



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 14, 2007

Approved Paul Krutz Date 5/21/07

COUNCIL DISTRICT: 10
SNI AREA: N/A

SUBJECT: PDC06-070. ENVIRONMENTAL APPEAL FOR A PLANNED DEVELOPMENT REZONING FROM R-1-1 SINGLE-FAMILY RESIDENCE ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW SIX SINGLE-FAMILY DETACHED RESIDENTIAL UNITS ON A 1.07 GROSS ACRE SITE LOCATED ON THE EAST SIDE OF ALMADEN EXPRESSWAY, APPROXIMATELY 200 FEET NORTH OF THE TERMINUS OF FLEETWOOD DRIVE.

RECOMMENDATION

Uphold the Planning Commission's decision to approve the Mitigated Negative Declaration for the proposed project.

OUTCOME

If the City Council upholds the Planning Commission's decision to approve the Mitigated Negative Declaration for the proposed project, the Council may consider the proposed Planned Development Rezoning immediately following this item.

BACKGROUND

On April 30, 2007, Douglas Page, the appellant, filed a Notice of Environmental Appeal letter regarding the adequacy of the Mitigated Negative Declaration for File No. PDC06-070, a Planned Development Rezoning from R-1-1 Single-Family Residence Zoning District to A(PD) Planned Development Zoning District on a 1.07 gross acre site. The issues in the appeal letter, and the City's responses, are contained in the ANALYSIS section below. A copy of the letter is attached to this report.

This memorandum explains the statutory requirements for a Mitigated Negative Declaration (MND), and provides responses to the Notice of Environmental Appeal of the MND for subject rezoning, File No. PDC06-070.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that an MND may be prepared if the Initial Study (IS) identifies one or more potentially significant effects on the environment for which the project proponent has made, or agrees to make, project revisions that clearly mitigate the effects to a less than significant level before circulation of the IS and MND.

An MND may not be used if substantial evidence indicates that the revised project with mitigation would have a significant effect on the environment. Pursuant to CEQA Guidelines Section 15073, the City does not have a formal obligation to prepare written responses to comments on the MND but should have adequate information on the record explaining why the comment does not affect the conclusion that there are no potential significant environmental effects. The City is required to notify in writing any commenting agencies of the date of the public hearing on the project for which the MND was prepared. No public agencies submitted comments on the MND.

Mitigated Negative Declaration

On March 20, 2007, the Director of Planning, Building, and Code Enforcement completed an Initial Study, and circulated a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available for public review at the (1) Department of Planning, Building, and Code Enforcement, (2) Martin Luther King Jr. Main Library, (3) Santa Teresa Branch Library, 290 International Circle, San José, CA, and (4) on the Department's website. The public review period began on March 20, 2007 and ended on April 9, 2007. The Director of Planning, Building and Code Enforcement adopted the MND on April 11, 2007.

ANALYSIS

The City's responses to the issues raised in the Notice of Environmental Appeal letter follow below. The City's responses correspond to the subheadings contained in the appellant's letter that is attached to this memorandum.

1. Flooding

The appellant asserts that the subject site is in a special flood hazard area and that per Section 17.08.370 of the San Jose Municipal Code, a floodway must be designated on the flood hazard map before new development can occur in a special flood hazard area. In August of 1998, the Federal Emergency Management Agency (FEMA) issued a new Flood Insurance Rate Map (FIRM) and an updated Flood Insurance Study (FIS) for this area. The FIS provides detailed numerical information regarding floodways. The 1998 FIRM was updated by a map revision in

May 14, 2007

Subject: NOTICE OF ENVIRONMENTAL APPEAL FOR PDC06-070

Page 3

October 21, 2002, Panel 47 of 64. This updated map provides some information regarding floodways. However, as noted on the map, FEMA recommends users to consult the 1998 FIS that contains detailed floodway information in the Floodway Data tables. Table 3 of the FIS provides floodway information at specific distances above, or upstream of the intersection between Alamitos Creek and the Guadalupe Creek. Based on the FIS, it is the opinion of the Director of Public Works that a floodway has been designated for this section of Alamitos Creek. Therefore, the Ordinance section cited in the Appeal is not applicable to this project or location.

The appellant also asserts that the existing storm drain system is inadequate and that new development will further impact the existing problem. As stated in the Supplemental Memo to the Planning Commission, dated April 12, 2007, it is the opinion of the Director of Public Works that the existing storm drain system is sufficient in size for the surrounding areas. This area includes the existing neighborhood and proposed project site. Staff recognizes that, historically, the storm drain system has under-performed due to lack of maintenance. City crews will continue to address these problems through frequent maintenance of the system as needed. Additionally, based on City design guidelines, the proposed project will install a 15-inch storm main and connect to the existing system. The 15-inch storm main is more than adequate for the proposed 1.07 gross acre project site. In addition, the excess capacity from the new main can provide additional storage for the neighborhood.

2. Fire and Safety Issues

The appellant is concerned that the project has not been reviewed by the San Jose Fire Department. In a memo issued by the San Jose Fire Department on August 9, 2006 it states that the project has been reviewed and found in compliance with Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). In addition, compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process. (See attached memorandum to Lesley Xavier from Nadia Naum-Stoian dated 8-9-06.)

The appellant asserts that the impacts of the proposed project should be analyzed with the future development of adjacent underutilized properties and the existing neighborhood with respect to Section VII. (g) Hazards and Hazardous Materials of the Initial Study, which states; "Would the project impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?" The appellant argues the addition of 24-30 more homes to the neighborhood will increase the number of people that exit the neighborhood at its one access point on Cloverhill Drive during an emergency.

The vehicular capacity of a typical two-lane residential street is approximately 1,500 average daily trips. Fleetwood Drive currently has approximately 450 average daily trips based on the existing 45 single-family detached residential units. The proposed project would add six additional residential units and generate an additional 60 average daily trips for a total of 510 daily trips. Therefore, the additional residences and traffic generated by the proposed project would not exceed the capacity of Fleetwood Drive.

May 14, 2007

Subject: NOTICE OF ENVIRONMENTAL APPEAL FOR PDC06-070

Page 4

The appellant acknowledges that the proposed six homes would not impact an emergency situation on Fleetwood Drive but asserts that “24-30 more homes, built on four side by side parcels of land that share only one road for exiting purposes would have a severe impact.” CEQA does not require the City to evaluate speculative indirect physical changes to the environment such as development of the parcels identified by the appellant known as the Woodrum and Logan parcels south of the subject site, and the Mazzone parcel to the north. No development proposals have been proposed on the parcels adjacent to the subject site. Therefore, any estimation of impacts from development of those parcels would be pure speculation.

In addition, the propose project will not impair the implementation of, or physically interfere with, the City of San Jose Emergency Operation Plan, which provides overall organizational and operational concepts relative to response an recovery, as well as, an overview of potential hazards.

3. Ingress and Egress

The appellant asserts that the Fleetwood Drive neighborhood does not want any additional traffic to use Fleetwood Drive from development of the subject site and development of adjacent parcels to the north and south. The appellant believes it was implied when they purchased their home that no additional traffic would be allowed on Fleetwood Drive in addition to the current residences. The appellant recommends that ingress and egress to the subject site and the underutilized properties to the north and the south should occur through the Alternative 3 conceptual access plan (see Planning Commission staff reports).

While this is not an environmental concern, Planning staff recommends that the long term access plan for the subject site and the underutilized properties to the north and south utilize Almaden Road via Fleetwood Drive instead of Alternative 3. Almaden Road via Fleetwood Drive would connect the existing residential neighborhood with new residential development and provide safer vehicle circulation throughout the neighborhood for the existing and future residences. It would also create a sense of community identity consistent with the San Jose 2020 General Plan Community Identity Policy #1, Neighborhood Identity Policy #3, Urban Design Policy #3 and Transportation Policy #9.

Conclusion

The Initial Study identifies the project possibly resulting in potentially significant impacts in the areas of air quality, cultural resources, hydrology and water quality, and noise. However, the impacts would be temporary, and occur during the construction phase of the project. The Initial Study concludes that the incorporation of identified feasible mitigation measures will reduce all significant impacts to a less than significant level. The project applicant has agreed in writing to include the referenced mitigation measures into the project.

Based upon the environmental record, none of the comments submitted with the Mitigated Negative Declaration appeal constitute substantial evidence of a "fair argument" pursuant to CEQA Guidelines Sections 15064, 15070 and 15369.5 that the project would result in a significant effect on the environment according to the CEQA Guidelines and the City's thresholds of significance. Therefore, as described in the responses above, Planning staff believes the Mitigated Negative Declaration meets the requirements of CEQA, and preparation of an EIR is not required.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

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

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

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

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.

COST SUMMARY/IMPLICATIONS

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

May 14, 2007

Subject: NOTICE OF ENVIRONMENTAL APPEAL FOR PDC06-070

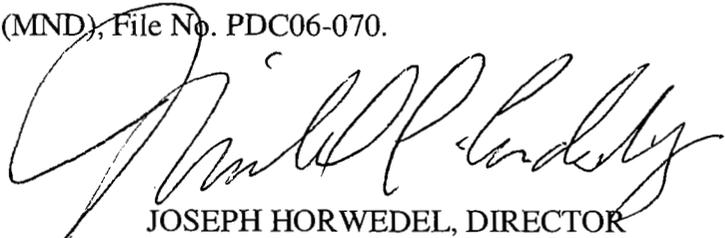
Page 6

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Mitigated Negative Declaration (MND), File No. PDC06-070.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", is written over the printed name and title.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

JH:ME:lx

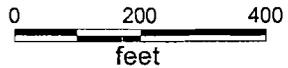
For questions please contact Lesley Xavier at 408-535-7800.

cc: Douglas Page
1060 Fleetwood Drive
San Jose, CA 95120




Map Created On:
7/3/2006

Scale 1 in = 300 ft 1:3600
Noticing Radius: 1,000ft



File No: PDC06-070
District: 10
Quad No: 141

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER <i>PDC06-070</i>	RECEIPT # _____		
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) <i>ND.</i>	AMOUNT <i>100/-</i>	DATE <i>4/30/07.</i>	
	BY <i>Sljja</i>		
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <i>THE APPEAL PERTAINS TO THE ADDITION, BY THE PLANNING COMMISSION OF MITIGATED NEGATIVE DECLARATION FOR PROJECT PDC06-070, ON APRIL 25, 2007. PLEASE SEE ATTACHMENT.</i>			
PERSON FILING APPEAL			
NAME <i>DOUGLAS PAGE</i>	DAYTIME TELEPHONE <i>(408) 268-8606</i>		
ADDRESS <i>1060 FLEETWOOD DRIVE</i>	CITY <i>SAN JOSE</i>	STATE <i>CA</i>	ZIP CODE <i>95120</i>
SIGNATURE <i>Douglas Page</i>	DATE <i>4/29/07</i>		
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS			
CITY			
STATE			
ZIP CODE			
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

**APPEAL OF MITIGATED NEGATIVE DECLARATION
PROJECT PDC06-070
(ACCEPTED ON 4/25/07 BY THE PLANNING COMMISSION)**

In the 2020 general plan there is a statement, “ The environment and livability of existing residential neighborhoods are an intangible but important community resource **to be preserved**”. By adopting this Mitigated Negative Declaration the planning commission and thus the City of San Jose fails to meet this objective.

A full Environmental Impact Report should be mandated for this project. The following 3 areas are of great concern to the residents of Fleetwood Drive. A full EIR would reveal pertinent details of this project that have been overlooked or downplayed and options that have not been fully exploited and analyzed.

1. FLOODING

Storm Water Drainage; The 2020 General Plan states a level of service goal is “For storm drainage, to minimize flooding on public streets and to minimize property damage from storm water”, (page 88) It also states that “New projects should be designed to minimize potential damage to the site **and other properties**” (page 91).

In the **Initial Study** report on project PDC06-070, section **VIII HYDROLOGY AND WATER QUALITY** sub-section e) has been checked as “**NO IMPACT**”. The Fleetwood Drive Homeowners Organization, would like to refer to “**Part 5 REQUIREMENTS FOR SPECIAL FLOOD HAZARD AREA**” section **17.08.370 New Developments** sub-section C and demand it be adhered to.

“The director of public works shall require that until a floodway is designated, no new construction, subdivision improvements or other development, including fill, shall be permitted within a special flood hazard area on the community flood insurance rate map unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point with in the community”

No floodway is designated on the map, it would be a cross hatched zone according to the map schedule. According to the “**Federal Emergency Management Agency**” document dated Oct 21, 2002, Panel 47 of 64, **ZONE AE** , Fleetwood Drive, is shaped like a bottle with PDC06-070 and the Mazzoni properties being the very neck of the bottle. Either property, if padded up, will act as a “cork” for **ZONE AE** and in turn would put the current and future residents of Fleetwood Drive in jeopardy.

The initial study, Issue XVI, Item c, has been checked as “No Impact”. Project PDC06-070 does propose to connect to the existing storm water drainage system for Fleetwood Drive. This system has already proven to be inadequate, not necessarily by design, but perhaps by performance. This has not been adequately investigated.

Everyone on the commission is well aware that there are four 1+ acre parcels of property that are currently in the process of being sold and or developed. If PDC06-070 development is initiated it will be the “**cork in the bottle**”, when the other 3 properties follow suit the Mazzoni property will further the corking of Zone AE, and the two 1+

acre sites, Logan & Woodrum, due to padding up, will further subject Fleetwood Drive to flooding. This is a real and serious problem and until the proper studies are completed, no further progress should be allowed by the Director of Public Works and or the Planning Commission.

2. FIRE AND SAFETY ISSUES

The Fleetwood Drive Homeowners Organization, were not able to obtain a copy of the Fire Department's signature of approval of this project PDC06-070 prior to the hearing of April 25, 2007. The planning commissioners initially requested a copy of the approval at the first public hearing held on April 11, 2007. A copy was suppose to be provided at the next public hearing held on April 25th, 2007 but it did not appear and was evidently overlooked/dismissed by the commission.

The PDC06-070 project should not be looked at as a stand alone project. We are concerned that the new developments of adjacent parcels of land north and south of this project on Almaden Expressway, are being looked at and treated as separate entities. They must be looked at as a whole, and consideration for existing neighborhoods must be taken into account. In the **"Initial Study" of project PDC06-070**, section VII, sub-section g) it reads any new development should not "Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan". Six more homes (as purposed in the PDC06-070 project) will not impact an emergency evacuation, but certainly 24-30 more homes, built on four side by side parcels of land that share only one road for exiting purposes would have a severe impact, especially where Almaden Road meets Fleetwood Drive. According to the proposal accepted on April 25, 2007, there would **not** be an alternative route for the homeowners on this proposed project as well as future homeowners on the parcels adjacent to this project.

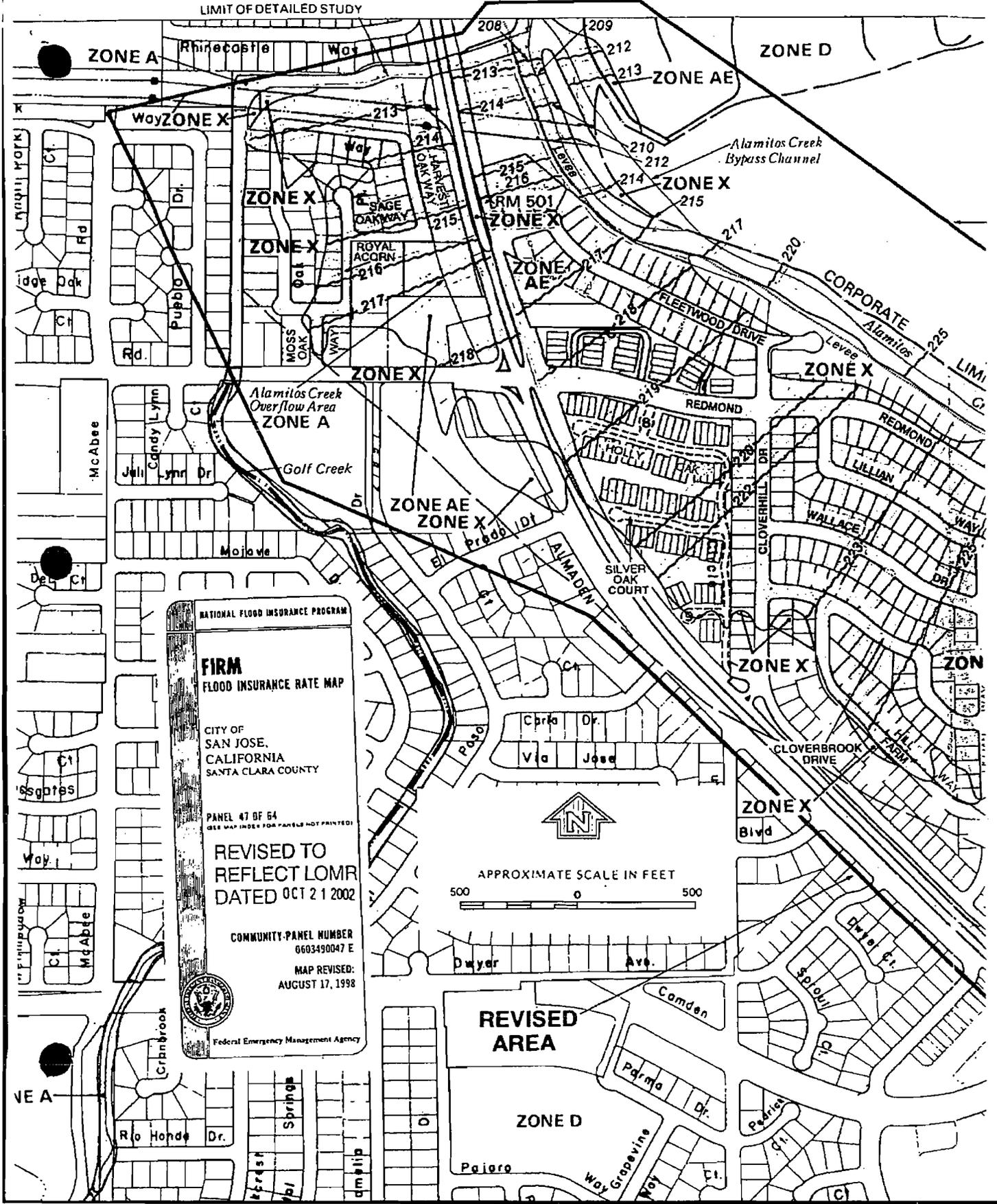
3. INGRESS AND EGRESS

The Fleetwood Drive residents strongly disagree with approving access to the new development (project PDC06-070) via Fleetwood Drive. The main reason for disagreement is **violation of the implied use** of our street from when we initially purchased our homes. There are a lot of homeowners who have own their homes for 30+ years and a lot of new families with children. We do not want additional traffic in any way, shape or form coming through our street. As stated above, the proposed new development as well as future development of the three other parcels of land should be looked at as a whole and not as separate entities being developed separately. For starters, creating an ingress/egress off the Expressway was considered "acceptable" by the county at the public hearing held on April 11, 2007 (as Alternative #3 in the city planning documentation). Secondly, Mr. Woodrum (for the Woodrum land) and Mr. Soukoulis (the applicant for this project PDC06-070) both stated that they would be willing to dedicate land for access purposes to their properties. Their properties are situated side by

side with Fleetwood Drive running between them. The proposed ingress/egress road created to access these two properties can later be extended to incorporate the other two properties that are situated directly north and south of these properties. And thirdly, many of the current ingress/egress lanes off the Almaden Expressway were built after the county guidelines were put in place and successfully handle much more traffic than what the new developments would produce. The Almaden Veterinary Clinic, the Almaden Nursery, the Almaden Park and Foxchase Drive, between blossom Hill and Highway 85, all handle more traffic and are examples of ingress/egresses that obviously work.

We also understand that exceptions can be made to current county guidelines on a case by case basis. We are well aware of the approved plan to develop a 32 condominium project proposed for the NE corner of Coleman Road and Almaden Expressway. The ingress/egress for this project is once again proposed for Almaden Expressway within 200 feet of Coleman Road. We understand that these condominiums will be situated in the vicinity of VTA and have "low income" units. Due to these stipulations this will be allowed as a "special circumstance" deviation from the current guidelines. The "special circumstances" conditions for this property, do not necessarily change the number of cars entering and exiting the complex and it does not change the fact that this project is being allowed to access from the Almaden Expressway. Creating an ingress/egress from the Almaden Expressway to the new developments which border Fleetwood Drive on both sides (north and south) would be a great compromise which would benefit both parties involved, the Fleetwood Drive residents as well as the developers of these parcels.

LIMIT OF DETAILED STUDY



NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

CITY OF
SAN JOSE,
CALIFORNIA
SANTA CLARA COUNTY

PANEL 47 OF 64
SEE MAP INDEX FOR PANELS NOT PRINTED

REVISED TO
REFLECT LOMR
DATED OCT 21 2002

COMMUNITY-PANEL NUMBER
0603490047 E

MAP REVISED:
AUGUST 17, 1998



Federal Emergency Management Agency



APPROXIMATE SCALE IN FEET
500 0 500

REVISED
AREA

ZONE D

Memorandum

DATE: 08/09/06

TO: Lesley Xavier

FROM: Nadia Naum-Stoian

Re: Plan Review Comments

PLANNING NO: PDC06-070

DESCRIPTION: Planned Development Rezoning from R-1-1 Residence District to A(PD) District to allow 6 single-family detached residences on a 1.07 gross acre site

LOCATION: east side of Almaden Expressway approximately 200 feet north of Fleetwood Drive

ADDRESS: east side of Almaden Expressway approximately 200 feet north of Fleetwood Drive (16310 ALMADEN RD)

FOLDER #: 06 019830 ZN

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

- These comments are based on the following information from drawings dated 6/12/06 by Dick Finnegan Arch. & Allied Eng.Co.

Largest building: +/-3000 sq. ft.

Construction Type: V N

Occupancy Group: R3

Number of stories: 2

1. The project plans as submitted, do not comply with the Fire Code. The following are discrepancies noted:

- a) The plans do not indicate that the required fire flow of 2000GPM will be available at the project site. Please ask the applicant to immediately contact Jim Bariteau of San Jose Water Co. at 408-279-7874 to get the water flow information.
- b) The plans do not show location of hydrants. The required fire flow shall be provided through 2 hydrants.

2. Please advise the applicant to submit plans to the Fire Department that provide the following information:

- a) Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. The fire access shall:
- be at least 20 feet wide; OK
 - have an unobstructed vertical clearance of not less than 14 feet; OK no trees shown in the way
 - be designed and maintained to support the loads of fire apparatus of at least 69,000 pounds; Specify on plans
 - have a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet;
 - be designed with approved provisions for turning around of fire apparatus if it dead ends and is in excess of 150 feet; N/A
 - have a gradient less than or equal to 15%. OK
 - **Curbs are required to be painted red and marked as “Fire Lane - No Parking” under the following conditions: (show exact locations on plan)**
 - i) **Roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked**
 - ii) **Roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked**
- b) Location of fire hydrants. The average distance between hydrants shall not exceed 500 feet, 250 feet from street frontage
- c) Available fire flow. Provide a copy of the letter from San Jose Water Co. that indicates the water flow available.

Every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue that shall open directly into a public street, public alley, yard, or exit court. Such windows or doors shall be in accordance with the adopted Building Code, and accessible for Fire Dept. laddering operation. The maximum angle for laddering is 70deg. from horizontal. Show all pertaining details including landscaping in relation to rescue window operation.

Note: The plans shall be submitted to the Fire Department *by appointment only* (call Nadia Naum-Stoian) as soon as possible.

Nadia Naum-Stoian
Fire Protection Engineer
Bureau of Fire Prevention
Fire Department
(408) 535-7699