  
Cell: 209.649.8972  
Email: [canutes@verizon.net](mailto:canutes@verizon.net)

-----Original Message-----

From: Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>  
To: Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>  
Sent: Wed, Aug 1, 2018 8:25 am  
Subject: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project

**NOTICE OF PREPARATION OF AN**

## **ENVIRONMENTAL IMPACT REPORT FOR THE SAN JOSÉ FLEA MARKET SOUTHSIDE REZONING PROJECT**

FILE NO: PDC17-051

PROJECT APPLICANT: THE FLEA MARKET, INC.

APN: 254-17-007, 254-17-052, 254-17-053, and 254-17-095

As the Lead Agency, the City of San José will prepare an Environmental Impact Report (EIR) for the project referenced above. The City welcomes your input regarding the scope and content of the environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities in connection with the proposed project. If you are affiliated with a public agency, the EIR may be used by your agency when considering subsequent approvals related to the project. The project description, location, and a brief summary of the probable environmental effects that will be analyzed in the EIR for the project are attached.

**Project location:** The project is on the San José Flea Market site, south of Berryessa Road, east of Coyote Creek, west of the Berryessa BART track alignment, and north of Mabury Road in the City of San José.

**Project Description:** The overall 120-acre Flea Market property has a San Jose General Plan land use designation of *Urban Village (UV)* and a *Planned Development (PD) zoning (PDC09-006)* allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. The Flea Market property north of Berryessa Road is developed with 1,000 dwelling units and 118,580 square feet of commercial uses. On the property south of Berryessa Road (currently occupied by The Flea Market offices and vendor booths), the existing entitlement includes the remaining capacity consisting of 1,818 residential units and 247,042 square feet of commercial uses. The EIR focuses on the development of the 63-acre area south of Berryessa Road.

Two development scenarios will be evaluated in this EIR; Option 1 is the Applicant's proposed development project and Option 2 is the City's preferred development scenario. The proposed project (Option 1) includes up to 3,450 residential units and up to 2.2 million square feet of commercial space. Based on the existing entitlement, the proposed project will result in a net increase of 1,632 residential units and an increase of 1.95 million square feet in commercial space. The City's preferred development scenario includes up to 3,450 residential units and up to 3.4 million square feet of commercial space, and will result in a net increase of 1,632 residential units and 3.15 million square feet of commercial space.

**Community and EIR Public Scoping Meeting:** A Community and EIR Public Scoping meeting will be held on **Thursday, August 16, 2018 from 6:30 p.m. to 8:00 p.m.** at Educational Park Branch Library, 1772 Educational Park Drive San José, CA 95133.

According to State law, the deadline for your response is 30 days after receipt of this notice. However, we would appreciate an earlier response, if possible. Please identify a contact person, and send your written response to:  
City of San José

Department of Planning, Building and Code Enforcement  
Attn: Kieulan Pham, Environmental Project Manager  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San José CA 95113-1905  
Phone: (408) 535-3844, e-mail: [kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)

For more information, the project webpage is available at: <http://www.sanjoseca.gov/ACTIVEEIRS>  
under file no. PDC17-051.

## Comment 3: Ed Ketchum

**From:** [Pham, Kieulan](#)  
**To:** [Julie Wright](#)  
**Cc:** [Judy Shanley](#); [Hannah Darst](#)  
**Subject:** FW: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project  
**Date:** Tuesday, September 4, 2018 11:09:47 AM

---

**From:** Pham, Kieulan  
**Sent:** Wednesday, August 1, 2018 4:04 PM  
**To:** Aerieways <aerieways@aol.com>  
**Subject:** RE: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project

Thanks Ed, will do.

Kieulan Pham, AICP  
Planner III | Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street, T3  
For general Planning queries, visit [www.sanjoseca.gov/planning](http://www.sanjoseca.gov/planning)

**From:** Aerieways [<mailto:aerieways@aol.com>]  
**Sent:** Wednesday, August 1, 2018 1:10 PM  
**To:** Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>  
**Subject:** Re: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project

Kieulan,

I suggest you consult with the Muwekma Tribal Band. Their contact is Alan Leventhal at [alan.leventhal@sjsu.edu](mailto:alan.leventhal@sjsu.edu) or telephone 408-924-5722

Ed

-----Original Message-----

From: Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>  
To: Pham, Kieulan <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>  
Sent: Wed, Aug 1, 2018 8:25 am  
Subject: CEQA Notice of Preparation for PDC17-051 The San Jose Flea Market Southside Rezoning Project

**NOTICE OF PREPARATION OF AN  
ENVIRONMENTAL IMPACT REPORT FOR THE  
SAN JOSÉ FLEA MARKET SOUTHSIDE REZONING PROJECT**

FILE NO: PDC17-051  
PROJECT APPLICANT: THE FLEA MARKET, INC.  
APN: 254-17-007, 254-17-052, 254-17-053, and 254-17-095

As the Lead Agency, the City of San José will prepare an Environmental Impact Report (EIR) for the project referenced above. The City welcomes your input regarding the scope and content of the environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities in connection with the proposed project. If you are affiliated with a public agency, the EIR may be used by your agency when considering subsequent approvals related to the project. The project description, location, and a brief summary of the probable environmental effects that will be analyzed in the EIR for the project are attached.

**Project location:** The project is on the San José Flea Market site, south of Berryessa Road, east of Coyote Creek, west of the Berryessa BART track alignment, and north of Mabury Road in the City of San José.

**Project Description:** The overall 120-acre Flea Market property has a San Jose General Plan land use designation of *Urban Village (UV)* and a *Planned Development (PD) zoning (PDC09-006)* allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. The Flea Market property north of Berryessa Road is developed with 1,000 dwelling units and 118,580 square feet of commercial uses. On the property south of Berryessa Road (currently occupied by The Flea Market offices and vendor booths), the existing entitlement includes the remaining capacity consisting of 1,818 residential units and 247,042 square feet of commercial uses. The EIR focuses on the development of the 63-acre area south of Berryessa Road.

Two development scenarios will be evaluated in this EIR; Option 1 is the Applicant's proposed development project and Option 2 is the City's preferred development scenario. The proposed project (Option 1) includes up to 3,450 residential units and up to 2.2 million square feet of commercial space. Based on the existing entitlement, the proposed project will result in a net increase of 1,632 residential units and an increase of 1.95 million square feet in commercial space. The City's preferred development scenario includes up to 3,450 residential units and up to 3.4 million square feet of commercial space, and will result in a net increase of 1,632 residential units and 3.15 million square feet of commercial space.

**Community and EIR Public Scoping Meeting:** A Community and EIR Public Scoping meeting will be held on **Thursday, August 16, 2018 from 6:30 p.m. to 8:00 p.m.** at Educational Park Branch Library, 1772 Educational Park Drive San José, CA 95133.

According to State law, the deadline for your response is 30 days after receipt of this notice. However, we would appreciate an earlier response, if possible. Please identify a contact person, and send your written response to:

City of San José  
Department of Planning, Building and Code Enforcement  
Attn: Kieulan Pham, Environmental Project Manager  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San José CA 95113-1905  
Phone: (408) 535-3844, e-mail: [kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)

For more information, the project webpage is available at: <http://www.sanjoseca.gov/ACTIVEEIRS>  
under file no. PDC17-051.

Comment 4: Santa Clara Valley  
Transportation Authority



August 30, 2018

City of San Jose  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113

Attn: Kieulan Pham, Environmental Project Manager

Subject: City File No. PDC17-051, San Jose Flea Market Southside Rezoning Project NOP

Dear Ms. Pham,

**In order to ensure that the combined benefits of the regional rail investment and area land use changes are fully maximized, VTA is prepared to work hand-in-hand with the City of San Jose, the developer, and others, beginning at this early planning stage, in order to establish a foundation for the station area/neighborhood's success.**

VTA and the City can work together to lay the groundwork for the success of this visionary development, neighboring development, and nearby planning areas, which will rely upon effective, high-quality transit to sustainably support current and future levels of travel demand.

This site currently contains the San Jose Flea Market, and is strategically located at the doorstep of one of Santa Clara County's first BART stations, Berryessa/North San Jose Station. This site presents an exciting, once-in-a-lifetime opportunity to achieve a world-class, walkable, urban destination that maximizes the \$2.4 billion public investment made to deliver VTA's BART Silicon Valley Phase I project to Santa Clara County. The Phase I Extension project will bring unparalleled mobility and economic benefits to the region, with further potential to be unlocked if the proposed Market Park project takes a holistic approach to creating a mixed-use station destination centered on the regional transit investment.

VTA reviewed the NOP for the San Jose Flea Market Southside Rezoning Project, and has the following comments.

Land Use & Locational Significance

- VTA recommends clustering high-density commercial uses, and the maximum height and density immediately outside of the station. Parking areas should be located furthest from the station. The ground floors of buildings immediately surrounding the BART station, along the BART alignment, and fronting the proposed public park, should contain active public uses (e.g. retail and restaurants) that serve the community and station users, and capitalize on the station as an attractive center of activity.
- Access between the station and the proposed development should be approached comprehensively, with seamless and convenient circulation between the Flea Market site and Berryessa/North San Jose BART Station areas, particularly along/beneath the elevated

guideway. Should the DEIR identify any ingress/egress between the two sites, the DEIR should study any impacts to VTA/BART facilities and utilities. VTA strongly recommends creating the site plan with a deliberate focus on the safety, comfort and engagement of pedestrians.

- VTA also recommends that the DEIR strengthen the BART station as a focal point. Internal streets should provide clear and direct connectivity, and lines of sight to the station. For example, Sierra Road access presents an opportunity to provide a direct route to the station; however, the current access at Sierra Road leads to a southbound public street and directs travelers toward the Coyote Creek, the opposite direction of the station.

#### Transportation Impact Analysis (TIA) Report

- VTA's Congestion Management Program (CMP) requires a Transportation Impact Analysis (TIA) for any project expected to generate 100 or more net new peak-hour trips.
- For any questions about the *VTA Transportation Impact Analysis Guidelines (TIA Guidelines)*, please contact Brent Pearse of the VTA Planning and Programming Division at 408-546-7985 or [Brent.Pearse@vta.org](mailto:Brent.Pearse@vta.org).

#### Congestion Impacts on Transit Travel Times/Transit Compatibility

- VTA supports increasing development densities. At the same time, VTA is concerned that the project could have operational impacts to transit, such as increased travel times, lessening the appeal of transit as the option of choice for travelers near the station. With this additional density is the need for concurrent off-setting mitigation of impacts to transit in order to enhance travel times, and emphasize the appeal of transit for travelers in the project area. Additional transit uses will improve congestion and the quality of the development.
- Per the *TIA Guidelines* (Section 9.2 – Transit), the DEIR/TIA should address the project's potential congestion impacts to transit travel times on Mabury Road, King Road, Berryessa Road, McKee Road and surrounding vicinity, as well as evaluate transit access and facilities. VTA also recommends the DEIR analyze all roadway modifications and signal operational changes surrounding the project site that may affect transit speed, reliability and safety.
- If increased transit delay is found, transit priority measures, such as improving transit travel times, and improvements to transit stops and passenger amenities, would constitute appropriate offsetting measures. Once the transit delay analysis results are available, VTA requests a consultation with the City regarding the appropriate offsetting measures.
- VTA notes that it is developing a Speed and Reliability Policy, in coordination with VTA Member Agencies, to make transit more appealing by increasing transit speeds and on-time reliability.

#### Potential Transportation Improvements

- Per the *TIA Guidelines* (Chapter 12. Special Project Types) VTA recommends that the DEIR/TIA analyze anticipated transit demand and capacity in the project vicinity. Improvements to transit service may be necessary to accommodate the increased transit demand in the area.

### Transportation Analysis

- VTA recommends a multimodal approach to the DEIR/TIA, including comprehensive analyses of impacts and mitigation measures for pedestrian, bicycle, and transit modes, such as a transit delay analysis, in addition to automobiles. VTA also recommends the use of other multimodal performance indicators such as non-auto mode shares, transit boardings, and pedestrian and bicycle quality of service measures.
- VTA supports using the City's new VMT-based Council Policy 5-1 in the DEIR for Transportation Analysis purposes. The analysis should also comply with VTA's *TIA Guidelines* (for CMP analysis).
- VTA recommends the DEIR study a westerly approach to the project site across Coyote Creek in the vicinity of Yard Court.

### Pedestrian and Bicycle Accommodations

- VTA requests that the DEIR/TIA analysis of Pedestrian and Bicycle Accommodations consider the completeness of the pedestrian and bicycle network on roadways and intersections adjacent to and nearby the Project site. The analysis should address internal pedestrian circulation within the site as well as pedestrian conditions on streets adjacent to the Project site.
- The project should include exceptional pedestrian and bicycle accommodations, internally and along arterial roadways, to support the volumes of trips expected to, from, and within the area. This includes the study of opportunities to connect the site to the trail access points for the Coyote Creek Trail and the Upper Penitencia Creek Trail.
- VTA supports bicycling as an important transportation mode and provides a wide range of guidance on bicycle facilities, which may be downloaded from [www.vta.org/bikeprogram](http://www.vta.org/bikeprogram).

### CMP Facilities

- The DEIR/TIA should include analysis of all freeway segments that may be impacted. For CMP guidance on the analysis of freeway segments, see Section 2.2.2 of the TIA Guidelines. If the freeway analysis indicates that there will be significant impacts according to CMP criteria, VTA recommends identifying potential mitigation measures and voluntary contribution opportunities for transportation improvements included in the Valley Transportation Plan (VTP) within the project area. VTA requests early coordination with the appropriate agencies to discuss the mitigation measures before the DEIR is released for public review.

### Trip Generation Assumptions

- All auto trip reductions must be clearly explained, documented, and justified in the project's TIA Report. Lead Agencies must state which approach is being used to develop auto trip reductions, if any reductions are claimed. Trip reductions shall be summarized in an Auto Trip Reduction Statement in the Executive Summary of the TIA Report, using the form provided in Appendix C.

### Construction Impacts and Roadway Design

- The DEIR/TIA should consider how temporary road closures and detour routes in connection with project construction would affect access for public transit vehicles and shuttles (VTA

bus, paratransit and private operators), pedestrians and bicycles. The DEIR/TIA should describe all measures to preserve or enhance such access.

- VTA notes the proposed project should comply with applicable BART-related requirements, such as guidelines and procedures related to construction or work next to BART structures. Please see the General Guidelines for Design and Construction Over or Adjacent to BART's At-grade and Aerial Structures document (attached as Exhibit A). VTA requests that the City require the developer to comply with BART construction and design requirements.

#### Transportation Demand Management(TDM)/Trip Reduction

- VTA recommends a TDM plan that establishes a trip reduction target, and third-party monitoring and enforcement. VTA recommends that the City consider the following TDM/Trip Reduction strategies:
  - Project design to encourage walking, bicycling, and convenient access to transit
  - Parking pricing and parking cash-out programs
  - Transit fare incentives such as free or discounted transit passes on a continuing basis or pre-tax commuter benefits
  - Dockless scooters, bicycles, and other micro-transit solutions
  - Bicycle lockers and bicycle racks
  - Bicycle storage integrated into the residential units
  - Showers and clothes lockers for bicycle commuters
  - On-site or walk-accessible services (day-care, dry-cleaning, fitness, banking, convenience store)
  - Preferentially located carpool parking
  - Employee carpool matching services
  - Parking for car-sharing vehicles
  - First/last mile ride sharing services voucher

#### Hydrology, Biological Resources, and Agency Coordination

- VTA requests that the City coordinate with the regulatory agencies who have oversight of Coyote and Upper Penitencia Creeks due to the proximity of the new development to these creeks, particularly the new roadway bridge structure over Upper Penitencia Creek, as well as the presence of special status species. VTA is available to assist with coordination.

#### Cultural Resources

- The Upper Penitencia Creek is a highly sensitive area for buried prehistoric resources. For specific details or questions please contact Samantha Swan at (408) 321-5785

City of San Jose  
August 30, 2018  
Page 5 of 5

VTA looks forward to continuing and improving our coordinated planning efforts with the City of San Jose to contribute toward the sustainable future of the Market Park and the Berryessa Urban Village area. Thank you for the opportunity to review this project. If you have any questions, please contact Brent Pearse at (408) 546-7985.

Sincerely,



Scott Haywood  
Transportation Planning Manager

CC: Charla Gomez, City of San Jose

SJ1804

Comment 5: San José Parks, Recreation,  
and Neighborhood Services

— SAN JOSE —  
**PARKS, RECREATION &  
NEIGHBORHOOD SERVICES**

**Parkland Obligation - Market Park  
(Also known as Flea Market South)**

**6/29/18**

**Project Summary**

- **Planned Development Rezoning file no.:** PDC17-051
- **Location:** South side of Berryessa Road, north of Mabury Road between the Coyote Creek and Berryessa BART
- **Council Districts:** 4; **Park District:** 8; **MLS:** 5; **Planning Area:** Alum Rock; **APN:** 254-17-052;  
**Growth Area:** Berryessa BART/Mabury; **General Plan:** Urban Village; **Zoning District:** Planned Development file nos. PDC09-006 and PDC16-001
- **Project Description Summary:** Signature Project Rezoning (titled Market Park) to allow up to 2,635 residential units and up to 2,291,000 square feet of commercial, 13.99 acres of open space, and 3.72 acres of public parkland on a 60.8-gross acre site.

**Park Impact Ordinance (PIO)/Parkland Dedication Ordinance (PDO) Obligation**

The residential portion of this project is subject to comply with the requirements of the City's Park Impact Ordinance ([PIO- Municipal Code Chapter 14.25](#)) or the Parkland Dedication Ordinance ([PDO - Municipal Code Chapter 19.38](#)). These ordinances, require that new residential development offset the Project's impacts to existing public parks and recreational facilities by dedicating parkland to the City (Parkland Obligation) for public park, trail, and/or other recreational purposes, or through other mitigation outlined in the PDO/PIO.

- **A project that includes 2,635 multi-family units has a Parkland Obligation under the PDO/PIO to provide 18.498 acres of parkland, the equivalent of \$36,363,000.00 in park impact in lieu fees.**

**The PIO/PDO obligation should primarily be met through the dedication of land to the City for park or recreational purposes.** Where projects are unable to fully satisfy their parkland obligation through the dedication of land, the City may accept payment of a park impact in-lieu fees, the construction of new public recreational facilities (such as a turnkey park or trail), improvements to existing City recreational facilities, private recreation credits, or a combination of these solutions. Full satisfaction of the Project's PDO/PIO obligation or an executed Parkland Agreement that outlines how a project will comply with the PIO/PDO is required prior to the issuance of a Parcel Map, Final Map [subdivision], or Building Permit for the Project, as applicable.

**PRNS Project Requirements**

- PRNS has identified the following priorities for the Berryessa BART Urban Village. PRNS wishes to coordinate with the Developer of Market Park to evaluate how available project resources might provide for the following public recreational amenities, including land dedication and development on site, wherever applicable:
  - a. **Regional Trails** – The project must provide for the construction of the Coyote Creek and Penitencia Creek Trail segments that are within the project area, including any bridges and under-crossings that are needed for safe pedestrian connectivity.
  - b. **Development of Land-banked Sites** – Development of nearby undeveloped city parklands, including at least partial development of two park sites that were dedicated to the City with the Flea Market North Project (Tract 10160) and construction of the Newbury Park site.

- c. **New Parks** - Parkland dedication and turnkey development of 6 acres of new parks within the project area proposed for rezoning with the Market Park Project (PDC17-051).
  - d. **Community Centers** – Improved access to recreational services for residents of the Urban Village. Potential solutions may include community center space within the Project or Urban Village, improvements to existing centers within the 3-mile level of service area, or offsite acquisition.
  - e. **Supporting Public Spaces** – Provision of privately owned and publicly accessible multi-use plazas or private recreation areas including park-like amenities that supplement public facilities within the area.
- PDO/PIO resources provided by the new residential development may not be sufficient to fully develop the above community amenities, sustainable transportation infrastructure, and public park lands needed, that are all needed for a complete park and recreation system serving Market Park and the Urban Village. The Project should explore the following infrastructure financing approaches as part of the regulatory compliance process:
    - a. The proposed trail improvements are sustainable transportation infrastructure that reduce Vehicle Miles Traveled (VMT) and provide mitigation for traffic congestion and nitrogen deposition. Recognizing these benefits to the project, the Project should explore supplemental financing for trail improvements as traffic and CEQA mitigation. The project should:
      - i. Evaluate the amount of VMT reduction applicable trail infrastructure; and,
      - ii. Calculate the reduction in traffic mitigation (VMT) fees proportional to the trail’s impact on VMT’s and apply this financial benefit toward the cost of trail construction; and,
      - iii. Calculate the reduction in Nitrogen Deposition Fees, required under the Santa Clara Valley Habitat Conservation Plan, and apply this financial benefit toward the cost of trail construction.
    - b. Community and Neighborhood Centers are significant community benefit amenities and should be considered as an amenity under the Urban Village Implementation and Amenity Framework.
      - i. Funding to support the dedication and construction of Community Center infrastructure should be provided by the Project’s Village Amenity Contribution (VAC) under the Urban Village Amenity (UVA) Program.
      - ii. For discussion purposes, the Project should consider a 10,000-20,000 square foot facility or condominium to provide community services to the Urban Village and neighboring community.
      - iii. Pursuant to the Berryessa Urban Village Planning Process, the community may choose to prioritize this improvement within the project.

**PDO/PIO - Park and Recreational Priorities**

The Berryessa BART Urban Village, including the Market Park Project, is a rare opportunity to develop a comprehensive park and recreation system with access to trails, parks, sports facilities, commerce, and regional transit. PRNS has several identified several priority park and recreation needs within the PDO/PIO nexus for this project, these are listed below. The Berryessa BART Urban Village planning process will help coordinate these needs with other community priorities. Successful delivery of a complete recreation system, will also require balancing financial resources and land dedications at strategic points within the Market Park development as well as at other projects within the Urban Village.

Staff has also been in discussions with the Developer, regarding the Developer’s intent to deliver new parkland and Turnkey Park Improvements as part of future development under the Original Master Rezoning (PDC09-006) at the Market Park Project Site. PRNS understands that the exact location, dimensions, and arrangement of park and recreational facilities may be modified from the prior rezoning (PDC09-006) with the Market Park Project Rezoning. Staff will be actively involved in the Berryessa BART Urban Village planning process as well as urban design decisions for the Project Rezoning. The following recommendations for the Project site are provided to help guide negotiations:

1. The project must provide the necessary access and property rights to facilitate development of the Coyote Creek and Penitencia Creek Trails through the Project Site.
  - a. The Coyote Creek Trail should be developed as described in the September 2011 Coyote Creek Trail Master Plan (from Montague Expressway to Watson Park).

- b. The Penitencia Creek Trail must be developed along the south side of Penitencia Creek. This will provide enhanced pedestrian connectivity, minimize habitat disruption, and increase trail safety.
      - i. The south side alignment is consistent with the confluence of trails as noted in the Coyote Creek Trail Master Plan and aligns with partial trail development as constructed by the VTA with the Berryessa BART Station improvements.
      - ii. The Coyote Creek Trail will require a pedestrian bridge across Penitencia Creek to sustain continuity over the confluence of waterways.
      - iii. To ensure public safety and compliance with roadway safety regulations, construction of the Penitencia Creek Trail will likely require widening of the creek corridor as well as modification and design of bridges so that the trail has sufficient clearance for safe undercrossing at Market Park access points along Berryessa Road. Early coordination with the City's Trail Program Manager Yves Zsutty and the Santa Clara Valley Water District is recommended.
      - iv. Additional trail related design comments are provided in Attachment A.
2. The Developer and City staff are proposing a Turnkey Improvement and Excess Credit Agreement for initial development of park sites previously dedicated as part of the Flea Market North Project (PDC09-006 and PDC16-001). Pursuant to Council approval of this Agreement the Developer may be awarded Excess Parkland Credits. These Excess Credits would be available to use in partial satisfaction of the Project's PDO/PIO obligation, outlined above. Resources for additional development phases of these parks may also come from other projects within the Berryessa BART Urban Village area to offset other competing needs within the Market Park Project.
3. PRNS recommends that the Market Park Project provide a central park of two to four acres connecting the Coyote Creek Trail to the Berryessa BART Station. This proposal is reflected in the draft site plan recommended by PBCE and should be designed with the following in mind:
  - a. Staff supports the PBCE proposal to have this park run from the Berryessa BART Station or adjacent plaza to at least Sierra Road.
  - b. Safe signalized pedestrian access across future segments of Sierra Road must be provided to connect the trail and any green space along the creek to the central park common.
  - c. Pedestrian crossings and access points should be provided between the park and the Berryessa BART Station's north and south entrances. Staff recommends a consistent park width of 180'-200' to ensure proper framing and interface between the BART station entrances and the park.
  - d. Staff would like to discuss innovative site layouts that provide commercial activity close to the park. Such proposals should encourage commerce that complements park amenities and attracts park users.
4. In addition to the central park, Staff has identified two potentially acceptable locations for creek side parks with a final preference dependent on streetscape and pedestrian accessibility. The Developer should provide information on any environmental restrictions, noise levels, flood management needs, existing setbacks/encumbrances, and any other considerations that might impact development of these sites as a park.
  - a. Northwest corner of the development near the confluence of the Coyote Creek and Penitencia Creek Park as consistent with the PBCE draft site layout. Key concerns: Sierra Road crossing, park shape, and riparian setback.
  - b. North center of site along Penitencia Creek. A larger building setback from the creek could accommodate at more rectilinear park space. Key concerns: visibility, access, and riparian setbacks.
5. Staff supports activation of the Coyote Creek Trail and Penitencia Creek Trail corridors with amenities that complement the trail. San Jose's Riparian Corridor Policy (RCP) as well as regional regulations like the Santa Clara Valley Habitat Conservation Plan (HCP) prescribe setbacks for lighting and development near riparian areas. Setback areas are not eligible for parkland dedication credit under the PDO/PIO. The Developer should consult with PRNS prior to the proposal of any parkland dedication within 200' of a riparian tree canopy.

- a. The Developer should evaluate the impact of lighting within the Riparian setback as part of the CEQA compliance for the project and identify any acceptable mitigation to address impacts to wildlife corridors.
6. As part of the Berryessa BART Urban Village Planning, staff will be evaluating how to best provide the Village with access to Community Center services and indoor recreational amenities. The nearest Community Centers currently serving the project are more than a one-mile away at Roosevelt or Mayfair Community Centers. Staff is interested in exploring the following solutions and invites feedback from the Developer:
- a. Acquisition of suitable condominium space and parking (10,000 to 20,000 square feet) within the Development or Urban Village.
  - b. Acquisition of property and/or built facilities offsite but close to the project area (<1 mile).
  - c. Rehabilitation or replacement of existing PRNS community centers serving the project area, including but not limited to Berryessa Community Center.

### **Private Recreation Credit**

Private Recreation Credits, which allow a credit of up to 50% towards the project's park impact in lieu fees, could be available for on-site recreational amenities that meet the Eligibility requirements listed in Section 3. Schedule of Credits included in [Resolution no. 73857](#). Private Recreation Credits are calculated on actual square footage and the entire development project (not on individual development phases).

Required common open space areas, landscape corridors, emergency vehicle access easements, walkways, unsuitable topography areas, riparian corridors, and environmental mitigation areas, stormwater low impact development areas, **are not** eligible for Private Recreation Credits. Applicants typically apply for Private Recreation Credits after Planning development permits are approved. Private Recreation Credits will not be provided for any features required to meet Signature Project requirements. Signature Project recreational features must be provided above the means to meet the parkland obligation

- PRNS always prioritizes the provision of public parks and recreational infrastructure above any credits for private recreation. Consistent with this approach, PRNS will prioritize any credits toward the Project's PDO/PIO obligation in the following manner:
  - 1) *Parkland dedications;* 2) *Turnkey park/trail improvements;* 3) *publicly accessible private recreation areas;* 4) *all other private recreation areas;* and, 5) *park in-lieu fees.*
- Privately owned plazas, pedestrian connections, and public spaces should integrate additional amenities into the development. Such improvements enhance quality of life, create opportunities for social interaction, and can even supplement the overall park and recreation system. Where the private recreation credit may be available for such improvements, the City prioritizes credit for publicly accessible areas over private access.

### **Affordable Housing Units**

If the project includes onsite deed restricted affordable/low income housing units that meet the City's Affordable Housing criteria and the policies of Resolution 75540, these units could qualify for a 50% credit towards the park impact in lieu fees.

- Provide the number of on-site units that will be deed restricted affordable housing units.

### **Conclusion**

Applicants are encouraged to meet with PRNS Planning staff at their earliest convenience to develop a schedule to complete the Parkland Agreement. We look forward to collaborating with the developer to identify solutions that fulfill the Project's parkland obligation.

Please contact David McCormic, Associate Landscape Designer, by phone at (408) 535-8433, or email at [david.mccormic@sanjoseca.gov](mailto:david.mccormic@sanjoseca.gov) to schedule a time to meet to discuss the Parkland Agreement.

## **ATTACHMENT A**

PRNS has identified the following base requirements for trail improvement along Coyote and Penitencia Creeks. As part of design development, the Developer should work in close coordination with PRNS to ensure the designs are consistent with City standards and public safety needs.

### **General**

- Design of trail should be consistent with San Jose Trails “Toolkit”:  
<http://www.sanjoseca.gov/DocumentCenter/View/77694>
- The Coyote Creek and Penitencia Creek Trails are designated as part of the Bay Area Ridge Trail and the National Recreation Trail, so a full Class I Bikeway experience with grade separated crossings is an important design objective.

### **Coyote Creek Trail**

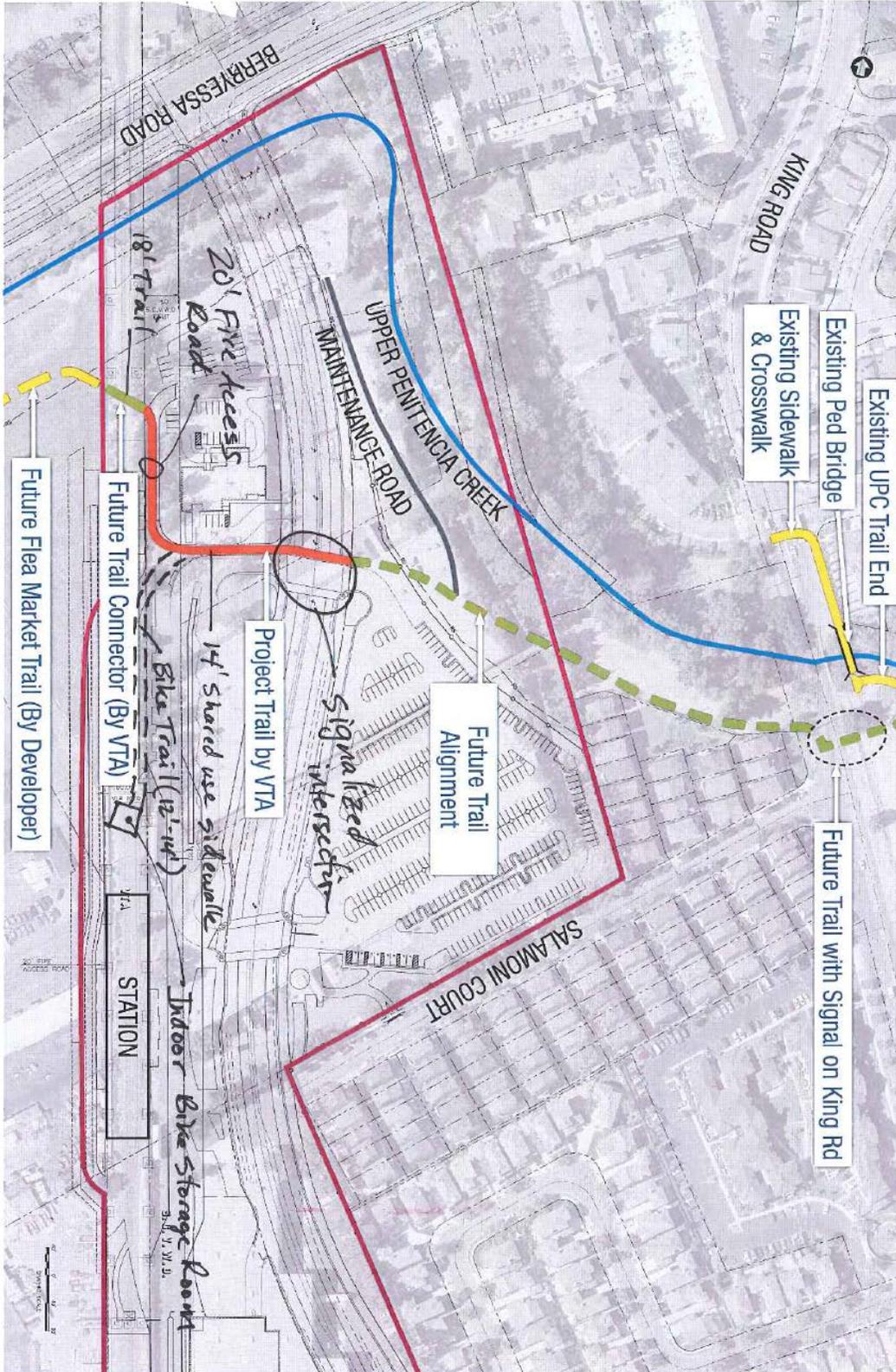
- Class I Bikeway trail development (per Caltrans Highway Design Manual and local guidelines) for the project from the north side of Berryessa Road, generally southward to Mabury Road.
- Modify existing Berryessa Road Under-Crossing to be above a 10-year flood level or better. Sustain a 12’ clearance, but height may be reduced to no less than 10’ to keep the surface above the 10-year flood elevation.
- A pedestrian/bicycle bridge may be needed for the trail to be constructed across Penitencia Creek.
- Alignment should be designed at a Top of Bank location whenever possible, and meander through open space between Sierra Road (extension) and creek channel.
- Develop the trail per the Council-approved Coyote Creek Trail Master Plan:  
<https://sanjoseca.gov/DocumentCenter/View/9350>

### **Penitencia Creek Trail**

- Class I Bikeway trail development along the south side of Penitencia Creek from the existing trail improvements at Berryessa Station Way to the confluence with Coyote Creek.
- Ensure development of under-crossings beneath proposed roadways to be above a 10-year flood level or better with at least a 12’ clearance where ever possible after maintaining flood level clearance.
- There are no recent master plans for work in this area, but attached graphic depicts draft assumptions at the time that the Berryessa Station Way to King Road trail was developed. The design assumption is that the trail will follow the south bank of the creek. This approaches connects with existing trail infrastructure and provides the greatest recreational and public safety benefit for adjacency to new developments.

Please refer any specific questions regarding the trails to Yves, Zsutty, Trail Program Manager, at [Yves.Zsutty@sanjoseca.gov](mailto:Yves.Zsutty@sanjoseca.gov) or by phone at 408.793.5561.

Draft Assumptions for Future Development of the Penitencia Creek Trail  
(Proposed Interface with Berryessa BART and adjacent areas)



FOR DISCUSSION ONLY - OS markup 1-23-13