

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 7, 2006

COUNCIL DISTRICT: 8
SNI AREA: N/A

SUBJECT: PDC06-092. PLANNED DEVELOPMENT REZONING FROM THE A-AGRICULTURE ZONING DISTRICT TO THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 22 SINGLE-FAMILY DETACHED HOMES ON A 17.98 GROSS-ACRE SITE ON THE EAST SIDE OF SAN FELIPE ROAD, 700 FEET NORTH OF SILVER CREEK ROAD.

RECOMMENDATION

The Planning Commission voted 5-0-1, Commissioner Platten absent, to recommend that the City Council approve the proposed rezoning.

OUTCOME

Approval of the subject Planned Development Rezoning would allow the subdivision of one existing parcel into 22 lots for future development of 22 single-family detached residences.

BACKGROUND

On December 6, 2006, the Planning Commission held a public hearing to consider a Planned Development Rezoning from the A-Agriculture to the A(PD) Planned Development Zoning District to allow 22 single-family detached residences.

Staff provided a report that discussed the history of the site including a previous rezoning that was filed (PDC05-035) in 2005 and denied by City Council on June 20, 2006. The denial of the previous rezoning was chiefly based on the grounds that development was overly concentrated on the west half of the site and the large remainder lot, Lot 22 on the east side of Misery Creek, was set up for potential future development. The existing residents of the Meadowlands and California Oak Creek developments, both adjacent to the project site, were largely dissatisfied with the original rezoning proposal based on concerns regarding the potential future subdivision beyond what was being presented and the perceived incompatibility of lot sizes to the adjacent developments. Staff indicated that the proposed current rezoning (PDC06-092) was filed with the Department of Planning, Building, and Code Enforcement on August 18, 2006 and was deemed to be a "substantially different" project than the previous rezoning which was denied months earlier because

it included a different site layout with only one public street connecting to San Felipe Road and six units on the east side of Misery Creek.

Staff indicated that a geologic hazards clearance was issued on December 1, 2006 to develop lots 1-21. Prior any development on lot 22, a geologic hazards clearance will need to be obtained.

Staff discussed the key issues including 1) the proposed preservation of existing eucalyptus trees and the widening of San Felipe Road, 2) the future development of Lot 22, and 3) street and driveway connections between Lots 17 & 16 that connect the project's proposed right of way to an adjacent eastern property. Staff elaborated that an arborist determined that Eucalyptus trees along San Felipe Road could be retained if San Felipe Road was widened to just 30 feet, which was now recommended for safety purposes by the Department of Transportation.

Staff then discussed issues regarding the future development on Lot 22 beyond the proposed single estate lot. Staff pointed out that the proposed rezoning limits Lot 22 to one estate lot at this time. Staff stated that the applicant has expressed a desire to further develop lot 22 beyond one single family lot if they could potentially obtain pool units through the new update Evergreen Development Policy if later approved. The applicant has had discussions with the community regarding the parameters of what type of development the community would find acceptable to pursue on Lot 22 in the future.

Staff stated that it is not appropriate for the City to condition future development on Lot 22 beyond one single family estate through this rezoning, given that additional units are not officially proposed due to the constraints of the current Evergreen Development Policy. Staff pointed out that the community has been made aware of this. Mr. Lazzarini has, however, emailed the community and the Planning Commissioners with this list of parameter items which they have communicated that they will abide by with any future development proposal on the Pan Clair property. Staff added this communication to the public record. Staff also added that there was one item in the Memorandum of Understanding (MOU) that Mark Lazzarini sent to the Planning Commissioners which was between the applicant and the community that was not implemented on the proposed site plan. The MOU is an agreement between the current developer and the community. The City is not a party to this agreement. The MOU stated that there would be 25 feet of side separation between units. Staff indicated that there were several instances on the proposed site plan where this degree of separation was not the case. Staff also clarified that this issue could potentially be worked out at the PD permit stage to reflect this provision of the MOU, but that it was important to note this discrepancy.

Staff discussed the proposed street/driveway connection between Lots 16 and 17 that would connect to APN 660-03-002 (Mr. Sidhu's property) to the immediate east of those lots. Specifically, Staff indicated that they would add the following language to the General Development Plan notes: "Access easements shall be provided to APN 660-03-002 from the extension of Grand Oak Way to the satisfaction of the Director of Planning, Building, and Code Enforcement as minimally necessary to accommodate build-out of APN 660-03-002 under the current General Plan designation. Upon acceptance of the new easement by the property owner of APN 660-03-002, the existing access rights at the northeast corner of the subject site (the northwest corner of APN 660-03-002) shall be extinguished."

Staff also pointed out an error stated in the General Development Plan notes in regards to the description of minimum setbacks from Thompson and Misery Creeks. The note should indicate the minimum setbacks are measured from "structures and roadways." The General Development Plan notes distributed to the Commission erroneously stated the setbacks were to "lots and roadways."

The applicant, Mark Lazzarini, spoke regarding the significant outreach that was done during the summer after the previous rezoning application he filed was denied by City Council. Mark thanked the community members for continuing to participate with him through this process. He indicated that he prepared a joint Memorandum of Understanding with the neighbors regarding what type of development they would pursue at this time as well as on any potential future development of Lot 22. Mr. Lazzarini stated that he would like to provide access for Mr. Sidhu's property through this project site and felt that an easement of 26 feet would be acceptable.

Kulwant Sidhu, an adjacent property owner, spoke to the Commission and stated that the opposed restricting access to his property as proposed by Staff. He indicated that he would like to see a full public street connect to his property because he currently does not receive City sewer services or mail delivery. He also wants to develop his property at a later date and feels that he needs a full public street to develop it to its highest and best use.

Commissioner Dhillon stated that he wanted to acknowledge that Mr. Sidhu had contacted him privately so that he may understand his situation.

Michael Mace, a community member, explained the background for the earlier rezoning that the community was not supportive of and described how it was chiefly different from this project, which the community supported.

Larry Cargnoni and Bonnie Gold-Mace, both community members, discussed points about the Memorandum of Understanding between the community and the developer. They stated that they understood the MOU could not be a binding document with the City but rather it was to be a political document that put in the public record what the community would find to be acceptable future development on the site.

Commissioner Kamkar wanted to ensure that community members understood that a subsequent rezoning for Lot 22 would require a new application and a public process. Mr. Mace responded by saying that he was aware of this, but that they were concerned that the earlier rezoning proposal was going to set a bad precedent, but that the current plan with the MOU would be acceptable to the community and should even be considered models for future development proposals in that area.

Commissioner Zito asked how the community felt about knowing that the riparian setback was going to be measured from structures and not lots as Staff had indicated in the Staff Report. Mr. Mace stated that he understood that the site plan still needs to be fine-tuned and believes that the developer will adhere to these promises. Mr. Lazzarini stated that fine tuning needs to be done on the site plan but that he feels the lots are big enough to achieve what was discussed in the MOU.

Commissioner Kalra asked Mr. Lazzarini to what extent he would be willing to accept a 26 foot easement leading to Mr. Sidhu's property. Mr. Lazzarini stated that he felt that 26 feet is sufficient and was indifferent on whether it should be larger or not.

Commissioner Zito stated that for the record he discussed matters of this project with community members and Mark Lazzarini before the hearing.

Commissioner Dhillon made a motion to approve the MND and accept Staff's recommendations on the PD zoning but he wanted Staff to work with Mr. Sidhu to have a public street connect to his property at the PD Permit stage.

Commissioner Zito asked how Staff felt about the compromised riparian setbacks and if a General Plan Amendment was necessary in the future if development on Lot 22 was to occur. Staff stated that the issue was of nomenclature only and that Staff has always understood that the riparian setback would be measured from structures, not from lots. Staff also pointed out that project conformed to the Riparian Corridor Policy.

Commissioner Kamkar stated that he would support the motion and that a public street should connect to Mr. Sidhu's property.

Staff clarified that the neighbor's property had a General Plan designation of two dwelling units per acre and that Staff was not supportive of a public street that because it would have growth inducing impacts beyond the allowed General Plan density.

Staff also stated that if the street were stubbed to Mr. Sidhu's property, when that property developed, the City would request that a cul-de-sac be built to property terminate the street. The area for a cul-de-sac bulb would take up some room on Mr. Sidhu's property and would be netted out for density calculation purposes, resulting in a net area that would yield only three, rather than four, residential lots per the current General Plan density. Staff is recommending a limited 12' driveway which would allow for the extension of services but would not have the same potential growth inducing impacts as a public street.

The City Attorney reiterated that the City could not be bound to the applicant's MOU with the neighbors when reviewing this or future development proposals.

The motion for recommendation of the project was approved (5-0-1), with Commissioner Platten absent.

ANALYSIS

See original staff report (attached).

POLICY ALTERNATIVES

Should the City Council choose to deny the proposed rezoning, the site would remain in the current A-Agriculture Zoning District.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A sign identifying the proposed development was placed on-site. A community meeting was held by the applicant on October 26, 2006. Approximately ten residents attended. Issues raised were concerns regarding preservation of trees on San Felipe Road, future development potential beyond the number of units currently proposed on the site with this rezoning, proposed lot sizes, and the size of proposed homes.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site and were posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is posted on the City's website, and staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, and Environmental Services Department.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report from the Director of Planning, Building, and Code Enforcement to the Planning Commission.

COST SUMMARY/IMPLICATIONS

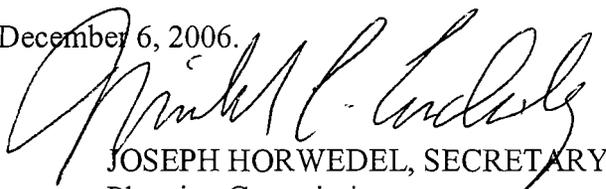
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Mitigated Negative Declaration adopted on December 6, 2006.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Mike Enderby at 408-535-7806

cc: Applicant



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

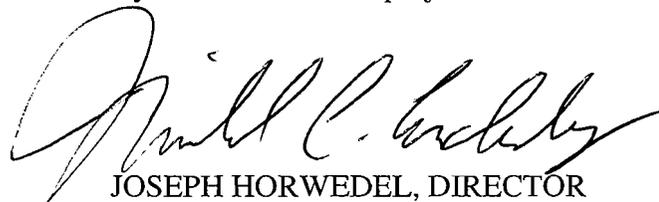
DATE: December 4, 2006

TRANSMITTAL MEMO

COUNCIL DISTRICT: 8
SNI: N/A

**SUBJECT: PDC06-092. LOCATED ON THE EAST SIDE OF SAN FELIPE ROAD,
APPROXIMATELY 700 FEET NORTHERLY OF SILVER CREEK ROAD.**

The Planning Commission will hear this project on December 6, 2006. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Mike Enderby at (408) 535-7800.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

Hearing Date/Agenda Number
P.C. 12/6/06 Item: **4e**
C.C. 1/9/07

File Number
PDC06-092

Application Type
Planned Development Zoning

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s)
660-02-013

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Reena V. Mathew

Location: East side of San Felipe Road, 700 feet north of Silver Creek Road

Gross Acreage: 17.98

Net Acreage: 15.3

Net Density: 1.43 DU/AC

Existing Zoning: A-Agriculture

Existing Use: Grazing land

Proposed Zoning: A(PD) Planned
Development

Proposed Use: Up to 22 single-family detached residential units

GENERAL PLAN

Completed by: Reena V. Mathew

Land Use/Transportation Diagram Designation
Very Low Density Residential (2 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Reena V. Mathew

North: Single-family residential

A(PD) Planned Development, R-1-1 Single-Family Residence

East: Single-family residential

A(PD) Planned Development

South: Single-family residential

A(PD) Planned Development, R-1-1 Single-Family Residence, &
A Agriculture

West: Single-family residential

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: Reena V. Mathew

Environmental Impact Report found complete
 Negative Declaration circulated on 11/15/06
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: Reena V. Mathew

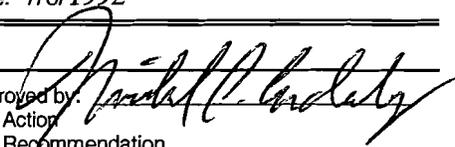
Annexation Title: Evergreen No. 176

Date: 7/8/1992

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 11/15/06

Approved by: 
 Action
 Recommendation

APPLICANT/OWNER/DEVELOPER	
Pan Clair General Partnership P.O. Box 3047 Santa Clara, CA 95050	Mark Lazzarini DAL Properties 255 West Julian Street, Suite 502 San Jose, CA 95110
PUBLIC AGENCY COMMENTS RECEIVED	Completed by: RVM
Department of Public Works	
See attached memorandum.	
Other Departments and Agencies Santa Clara Valley Water District	
GENERAL CORRESPONDENCE	
See attached correspondence from neighbors	
ANALYSIS AND RECOMMENDATIONS	

BACKGROUND

The applicant, DAL Properties, on behalf the Pan Clair General Partnership, is requesting to rezone the subject 17.98 gross-acre site from the A-Agriculture zoning district to the A(PD) Planned Development zoning district to allow up to 22 single-family detached homes. The applicant applied for a previous rezoning on the site (file number PDC05-035), and that proposal was denied by City Council on June 20, 2006. The previous proposal included 21 units on the west side of Misery Creek and one large lot, 8.74 acres in size, on the east side of Misery Creek. The Council denied the application primarily on the grounds that development was overly concentrated on the west half of the site and the large remainder lot, Lot 22 on the east side of Misery Creek, was set up for potential future development. The existing residents of the Meadowlands and California Oak Creek developments, both adjacent to the project site, were largely dissatisfied with the original rezoning proposal based on concerns regarding the potential future subdivision beyond what was being presented and the perceived incompatibility of lot sizes to the adjacent developments. Section 20.120.080 of the Zoning Code states that if a petition is denied by the City Council, no new petition requesting the "same rezoning" for the same property, or any part thereof, shall be filed with one (1) year from and after the date of the Council's denial.

The proposed current rezoning (PDC06-092) was filed with the Department of Planning, Building, and Code Enforcement on August 18, 2006 and was deemed to be a "substantially different" project than the previous rezoning which was denied months earlier because it included a different site layout with only one public street connecting to San Felipe Road and six units on the east side of Misery Creek. The earlier proposal included two entry drives off of San Felipe Road only one large estate lot on the east side of the creek. The applicants indicated that in the months after the Council denial of the previous rezoning, PDC05-035, they participated in significant public outreach in order to work with the community on improving the site layout as well as confirming with the community their intentions for development on the site. While the

applicant has made promises to the community about any future development proposals beyond the current rezoning, it is not appropriate for the City to memorialize constraints put on any future rezoning or General Plan Amendment with this subject rezoning.

The current rezoning file, PDC06-092, proposes to subdivide the existing parcel into 22 lots. Fifteen (15) of the proposed 22 lots are to be located to the west of Misery Creek; the other 6 project lots are to be located in the northeasterly corner of the project site, on the east side of Misery Creek. A seventh lot on the east side of the creek, Lot 22, is proposed to be approximately 7.35 acres, which will allow one house. Lots 1-21 are proposed to each have an average lot size of 13,400 square feet, with a minimum lot size of 9,000 square feet. Any future development on Lot 22 beyond a single-family home is not approved through this rezoning and would necessitate the obtainment of pool units made available through the updated Evergreen Development Policy. At minimum a subsequent rezoning would also be required. The proposed updated Evergreen Development Policy, which was heard by the Planning Commission on November 8, 2006 and will be heard by the City Council on December 5, 2006, has a list of criteria for any developments seeking to utilize some of the proposed 500 pool units available in the Evergreen Development Policy Area. Future development on Lot 22 would need to conform to these minimum criteria listed in the updated Evergreen Development Policy in order to make use of the pool units.

There are two riparian areas within the subject site. Thompson Creek crosses the southerly corner and Misery Creek transverses the center. Single-family detached residences are located to the north, south, east and west. The site currently accesses San Felipe Road directly off of a private road that runs along the northwestern edge of the property. Several chicken coops exist on the southeast corner and the remainder of the property is used for grazing land. The topography of the site as a whole ranges in slope from 2 to 21 percent, with moderate slope along the western and eastern edge of the project site.

This project is subject to the current Evergreen Development Policy, which was originally adopted in 1976, with the latest revisions approved by City Council in May 1995. The Evergreen Development Policy guides current development potential and traffic improvements in the policy area, and is separate from the Evergreen East Hills Visioning Strategy, which is underway to create additional housing opportunities beyond what was anticipated through the current Evergreen Development Policy.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration circulated on November 15, 2006 indicates that the project will not result in a significant environmental impact when the identified mitigations are implemented. The Mitigated Negative Declaration addressed a multitude of issues such as agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation/traffic, and utilities and service systems. The section below highlights the key issues associated with this development. For the purposes of obtaining clearance through a Mitigated Negative Declaration under the California Environmental Quality Act, a project shall not result in significant unmitigated impacts. With the implementation of the proposed mitigation measures, which include related mitigation for aesthetics, air quality, biological resources, cultural resources, geology and soils,

hazards and hazardous materials, hydrology and water quality, and noise, the project will not have a significant impact on the environment. A more comprehensive accounting of the environmental mitigation measures required as part of this project can be found in the project's Initial Study. The full text of the Initial Study is available online at:
<http://www.sanjoseca.gov/planning/eir/MND.asp>

Traffic

The 1976 Evergreen Development Policy (EDP) ensured that the total number of existing and proposed dwelling units would be able to maintain acceptable traffic standards for the area. Subsequent revisions to the EDP in 1995 identified a total of 4,759 dwelling units that were to be included in a benefit assessment district to further fund infrastructural improvements. This parcel was included in this benefit assessment district and given allocation for 21 dwelling units plus credit to develop one dwelling unit for a single family home documented to be in existence at the time the EDP was formulated. The applicant shall pay fees to the Benefit Assessment District for traffic improvements in exchange for their ability to develop their allocated units.

Geology

The presence of Misery and Thompson Creeks, as well as the site's topography, contributes to the potential for seismic, liquefaction, lateral spreading, soil erosion, and other geological hazards. A Geologic Hazards Clearance was issued for the site plan associated with the previous rezoning proposal (PDC05-035), which was contingent on setbacks from both creek banks as well as standard and special engineering techniques. A Geologic Hazards Clearance shall be obtained to reflect the current site plan proposed with the subject rezoning prior to the adoption of the Mitigated Negative Declaration.

Biological Resources

A biological assessment was prepared for the project site. The report did not identify the existence of any special status plant species on the site; however, a number of special-status plants occur in the vicinity. This is mainly due to the fact that the site supports no serpentine soils and has been grazed intensively for several years.

Four special status animal species were classified as rarely or occasionally occurring on site as transients or migrants. These special status animals include the sharp-shinned hawk, merlin, prairie falcon, and burrowing owl. Other special status species, including the white-tailed kite, Northern harrier, Cooper's hawk, golden eagle, loggerhead shrike, Townsend big-eared bat, pallid bat, California mastiff bat, and ringtail, were considered to potentially occur more frequently as regular foragers, transients, or as possible residents to the site. The biological assessment concluded that the project build-out would have no effect on the breeding success of these species and would, at most, result in a small reduction of foraging and/or roosting habitat that is available regionally. The project requires surveys for roosting bats and cliff swallows in all the outbuildings that are to be demolished, a pre-construction survey for burrowing owls prior to ground disturbance activities, and appropriate contingencies in the event these animals are discovered.

Thirty-eight (38) trees will be removed as a part of this project, of which 14 trees which will be removed as a result of the City's recommendation to widen San Felipe Road. The ordinance

sized trees, as well as the smaller trees removed, will be replaced according to the City's tree mitigation requirements resulting in the on-site planting of 114 24-inch box trees and nine 15-gallon trees. Although the removal of all 38 trees shall have environmental clearance under the circulated Mitigated Negative Declaration, Staff will work with the applicant during the Planned Development Permit stage to preserve as many trees as feasible along San Felipe Road. See public outreach section for further discussion.

The project proposes that all development be setback a minimum of 100 feet from Thompson Creek. Streets south of Misery Creek have a riparian setback of approximately 75 feet from the edge of the riparian corridor, and all development north of Misery Creek has a minimum 100-foot setback from the edge of the riparian corridor. The Santa Clara Valley Water District has expressed interest in accepting a dedication of the proposed setback area between the development and Thompson Creek. The developer and/or future homeowner's association will be responsible to maintain any area not accepted by the District. The proposed approximate 75-foot setback from Misery Creek's southern riparian edge shall be mitigated at a ratio of 1:1 with enhancement plantings prepared through a Riparian Mitigation and Monitoring Plan, which shall be submitted for review and approval by the Director of Planning prior to the issuance of a grading permit. See the analysis section of this Staff Report for further discussion of the project's conformance to the City's Riparian Corridor Policy.

Hydrology and Water Quality

The project would result in the addition of impervious surfaces, such as rooftops, driveways, and streets, thus increasing storm water runoff. This project is required to conform to the City's C.3 and HMP policy provisions. Both construction and post-construction measures have been included in the project. In particular, downspouts are to be directed into landscaped areas and grassy swales are to be located along the San Felipe Road frontage. All public streets shall drain into grassy swales, which shall be numerically sized to meet the provisions of the City's Post-Construction Hydromodification Management policy. The swales will then drain into an offsite line in San Felipe Road, which shall connect to the existing Misery creek culvert near Meadowfield Lane. The developer shall be responsible to develop a means of providing ongoing maintenance for the proposed swales to the satisfaction of the Director of Public Works.

GENERAL PLAN CONFORMANCE

The subject site is designated Very Low Density Residential (2 DU/AC) on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram. The area being utilized for streets (2.4 acres) and the area to be dedicated to the Santa Clara Valley Water District (0.70 acres) are not included in the density calculation. As such, the net acreage for the site is 15.3 acres and the proposal for 22 units on site results in a net density of 1.43 units per acre, consistent with this designation. The General Plan allows units to be clustered and does not require that all lots have a uniform size.

ANALYSIS

The primary issues for this proposed zoning include 1) site design and grading, and 2) conformance with Riparian Corridor Policy.

Site Design and Grading

The site layout generally complies with the principles contained in the Residential Design Guidelines to ensure compatible unit relationships and proper integration into the surrounding neighborhood. It should be noted that the Residential Design Guidelines are technically not applicable to single-family development with lot sizes larger than 6,000 square feet. In particular, the project utilizes lot sizes and unit designs that are comparable to the residential development just east of the project site, known as the California Oaks development.

Lots 1-15 are proposed to take access off one new public street extending from San Felipe Road, and Lots 16-22 are configured along both sides of a new cul-de-sac which takes access off of Grand Oak Way. The new public right-of-way off of San Felipe Road is proposed to be a width of 48 feet adjacent to San Felipe Road and would widen to a maximum of 52 feet. All internal roads are designed with sidewalks on both sides of the street. The cul-de-sac at the northern end of the new street from San Felipe is designed with limited encroachment into the 100-foot setback from Misery Creek's southern riparian edge.

The applicant's current proposal indicates the use of retaining walls as high as 4 feet tall along the project's border that will be visible from San Felipe Road. Such tall retaining walls in conjunction with fences could result in an unattractive interface with the rural character of the street. Given that the rear yards of Lots 1-4 share this border, some grading to provide usable rear yards is necessary; however, Staff believes that by reducing the width of the stretch of the proposed new public street to 48 feet, rather than the 52 feet proposed at that area of roadway, additional area will be provided to enable Lots 1-4 to shift closer to the new public street. The result would be a reduction in the height or elimination of the proposed retaining walls along San Felipe, thereby maintaining a more rural and natural character.

While the applicant's proposal is conceptual, Staff has added conditions to the General Development Plan notes to allow flexibility for the final determination of internal street widths with the goal of minimizing surface area for streets in order to reduce the need for retaining walls along San Felipe and create a more subtle transition in grade changes between San Felipe Road and the rear pads of Lots 1-4. In the same vein, the proposed development standards would allow for slightly smaller front setbacks for Lots 1-4 which back towards San Felipe Road, thereby shifting the structures to the east, away from San Felipe. San Felipe Road is approximately 25 feet lower in elevation than these lots. In order to reduce the appearance of this grade differential, increased setbacks for second stories of those homes have been added to the General Development Notes. These second story rear elevation setbacks for Lots 1-4 will reduce the verticality of massing immediately adjacent to San Felipe Road. The developer shall also be improving the public right-of-way along San Felipe Road to accommodate the extension of the Thompson Creek Master Trail.

In order to provide a 100-foot setback from Thompson Creek, Lot 10 has a unique configuration, including a substantial side yard in exchange for a smaller rear yard. As such, there are separate development standards for Lot 10, which anticipate and regulate what would normally typify backyard development, such as pools, decks, and spas, in this side yard. Due to the substantial slope and adjacency to Thompson Creek, lots 10-15 shall require more significant grading and use of retaining walls along the rear property lines. The use of taller retaining walls in this area is not deemed to be problematic since the wall will not be visible from public areas. The area on

site within the 50-foot setback from Thompson Creek shall be an easement dedicated to the Santa Clara Valley Water District.

Riparian Corridor Policy

The site layout has been modified from earlier proposals so that all development is setback a minimum of 100 feet from the edge of the riparian corridors of Thompson Creek and Misery Creeks, with the exception of the proposed cul-de-sac bulb and Lots 5, 9 and 15, which are all setback at least 75 feet from the southern edge of Misery Creek's riparian corridor. The northern edge of Misery Creek shall have a 100-foot setback from all development. In addition, the project proposal further enhances the area between all development on the site and Thompson Creek's riparian edge by removing the existing chicken coops that are adjacent to Thompson Creek along the southern corner of the property.

Setbacks from the riparian corridor are the principle means of minimizing impacts associated with human activities. The Riparian Corridor Policy Study recommends a setback of 100 feet from the edge of the corridor for any new development. Exceptions to the 100-foot setback can be considered as long as no reasonable alternative exists which avoids or reduces the encroachment into the setback area and the habitat protection objectives are achieved, with no less than 30 feet considered the minimum.

The General Plan designation on the site would allow for approximately 30-35 units on the site, however the site only has the capacity to build 22 units in order to conform to the Evergreen Development Policy. As a result, reducing the size of the proposed lots or reducing the proposed number of units is not a feasible proposition in order to maximize 100 foot setbacks from both Thompson and Misery Creeks, as the units available for development on a site of this size currently do not take full advantage of the General Plan density afforded to the site. Staff has worked with the applicant to provide the greatest setback from all riparian edges and still allow for a number of units which allows them to take advantage of their given allocation, which is albeit, a much smaller number of units than the General Plan density allows. Given that there is no reasonable alternative which avoids or reduces encroachment into the 100 foot setback area from Misery Creek, Staff looked at the exceptions listed in the Riparian Corridor Policy which would be applicable to the project site and may warrant consideration of setbacks less than 100 feet as it relates to Misery Creek's southern riparian edge.

The following two exceptions to the 100 foot setback are indicated in the Riparian Corridor Policy and apply to the project site:

- 1) Sites adjacent to small lower order tributaries whose riparian influence does not extend 100 feet.

Per the biological assessment provided for this project, Misery Creek is a lower order tributary, and its riparian influence does not extend 100 feet, but rather has riparian vegetation only one to three trees wide. In addition, the banks have been impacted by years of intensive grazing and are covered with non-native vegetation.

- 2) Instances where implementation of the project includes measures which can protect and enhance the riparian value of the corridor more than a 100 foot-setback.

Using a 1:1 mitigation ratio, enhancements are proposed along Misery Creek and shall off-set the area of encroachment into the 100-foot setback. Riparian plantings per the biological assessment will restore and improve wildlife value within this short reach of the creek.

A reduced setback along the southern edge of Misery Creek was further deemed appropriate by a qualified biologist.

PUBLIC OUTREACH

A notice of the public hearing was distributed to owners and tenants of all properties located within 1000 feet of the project location. This staff report was made available on the Planning Department's website one week prior to the Planning Commission hearing. Staff has been available to discuss the project with interested members of the public.

Various members of the community continued to participate with the applicant after the first rezoning proposal (PDC05-035) on the subject site was denied by City Council. On September 26, 2006, Staff met with these community members to share initial staff comments on the subject rezoning, PDC06-092. In addition, a community meeting was noticed to residents within 1000 feet of the project site and was held at the Laurelwood Elementary School on October 26, 2006. Approximately ten residents attended. Issues raised were concerns regarding preservation of trees on San Felipe Road, future development potential beyond the number of units currently proposed on the site with this rezoning, proposed lot sizes, and the size of proposed homes.

Widening of San Felipe Road and Existing Eucalyptus Trees on Site

The Department of Transportation (DOT) has evaluated the condition of San Felipe Road and determined that the roadway should be widened with the approval of this project in order to have the roadway width meet current standards for traffic safety. Regardless of the size of the development proposed, DOT has indicated that the road widening along the project's frontage with San Felipe is necessary to be constructed with any redevelopment on the site. DOT has conditioned the project to provide a total right of way section that is 30 feet wide, which includes 28 feet of roadway, plus two feet of separation from an existing guardrail on the west side of San Felipe, which is across the street from the project site. The minor road widening would result in approximately three feet of separation from the closest Eucalyptus tree and the edge of the improved roadway.

An arborist provided comments to the City that the Eucalyptus trees can be retained if the thickness of the proposed pavement is limited to match the road's existing thickness and/or if reinforced pavement on grade is used at the section of the proposed street which is closest to the Eucalyptus trees. Based on the arborist findings it has been determined that the existing three Eucalyptus trees can be retained with the widening of San Felipe Road to 28 feet in width as recommended by DOT. Further refinement of the plan shall be necessary at the Planned Development permit stage to provide adequate space to install a guardrail or similar barrier to protect the Eucalyptus tree closest to San Felipe Road. The community has expressed a strong desire to retain these existing Eucalyptus trees along San Felipe Road.

RECOMMENDATION

Staff recommends approval of the project for the following reasons:

1. The project conforms to the General Plan Land Use/Transportation Diagram designation of Very Low Density Residential (2 DU/AC).
2. The project conforms to the Evergreen Development Policy.
3. The project conforms to the Riparian Corridor Policy.
4. The project will be designed to be compatible with the surrounding neighborhood.

Attachments

Location Map

Public Works Memo

Santa Clara Valley Water District Memo

Correspondence for Neighbors

cc: owner

applicant

PDC06-092

DRAFT GENERAL DEVELOPMENT PLAN NOTES

The following notes are to be incorporated on the final General Development Plan upon City Council Approval. These notes reflect the modifications recommended by the Planning Commission and shall replace all other notes, if any, currently identified on said plan(s).

ALLOWED USES:

Up to 22 single-family detached residential units. Residential uses shall include all those allowed by right in the R-1 Residential Zoning District. Conditional uses as identified in the R-1 Residential Zoning District shall require the approval of a Planned Development Permit or Amendment.

DEVELOPMENT STANDARDS:

Setbacks/Height Requirements for Residential Development

Minimum Lot Size-9,000 square feet, except for Lot 22, which shall be approximately 7.35 acres in size as indicated on the conceptual site plan, last revised November 11, 2006

Minimum Front Setbacks (linear feet)

Living Area & Garage- 25 feet (except 20 feet for living area & porch for lots immediately adjacent to the California Oaks development, which are Lots 10-16 & 19 and for lots adjacent to San Felipe Road, which are Lots 1-4 shown on the conceptual site plan, last revised November 11, 2006)

Porch-can extend 5 feet into designated front setbacks.

Minimum Rear Setbacks (linear feet)

Living Area & Garage- 20 feet (30 feet for lots immediately adjacent to the California Oaks development, which are Lots 10-16 & 19 and for lots adjacent to San Felipe Road, which are Lots 1-4 shown on the conceptual site plan, last revised November 11, 2006)

Second Story Setback for Lots 1-4 adjacent to San Felipe Road shall be an aggregate of at least 5 feet more than the first story setback provided.

Patio Cover/ Trellis- 15 feet

Detached Garage- 5 feet

Minimum Side Setbacks (linear feet)

Living Area – 10 feet

Detached Garage- 5 feet

Maximum Height / Stories (per Title 20 definitions)

Height- 35 feet from pad elevation

Stories- 2.5

Accessory Structures. Accessory structures must conform to R-1 standards, as amended, and are subject to the review of the Director of Planning, Building, and Code Enforcement.

Additions. All additions are subject to the review of the Director of Planning, Building, and Code Enforcement.

Minimum Setbacks from Thompson and Misery Creeks Dripline – Minimum setbacks of Lots and roadways from the subject creeks shall conform to the conceptual site plan last revised November 11, 2006, which indicates a minimum setback of 100 feet from Thompson Creek and 100 feet from the northeast side of Misery Creek.

DEVELOPMENT OF LOT 22 SHOWN ON THE CONCEPTUAL SITE PLAN:

The placement of more than one single-family home on Lot 22, shall require additional improvements and approval by the City, including, but not limited to, a rezoning, public street improvements, storm water control measures, and environmental clearance.

PARKING REQUIREMENTS:

1. Two (2) garage spaces per unit.

LANDSCAPING REQUIREMENTS:

1. Street Trees. The developer shall install street trees within the public right-of-way along the entire street frontage per City standards. The location of the street trees will be determined at the street improvement stage.
2. Mitigation Trees. The developer shall install mitigation trees as described below.
3. Landscaping. Landscaping for individual lots should incorporate predominantly native, drought-tolerant plant material.
4. Riparian Planting. Riparian setback planting shall be implemented as described below.

PUBLIC INFRASTRUCTURE IMPROVEMENTS AND LAND TO BE DEDICATED:

1. Public Improvements. All public improvements shall be dedicated and improved to the satisfaction of the Director of Public Works.
2. Street Improvements. Street cross-section for San Felipe Road shall be improved to conform to the approved Thompson Creek Trail Master Plan dated 4/26/05 as amended.
3. Stormwater Run-off. Storm sewer capacity analysis to determine the size of sewer pipe required on San Felipe Road shall be submitted to the Director of Public Works. The project shall comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires the implementation of Best Management Practices that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-39-or-the project shall provide an Alternate Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building, and Code Enforcement.
4. Maintenance of Stormwater Treatment Controls. The funding mechanism for the maintenance of treatment controls shall be in place to the satisfaction of the Director of Public Works prior to the recordation of the final map.
5. Dedication of land to the SCVWD. Prior to the issuance of a PD Permit for the development, the area within the 50' setback of Thompson Creek shall be dedicated to the Santa Clara Valley Water District and/or an easement shall be provided, to the satisfaction of the Santa Clara Water District.

Location of Public Streets. Minor modifications to the final location and dimensions of the public streets may be permitted at the PD Permit stage to reduce grading impacts and use of retaining walls as determined appropriate to the satisfaction of the Director of Planning and Director of Public Works.

ENVIRONMENTAL MITIGATION:

AESTHETICS

- The 3 eucalyptus trees (Nos. 33, 34 and 35), 3 oak trees (Nos. 38, 42 and 43) and 8 walnut trees (Nos. 36, 37, 39 to 41, and 44 to 46) along San Felipe Road shall be retained.

-or-

If any of the 3 eucalyptus trees (Nos. 33, 34 and 35), 3 oak trees (Nos. 38, 42 and 43) and 8 walnut trees (Nos. 36, 37, 39 to 41, and 44 to 46) along San Felipe Road is removed for City roadway widening purposes, each tree removed shall be replaced with a new tree(s) at the ratios shown in the Tree Replacement Ratios table.

BIOLOGICAL RESOURCES

- All coops, sheds and fences within the riparian area of Thompson Creek shall be removed.
- The area within 100 feet of the edge of the riparian corridor of Thompson Creek shall be fenced off and deeded to the Santa Clara Valley Water District, and seeded and planted with riparian vegetation as approved by the District.

-or-

A Riparian Enhancement Plan for the area within 100 feet of the edge of the riparian corridor of Thompson Creek shall be developed and implemented as approved by the Director of Planning.

- Permanent encroachment into the 100-foot setback of Misery Creek (approximately 3,100 square feet) shall be mitigated at a ratio of 1:1 with enhancement plantings at the associated reach of Misery Creek.
- The approximately 9,100 square feet of grading within the 100-foot setback of Misery Creek (south side) shall be reseeded using a native seed mix to restore the area of temporary disturbance.
- A City-approved Riparian Mitigation and Monitoring Plan shall be developed by a qualified biologist or horticulturist to restore riparian vegetation in any disturbed areas along Misery Creek and implemented by measures such as preservation and enhancement of existing riparian habitat, creation of new riparian habitat, replacement of lost trees, replacement of lost acreage with riparian habitat of equal or greater value, location of appropriate onsite restoration sites within the existing riparian zone, revegetation with native species, establishment of a minimum undeveloped buffer zone on either side of the riparian area, discouragement of additional human intrusion into the riparian zone, establishment of success criteria and institution of a monitoring program.
- The 3 eucalyptus trees (Nos. 33, 34 and 35), 3 oak trees (Nos. 38, 42 and 43) and 8 walnut trees (Nos. 36, 37, 39 to 41, and 44 to 46) along San Felipe Road shall be retained.

-or-

If any of the 3 eucalyptus trees (Nos. 33, 34 and 35), 3 oak trees (Nos. 38, 42 and 43) and 8 walnut trees (Nos. 36, 37, 39 to 41, and 44 to 46) along San Felipe Road is removed for City roadway widening purposes, each tree removed shall be replaced with a new tree(s) at the ratios shown in the Tree Replacement Ratios table.

- If possible, construction should be scheduled between September 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 indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

- A pre-construction survey for burrowing owls shall be conducted by a qualified ornithologist within 30 days prior to any ground disturbance activities.
- A buffer zone of a minimum of 250 feet shall be established around active burrowing owl nesting sites if nesting burrowing owls are discovered during pre-construction surveys conducted between February 1st and August 31st, and no disturbance shall occur within the buffer zone until a qualified biologist has determined that the young birds have fledged; and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.
- No disturbance shall occur within 160 feet of occupied burrows if over-wintering burrowing owls are discovered using the site during the non-breeding season (September 1st through January 31st); and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of burrowing owls or single unpaired resident bird.
- If any burrowing owls are discovered using the site during the pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows after four days to ensure no owls remain underground, and filling all burrows in the construction area to prevent owls from using them.
- A biologist report outlining the results of the pre-construction burrowing owl surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of a grading permit.
- Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities, or oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a qualified bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony; buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31st and before March 1st).
- If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats shall be excluded after July 31st and before March 1st to prevent the formation of maternity colonies. Such exclusion shall occur, under the direction of a qualified bat biologist, by sealing openings and providing bats with one-way exclusion doors. Bat roosts shall be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with CDFG requirements.
- A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the Director of Planning prior to the issuance of any grading, building, or tree removal permit.

- If possible, construction should be scheduled between August and February (inclusive) to avoid the cliff swallows nesting season. If this is not possible, pre-construction surveys for nesting swallows shall be conducted under the San Felipe Road overpass of Thompson Creek as well as in all outbuildings to be demolished by a qualified ornithologist within 30 days prior to any construction activities. If swallows are determined to be absent during the nesting season surveys, demolition can proceed without further mitigation; however, if swallows are determined to be present in outbuildings, demolition of all structures shall be delayed until it has been determined that all young swallows have fledged. The applicant shall submit a report indicating the results of the survey to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading permit.

CULTURAL RESOURCES

- A qualified archaeologist shall be required to monitor all earthmoving or ground disturbing activities within the prehistoric site area or within 30 meters of the prehistoric site area, as follows:
 - If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines.
 - The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results; these reports shall identify any program mitigation to be completed in order to mitigate archaeological impacts (including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources at a recognized storage facility).
 - In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required.

HAZARDS AND HAZARDOUS MATERIALS

- The soil shall be well mixed during site grading to assure that the single identified point of the slightly elevated Dieldrin concentration is reduced.

HYDROLOGY AND WATER QUALITY

- A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls, including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMPs) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by use of open vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.

- The project shall incorporate the following site design, source control, and treatment measures to minimize the discharge of stormwater pollutants and limit the volume, velocity and duration of runoff:
 - Hydraulically-sized grassy swales shall be incorporated into the stormwater drainage design.
 - Roof drains shall discharge and drain into landscaped areas located away from the building foundation to an unpaved area wherever possible.

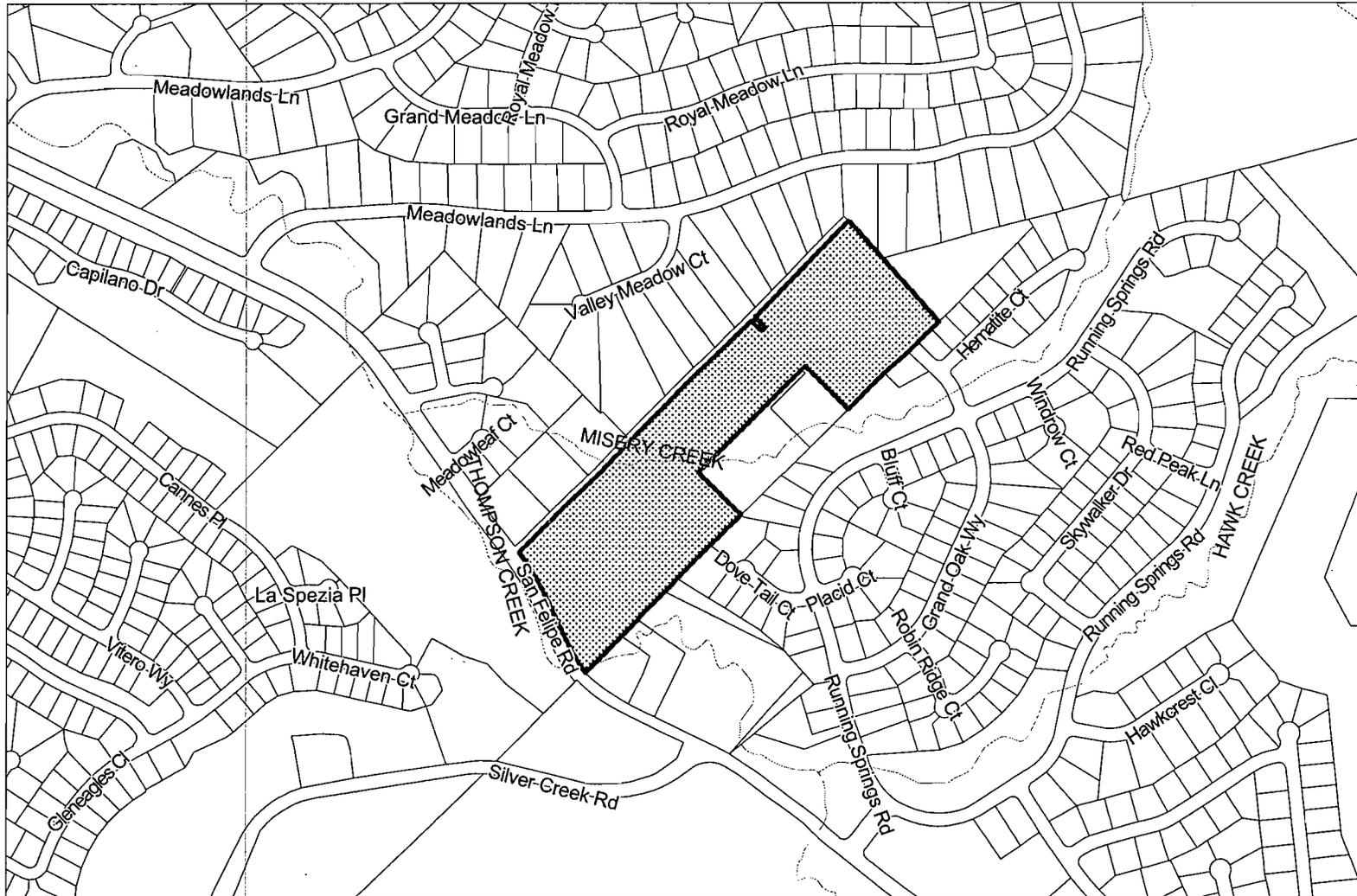
NOISE

- Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

UTILITIES AND SERVICE SYSTEMS

- An onsite collection system including curbs, gutters and an underground system, including the construction of a new offsite storm drainage line in San Felipe Road to the existing Misery Creek culvert crossing near Meadowfield Lane, shall be included in the project.

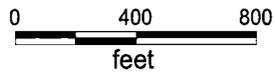
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Map Created On:
8/21/2006



File No: PDC06-092
District: 08
Quad No: 117

TO: Reena Mathew
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

**SUBJECT: FINAL RESPONSE TO
DEVELOPMENT APPLICATION**

DATE: 11/28/06

PLANNING NO.: PDC06-092
DESCRIPTION: Planned Development Rezoning from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow up to 22 single-family detached residences on a 17.98 gross acre site
LOCATION: East side of San Felipe Rd, approx. 700 feet northerly of Silver Creek Rd
P.W. NUMBER: 3-09967

Public Works received the subject project on 10/27/06 and submits the following comments and requirements.

Project Conditions:

Public Works Approval of Tract Map: Prior to the approval of the tract map by the Director of Public Works or unless otherwise noted, the applicant will be required to have satisfied all of the following Public Works conditions.

1. **Public Works Development Review Fee:** Prior to zoning approval an additional Public Works Review Fee of **\$4,070** is due based on the following:
 - a) This project has been rated high complexity. An additional fee of \$1,750 is due.
 - b) This project is subject to the NPDES - C.3 Requirements Review Fee. A sum of \$2,320 is due.
2. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
3. **Transportation/Assessment:** The proposed project is within Benefit Assessment District 91-209SJ (Aborn-Murillo), but outside of the Evergreen Specific Plan (ESP) Area. This property has traffic allocation for 21 dwelling units, and the assessment is based on the number of dwelling units allocated to the property. Payment of the assessment is due prior to final map approval or Public Works Clearance, whichever comes first. The current assessment is \$2,549.87/unit (this amount is subject to increase annually based on the inflation factor) plus a 5% administration fee (not to exceed \$1,500 per development). Contact Tom Borden at (408) 535-6831 for further information.
4. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires

implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.

- a) The project's preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed. At PD stage, submit the final Stormwater Control Plan and numeric sizing calculations.
 - b) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
5. **Stormwater Peak Flow Control Measures:** This project shall incorporate the watershed-wide Hydromodification Management Plan (HMP) controls to the maximum extent practicable by using TCMs that also have flow control benefits such as basins and swales.
6. **Grading/Geology:**
- a) A Geologic Hazard Clearance is required prior to environmental clearance or zoning approval.
 - b) A grading permit is required prior to the issuance of a Public Works Clearance.
 - c) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit.
 - d) Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
7. **Flood: Zone D** The proposed structures are not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D. Refer Project to the Santa Clara Valley Water District due to proximity of Thompson and Misery Creeks.
8. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
9. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Tim Town at (408) 277-3671 for further information.
10. **Grading/Storm:** At PD stage, submit storm sewer capacity analysis to determine the size of sewer pipe required on San Felipe Road.

11. **Street Improvements:**

- a) San Felipe Road shall be widened to a minimum traveled way width of 28' with a minimum 2' distance from face of guardrail to edge of traveled way along the creek side. Installation of a curb and/or guardrail may be required along the three existing eucalyptus trees.
- b) An In-lieu fee will be required to cover maintenance for a period of 5 years of the three existing eucalyptus trees along San Felipe Road. This fee can also be used to deal with any damage to the trees or for tree removal, if necessary, after roadway widening. The amount of this in-lieu fee will be determined at PD stage. The eucalyptus trees shall be in good condition prior to City's acceptance of tree maintenance.
- c) Street cross-section for San Felipe Road shall conform to the approved Thompson Creek Trail Master Plan dated 4/26/05:
 - i) Provide 5' minimum buffer between trail and roadway, an 8' wide paved trail with minimum 2' compacted shoulders on each side with 2% cross slope, and a 4" wide yellow painted stripe to separate trail traffic.
 - ii) Provide bollards at entry points to restrict motorized vehicle access to trail.
 - iii) Provide regulatory "Stop" signs and pavement markings.
 - iv) Provide "Caution - Trail Crossing" signs to warn motorists.
 - v) Locate trail crossings with adequate sight lines and distance for trail users and motorists.
- d) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works. The swale and sloped area between the swale and the back of lots 1 through 4 shall not be included in the dedication.
- e) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

12. **Electrical:** This project will be required to install new electroliers per City standard. Additional details will be provided at the street improvement plan stage.

13. **Landscape:**

- a) Install street trees within the public right-of-way along the entire street frontage per City standards.
- b) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.

Please contact the Project Engineer, Maria Angeles, at (408) 535-6817 if you have any questions.



Ebrahim Sohrabi
Senior Civil Engineer
Transportation and Development Services Division

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSÉ REZONING CERTAIN REAL PROPERTY SITUATED AT EAST SIDE OF SAN FELIPE ROAD, APPROXIMATELY 700 FEET NORTHERLY OF SILVER CREEK ROAD TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 22 SINGLE-FAMILY DETACHED RESIDENCES ON A 17.98 GROSS ACRE SITE

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, a Negative Declaration (ND) was prepared for a rezoning project under File No. PDC06-092, and said ND is adopted on December 6, 2006; and

WHEREAS, the Council is the decision-making body for the proposed subject rezoning to A(PD) Planned Development Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves said ND prior to approval of this project; and

WHEREAS, the proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as A(PD) Planned Development District.

The base district zoning of the subject property shall be A-Agricultural. The PD zoning of the subject property shall be that development plan for the subject property entitled, "Lands of Pan Clair General Partnership," last revised November 11, 2006.

Said General Development Plan is on file in the office of the Director of Planning and is available for inspection by anyone interested therein, and said General Development Plan is by this reference adopted and incorporated herein the same as if it were fully set forth herein.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 2. The district map of the City is hereby amended accordingly.

SECTION 3. The land development approval that is the subject of City File No. PDC06-092 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this 12th day of December, 2006 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

cc:

File: 19543
Thompson Creek

February 27, 2006

Ms. Reena Mathew
Planning Division
Department of Planning, Building, & Code Enforcement
City of San Jose
200 East Santa Clara Street, Third Floor
San Jose, CA 95113-1905

Subject: Zoning PDC05-035, Assessor's Parcel No. 660-02-013

Dear Ms. Mathew:

The Santa Clara Valley Water District (District) has reviewed the Administrative Draft Initial Study, biotic assessment report, and the revised zoning plans for the development of 20 single family detached residences on a portion of the 17.98 gross acre site located northeast of the San Felipe Road and Thompson Creek intersection.

The project site is adjacent to Thompson Creek and Misery Creek traverses the site. Improvements within 50 feet of the creek banks will require District review and issuance of a permit.

For flood management purposes, we request that a 50-foot wide easement from the Thompson Creek riparian edge be dedicated to the District. An 18-foot wide clear path, within the dedicated area should be reserved for District maintenance access.

A flood hydraulic evaluation of Misery Creek should be conducted since the conveyance of the creek flow under the future extension of the street may have a bearing on the final elevations for Public Street 1.

It is our understanding that the area north of Misery Creek will be developed at a future date. As such, consideration should be given to improve the crossing at Misery Creek during this phase of the development. This will minimize future impacts to the riparian corridor as the plants and wildlife become established.

To maintain ecological compatibility with the existing riparian forest and ensure genetic specificity, areas within the riparian setback should be landscaped with plant species native to the local watershed. It should be noted that the plant growing period from seeds or cuttings harvested from the donor plants require long lead times and should be considered in the construction schedule.

The San Felipe Road frontage landscape is considered part of the Thompson Creek riparian corridor. The most ecologically appropriate plant palette would be a subset of the species found in the creek corridor, contract grown from Thompson Creek or Misery Creek propagules. Alternately, a non-native, non-invasive and non-hybridizing palette could be selected (see

Ms. Reena Mathew
Page 2
February 27, 2006

enclosed pamphlets for more information). This strategy would protect the existing riparian habitat from degradation. Please contact Linda Spahr at (408) 265-2607, extension 2752, before species selection occurs in order to "streamline" the selection process.

"Tall Fescue" and "Fountain Grass" noted on plan sheet 6.2 are invasive and should be deleted.

The benefit in reducing the setback along the south side of Misery Creek in order to connect the two public streets is not clear. As such, please consider using a cul-de-sac design for Public Street 1 and Public Street 2. This would provide a more appropriate buffer from the development and reduce the potential for dumping.

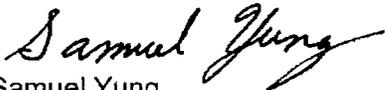
A soil survey should be conducted in order to assist in determining the viability of the riparian enhancements along Misery Creek.

District records show two wells on the site. The wells should be properly maintained or destroyed in accordance with District standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

When the revised plans become available, please submit a copy for our review and comment.

Please reference District File No. 19453 on future correspondence regarding this project. If you have any questions or comments, you can contact me at (408) 265-2607, extension 3174, or at syung@valleywater.org.

Sincerely,



Samuel Yung
Associate Civil Engineer
Community Projects Review Unit

Enclosures:

1. CreekWise Best Management Practices for Single Family Homes
2. CreekWise Use of Ornamental or Non-native Landscaping
3. CreekWise Use of Local Native Plant Species

cc: Winnie Pagan
Transportation and Development Services Division
Department of Public Works
City of San Jose
200 East Santa Clara Street, Third Floor
San Jose, CA 95113-1905

S. Tippetts, S. Yung, T. Hipol, M. Klemencic, S. Katric, S. Rose, L. Spahr, File (2)

SY:mf
0227a-pl.doc

Mathew, Reena

From: Lawrence Cargnoni [lcargnoni@sbcglobal.net]
Sent: Monday, November 13, 2006 8:12 PM
To: Enderby, Mike
Cc: Mathew, Reena; Butler, Lee
Subject: Re: Memorialization

Hi Mike,

I emailed you by mistake. Sorry about that. Thanks for the reply nonetheless. We are aware that the City can't comment on speculation.

Regards,
Larry C

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

From: "Enderby, Mike" <Mike.Enderby@sanjoseca.gov>
To: Lawrence Cargnoni <lcargnoni@sbcglobal.net>
Cc: "Mathew, Reena" <Reena.Mathew@sanjoseca.gov>; "Butler, Lee" <Lee.Butler@sanjoseca.gov>
Sent: Monday, November 13, 2006 3:32:46 PM
Subject: RE: Memorialization

Hi Larry,

No. This is really a separate agreement between the surrounding neighborhood and DAL. Since this agreement would suggest that more development could be provided on this site than allowed by the current General Plan and Evergreen Development Policy, it would really be inappropriate for the City to provide comments.
-Mike

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

From: Lawrence Cargnoni [mailto:lcargnoni@sbcglobal.net]
Sent: Monday, November 13, 2006 8:43 AM
To: mike.enderby@sanjoseca.gov
Cc: Kathleen Helsing; Larry Cargnoni
Subject: Memorialization

Hi Mike,

Has DAL signed off on your proposed wording for the memorialization letter?

I've pinged Reena/Lee/Mike E to get a handle on when the MND will be available which last I heard was to be mid-November.

Larry C

Mathew, Reena

From: Butler, Lee
Sent: Monday, November 06, 2006 6:52 PM
To: Mathew, Reena
Subject: FW: References regarding the invasive pest plants proposed for the bioswale in the Pan Clair project.

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

From: Butler, Lee
Sent: Friday, October 27, 2006 8:55 AM
To: 'Krzysztof Kozminski'
Subject: RE: References regarding the invasive pest plants proposed for the bioswale in the Pan Clair project.

Thanks Krzysztof! This information will be very helpful. The specific plants used will be evaluated at the PD Permit stage. The landscape plan is only conceptual at this point, however, we will certainly use the information you have provided when reviewing the final landscape plans to ensure that the plant selection is appropriate.

Have a great day!

Lee Butler
Acting Senior Planner
City of San Jose Plan Implementation Division
Department of Planning, Building, & Code Enforcement
200 E. Santa Clara St., San Jose, California, 95113-1905 U.S.A.
(408) 535-7851 (direct)
(408) 292-6055 (fax)
(408) 535-7800 (Planning Main)
(408) 535-7801 (Planning Voice Mail)
<http://www.sanjoseca.gov/planning/>
Lee.Butler@sanjoseca.gov

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

From: Krzysztof Kozminski [<mailto:kk@kozminski.com>]
Sent: Thursday, October 26, 2006 9:39 PM
To: lee.butler@sanjoseca.gov
Cc: Mike Enderby
Subject: References regarding the invasive pest plants proposed for the bioswale in the Pan Clair project.

Dear Mr. Butler:

At today's discussion of the Pan Clair project, I mentioned that Fountain grass (*Pennisetum setaceum*) planned for the bioswale might not be a good choice. As it turns out, *Festuca arundinacea*, another plant proposed for the bioswale, is also a species that is of concern.

Here is some substantiation of my statement:

1) California Department of Food and Agriculture lists *Pennisetum setaceum* as a noxious weed on their website:

http://www.cdfa.ca.gov/phpps/ipc/encycloweedia/encycloweedia_hp.htm
http://www.cdfa.ca.gov/phpps/ipc/weedinfo/winfo_table-sciname.htm
<http://www.cdfa.ca.gov/phpps/ipc/weedinfo/pennisetum.htm>

2) The most recent list published by the California Invasive Plant Council lists both the Pennisetum setaceum and Festuca arundinacea in the "moderate" category, as species that have substantial and apparent — but generally not severe — ecological impacts. Here's a link to that document:

<http://www.cal-ipc.org/ip/inventory/pdf/Inventory2006.pdf>

The invasive weed status of these proposed plantings has been known for quite some time. In 1999, both species were listed by the California Exotic Pest Plant Council on their lists of wildland pest plants. Here's a link to that historical document:

<http://www.cal-ipc.org/ip/inventory/pdf/Inventory1999.pdf>

I hope that the information available in all the above links will be found useful by the Planning Department during the review process of proposed developments.

Sincerely,

Krzysztof Kozminski

Mathew, Reena

From: Kmhelsing2@cs.com
Sent: Wednesday, September 13, 2006 9:26 AM
To: mlazzarini@dalpropertiesllc.com; Reena.Mathew@sanjoseca.gov
Subject: Re: PDC06-092 meeting with staff with interested members of community
Follow Up Flag: Follow up
Flag Status: Completed

Hello.

At least 5 and perhaps 7 from the group can make the meeting on Tuesday, 9/26 at 6pm. Please let us know the location.

Thank you.

--Kathleen

In a message dated 9/12/2006 2:04:11 PM Pacific Standard Time, mlazzarini@dalpropertiesllc.com writes:

Subj: RE: PDC06-092 meeting with staff with interested members of community
Date:9/12/2006 2:04:11 PM Pacific Standard Time
From:mlazzarini@dalpropertiesllc.com
To:Reena.Mathew@sanjoseca.gov
CC:Kmhelsing2@cs.com
Received from Internet:

Hi Reena,

We can be available that evening. I will let Kathleen Helsing confirm on behalf of the neighbors to your offer for a meeting on Sept. 26th, at 6:00pm, location to be determined,

Thanks.

Mark

Mark D. Lazzarini

DAL Properties LLC

255 W. Julian Street, Suite 502

San Jose, CA 95110-2405

(408) 298-9302

11/18/2006

(408) 298-9306 fax

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

From: Mathew, Reena [mailto:Reena.Mathew@sanjoseca.gov]

Sent: Tuesday, September 12, 2006 10:08 AM

To: mlazzarini@dalpropertiesllc.com

Cc: mlazzarini@dalpropertiesllc.com

Subject: PDC06-092 meeting with staff with interested members of community

Hi Mark,

You had mentioned wanting a focused meeting for Staff and members of the community prior to the formal community meeting. I have checked with Mike and Lee and we are available at 6pm on September 26, 2006. Is your team available on that date? In addition, do you have email contacts for the members of the community that you would like us to include in this meeting?

Thanks

Reena

Reena Mathew, Project Manager/ Planner
City of San Jose -Department of Planning
Building &Code Enforcement

200 East Santa Clara Street, Tower 3
San Jose, CA 95113
408.535.7844

11/18/2006