

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** October 25, 2006

Approved

Date

10/31/06

**COUNCIL DISTRICT:** 10  
**SNI AREA:** N/A

**SUBJECT: T06-051. APPEAL OF THE PLANNING DIRECTOR'S DECISION TO DENY A TENTATIVE MAP PROPOSING TO SUBDIVIDE TWO PARCELS INTO 16 LOTS FOR SINGLE-FAMILY DETACHED RESIDENTIAL USES ON A 684.5 GROSS ACRE SITE.**

## RECOMMENDATION

The Director of Planning recommends that the City Council uphold the Planning Director's decision to deny the Tentative Map proposing to subdivide two parcels into 16 lots for single-family detached residential uses on a 684.5 gross acre site.

## OUTCOME

If the City Council upholds the Planning Director's decision to deny the Tentative Map, the subject site would continue to consist of two parcels totaling 684.5 acres. The existing zoning of R-1-1 Residence District would allow development of up to one single-family dwelling unit per lot with no extension of urban services beyond the City's Urban Growth Boundary and Urban Service Area required.

## BACKGROUND

On June 7, 2006, the applicant, Rancho San Vicente Associates, submitted a Tentative Map Permit application proposing to subdivide two parcels into 16 lots ranging from 41.33 to 42.96 acres in size for single-family detached residential uses on a 684.5 gross acre site.

The subject site has a San Jose 2020 General Plan Land Use/Transportation Diagram designation of "Non-Urban Hillside" and is located in the City of San Jose beyond both the Greenline/Urban Growth Boundary(G/UGB) and the Urban Service Area(USA). The subject site is currently undeveloped and characterized by steep hillside terrain comprised of oak woodland, grassland and scrub habitat. The site is also located in a geologic hazards zone. Existing surrounding land uses include undeveloped county parks, grazing, open space, and rural residential uses.

The location and design of the proposed project does not conform to several Major Strategies, Goals, and related policies of the San Jose 2020 General Plan (SJ2020) including the Growth Management Major Strategy, the Greenline/Urban Growth Boundary Major Strategy, Goals, and related policies, the Urban Service Area Goal and related policies, Hillside Development policies, Species of Concern Goal, and Land Use Diagram definition of Non-Urban Hillside. Please see attached Tentative Map Denial Permit for specific facts outlining these inconsistencies.

Pursuant to the City's Subdivision Ordinance, specifically Sections 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 Director, and the City Council on appeal, shall not approve any tentative map for any subdivision, together with the provisions for its design and improvements, where:

1. The Director finds that the proposed subdivision is inconsistent with the applicable general and specific plans of the City;
2. The Director makes any of the findings described in Section 66474 of the Subdivision Map Act (Government Code), as follows:
  - a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Government Code.
  - b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - c. That the site is not physically suitable for the type of development.
  - d. 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.

On July 6, 2006, planning staff informed the applicant in writing that the proposed project was inconsistent with the San Jose General Plan based on irreconcilable inconsistencies with several Major Strategies, Goals, and related policies. On August 2, 2006, staff met with the applicant's representative to discuss the project, and on August 24, 2006, the Director of Planning denied the Tentative Map at a public hearing based on inconsistencies with the San Jose General Plan Major Strategies, Goals, and related policies.

Environmental clearance for the application was not necessary prior to the Director's Hearing because Section 15270 of the California Environmental Quality Act guidelines states that CEQA does not apply to projects which a public agency rejects or disapproves.

On September 18, 2006, the applicant's representative, Tom Armstrong, submitted an appeal of the Director's decision to deny the Tentative Map "based on the grounds that it is was an abuse of discretion

due to the fact that your department did not process our subdivision application or the Environmental Clearance application and the findings upon which you based your denial have no basis in fact or law."

Procedurally, Tentative Map appeals are considered by the City Council only. There was no Planning Commission consideration of this proposal. The City Council has not considered the item previously.

### **ANALYSIS**

This proposal was denied on the basis of numerous inconsistencies with General Plan policies. The State Subdivision Map Act requires that subdivisions be consistent with the City's General Plan (See Background). This extends not only to the identified land use designation for the property, but all relevant policies as well. The attached Tentative Map Permit Denial provides a comprehensive listing of facts and findings related to General Plan conformance (See attached). The Analysis section of this memorandum highlights some of the key reasons for denial of this application and a discussion of the applicant's reasons for appeal.

The applicant reasons for appeal of the Director's decision to deny the Tentative Map state:

"The appeal is based on the grounds that it is was an abuse of discretion due to the fact that your department did not process our subdivision application or the Environmental Clearance application and the findings upon which you based your denial have no basis in fact or law."

Staff does not agree that the decision to deny the Tentative Map Permit was an abuse of discretion and has outlined how the department has processed the application in an appropriate amount of time and given the proposal due consideration prior to rendering a decision. The decision to deny the Tentative Map Permit was based on a comprehensive analysis of facts provided by the applicant and relevant state and local laws.

1. *"Your department did not process our subdivision application"*

After analyzing the proposed subdivision, staff found it to be inconsistent with the San Jose 2020 General Plan Major Strategies, Goals, and Policies.

Staff received the Tentative Map application on June 6, 2006. Within 30 days, a letter was sent to the applicant detailing staff concerns with the proposed project, and requested a meeting with the applicant. On August 2, 2006 staff was able to meet with the applicant to discuss the project before scheduling it for Public Hearing. After completing all required steps of the review process, the project was denied at Director's Hearing on August 30, 2006. The total processing time for the project was 86 days, which is within the project processing timeline goal for Tentative Maps, which is 90 days.

The applicant submitted an appeal of the Director's decision on September 18, 2006. The project was scheduled for the November 14th City Council meeting, which is within 60 days of the date the appeal was filed as required.

2. *"Your department did not process our Environmental Clearance application"*

The California Environmental Quality Act Guidelines Section 15270 (14 Cal. Code of Regs. § 15270(a)), states that CEQA does not apply to a project which a public agency rejects or disapproves. The purpose of this section in CEQA is to allow for initial screening of projects on the merits to allow for quick disapprovals where the agency determines that the project cannot be approved. (14 Cal. Code of Regs. § 15270(b)). Environmental Clearance is not legally required for this project because the Director denied the project application for General Plan inconsistency, which is a disapproval of the project by a public agency under CEQA.

An approval would have most likely required the preparation of a costly Environmental Impact Report (EIR). While it may have been possible to reduce some potential impacts, the EIR would not have been able to reconcile inconsistencies with many key General Plan policies.

3. *"The Findings upon which you based the denial have no basis in fact or law"*

The findings upon which the denial is based are specified in the City's Subdivision Ordinance (specifically Sections 19.12.130 and 19.12.220 of Title 19 of the San Jose Municipal Code), the Subdivision Map Act (specifically Government Code section 66474), and the California Environmental Quality Act. The decision to deny the Tentative Map Permit was based on the analysis of facts provided to staff by the applicant, as well as the SJ2020 General Plan Major Strategies, Goals, and Policies, and the conclusion based upon those facts that positive findings could not be made in support of the project.

## **POLICY ALTERNATIVES**

### ***Alternative # 1: Require preparation of an Environmental Impact Report (EIR).***

**Pros:** The applicant would initiate environmental clearance for the project by preparing an Environmental Impact Report for the proposed project. An EIR is necessary for the project because of the presence of species that are federally protected under the Endangered Species Act.

**Cons:** Preparing an EIR does not rectify the inconsistencies with the SJ2020 General Plan Major Strategies, Goals, and Policies.

**Reason for not recommending:** Preparation of an EIR would not bring the proposed project into conformance with the SJ2020 General Plan because the project is located outside of the Urban Growth Boundary and Urban Service Area of the City of San Jose.

## **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. Public notices for the City Council hearing regarding the appeal of the Tentative Map was distributed to the owners and tenants of all properties located within 1,000 feet of the subject site. Notice of the City Council hearing was also published in a local newspaper, the Post Record two weeks prior to the public hearing. Staff has notified interested members of the public via e-mail of all public hearings for this project. This memo was also posted on the City's website. Staff has been available to respond to questions from the public.

### **COORDINATION**

The appeal of the Director's decision was coordinated with the City Attorney's office. The Director's decision to deny the Tentative Map was coordinated with the Public Works Department, the Building Department, the Fire Department, and the City Attorney's office.

### **FISCAL/POLICY ALIGNMENT**

The Director of Planning decision to deny the proposed Tentative Map is in alignment with the San Jose 2020 General Plan in that the plan recognizes that it is more costly to provide services at the edge of the city and therefore discourages such development.

### **COST SUMMARY/IMPLICATIONS**

N/A

### **BUDGET REFERENCE**

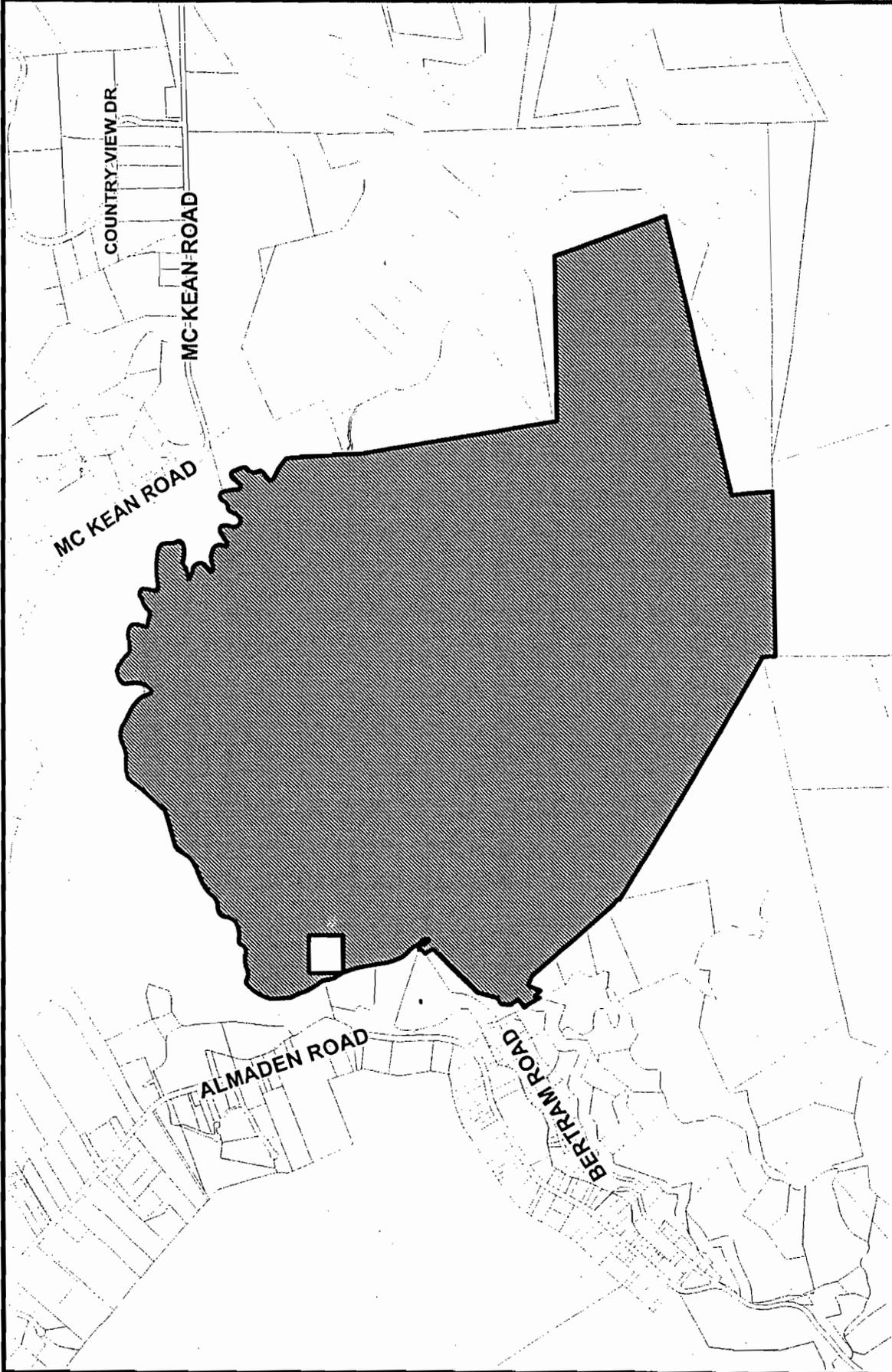
N/A

### **CEQA**

CEQA Guidelines Section 15270 (14 Cal. Code of Regs. § 15270) states that CEQA does not apply to projects which a public agency rejects or disapproves.



JOSEPH HORWEDEL, ACTING DIRECTOR  
Planning, Building and Code Enforcement



File No: T06-051

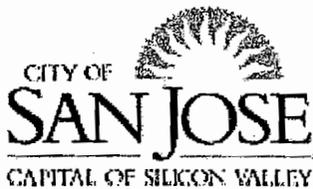
District: 10

Quad No: 155, 156, 169, 170

Scale: 1"= 1,400'

Map Created On: 06/07/2006





**RECEIVED**  
 SEP 19 2006  
 CITY OF SAN JOSE  
 PLANNING DEPARTMENT

**CITY OF SAN JOSE**  
 Planning, Building and Code Enforcement  
 200 East Santa Clara Street  
 San José, CA 95113-1905  
 tel (408) 535-3555 fax (408) 292-6055  
 Website: www.sanjoseca.gov/planning

**NOTICE OF PERMIT APPEAL**

**TO BE COMPLETED BY PLANNING STAFF**

FILE NUMBER <i>T06-051</i>	RECEIPT # <i>725818</i>
PROJECT LOCATION	AMOUNT <i>2347.63</i>
	DATE <i>09/18/2006</i>
	BY <i>JC</i>

**TO BE COMPLETED BY PERSON FILING APPEAL**

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

The appeal is based on the grounds that it was an abuse of discretion due to the fact that your department did not process our subdivision application or the Environmental Clearance application and the findings upon which you based your denial have no basis in fact or law.

**PERSON FILING APPEAL**

NAME Tom Armstrong	DAYTIME TELEPHONE (408) 487-2200
ADDRESS 1570 Oakland Road	CITY San Jose
	STATE CA
	ZIP CODE 95113
SIGNATURE <i>Tom Armstrong</i>	DATE <i>9/7/06</i>
RELATIONSHIP TO SUBJECT SITE: (e.g. adjacent property owner, property owner within one thousand (1,000) feet) <i>Civil Engineer</i>	

**CONTACT PERSON  
 (IF DIFFERENT FROM PERSON FILING APPEAL)**

NAME Tom deRegt			
ADDRESS 100 Pasadera Drive	CITY Monterey	STATE CA	ZIP CODE 93940
DAYTIME TELEPHONE (831) 655-5000	FAX NUMBER (831) 655-2448	E-MAIL ADDRESS	

**PROPERTY OWNER**

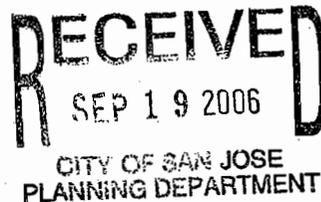
NAME Rancho San Vicente Associates	DATE <i>9/7/06</i>
ADDRESS 100 Pasadera Drive	CITY Monterey
	STATE CA
	ZIP CODE 93940

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



September 5, 2005  
Job No. 2280.03

Mr. Joseph Horwedel, Acting Director  
City of San Jose  
Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113



**Re: Tentative Map Permit - Denial T06-051  
Notice of Permit Appeal  
Appeal of Director's Conclusions and Findings of Fact**

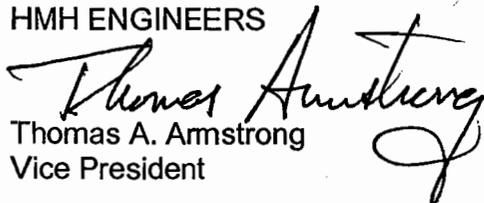
Dear Mr. Horwedel:

On behalf of our client, Rancho San Vicente Associates, LLC, we are respectfully requesting that you process our appeal of your decision to deny our clients' Tentative Map Application (T06-051). Enclosed with this request is our completed Permit Appeal Application and application fee, Assessor's parcel map with the subject site outlined, Public Noticing Fee, 45 Z-folded and 3 hole punched/stapled plan sets as required.

We are appealing your decision to deny our application for a Tentative Map on the grounds that it was an abuse of discretion due to the fact that your department did not process our subdivision application or the Environmental Clearance application and the findings upon which you based your denial have no basis in fact or in law.

Sincerely,

HMH ENGINEERS



Thomas A. Armstrong  
Vice President

cc: Tom deRegt  
Joan Gallo  
Bart Hecthman  
Jerry Strangis

Enclosures

**SAN JOSE**  
1570 Oakland Road  
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408.487.2200 Tel 408.487.2222 Fax  
[www.hmh-engineers.com](http://www.hmh-engineers.com)

**GILROY**  
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Gilroy, California 95020  
408.846.0707 Tel 408.846.0676 Fax



**TENTATIVE MAP PERMIT  
DENIAL**

<b>FILE NO.</b>	<b>T06-051</b>
<b>SITE LOCATION</b>	<b>Approximately 500 feet east of Almaden Road and 500 feet west of McKean Road adjacent to Calero Reservoir</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Non-Urban Hillside</b>
<b>ZONING DISTRICT</b>	<b>R-1-1 Single-Family Residence District (1 DU/AC)</b>
<b>PROPOSED USE</b>	<b>Single-Family Detached Residential</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Incomplete</b>
<b>OWNER</b>	<b>Rancho San Vicente Associates, LLC</b>
<b>ADDRESS</b>	<b>100 Pasadena Dr Monterey, CA 93940</b>

**FACTS**

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. The subject site has a designation of Non-Urban Hillside on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
2. The zoning designation for the subject site is R-1-1 Residence District.
3. The R-1-1 Single-Family Residence zoning designation of the subject site is inconsistent with the General Plan designation of Non-Urban Hillside for the site.
4. The Tentative Map proposes to reconfigure two parcels totaling 684.5 acres into 16 lots ranging from 41.33 to 42.96 acres in size covering the entire site for 16 single-family detached residential units.
5. The subject site is currently undeveloped, and located in the City of San Jose beyond both the Greenline/Urban Growth Boundary and the Urban Service Area.
6. 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.

7. The subject site is located above the 15 percent slope line, as identified in a Final Environmental Impact Report prepared in 1990 for this area which included the proposed project site (GP90-10-03). The project proposed to change the General Plan Land Use/Transportation Diagram from Non-Urban Hillside to inclusion in the South Almaden Valley Urban Reserve. The project was withdrawn based on non-conformance with the General Plan.
8. The Tentative Map proposes to have water supplied by the Great Oaks Water Company.
9. The Tentative Map proposes to have sanitary and storm sewer service provided by the City of San Jose.
10. Existing land uses surrounding the subject site include undeveloped county parks, grazing, open space, and rural residential uses.

### ***Physical Improvements***

11. The Tentative Map proposes access from McKean Road to the site along a right-of-way approximately 0.4 miles in length. Access to the site would require construction of a bridge across the Almaden-Calero canal located on APN 742-09-047 owned in fee title by the Santa Clara Valley Water District. A loop road 40 feet in width and approximately 2 miles in length would provide access to each of the proposed parcels. Utilities to be constructed in the road would include a potable water system, sanitary sewers, and storm drains.
12. The City of San Jose Fire Code requires (1) 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, (2) a minimum fire flow per unit of 2,000 to 4,000 gallons per minute for a duration of at least two hours, (3) sprinkler systems for homes greater than 6,200 square feet, and (4) a minimum turning radius of 50 feet outside and 30 feet inside.
13. The minimum fire flow per unit would require a water supply system and water storage system of up to one million gallons located on the subject site.
14. 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 proposed lots. Tree removal could include an undetermined number of native oaks, ordinance size and heritage trees.

### ***General Plan***

The following San Jose 2020 General Plan ("SJ2020") Major Strategies, goals and policies are applicable to this proposed project:

#### **Growth Management Major Strategy**

12. 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).

13. 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).
14. 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).

### **Greenline/Urban Growth Boundary Major Strategy**

15. 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).
16. 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).
17. 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).
18. 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).

### **Greenline/Urban Growth Boundary Goals**

19. 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).
20. Promote fiscally and environmentally sustainable development in locations where the City can most efficiently provide urban services (SJ2020, p. 67).
21. 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).
22. Protect public health and safety by preventing urban development in areas subject to natural hazards (SJ2020, p. 67).
23. 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).

### **Greenline/Urban Growth Boundary Policies**

24. 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).
25. 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).

### **Relationship to Urban Service Area**

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

### **Urban Service Area Goal**

27. 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).

### **Urban Service Area Policies**

28. 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).
29. 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).
30. 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).

### **Hillside Development Goal**

31. 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).

### **Hillside Development Policies**

32. 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).
33. 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).
34. 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).
35. 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).

### **Non-Urban Hillside**

36. 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).
37. 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).

### ***General Plan Species of Concern***

38. The General Plan Species of Concern Goal is "Preserve habitat suitable for Species of Concern, including threatened and endangered species" (SJ2020, p. 116).
39. 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).

### ***Subdivision Design***

40. 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.

41. According to the SCVWD, the drainage improvements for the site development may not discharge or drain to the canal.
42. The SCVWD suggests a roadway crossing over the canal will need to be provided by constructing either a bridge or arch culvert.

### ***Physical Site Characteristics***

43. The site is characterized by steep hillside terrain comprised of oak woodland, grassland and scrub habitat.
44. 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.
45. According to MapInfo, the subject site contains a landslide and is located in a Geologic Hazards Zone.

### ***Environmental Resources***

46. 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.
47. 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.
48. 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.
49. 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 Map Act*

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:

1. The Director finds that the proposed subdivision is inconsistent with the applicable general and specific plans of the City;
2. The Director makes any of the findings described in Section 66474 of the Subdivision Map Act (Government Code), as follows:
  - a. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Government Code.
  - b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - c. That the site is not physically suitable for the type of development.
  - d. That the site is not physically suitable for the proposed density of development.
  - e. 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.
  - f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
  - g. 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.
3. 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:
  - a. 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

- b. 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.

## FINDINGS

The Director of Planning concludes and finds, based on an analysis of the above facts, that:

1. The proposed subdivision is inconsistent with the applicable general and specific plans of the City 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.
2. The proposed map is not consistent with applicable general and specific plans 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.
2. 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.
3. The site is not physically suitable for the 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.
4. 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 because:

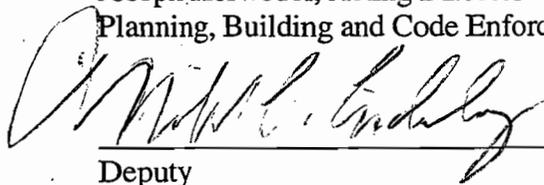
- a. The project is located in an area of Santa Clara County that may provide suitable habitat for several threatened and endangered species listed by the United States Fish and Wildlife Service and the California Department of Fish and Game.
- b. The subject site is located in a Geologic Hazards area 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 Director of Planning 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. The proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
3. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
4. The site is not physically suitable for the type of development.
5. 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.

**DENIED** this on the 7<sup>th</sup> Day of September, 2006.

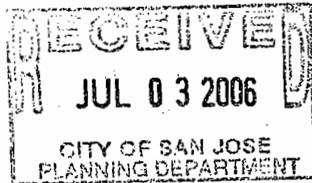
Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement



Deputy

JH:ME:ms

cc: Tom Dereg, Rancho San Vicente Associates, LLC, 100 Pasadera Dr., Monterey, CA 93940  
Dave Wilson, HMH Engineers, 1570 Oakland Rd., San Jose, CA 95131  
Tom Armstrong, HMH Engineers, 1570 Oakland Road, San Jose, CA 95131



File: 31154  
Almaden-Calero Canal

X-Fac.: Calero Reservoir  
Calero Pipeline  
Almaden Valley Pipeline

June 29, 2006

City of San Jose  
Department of Planning, Building  
and Code Enforcement  
Attention: Ms. Michelle Stahlhut  
200 East Santa Clara Street  
San Jose, CA 95113-1905

Subject: Lands of Rancho San Vicente, City File T06-051, Located Westerly of McKean Road at Schillingsburg Avenue and Adjacent to Calero Reservoir, Assessor's Parcel Nos. 742-09-046 and 049

Dear Ms. Stahlhut:

The Santa Clara Valley Water District (District) received a draft Tract Map on the subject development. The site is approximately 685 acres and will be subdivided into 16 SFR lots. The map shows access off of McKean Road via an easement which crosses District fee title over the Almaden-Calero Canal. This is a very active canal that is used every season to transfer water from Almaden Reservoir to Calero Reservoir. There are several items that need clarification:

1. Based upon District records, the easement from McKean Road to the site is only 20 feet wide and is centered on the bearings and distances. The Tract Map shows this easement width as 40 feet which may not be correct.
2. The District would like to review the site layout of the improvements. Buildings should be clustered and grading impacts minimized.
3. The drainage improvements for the site development cannot discharge or drain to the canal.
4. Any proposed improvements in, on, over, or under the canal is subject to a District permit. Improvement plans should be submitted. Utilities should cross under the canal a minimum of 4 feet.
5. Information on the proposed roadway crossing over the canal will need to be provided. A bridge or arch culvert should be utilized. Putting the canal in a pipe is not desirable due to hydraulic considerations. The soffit of any bridge must be above the top of the canal. The abutments should be set back a minimum of 3-feet on each side of the canal lining. The bridge approaches cannot interfere with the District's access to the canal maintenance road on either side of the crossing.

Ms. Michelle Stahlhut  
Page 2  
June 29, 2006

6. The plan notes indicate that sewage disposal for the site will be with the City of San Jose. However, if a septic system (tank and leach lines) are utilized for the home sites, a set back of 200 feet (horizontal) is required from the high water elevation in Calero Reservoir. The high water elevation of the reservoir 490 feet, NGVD29.
7. The District would like to review and comment on any site plan for the proposed subdivision when it is available.

Thank you for the opportunity to review and comment on the proposed development. Please reference District File No. 31154 on further correspondence regarding this matter.

If you have any questions, or need further information, you can contact me at (408) 265-2607, extension 2439.

Sincerely,



Vincent Stephens  
Associate Civil Engineer  
Community Projects Review Unit

cc: S. Tippets, B. Goldie, A. Gurevich, J. Micko, J. Aguilera, C. Haggerty, V. Stephens,  
A. Draper, File (2)

vms:fd  
0629a-pl.doc



## GUADALUPE - COYOTE RESOURCE CONSERVATION DISTRICT

888 NORTH FIRST STREET RM. 204, SAN JOSE, CA 95112-6314  
OFFICE (408) 288-5888 FAX (408) 903-8728 email: gcrd@pachell.net

June 28, 2006

Department of Planning, Building and Code Enforcement  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113-1905

Attn: Michelle Stahlhut, Project Planner  
Fax: 408.292.6055

michelle.stahlhut@sanjoseca.gov

City File No. T06-051

APN: 74209049

Dear Michelle:

In regards to the Lands of Rancho San Vicente Tentative Map Permit application to subdivide two parcels into 16 lots for single-family detached residential uses on a 684.5 acre site adjacent to the westerly shore of Calero Reservoir and between McKean and Almaden Roads, please require an environmental assessment of these lands before there is tract map consideration.

This oak woodland acreage is exceptionally high in natural resources of both flora and fauna. Numerous Special Status plants are located here. The California Department of Fish & Game considers the Santa Clara Valley Dudleya of paramount importance. Serpentine soils on the crest of hills of this acreage where Dudleya is found appear to be threatened by a proposed access road. Bay Checker-Spot Butterfly habitat would be diminished by roads on Serpentine soils. The San Francisco garter snake may inhabit the area. It is critical to have an environmental assessment.

The Bay Checker-Spot Butterfly and Tiger Salamander habitat that distinguishes this acreage is high on the list for preservation by City of San Jose and Santa Clara County's Habitat Conservation Plan. Parameters of buffer land required for habitat protection needs to be included in the permit application's environmental assessment.

The site also lies between Calero and Almaden Reservoirs and is the wildlife corridor between the major County parks adjoining these reservoirs, as well as an alignment for a recreation trail. In light of the high density of human population anticipated within the Coyote Valley Specific Plan, it is important that the connectivity of the region's recreation resource be clearly retained. Is this acreage under consideration for park acquisition?

Besides evaluation of oak woodland habitat protection in general, the full extent of wildlife that migrates through these hills needs to be reviewed. There are resident

populations of butterflies as well as nesting eagles which use this area year to year. Is it known if they are golden eagles? Additionally, there needs to be an assessment of burrowing owl populations and species of waterfowl and Pacific Flyway birds that pass through. What times of year are important?

Salamander habitat needs water access as well as dry hillsides, so lots no. 10 and 16 could well preclude the viability of the present population being able to sustain themselves. The Santa Clara Valley Water District Almaden-Calero canal constitutes the northern boundary of the site and may contribute to the welfare of the Tiger Salamanders. The acreage has wetland areas and springs which may have resident Ferry shrimp. Biological assessment is needed.

The proposed access road needs particular attention, not only for impact to serpentine soils on the ridge, but for its visual impact on Calero Reservoir hillsides as seen from County parkland. Also, is it public right of way as it passes over Santa Clara Valley Water District's canal?

Water Quality of watershed runoff to Calero Reservoir and to Almaden-Calero Canal is of utmost importance as it affects drinking water quality for the Guadalupe River supply. Could this preclude use of septic drainage fields? Is the City of San Jose sanitary sewer system and water service available to sustain this development?

The Rancho San Vicente lands are quite unique not only in acreage and in foothills location, but in the integrity of its landscape vista of oak woodlands. As a Resource Conservation District we therefore request that this project site be evaluated as a special sphere of biodiversity and as an ecosystem in its entirety.

Thank you for your consideration of these comments on this tentative map application.

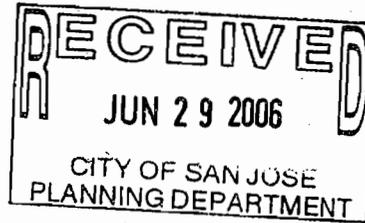
Sincerely,



Lawrence Johann, President  
Guadalupe-Coyote Resource Conservation District

# California Native Plant Society

June 28, 2006  
Santa Clara Valley Chapter  
California Native Plant Society  
3921 East Bayshore Road  
Palo Alto, CA 94303



By fax and surface mail

City of San Jose, California  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CQA 985113-1905

ATTN Michelle Stahlhut, Project Manager

City File No. T06-051

We believe that the approval of the tentative tract map, without any prior environmental assessment is ill-advised

In this area are as many as ten plants on the California Department of Fish and Game Special Status plants list which require consideration under CEQA. Of particular concern is the Santa Clara Valley Dudleya, listed as endangered by the US Fish and Wildlife Service. The existence of this plant means there is a presumption of significant impact. This means a full environmental impact report is mandatory. The project applicants should be made aware of this.

A better approach would be to conduct preliminary surveys before proceeding.

The proposed project is adjacent to Santa Clara County parklands which contain rare and endangered species. The impact of the project on the park also needs to be considered.

  
Donald Mayall  
Rare Plant Coordinator-South  
Santa Clara Valley Chapter  
California Native Plant Society



*Dedicated to the preservation of California native flora*



# County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX 355-2290  
Reservations (408) 355-2201  
[www.parkhere.org](http://www.parkhere.org)



June 30, 2006

Michelle Stahlhut  
Planning, Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905

RE: City File No. T06-051 – Ranch San Vicente  
APNs 742-09-046 & 049

The Santa Clara County Parks and Recreation Department is in receipt of a notice regarding a Tentative Map Permit to subdivide two parcels into 16 lots for single-family residential uses on a 684.5 gross acre site. The subject property abuts the 3,700-acre Calero Reservoir County Park to the east and south. The following comments are submitted:

- 1) The Regional Parks, Trails and Scenic Highways element of the Santa Clara County General Plan identifies a portion of the property as "proposed park".
- 2) 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.
- 3) The Countywide Trails Master Plan, an element of the Santa Clara County General Plan identifies the C-18, Guadalupe Reservoir/Calero Trail, connecting Calero Reservoir and Almaden Quicksilver County Parks as passing through Chilean Gulch which is contained within the subdivision, and specifically lots, 2, 6, 7, 12, and 13.
- 4) The proposed project lies within Critical Habitat area as designated by the United States Fish and Wildlife Service (USFWS) for the California Tiger Salamander (CTS) and Bay Checkerspot Butterfly (BCB). BCB and CTS are Federally designated threatened species. The California State Natural Diversity Data base also show the CTS and BCB habitats on site as well as the Santa Clara Valley Dudleya, a Federally listed endangered plant species. It is evident that the project site contains increasingly rare habitat for these endangered and threatened species and therefore a habitat conservation plan should be considered to minimize development impacts to the habitat.



Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, James T. Beall, Jr., Liz Kniss  
County Executive: Peter Kuitras, Jr.

- 5) Santa Clara County, the City of San Jose, Valley Transportation Authority and Santa Clara Valley Water District are working in cooperation with USFWS, National Marine Fisheries and California 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 project is located within the boundaries of the study and HCP/NCCP. The purpose of the study is to provide an effective framework to protect natural resources in Santa Clara County while allowing for reasonable development and growth that is compatible with the HCP/NCCP's conservation goals. The on-going efforts of the plan have mapped those areas where preservation and active management of mitigation would likely be considered for preservation by securing significant and substantial habitats that could contribute to recovery efforts and provide sustainable habitats for endangered and threatened species. For BCB, there are only a few areas of significant habitat identified throughout the county. The subject property is one of those critical habitats that has been mapped and will be studied and considered for possible mitigation in the HCP/NCCP. If a habitat conservation plan were required for the subject project, it would be advisable and more effective to defer development of the building sites until the countywide HCP/NCCP is completed.

Santa Clara County Parks appreciates the opportunity to comment on the proposed subdivision. Please forward any future documents associated with the project available for public comment. If you have any questions about our comments, please call me at (408) 355-2210 or by e mail at [mark.frederick@prk.sccgov.org](mailto:mark.frederick@prk.sccgov.org).

Sincerely,



Mark Frederick  
Planning & Real Estate Program Manager

Cc: Bill Shoe, County Planning  
Ken Shreiber, HCP/NCC Program Manager  
Tim Heffington, Senior Real Estate Agent, County Parks

**Stahlhut, Michelle**

---

**From:** Chris\_Nagano@fws.gov  
**Sent:** Thursday, June 22, 2006 2:12 PM  
**To:** michelle.stahlhut@sanjoseca.gov  
**Cc:** djohnston@dfg.ca.gov; Ryan\_Olah@fws.gov; Darryl.Boyd@sanjoseca.gov; Michael.Mena@sanjoseca.gov; Eric\_Tattersall@fws.gov; Jonathan.Ambrose@noaa.gov; Mike\_Thomas@fws.gov; Cori\_Nagasawa@fws.gov  
**Subject:** Tentative Map permit to subdivide two parcels into 16 lots for single-family detached residential uses on 684.5 gross acre site approximately 500 feet east of Almaden Road and 500 feet west of mcKean Road in the City of San Jose, Santa Clara County, Calif

Dear Ms. Stahlhut:

This electronic mail message is in response to the proposed Tentative Map permit to subdivide two parcels into 16 lots for single-family detached residential uses on 684.5 gross acre site approximately 500 feet east of Almaden Road and 500 feet west of mcKean Road in the City of San Jose, Santa Clara County, California (SJ file T06-051; APN 74209049). At issue are the potential adverse effects of the proposed project 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 (Service).

This review is based on the information dated June 14, 2006, that was provided to the Service by the San Jose Department of Planning, Building and Code Enforcement. The information was received by this Field Office on June 19, 2006. Based on the information provided by the City of San Jose and otherwise available to us, 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.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only are the bay checkerspot butterfly, least Bell's vireo, California red-legged frog, and California tiger salamander protected from such activities as collecting and hunting, but also from actions that result in their death or injury due to the damage or destruction of their habitat. The Act prohibits activities that "...remove and reduce to possession any listed plant from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law." The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed

6/23/2006

species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. 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 pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

As part of the environmental review for this proposed project, the Service recommends that habitat evaluations and/or surveys, as appropriate, by qualified biologists following Service and California Department of Fish and Game protocols be completed for the bay checkerspot butterfly, California red-legged frog, California tiger salamander, least Bell's vireo, Santa Clara Valley dudleya, and the Metcalf Canyon jewelflower in the action area. We recommend the City of San Jose provide us and the California Department of Fish and Game with the results of these assessments and/or surveys. If it is determined that the proposed project may result in take or adverse effects to the bay checkerspot butterfly, California red-legged frog, California tiger salamander, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, and/or other federally listed species under the authority of the Service, we recommend that the City of San Jose require the applicant to obtain authorization for incidental take for the appropriate listed species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to certification of the final environmental documents.

We also recommend adequate habitat assessments/surveys, as appropriate, for the burrowing owl (*Spetylo canicularia*), loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), and nesting raptors be completed in the action area. Photocopies of the data and findings from the habitat assessments/surveys should be provided to the Service and the California Department of Fish and Game. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these species will be adversely affected by the proposed project.

The City of San Jose should contact NOAA - Fisheries regarding the potential effects of this project on the threatened Central California steelhead (*Oncorhynchus mykiss*), threatened California coast coho salmon (*Oncorhynchus kisutch*), and other listed species, and animals and plants under their authority. The NOAA - Fisheries contact may be reached at: Jonathan.Ambrose@noaa.gov.

If you have any questions, please contact me via electronic mail or at telephone 916/414-6600.

s/Christopher D. Nagano

Deputy Assistant Field Supervisor  
Endangered Species Program  
Sacramento Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2800 Cottage Way Room W-2605  
Sacramento, California 95825