CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

File No. PDC12-001. Curtner/Union Retail Project. A Planned Development Rezoning from the CP Commercial Pedestrian Zoning District to the A(PD) Planned Development Zoning District to allow for commercial uses including a restaurant with a drive-through on the 1.34 gross acre site. The project is located in Council District: 9.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does** contain a listed toxic site. Pursuant to the conclusions of the Initial Study, the Director of Planning, Building & Code Enforcement has prepared a draft Mitigated Negative Declaration for this project.

The purpose of this notice is inform the public of the opportunity for public review and comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **March 29, 2012,** and ends on **April 17, 2012.** A public hearing to adopt the Mitigated Negative Declaration has not been scheduled as of the date of this notice. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at http://www.sanjoseca.gov/planning/eir/MND.asp

For additional information, please contact the project manager, Lesley Xavier, via e-mail at lesley.xavier@sanjoseca.gov or by phone at (408) 535-7852.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

John Davidson

Deputy

Circulated on: March 29, 2012

DRAFT
MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Curtner/Union Retail Project

PROJECT FILE NUMBER: PDC12-001

PROJECT DESCRIPTION: The project proposes to redevelop the 1.34 gross acre, triangular-shaped site with new retail and commercial uses, and rezone the site to the *A(PD) Planning Development Zoning District*. The proposed project would include the demolition of up to seven existing structures and surrounding paved areas, and the development of up to 9,400 square feet of retail/restaurant and commercial uses, including a 1,375 square foot retail space, a 4,134 square foot bank, and a 3,891 square foot fast food restaurant with a drive-through. The proposed development would be surrounded by surface parking spaces, a driveway for the drive-through restaurant, surrounding paved walkways, and landscaping.

PROJECT LOCATION & ASSESSORS PARCEL NO.: The project site is located at the northwest quadrant of the Curtner Avenue and Union Avenue intersection in the City of San Jose.; APN's: 412-22-036, 412-22-037, 412-22-038, and 412-22-039.

COUNCIL DISTRICT: Council District 9

APPLICANT CONTACT INFORMATION: J.P. DiNapoli Companies, Inc.
Peter Larko, AICP
99 Almaden Boulevard, Suite 565
San Jose, CA 95113
(408) 535-2224

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

I. AESTHETICS – The project will not have a significant impact on this resource, therefore no mitigation is required.

II. AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY – The proposed project includes the following construction practices that can reduce construction dust/air quality impacts to a less than significant level. BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall be implemented during construction of the proposed project:

- All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material offsite shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Sweep daily (with water sweepers) all paved parking areas and staging areas at construction sites.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Vegetative ground cover (e.g. fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.

- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

IV. **BIOLOGICAL RESOURCES-**If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

VI. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

VII. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

VIII. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.

IX. **LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

X. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. NOISE – The project will not have a significant impact on this resource, therefore no mitigation is required.

XII. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIII. PUBLIC SERVICES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIV. RECREATION – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE –The project includes standard and mitigation measures to avoid or reduce temporary air quality, biological, hydrology and water quality, and transportation impacts to a less than significant level. As described in the respective sections of the Initial Study, with implementation of standard and mitigation measures the proposed project would not result in other significant environmental impacts or substantially adversely affect human beings directly or indirectly.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **April 17, 2012**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: March 29, 2012

Deputy

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