

## **Employment Lands Preservation**

The City Council adopted the *Framework for Preservation of Employment Lands* on October 23, 2007 to preserve remaining industrial and commercial lands in the City of San José.

This policy and the Joint Mayor-Councilmember (Nguyen, Pyle, Williams) Memo provide the criteria to maintain no net loss of employment capacity on lands designated in the San José 2020 General Plan for commercial or industrial uses. Proposals for changes in land uses on designated employment lands in the City of San José are subject to the criteria in the Framework and the associated Joint Mayor-Council Memo.

For more information on this topic, please contact Andrew Crabtree, Principal Planner at [andrew.crabtree@sanjoseca.gov](mailto:andrew.crabtree@sanjoseca.gov)

# FRAMEWORK FOR PRESERVATION OF EMPLOYMENT LANDS

## BACKGROUND

### 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 Framework. The 2005 Framework was modified on November 15, 2005 (see attachment). 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. 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.

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.

### **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.

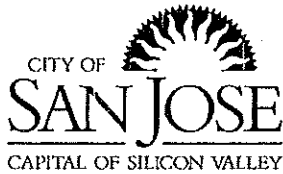
#### 1. Capital Contribution for Investments in Economic Development

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.



# Memorandum

TO: City Council

FROM: Mayor Chuck Reed  
Councilmember Madison Nguyen  
Councilmember Nancy Pyle  
Councilmember Forrest Williams

SUBJECT: SEE BELOW DATE: October 19, 2007

*Forrest Williams* *Chuck Reed*  
APPROVED: *Madison P. Nguyen* DATE: *10/19/07*  
*J. Williams* *NP*

SUBJECT: PROPOSED FRAMEWORK FOR PRESERVATION OF EMPLOYMENT LANDS

## RECOMMENDATION

Approve staff recommendations with the following clarifications and changes:

1. The following are not employment land conversions and are not governed by the Framework:
  - Rezoning that are consistent with existing General Plan land use designation;
  - Rezoning that are consistent with existing Specific Plan land use designation;
  - Changes from Industrial Park uses to Combined Industrial/Commercial uses;
  - Conditional Use Permits for Emergency Residential Shelters and SRO's per the Zoning Code;
  - Development of sites in the General Plan designations of Commercial in Neighborhood Business Districts under Discretionary Alternative Use Policies as appropriate, with preference for mixed use; and
  - Public Schools.
2. Commercial uses or a combination of industrial and commercial uses should be considered on small or unusually configured remnant industrial designated sites per the proposed Discretionary Alternative Use Policies. Staff is directed to develop specific criteria to allow for some flexibility on such sites. Other uses for small or unusually configured industrial sites will be considered by the General Plan Task Force at the appropriate time.
3. Small, isolated remnant commercial parcels that are degrading neighborhoods and are no longer suitable for commercial uses may be considered for conversion for affordable housing projects which include Extremely Low Income units, and/or schools, assembly uses, and other Public/Quasi-Public uses, secured by a Development Agreement or similar mechanism. Staff is directed to identify such remnant parcels and make the information publicly available.
4. Proposals to designate employment lands for conversion to non-employment uses in support of public infrastructure, such as BART or Light Rail, must be accompanied by a proposal to offset the loss of Light Industrial or Heavy Industrial lands as recommended by City staff. Proposals for conversions to residential use in support of BART or Light Rail should include a significant portion of Extremely Low Income (ELI) units and other Affordable units, secured by a Development Agreement or similar mechanism. It is recommended that staff

coordinate the direction above with discussions that are currently in progress on a proposal for citywide inclusionary housing.

5. There are currently 12 pending General Plan Amendments involving the potential loss of 147 acres of employment lands. These pending applications could generate an estimated 3,600 dwelling units. All pending conversion applications will be processed and evaluated under the Preservation Framework and agenda'd for Council consideration at one time, no later than the end of March 2008, if ready.
6. Staff is directed not to pursue a mitigation fee program nor monetary capital contributions for economic development.

## BACKGROUND

The Framework to Evaluate Proposed Conversions of Employment Lands to Other Uses was originally approved by the City Council in April 2004. Direction was given to staff at our March 2007 Council Study Session that the Framework be updated. On May 15, 2007, City Council unanimously approved strengthening the employment lands conversion criteria and directed staff to modify the Framework as such. Staff has acted upon this direction and drafted a proposed Framework for Preservation of Employment Lands that is before us now.

City Council actions since 1990 have led to the conversion of over 1,400 acres of prime employment lands, a conversion of 9% of all employment lands. We need to send a message that our commitment to land use, economic development and a fiscally sustainable city is a long-term proposition. We must discourage conversion of employment lands that are based on current market demand and pricing. We need to preserve employment lands to support driving industries, as well as our business-support and people-serving industries, jobs, and tax base. We need to generate more revenue to support residents. We need to eliminate the structural budget deficit.

While we take a stand on preservation of employment lands, let us reiterate that our commitment to leading the South Bay in housing production continues to be strong. Staff estimates a General Plan residential holding capacity of approximately 75,000 dwelling units including allocations in the Greater Downtown Core Area and North San Jose. We must encourage and work with our housing partners to achieve full build-out of the General Plan capacity.

Comparing San Jose data with other Silicon Valley cities provides a grim picture of our current fiscal status. Total revenue per capita is 1.4 times less in San Jose than in Santa Clara and 2.1 times less than in Sunnyvale. San Jose continues to be the County's bedroom community with 0.9 jobs per employed resident, trailing badly behind Santa Clara with 2.1 jobs per employed resident, and Sunnyvale with 1.2 jobs per employed resident.

Approval of the proposed Framework will be our opportunity to intentionally slow down the rate of employment land conversions while the General Plan Update is in development. Our approach is not misguided. Rather it is an opportunity to correct the existing imbalance and create opportunities for jobs and housing.

The San Jose Metro Area is ranked as the 10<sup>th</sup> Major Manufacturing Center in the US. Other major cities in the country including San Francisco, Los Angeles, Oakland, Boston, Chicago, Cleveland, New York, and Portland, are facing similar pressures on conversion of employment lands, and are similarly engaged in preservation and zoning protection of their industrial lands.

Your support of these recommendations is appreciated.