

October 22, 2023

The Honorable Alfredo Pedroza, Chairperson
Metropolitan Transportation Commission
375 Beale Street
San Francisco CA

Dear Chairperson Pedroza and members of the Commission,

The intent of this letter is to alert the Commission to multiple issues with the proposed allocation of \$30M RM3 Capital funds for the San Jose Diridon Station Project to Santa Clara Valley Transportation Authority (VTA) as follows:

- **VTA is NOT the lead agency for the project**
- **The parcels in question are not (and cannot possibly be) required for the project**
- **The City of San Jose artificially inflated the value of the parcels** through a CEQA determination that the Diridon Station Area Plan (DSAP) takes precedence over the Diridon Integrated Station Concept (DISC)
- VTA, Santa Clara County and the City of San Jose have a **TOJD funding plan** in place
- **The agreed sale price is \$23.8M, not \$30M**

This letter concludes with a recommendation that the Commission direct VTA, Santa Clara County and the City of San Jose to proceed with their original **TOJD** funding plan and preserve RM3 funds until a lead agency responsible for delivering the project has been identified.

1) VTA is NOT the lead agency for the Diridon Station project

The Peninsula Corridor Joint Powers Board (PCJPB AKA "Caltrain") own the right of way (ROW) for the tracks, the Historical train depot and multiple parcels currently used for parking.

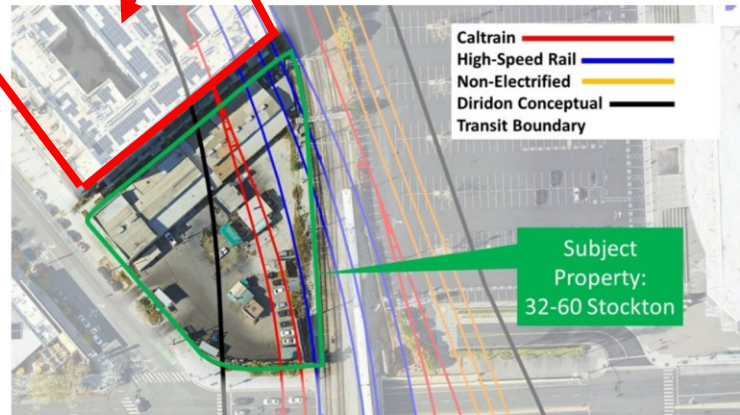
While VTA is currently the lead agency for the BART Phase II extension to San Jose, VTA staff and consultants have steadfastly refused to integrate the "Diridon BART station" into the Diridon Integrated Station Concept (DISC) stating categorically over the last 10 years that the Diridon Station project is "*a separate project*".

2) The parcels in question are not (and cannot possibly be) required for the project

The October 17th San Jose City Council meeting included a presentation showing the two parcels (**green line**) as well as the "*Diridon Conceptual Transit Boundary*" (**black lines**) but staff failed to point out that such an "alignment" would impact approximately \$100M of parcels (Parcels A, B & C) slated for **Google affordable housing development as well as the entire brand new 162-unit Vespaio Apartment complex** (<https://www.vespaio.com/>) **marked in red**

Background

- 32 & 60 Stockton Ave (Subject Property) are located within footprint of anticipated future rail infrastructure
- City, VTA, Caltrain, the California High Speed Rail Authority, and the Metropolitan Transportation Commission need to acquire Subject Property to facilitate the California High-Speed Rail and San José Diridon Station construction projects



SAN JOSÉ

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Vespaio 162-unit apartment complex with the 60 Stockton Avenue tire shop to the right (Caltrain tracks are visible in the background).

3) The City of San Jose artificially inflated the value of the parcels through a CEQA determination that the Diridon Station Area Plan (DSAP) takes precedence over the Diridon Integrated Station Concept (DISC)

On October 18th (one day after the October 17th Council meeting), the following article appeared in the Business Journal:

[San Jose is paying an \\$8M premium for a pair of Downtown sites it recently approved for a 20-story apartment tower - Silicon Valley Business Journal](#)

*“Less than a year after approving **Urban Catalyst** and Aedis Architects' **Apollo project**, the city is buying the sites it would have sat on for an expansion of Diridon Station that's been in the works since long before the apartment development.”*

“The Santa Clara Valley Transportation Authority will pay 58% more for a pair of San Jose properties needed for a long-planned revamp of the city's Diridon Station than they sold for within the last three years.”

“It was unclear why the city or VTA didn't step in to purchase the properties sooner at a lower cost.”

“Despite being aware of the plans to redevelop Diridon, the city's planning department last November [approved](#) the Apollo project.”

Staff Recommendation:

Consider the Addendum to the Downtown Strategy 2040 Final EIR, and Addenda thereto in accordance with CEQA. Approve a Site Development Permit and Vesting Tentative Map.

The following article appeared in the press the next day:

Bullet train or housing? San Jose project begs question

Approval of 500 apartments near Diridon Station conflicts with rail authority plans



Urban Catalyst's Erik Hayden and a rendering of the developer's Apollo project (Urban Catalyst)

*"Responsible for developing more than \$3.5 billion in real estate projects, including over 2,300 residential units in the California Bay Area, Mr. Hayden has experience in acquisition, contract negotiation, due diligence, risk assessment, financing, construction, and disposition of multifamily, single family and large mixed-use and master planned developments. He maintains relationships with a broad network of property owners, enabling him to identify and acquire prime investments. **Mr. Hayden also has expertise in navigating projects through the entitlement process by working with elected officials, community groups, and political organizations to gain support and get projects approved.**"*

<https://www.urbancatalyst.com/erik-hayden>

Mr. Hayden commented as follows:

"Urban Catalyst hasn't decided whether it will build Apollo — which would cost north of \$100 million — or list the project for sale, founder Erik Hayden said in an interview. The developer doesn't have a dedicated funding source for it, and it doesn't plan to start drafting its construction documents anytime soon."

"Urban Catalyst knew about the rail authority's plans for 32 and 60 Stockton Avenue before it partnered with the late architect Thang Do, Apollo's chief designer, to acquire both parcels."

“We thought that housing would have a much greater benefit, and the planning director agreed with us,” Hayden said. *“If you’re going to do density in San Jose, this is the spot. You’re next to Diridon Station. You’re across the street from Whole Foods. This is where density belongs.”*

“If Urban Catalyst chooses to build Apollo, the specter of eminent domain shouldn’t impact the project’s construction timeline, according to Hayden. And even if it did, the way eminent domain usually works is a landowner gets an appraisal for the value of the property in question, and the government agency taking eminent domain action pays 120 percent of the appraisal, Hayden said.”

“No matter what we do, we would always assume that if they did ‘buy us out,’ it would be for fair value,” he said. “That wouldn’t necessarily be our number-one plan. But as far as a worst-case scenario, it’s not so bad. <https://therealdeal.com/sanfrancisco/2022/11/11/bullet-train-or-housing-san-jose-project-begs-question/>

Indeed, everything went according to plan and, having received its entitlement for a project he never had any intention of building, Mr. Hayden walked away from his investment with a nice \$8.7M tax-free profit courtesy of an IRS Section 1033 exchange letter from the City of San Jose.

Key Terms

- Price: \$23,800,000
- Subject Property consists of two contiguous parcels with ± 1.12 acres (48,830 square feet) of land containing a combined 16,000 square feet of building space
- General plan designation: Downtown
- Zoned: DC – Downtown Primary Commercial
- The City, at its discretion, may assign the purchase and sale agreement to the VTA.
 - The VTA would assume the purchase and sale agreement under the same terms and conditions.
- Removal from title of all outstanding debts, including taxes and a \$5,600,000 deed of trust.
- Purchase is contingent upon receiving Metropolitan Transportation Commission funding authorization, which is expected to be heard on October 25, 2023.
- As-is acquisition, buyer to assume closing costs.
- Buyer to deliver an I.R.S. §1033 exchange letter to seller at closing.
- The anticipated close is 30 days after the execution of a purchase agreement, but in no event later than December 31, 2023.



Life does not get any better than this...

4) VTA, Santa Clara County and the City of San Jose have a **TOJD** funding plan in place

On November 16, 2022 the MTC Commission approved Item 12c on consent
MTC Resolution No. 4412, Revised. Regional Measure 3 (RM3) Letter of No Prejudice to the Santa Clara Valley Transportation Authority (VTA) for the San Jose Diridon Station Project
<http://mtc.legistar.com/gateway.aspx?M=F&ID=375dd498-ae9b-4b48-9e61-d5d9fc422786.pdf> which included a Project Funding Plan and Schedule showing the following source of funds for the proposed ROW acquisition as follows:

- Santa Clara County **2015 Measure B Housing Bonds**
- **VTA Joint Development Funds**
- City of San Jose Local (**Multifamily Housing** Revenue) Funds

November 16, 2022
 Attachment U
 MTC Resolution No. 4412
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Regional Measure 3
 Letter of No Prejudice Project Summary
 Project Funding Plan and Schedule

RM3 Project Number	16
Project Title	San Jose Diridon Station Project
RM3 Replacement Funding Source	2015 Measure B Funds, VTA Joint Development Funds, and City of San Jose Local Funds

Project Funding Plan				Project Schedule	
Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV					
	ENV Subtotal		\$ -		
PSE					
	PSE Subtotal		\$ -		
ROW	2015 Measure B Funds, VTA Joint Development Funds, and City of San Jose Local Funds (RM3 Replacement)	Y	\$ 30,000	Nov-22	Dec-28
	ROW Subtotal		\$ 30,000		
CON					
	CON Subtotal		\$ -		
Capital Funding Total			\$ 30,000		

5) The agreed sale price is \$23.8M, not \$30M

There is no mention of this \$6.2M discrepancy in the staff memo.

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Recommendation

- 1) The City of San Jose having agreed with the developer that the two parcels in question should be rezoned for housing automatically disqualifies VTA's application for RM3 funds which are restricted by the ballot measure text: *"Expand Diridon Station to more efficiently and effectively accommodate existing rail service, future BART and high-speed rail service, and Santa Clara Valley Transportation Authority (VTA) light rail and buses."*
- 2) VTA, Santa Clara County and the City of San Jose should revert to their initial funding plan to acquire the parcels as follows:
 - Santa Clara County **2015 Measure B Housing Bonds**
 - **VTA Joint Development Funds**
 - City of San Jose Local (**Multifamily Housing** Revenue) Funds

Respectfully presented for your consideration

Roland Lebrun