

RESOLUTION NO. 73548

A Resolution of the City Council of the City of San Jose, denying the appeal by Rancho San Vicente LLC and upholding the Planning Director's decision to deny a Tentative Map application, File No. T06-051, proposing to subdivide two parcels into 16 lots for single-family detached residential uses on a 684.5 gross acre site located approximately 500 feet east of Almaden Road and 500 feet west of McKean Road adjacent to Calero Reservoir.

FILE NO. T06-051

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San Jose Municipal Code, on June 6, 2006, an application (File No. T06-051) was filed for a Tentative Map by Rancho San Vicente LLC (hereinafter "Applicant") for the purpose of creating 16 parcels for single-family detached residential uses, on that certain real property comprising approximately 684.5 gross acres located approximately 500 feet east of Almaden Road and 500 feet west of McKean Road adjacent to Calero Reservoir, San Jose, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter "Subject Property"); and

WHEREAS, the Subject Property is located in the R-1-1 Single-Family Residence District; and

WHEREAS, on August 30, 2006 pursuant to and in accordance with Chapter 19.12 of Title 19 of the San Jose Municipal Code, the Planning Director conducted a hearing on said application; and

WHEREAS, on September 7, 2006, the Planning Director denied the application in his Tentative Map Permit Denial, a copy of which is attached hereto as Exhibit "B" (hereinafter "Tentative Map Permit Denial") which decision is being appealed to the City Council by the Applicant; and

WHEREAS, the California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves pursuant to the CEQA Guidelines, specifically 14 Cal. Code of Regs. § 15270; and

WHEREAS, the City Council with the Applicant's consent deferred the duly noticed public hearing on the Applicant's appeal from its November 14, 2006 hearing date to its December 5, 2006;

WHEREAS, pursuant to and in accordance with Chapter 19.12 of Title 19 of the San Jose Municipal Code, this City Council conducted the hearing on the appeal on December 5, 2006, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and fully set forth herein;

WHEREAS, at said hearing, this City Council received in evidence a development plan for the Subject Property entitled, "Tentative Tract Map T06-051," dated October 21, 2005 (hereinafter "Applicant's Proposal"). The Applicant's Proposal is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, at said hearing, the City Council also received and considered the relevant reports and recommendation of the Planning Director, including the Planning Director's September 7, 2006 Tentative Map Permit Denial; and

WHEREAS, at said hearing, the City Council also received and considered the Applicant's notice of appeal; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council.

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

RELEVANT FACTS:

1. The Subject Property comprises approximately 684.5 gross acres located approximately 500 feet east of Almaden Road and 500 feet west of McKean Road adjacent to Calero Reservoir.
2. The Subject Property has a designation of Non-Urban Hillside on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.

3. The zoning designation for the Subject Property is R-1-1 Residence District.
4. The R-1-1 Single-Family Residence zoning designation of the Subject Property is inconsistent with the General Plan designation of Non-Urban Hillside for the site.
5. The Applicant's Proposal proposes to re-subdivide the two parcels totaling 684.5 acres on the Subject Property into 16 individual parcels ranging in size from 41.33 to 42.96 acres for 16 single-family detached residential units.
6. The Subject Property is currently undeveloped.
7. The Subject Property is located in the City of San Jose beyond both the Greenline/Urban Growth Boundary and the Urban Service Area established by the San Jose 2020 General Plan.
8. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves (14 Cal. Code of Regs. § 15270).
9. Existing land uses surrounding the Subject Property include undeveloped county parks, grazing, open space, and rural residential uses.
10. The Subject Property is located above the 15 percent slope line, as identified in a Final Environmental Impact Report ("EIR") prepared in 1990 for this area entitled "Rancho San Vicente General Plan EIR", which included the Subject property (GP90-10-03). The project for which the 1990 EIR was certified proposed to change the General Plan Land Use/Transportation Diagram from Non-Urban Hillside to inclusion in the South Almaden Valley Urban Reserve. That project was withdrawn based on non-conformance with the General Plan.
11. The site is characterized by steep hillside terrain comprised of oak woodland, grassland and scrub habitat.
12. The Applicant's Proposal originally proposed to have water supplied by the Great Oaks Water Company, and was amended by the Applicant to include no information about the water supplier.
13. The Applicant's Proposal proposes to have sanitary and storm sewer service provided by the City of San Jose.
14. According to MapInfo, the subject site contains a landslide and is located in a Geologic Hazards Zone.

Physical Improvements

15. The Applicant's Proposal proposes access from McKean Road to the Subject Property along a right-of-way approximately 0.4 miles in length. Access to the Subject Property

would require construction of a bridge across the Almaden-Calero canal located on APN 742-09-047, which is owned in fee title by the Santa Clara Valley Water District.

16. Access within the subdivision would be provided by a loop road 40 feet in width and approximately 2 miles in length would provide access to each of the proposed parcels. This road is proposed as a public road to be dedicated to and maintained by the City of San Jose.
17. Utilities are proposed to be constructed from the point of access across the bridge to the loop road and would include a potable water system, sanitary sewers, and storm drains. According to the Applicant's Proposal, the sanitary sewer and storm drain improvements would be owned and maintained by the City of San Jose upon acceptance of the public improvements on the site.
18. The City of San Jose Fire Code 17.12 requires all of the following:
 - a. A second access road in addition to the proposed road a minimum of 20 feet in width able to withstand a 69,000 pound vehicle load;
 - b. A minimum fire flow per unit of 2,000 to 4,500 gallons per minute for a duration of at least two hours measure at each homesite;
 - c. Interior sprinkler systems for homes greater than 6,200 square feet; and
 - d. A minimum access road turning radius of 50 feet outside and 30 feet inside.
19. The minimum fire flow per residential unit would require a water supply system and water storage system large enough to meet the fire flow minimum of 2,000 to 4,500 gallons per minute for a duration of at least two hours.
20. An unspecified amount of grading and tree removal would be required to construct the bridge, access roads, water supply system, sanitary sewer system, and water storage system for each of the 16 proposed parcels. Tree removal could include an undetermined number of native oaks, ordinance size and heritage trees.

Agency Comments

21. According to correspondence received from the Santa Clara Valley Water District ("SCVWD"), the proposed project shows access off of McKean Road via an easement which crosses District fee title over the Almaden-Calero Canal, a very active canal that is used every season to transfer water from Almaden Reservoir to Calero Reservoir.
22. According to the SCVWD, the drainage improvements for the site development may not discharge or drain to the canal.

23. The SCVWD suggests a roadway crossing over the canal will need to be provided by constructing either a bridge or arch culvert.
24. According to correspondence received from the County of Santa Clara Parks and Recreation Department, the subject subdivision is sited on a hilltop and therefore any development of structures would have the potential to impact viewsheds from many vantage points including Calero, Santa Teresa and Almaden Quicksilver County Parks as well as from the Almaden Valley Urban Reserve.
25. According correspondence from the U.S. Fish and Wildlife Service (“USFWS”), the proposed project could have significant adverse effects on the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), endangered least Bell's vireo (*Vireo bellii pusillus*), threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and other listed species under the authority of the U.S. Fish and Wildlife Service.
26. According to the USFWS, the proposed project is located in an area of Santa Clara County that may provide suitable habitat for the bay checkerspot butterfly, least Bell's vireo, California red-legged frog, California tiger salamander, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, and other listed species under the authority of the Service, or is otherwise naturally accessible to them.
27. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit is required be obtained pursuant to section 10(a)(1)(B) of the Federal Endangered Species Act.
28. According to correspondence received from the County of Santa Clara Parks and Recreation Department, Santa Clara County, the City of San Jose, the Valley Transportation Authority and the Santa Clara Valley Water District are working in cooperation with USFWS, National Marine Fisheries Service, and the California Department of Fish and Game in preparing a regional Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) for about two-thirds of Santa Clara County. The subject property is located within the boundaries of the study and HCP/NCCP.

Subdivision Laws

29. Pursuant to Section 19.12.130 and 19.12.220 of the San Jose Municipal Code and Government Code sections 66474(a), (b) and (c), the Planning Director, and now the City Council on appeal, is required to make a determination of consistency of the Applicant's Proposal with the City's General Plan, any applicable specific plan, the requirements of Title 19 of the San Jose Municipal Code (the “Subdivision Ordinance”), and the requirements of Government Code section 66474, among other required determinations. The relevant sections of the San Jose 2020 General Plan (“SJ2020”) and other policies affecting land use determination in relation to the Applicant's Proposal are as follows:

a. 2020 General Plan: Chapter III. Growth Management Major Strategy

1. The Growth Management Major Strategy addresses the need to balance the urban facilities and service demands of new development with the need to balance the City's budget. Infill development within urbanized areas is identified as an important means of controlling service costs through increased efficiency. The purpose of a growth management strategy, therefore, is to find the delicate balance between the need to house new population and the need to balance the City's budget, while providing acceptable levels of service (SJ2020, p. 44).
2. The location of growth in the City is established by the Greenline/Urban Growth Boundary (G/UGB) which defines the ultimate limits of the City's urban expansion. (SJ2020, p. 44).
3. The Greenline/Urban Growth Boundary, Urban Reserve, and Urban Service Area policies of the General Plan are designed to encourage compact, efficient infill development and discourage more costly development at the edge of the city (SJ2020, p. 44).

b. 2020 General Plan: Chapter III. Greenline/Urban Growth Boundary Major Strategy

1. The Greenline/Urban Growth Boundary is a strategy to define the ultimate perimeter of urbanization in San Jose. Besides setting limits to urban development as described the Growth Management Major Strategy, the Greenline/Urban Growth Boundary is intended to develop clearer identity for San Jose by defining where the City begins and ends and to preserve valuable open space resources (SJ2020, p. 47).
2. Lands outside of the Greenline/Urban Growth Boundary are identified as those that are intended to remain permanently rural in character and that should remain under the jurisdiction of the County (SJ2020, p. 47).
3. The hillsides are the most extensive and visually prominent feature addressed as part of the Greenline/Urban Growth Boundary strategy. Planned uses in the hillsides include valuable watersheds, wildlife habitat areas and rangelands for agriculture and grazing (SJ2020, p. 47).
4. The Greenline/Urban Growth Boundary and its supporting policies seek to prevent urban development in hazardous areas especially those areas with significant exposure to geologic or fire hazards (e.g., the hillsides). By discouraging the expansion of urban services, particularly sanitary sewers, the Greenline/Urban Growth Boundary and the Urban Service Area policies reduce development pressures beyond the Greenline/Urban Growth Boundary (SJ2020, pp. 47-48).

c. 2020 General Plan: Chapter IV. Greenline/Urban Growth Boundary Goals

1. Delineate the extent of future urban expansion and reinforce fundamental policies concerning the appropriate location of urban development in furtherance of both the City and County General Plans (SJ2020, p. 67).
2. Promote fiscally and environmentally sustainable development in locations where the City can most efficiently provide urban services (SJ2020, p. 67).
3. Preserve substantial areas of the surrounding hillsides, baylands, and other lands, as open space both to conserve the valuable natural resources contained on these lands and to protect valley floor viewsheds (SJ2020, p. 67).
4. Protect public health and safety by preventing urban development in areas subject to natural hazards (SJ2020, p. 67).
5. Provide greater long-term certainty regarding future land uses outside the Greenline/Urban Growth Boundary than is provided by the Urban Service Area boundary (SJ2020, p. 67).

d. 2020 General Plan: Chapter IV. Greenline/Urban Growth Boundary Policies

1. No urban development should extend outside of the Greenline/Urban Growth Boundary which separates those lands planned and reserved for urban uses from those that should remain rural in character (SJ2020, p. 67).
2. The Greenline/Urban Growth Boundary should contain within it those lands suitable and appropriate for urban purposes including all Urban Service Area lands, the City's Urban Reserves, and certain lands located below the 15 percent slope line and deemed potentially suitable for future urban development (SJ2020, p. 68).

e. 2020 General Plan: Chapter IV. Relationship to Urban Service Area

1. No expansion of the Urban Service Area should be permitted outside the Greenline/Urban Growth Boundary (SJ2020, p. 68).

f. 2020 General Plan: Chapter IV. Urban Service Area Goal

1. Insure that San José's future growth will proceed in an orderly, planned manner in order to provide efficient and economical public services, to maximize the utilization of existing and proposed public facilities, and to achieve the equitable sharing of the cost of such services and facilities (SJ2020, p. 70).

g. 2020 General Plan: Chapter IV. Urban Service Area Policies

1. The General Plan designates an Urban Services Area where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring such services should be located (SJ2020, p. 70).
2. The Urban Service Area should be expanded only when it can be demonstrated that existing facilities and services are available and adequate to serve the proposed expansion area; adequate facilities are planned (i.e., in the adopted Capital Improvement Program or similar programs or other public agencies) and will be available when required; or all necessary facilities will be provided by the developer (s). Additionally, the Urban Service Area should not be expanded unless it can be determined that adequate resources, including operations and maintenance resources, will be available in the long term to maintain service levels citywide and that services to existing neighborhoods will not be reduced or jeopardized (SJ2020, p. 70).
3. Since the provision of sanitary sewers is an urban service and development served by sanitary sewers is thereby urban, the expansion of sanitary sewer districts is discouraged for areas planned in non-urban uses outside the Urban Service Area (SJ2020, p. 71).

h. 2020 General Plan: Chapter IV. Hillside Development Goal

1. Preserve the valuable natural resources of the hillsides and minimize the exposure of the public to potential environmental hazards associated with development on the hillsides (SJ2020, p. 79).

i. 2020 General Plan: Chapter IV. Hillside Development Policies

1. Regardless of the maximum potential residential densities designated by the Land Use/Transportation Diagram for land with a slope of 7% or greater, the City should only allow the development of these lands at densities consistent with the City's objectives of minimizing exposure to environmental hazards, maximizing resource conservation, and achieving compatibility with existing land use patterns (SJ2020, p. 79).
2. Planned Development zonings should be used to govern hillside developments since it allows flexible design techniques as clustering, and varying lot sizes, and setbacks which can help minimize damage to the natural environment and maximize resource preservation (SJ2020, p. 80).
3. To avoid any extraordinary maintenance and operating expenses, the City should not locate public improvements, communication facilities, and utilities in hillside areas with identified soils and/or geologic hazards. When the location of public improvements, communication facilities, and utilities in such areas cannot be

avoided, effective mitigation measures should be implemented to maximize their potential to remain functional during and after a seismic event (SJ2020, pp. 80-81).

4. The Development Review process for projects in hillside areas should consider the potential for any extraordinary expenditure of public resources to provide emergency services in the event of a man-made or natural disaster (SJ2020, p. 81).

j. 2020 General Plan: Chapter V. Non-Urban Hillside

1. This land use is proposed for most hillside areas above the fifteen percent slope line. Because of the pervasive geologic conditions in the hills (land sliding, soil creep, earthquake faults) and the extraordinary public costs of hillside development, uses must be limited to those having very little physical impact on the land and requiring no urban facilities or services. There is also a need to preserve watershed and prime percolation soil areas. Protecting natural habitats and minimizing the visibility of development are important to enhance the open space character of these land areas (SJ2020, p. 241).
2. Clustering of the allowable density is an appropriate means to encourage open space preservation and reduce impacts associated with on-site grading necessary for development and roadways. Development under this land use designation should be consistent with the Hillside Development policies of the General Plan (SJ2020, p. 242).

k. 2020 General Plan: Chapter IV. General Plan Species of Concern

1. The General Plan Species of Concern Goal is “Preserve habitat suitable for Species of Concern, including threatened and endangered species” (SJ2020, p. 116).
2. Species of Concern Policy No. 2 states “Habitat areas that support Species of Concern should be retained to the greatest extent feasible” (SJ2020, p. 117).

l. *Subdivision Map Act and Subdivision Ordinance*

1. Pursuant to the City’s Subdivision Ordinance, specifically Section 19.12.130 of the San Jose Municipal Code, the Director shall not approve any tentative map for any subdivision, together with the provisions for its design and improvements, where:
 - (a) The Director finds that the proposed subdivision is inconsistent with the applicable general and specific plans of the City;
 - (b) The Director makes any of the findings described in Section 66474 of the Subdivision Map Act (Government Code), as follows:

- (i) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Government Code.
 - (ii) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - (iii) That the site is not physically suitable for the type of development.
 - (iv) That the site is not physically suitable for the proposed density of development.
 - (v) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
 - (vi) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
 - (vii) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.
2. Additionally, pursuant to the City's Subdivision Ordinance, specifically Section 19.12.220 of the San Jose Municipal Code, the director may disapprove a tentative map because of design, flood hazard, inundation, lack of adequate access, lack of adequate water supply or fire protection, insufficient sewerage or drainage facilities, geological hazards, when the only practical use which can be made of the property thereon is a use prohibited by any ordinance, statute, law or other valid regulation, or because of failure to comply with the requirements of the Subdivision Map Act or of this Title 19.

FINDINGS

The City Council concludes and finds, based on an analysis of the above facts, that:

1. The above-referenced facts are incorporated herein as findings.

2. The proposed subdivision is not consistent with the applicable general and specific plans of the City, and as specified in Government Code section 65451, in that:
 - a. The project does not further the Growth Management Major Strategy which encourages infill development within urbanized areas as an important means of controlling service costs through increased efficiency.
 - b. The project does not respect the Greenline/Urban Growth Boundary which defines the City's ultimate limits to urban expansion.
 - c. The project would encourage more costly development at the edge of the City inconsistent with the Greenline/Urban Growth Boundary and Urban Service Area policies.
 - d. The project would extend urban services in a rural area outside of the Urban Growth Boundary and Urban Service Area inconsistent with the Greenline/Urban Growth Boundary Major Strategy, Goal, and policies.
 - e. The project would locate urban development on an undeveloped rural site located in an area with geologic hazards and important biological resources inconsistent with the General Plan Hillside Development policies.

3. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans in that:
 - a. The project proposes a large-lot, low-density design which is inconsistent with the Hillside Development Policies that encourage clustering residential development in order to minimize exposure of development to environmental hazards and maximize the preservation of natural resources in the hillsides.
 - b. The project and related improvements including, but not limited to, grading, vegetation removal, and construction of the road, bridge, and infrastructure is inconsistent with the Hillside Development Goal and Policies because it would not preserve valuable natural resources of the hillsides, minimize exposure of the public to potential environmental hazards, and maximize resource conservation.
 - c. The project is inconsistent with the Hillside Development Policies because it would locate public improvements in hillside areas with identified geologic hazards.
 - d. The project is inconsistent with the Hillside Development Policies because it does not consider the potential for any extraordinary expenditure of public resources to provide emergency services in the event of a natural or man-made disaster.

4. The site is not physically suitable for the proposed type of development in that:
 - a. The subject site contains a landslide and is located in a Geologic Hazard area.
 - b. The subject site is characterized by steep hillside terrain comprised of oak woodland, grassland and scrub habitat which contains Special Status species and habitat.
 - c. The proposed project will require significant grading and vegetation disturbance to construct road, bridge, water system, and sanitary sewer improvements.
 - d. The project proposes 16 lots consisting of approximately 40 acres each requiring the road and infrastructure improvements be extended throughout the entire hillside area.

5. The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because:
 - a. The project is located in an area of Santa Clara County that may provide suitable habitat for several threatened and endangered species listed by the United States Fish and Wildlife Service and the California Department of Fish and Game.
 - b. The subject site is located in a Geologic Hazards area that contains a landslide.
 - c. The project would require urban services and improvements that have the potential to substantially reduce the habitat of a wildlife species, and to substantially reduce the number or restrict the range of an endangered, rare or threatened species.

Finally, the City Council concludes and finds, based on an analysis of the above facts and findings, that:

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

2. Pursuant to the City's Subdivision Ordinance, specifically Sections 19.12.130 of the San Jose Municipal Code, the Director, or the Council on appeal, shall not approve any tentative map for any subdivision, together with the provisions for its design and improvements, where:
 - a. The Director, or the Council on appeal, finds that the proposed subdivision is inconsistent with the applicable general and specific plans of the City;
 - b. The Director, or the Council on appeal, makes any of the findings described in Section 66474 of the Subdivision Map Act (Government Code), as follows:

- (1) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Government Code.
 - (2) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - (3) That the site is not physically suitable for the type of development.
 - (4) That the site is not physically suitable for the proposed density of development.
 - (5) That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
 - (6) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
 - (7) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.
- c. The project is not exempt from the EIR requirements of Title 21 of the San José Municipal Code, or not previously found by the Director to have no significant effect on the environment, unless there has been filed with the Director:
- (1) A negative declaration, meeting in all respects the requirements of Title 21 of the San José Municipal Code, finding that the proposed subdivision would not have a significant effect upon the environment which declaration has been filed at least twenty days before action is taken by the Director with reference to the tentative map with the county clerk of the county of Santa Clara, to which declaration no written protest has been filed in accordance with Section 21.32.100 of this code, or in the event it has, such protest has not been sustained by the commission after a hearing as prescribed by said Section 21.32.100; or
 - (2) A final environmental impact report prepared in accordance with the procedures set forth in Title 21 of this code, meeting in every respect all the requirements of said Title 21, covering the proposed subdivision will or will not have a significant effect on the said environment, which report is accompanied by the Director's: (1) certification that the said report has been

completed in compliance with the California Environmental Quality Act of 1970, as amended, the state guidelines and said Title 21, and (2) statement that he has reviewed and considered the information contained in the said report.

3. Pursuant to Section 19.12.220 of the San Jose Municipal Code, the director, or Council on appeal, may disapprove a tentative map because of design, flood hazard, inundation, lack of adequate access, lack of adequate water supply or fire protection, insufficient sewerage or drainage facilities, geological hazards, when the only practical use which can be made of the property thereon is a use prohibited by any ordinance, statute, law or other valid regulation, or because of failure to comply with the requirements of the Subdivision Map Act or of Title 19 of the Municipal Code.
4. The proposed map is not consistent with applicable general and specific plans as specified in Government Code section 65451 because:
 - a. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - b. The site is not physically suitable for the type of development.
 - c. The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

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The City Council hereby upholds on appeal, and confirms, the Director's September 7, 2006 Tentative Map Permit Denial decision.

DENIED this 5th day of December 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.