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To: Mayor Bates and Members of the City Council

From: Community Services United dba Berkeley Flea Market

Re: Caltrans Grant for Development of air rights at Ashby BART Station

I am the counsel for Community Services United (“CSU”), which for 27 year has operated the Berkeley Flea Market on the West parking lot of the Ashby BART station. I write to express CSU’s deep concern that the Council decided to fund the preparation of a plan for a development on that parking lot without adequate public input and without considering a previous City funded study, which concluded that the development of the site was not economically feasible. We ask that the Council reconsider its decision to support development of the site.

Our concerns can be summarized as follows:

- **Lack of public input**
- **Failure to consider prior feasibility studies before approving the grant**
- **Failure to inquire into the claims, commitments and projections made in the proposal**
- **Failure to address the impact on the Berkeley Flea Market**
- **Failure to consider the project in relation to the Ed Roberts campus**

Lack of public input

The proposed development will displace the Berkeley Flea Market, which serves tens of thousands of customers every year and provides a livelihood for hundreds of vendors. The market has been thriving at its present location for 27 years. It is one of the most diverse public institutions in Berkeley. It is an outlet for local crafts people. It has been an inexpensive source of goods and furnishings for those in our community who cannot afford to shop at expensive retail outlets. All the profits generated by the market go to support a range of community organizations in Berkeley. In addition, a wide variety of community groups have raised money to support their activities by selling at the Flea Market. The Flea Market is a major stakeholder in the South Berkeley community. We would like to have had a chance to comment to the Council before it voted. Although Councilmember Anderson, accompanied by Ed Church, the project director, attended a meeting of our all volunteer board on September 13, 2005 to discuss the planned development, we were not informed that the grant proposal would be on the December 13 Council agenda, and therefore did not have an opportunity to address our concerns to the Council before its vote. Nor was that opportunity provided to others in the community who have concerns about the proposal.

There is much talk in the grant proposal about seeking public input into how the development should take shape, but on the crucial question of *whether* there should be any development at all, major stakeholders who might, for very good reasons, be opposed to development have been excluded.

Failure to consider prior feasibility studies before approving the grant

The Council appears to have forgotten that in 2001 it commissioned a study of the feasibility of building on the exact same site. That very comprehensive and independent study prepared by staff at the Haas business school concluded that for a number of reasons, primarily the high cost of providing replacement parking, the project was not feasible. The cost of that study was very close to the cost to the City of matching funds for the current CalTrans grant proposal. In the materials presented to the Council by the City Manager, the study is mentioned in such a way as to minimize its significance and downplay its conclusions. The City Manager's memo states: "A study of development feasibility at the West parking lot undertaken on behalf of the City in 2002 concluded that the requirement for full BART replacement parking was a significant impediment to undertaking development at the site." In fact, the report went further and included that development was "not currently feasible." It is troubling that no one on the Council asked the proponents of funding a new study to explain why what was not feasible in 2002 had become feasible in 2005. The study is not even mentioned in the actual grant proposal to Caltrans. We are familiar unfortunately with proponents of policies discounting intelligence that throws those policies into question, but we hope not to see this unfortunate pattern replicated on a local level.

Failure to inquire into the claims and commitments made in the Caltrans grant proposal

A number of serious questions were neither asked nor answered before the Council voted to approve the CalTrans proposal.

What About Parking?

The Caltrans grant will fund the development of a plan for housing by proponents with a vested interest in seeing housing built. The 2001/2002 study was genuinely independent. It is all the more troubling that the Council did not require the South Berkeley Neighborhood Development Corp. (SBNDP) to address the conclusions of that study. The staff report claims that

BART has modified its parking replacement policies to focus on ridership rather than parking. To the degree that an appropriate analysis demonstrates that development at a BART Station provides BART riders, BART *may* no longer require a one to one replacement of parking when development occurs on a parking lot as was the case a few years ago [emphasis added].

Note the hypothetical. BART "may" not require one to one replacement. Or it may. And how many fewer spaces *might* it require? BART's modified policy requires it to evaluate development projects on their "ability to generate transit ridership, fare revenue, lease payments, parking revenues . . . and/or cost savings." The degree to which this project will increase BART ridership is

unknown. The project is billed as housing for City workers who may find means other than BART to go the short distance to downtown, or will make short BART trips that generate little revenue. The project will not generate parking revenue.

A comparison of the assumptions in the 2001/2002 with those in the CalTrans grant proposal throws further doubt on whether changed conditions invalidate the conclusion of the 2001/2002 report. The 2001/2002 report assumed that the project would involve the construction of 249 units of rental housing. The Caltrans grant contemplates the construction of “at least” 300 units of housing, a 27% increase in density, requiring a corresponding increase in parking spaces.*

What about financing?

The 2001/2002 study determined that to provide the necessary parking, developers would have to construct a two story parking garage. Rental housing would have to be built on a slab above the parking structure. The study concluded:

Any benefits to development receives from nominal land costs are significantly reduced, if not completely eliminated by the costs associated with constructing replacement parking . . . In addition, parking is provided at a significant cost to the development, with no resulting revenue. As a result, the project has no means to recoup these costs to permanent or LIHTC financing.

A lengthy article in the January 4, 2006 East Bay Express (“*Ghost Town, What if they built the development of the future and no one came?*” By Eliza Strickland) details the sad failure of the transit village at the Fruitvale BART station to live up to the promises of its developers. It points out that retail tenants “will be absolutely essential to many of the Bay Area’s other proposed transit villages,” because “retail tenants . . . generate higher revenues than either residential or office tenants.” It’s not at all clear that there will be room for substantial retail in the proposed Ashby BART development. The CalTrans grant proposal to which the city has now lent its support, provides no cost analysis of the project only vague assurances that the project will be able to “garner financial resources to facilitate the process, beyond those available to the cash-strapped governmental entities.” Too often the city has been left holding the bag when promised funding fails to appear. And if adequate funding does not materialize, we should be concerned about the kind of shortcuts that will be necessary to make the project economically viable.

Will the housing that is built be affordable?

The proposal admits that “some public funding may be necessary to realize goals for low income housing. . . .” (p. 7) Public funding will be all the more important because retail is likely to be a small component of the project. If that public funding is not available and if the developer can not build the maximum 300 units, the cost per unit will go up with a corresponding upward pressure on the price of the unit.

* At the December 13 Council meeting Ed Church indicated that the 300 minimum was based on a miscalculation of the area that could be developed, and that 300 would be the *maximum* number of units that could be built.

What about impact on the community?

The CalTrans grant refers to the project it seeks funding for as a “transit village.” The term “village” invokes tree-lined streets, parks, lawns and rows of houses. It does not invoke a big box of 300 units stacked above a two-story garage. But that in fact is what is likely to be built.

The grant proposal correctly describes the Adeline Corridor from Ashby Avenue south to the Berkeley/Oakland border as economically “depressed for decades.” However its promise that “developing a transit village . . . will revitalize the Corridor” is highly questionable. The development of retail on Ashby Avenue could well siphon off customers to the commercial enterprises that line Adeline/Martin Luther King from Woolsey to Alcatraz Avenue. The grant proposal itself admits that “revitalization will raise land values, which if unchecked, will result in the displacement of many local businesses, most owned by African-Americans, by higher-paying commercial tenants.”

The City Manager’s report calls the BART parking lots “holes in the fabric of what was once a thriving community.” That may be the case, but filling those holes with a parking structure and what may end up being market rate units will do little to restore the community. For now, at least on the weekends, the West parking lot is a thriving marketplace and focus for community expression and economic activity. The Flea Market, which the project will displace, is a model of economic development which does *not* led to gentrification.

The Strickland article cited above comes to a conclusion, which should serve as a useful antidote to the boosterism of proponents of the Ashby BART station development.

If . . . assumptions about the viability of retail development turn out to be invalid the economics of the entire movement [for transit villages] may have to be reconsidered. To make the economic model work, developers might choose to build purely residential developments instead . . . Rather than being lively social spaces where neighbors stroll between shops and bump into each other on the sidewalks, transit villages could turn into boring apartment complexes.”

Behind the rhetoric of the CalTrans proposal which the Council voted to support lies the very real possibility that South Berkeley will end up with a “boring apartment complex,” filled with middle income tenants, displacing the Flea Market and contributing not to the revitalization, but gentrification of the neighborhood.

Failure to address the impact on the Berkeley Flea Market

Both the city manager's report and the CalTrans grant request recognize that the proposed development would displace the Berkeley Flea Market. The staff report comments that the planning process must “consider the impacts such a project could have on the existing use (the Flea Market) . . . and how it can maximize the potential beneficial effects, and minimize potential negative impacts.” That's well and good, but says nothing about the existence of any real alternative location for the Flea Market in the South Berkeley area.

The grant proposal lists "Integration of the Berkeley flea market into the area." among the elements that should be included in any planned development proposal Further on it states:

We are working with the Flea Market and the City traffic engineer to explore the possibility of relocating it [the Flea Market] to a section of Adeline Street directly above the BART station.

This statement, which is repeated in the City Manager's report, is quite misleading. SBNDP is *not* working with the Flea Market. The CSU board only learned about the proposal when Ed Church and Councilmember Anderson spoke to the board at its September 13 meeting.

CSU has a lease with BART, which provides it security and a legal right to operate at its present location. It would have no such legal protection on Adeline Street. The proposed development would conflict with CSU's rights under that lease. Furthermore the proposal to move the Flea Market to Adeline Street is unworkable. The problem is not simply that the plan would require rerouting traffic on a major North-South artery. It is that locating the Flea Market, with all its noise and hubbub, on Adeline Street would put it on the doorstep of neighbors. Now every weekend, the drummers who are an integral part of the Flea Market make their music under the overhang of the BART station and well away from any adjacent houses. On Adeline Street the neighbors' windows would be rattling. Now, the sunken parking lot with limited entrances and exits keeps the Flea Market contained and permits control of the flow of traffic and people. On Adeline Street control would be far more difficult. Already neighbors complain about the impact of Black and White liquors and the activity it attracts. Having a liquor store on the edge of the Flea Market is a really bad idea. Having the Flea Market just up from a Russian Orthodox church and an apartment building is a really bad idea. The Adeline St. proposal is a recipe for perpetual conflict between the Flea Market and its neighbors. There would be constant pressure to move the Flea Market somewhere else, anywhere else. The result would be a major loss for the community.

Failure to consider the project in relation to the Ed Roberts campus

The General Plan adopted in December 2001, includes a policy recommendation to "Encourage affordable housing or mixed-use development including housing on the air rights above the Ashby BART station and parking lot west of Adeline Street." It did not include recommendations to build a major campus for disability rights organizations on the East parking lot. Plans for that worthy project are well on their way, but ground has not yet been broken and no one can tell the impact of that project on the neighborhood and on the availability of parking for BART patrons. The city has now thrown its support behind two major projects to be built on Ashby BART parking lots. It wants to have its Ed Roberts cake and its housing development too. The City Manager's report and the SBNDP grant proposal makes no effort to address the uncertainties that necessarily will plague any planning process that takes place before the impact of the Ed Roberts campus can be fully assessed.

Conclusion and Recommendations for Action

The CalTrans grant proposal assures us that “historical reasons that prevented development at the site have shifted and are being resolved.” (p.8) And again: “Historic reasons that this prime site for infill development has a not been developed can now be resolved.” (p.4) These assurances are not backed by any evidence. The City Manager’s report fails to address the significant concerns raised by the 2001/2002 Haas Business school report, fails to explain why change circumstances have answered those concerns, and generally fails to examine carefully the premises on which the Caltrans grant proposal is predicated.

Therefore Community Services United urges the Council to:

- Rescind its support for the SBNDP Caltrans grant proposal.
- Request that the City Manager provide a detailed report addressing the feasibility of the proposed development, the concerns expressed by CSU, and any issues that have been raised by other members of the community.
- Provide the community an opportunity to comment on the response of the city manager before taking any further action.

Osha Neumann
Counsel for Community Services United.

Attachments:

2002 report from City of Berkeley Housing Dept. on development of Ashby BART air rights

“Ghost Town, What if they built the development of the future and no one came?” by Eliza Strickland, East Bay Express, January 4, 2006