



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 20, 2006

COUNCIL DISTRICT: 2

SNI AREA: Not Applicable

SUBJECT: GP05-02-06. GENERAL PLAN AMENDMENT REQUEST TO CHANGE THE LAND USE DESIGNATION FROM VERY LOW DENSITY RESIDENTIAL (2 DU/AC) ON 4.55 ACRES AND GENERAL COMMERCIAL ON 0.2 ACRES TO MEDIUM LOW DENSITY RESIDENTIAL (8 DU/AC) ON 4.75 ACRES ON THE EAST SIDE OF MONTEREY HIGHWAY, APPROXIMATELY 800 FEET NORTHWESTERLY OF SKYWAY DRIVE (4240 MONTEREY ROAD).

RECOMMENDATION

The Planning Commission voted 4-2-1 (Commissioners Campos and Platten, opposed, Commissioner Pham, absent) to recommend changing the General Plan land use designation from Very Low Density Residential (2 DU/AC) and General Commercial to Low Density Residential (5 DU/AC) on 4.75 acres.

OUTCOME

If the City Council were to deny the General Plan amendment, as recommended by staff, the applicant could propose development at up to two dwelling units per acre. If the Council were to approve a land use change as recommended by Planning Commission, the applicant could propose development at up five dwelling units per acre. If approved per the applicant's request, the proposed General Plan amendment, would potentially allow development at a maximum density of eight dwelling units per acre. The applicant's currently pending Planned Development Zoning (File No. PDC06-004) would need to conform to the approved General Plan land use designation.

BACKGROUND

On November 13, 2006, the Planning Commission held a public hearing to consider the applicant's proposed General Plan amendment request. The Director of Planning Building and Code Enforcement recommended No Change to the Land Use/Transportation Diagram.

Planning staff noted that additional correspondence had been received subsequent to distribution of staff report including comments from Elena Shur, a resident concerned with environmental impacts from future development, and copies of plans for the pending rezoning application on the subject site. This correspondence was distributed to Planning Commission at the hearing for reference (see attachments).

The applicant, Michael Luu, stated that the topography of the site creates access constraints. If strict enforcement of Residential Land Use Policy No. 14 were to be applied, no future development would be allowed on the site. Mr. Luu also stated that hillside development had been allowed in other areas of San Jose, at greater densities, and involving significant grading. In Mr. Luu's response to the Land Use Compatibility issue, he addressed the mixture of uses that occurs on Monterey Highway. The applicant also stated that Planning staff had failed to mention that the project received Geologic Hazard Clearance. Mr. Luu then requested that the Planning Commission support his General Plan amendment request.

Elena Shur, a property owner on 4260 Spoonwood Court, addressed the Commission and spoke against the General Plan amendment. She was concerned that naturally occurring asbestos is potentially present on the site, and that future construction would affect the quality of life of people in the area. She was also concerned about noise and traffic.

Planning staff addressed Ms. Shur's comments by pointing out the mitigation measures that were described in the Initial Study. These measures include construction practices to be implemented during all phases of construction, as well as the implementation of a City-approved Airborne Asbestos Control Plan, implementation of mechanical ventilation in accordance with the Uniform Building Code, installation of high-insulation rated windows and glass doors, and disclosure of railway noise in sales or leases; staff also noted that the proposed amendment was exempt from a long term traffic impact model analysis. (See attached Mitigated Negative Declaration and electronic mail response to Ms. Shur).

Commissioner Kalra observed that this project is located in a very noisy area. He asked if there was safe egress from the site, and if the project could provide enough landscaping. The applicant responded that there is generous landscaping proposed in the pending Planned Development Zoning.

Commissioner Kamkar asked if the proposed street was private or public. He also wanted to know how the stormwater runoff was going to be addressed in this project. He indicated that there might be a possibility of allocating a considerable amount of the site area to address treatment. The applicant responded that they have submitted plans that meet the standards.

Commissioner Dhillon asked the applicant if he knew how much terrain would be lost because of grading and how this would change the site's topography. The applicant stated that they are trying to minimize grading. However, he added that he wasn't able to fully address the question, and his consultant on this issue was not present. Commissioner Dhillon stated that he was concerned because new development might push the limit on the amount of grading on the site.

Commissioner Zito asked Planning staff about access to the site and if the same residential land use policies would apply if the property were developed at a lower density. Staff responded that the same policies apply for any residential density. He also asked how much of the existing site is

currently suitable to be built. Staff stated that the current land use designation of Very Low Density Residential (2 dwelling units per acre) would permit minimal residential density in the area, given the characteristics of the terrain and endangered species on the northwesterly portion of the site.

Commissioner Zito made a motion to consider the Mitigated Negative Declaration and find it in compliance with CEQA and recommend to the City Council denial of the proposed General Plan amendment.

Commissioner Dhillon said he could not support the motion because the Planned Development Zoning was not in front of them to analyze maximum development potential. In addition, he could not determine how much geohazard conditions would constrain potential hillside development of the site. Commissioner Kalra stated that he was not going to support the motion because he was not sure how much development was feasible.

Commissioner Kamkar suggested that the Low Density Residential (5 DU/AC) designation would better address the potential stormwater issues. Chair Campos asked Commissioner Kamkar to make a motion for Low Density Residential (5 DU/AC).

Commissioner Zito's motion for denial failed 1-5-1 (Campos, Platten, Dhillon, Kamkar, and Kalra opposed, Pham absent).

Commissioner Kamkar made a motion to recommend Low Density Residential (5 DU/AC). Commissioner Kalra explained that he would not support the motion because he had incomplete information to determine the development potential of the site.

Commissioner Zito expressed concerns of creating false expectations if the Commission were to support Medium Low Density Residential (8 DU/AC) because this density implies pushing the limits of development, and that Low Density Residential (5 DU/AC) made more sense. Commissioner Kamkar stated that if the site were flat then the whole site would be usable. He stated the proposed site plan for the pending Planned Development Zoning shows two dwelling units over garages. Commissioner Kamkar noted this development approach results from not having enough space on the site to accommodate all the dwelling units the applicant wants, and at eight dwelling units per acre the project would not have adequate stormwater controls.

POLICY ALTERNATIVES

Not applicable.

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. The property owners and occupants within a 1,000-foot radius of the subject site were sent a newsletter for a community meeting held on April 3, 2006. They also received notices by mail on the public hearings with the Planning Commission and City Council. Planning staff was not able to confirm whether on-site noticing was provided. Project information was posted on the City's website, and correspondence between staff and community members also occurred.

State of California Tribal Consultation Guidelines:

This General Plan amendment request was referred to Tribal Representatives in January 2006. Staff received comments from Ms. Sawyers that the subject site and the area in general were known to have Native-American burials. Planning staff provided Ms. Sawyers the General policies and mitigation measures for cultural resources included in the Mitigated Negative Declaration. No additional comments were received from the referral to the Tribal Representatives.

COORDINATION

Review of this General Plan amendment was coordinated with the Department of Public Works, Fire Department, Department of Transportation, the Valley Transportation Authority, the Santa Clara Valley Water District, U.S. Fish and Wildlife, and the California Department of Fish and Game.

FISCAL/POLICY ALIGNMENT

Consistency with applicable General Plan policies is further discussed in the attached staff report.

COST SUMMARY/IMPLICATIONS

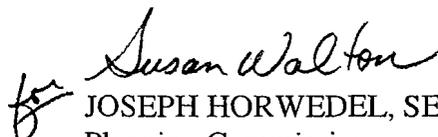
Not applicable.

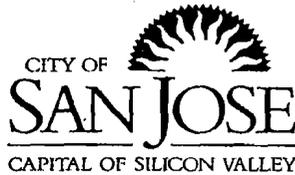
BUDGET REFERENCE

Not applicable.

CEQA

A Mitigated Negative Declaration was adopted on November 13, 2006.


JOSEPH HORWEDEL, SECRETARY
Planning Commission



Memorandum

TO: PLANNING COMMISSION
SUBJECT: SEE BELOW

FROM: Stan Ketchum
DATE: November 13, 2006

SUPPLEMENTAL MEMO

SUBJECT: SUPPLEMENTAL INFORMATION RECEIVED AFTER DISTRIBUTION OF THE STAFF REPORT FOR GP05-02-06, A GENERAL PLAN AMENDMENT REQUEST TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM DESIGNATION FROM VERY LOW DENSITY RESIDENTIAL (2 DU/AC) TO MEDIUM LOW DENSITY RESIDENTIAL (8 DU/AC) ON 4.75 ACRES ON PROPERTY LOCATED AT THE EAST SIDE OF MONTEREY HIGHWAY, APPROXIMATELY 800 FEET NORTHWEST OF SKYWAY DRIVE.

1. A resident, Elena Shur, submitted comments on the Mitigated Negative Declaration (see attached electronic mail). She has some concerns that pertain to naturally occurring asbestos on the subject site as well as noise and traffic. Please find attached the electronic mail received on Friday, November 10, 2006 and Planning staff responses.

Stan Ketchum
Principal Planner

Corrales, Ben

To: Elena Shur
Subject: RE: GP05-02-06 and PDC06-004

Ms. Shur.
 Please find the responses to your comments.
 Thanks for your inquiry.

Ben Corrales
 Project Manager

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

From: Elena Shur [mailto:Elena.Shur@amdocs.com]
Sent: Friday, November 10, 2006 2:03 PM
To: ben.corrales@sanjoseca.gov
Subject: GP05-02-06 and PDC06-004

Mr. Corrales,

I'm writing as a follow-up to our phone conversation regarding the proposal to allow building 38 new housing units on Monterey Highway about 800 feet north west of Skyway Drive (GP05-02-06 and PDC06-004).

I live in a very close proximity to that place and have great concerns regarding this proposal. I've spoken to my neighbors, and all of them share the same concerns:

1. As described in the Initial Study doc, the proposed building site has naturally occurring asbestos, which will be ultimately release into the air during construction. I have yet to see a construction site which does not generate dust, no matter what mitigating measures the developer will promise there will be some asbestos in the air. And the building site is located right below Valley Christian school, which means children will inhale this asbestos. Some asbestos will land in the neighboring backyards and on the windowsills, which means local residents will inhale it as well.

Staff Response: [Corrales, Ben] The Initial Study describes in detail on pages 34 and 35 as well as pages 67 and 68 the Standard Requirements included in the Project as well as Mitigation Measures included in the project to reduce the impacts to a less than significant level. A summary of those requirements and measures follows:

 - o Regulations regarding working conditions from the Occupational Safety and Health Administration (OSHA) will be implemented in the project.
 - o Construction practices shall be implemented during all phases of construction to prevent visible dust emissions from leaving the site: 1) water all active construction areas at least twice daily or as often as needed to control dust emissions; 2) cover all truck hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard; 3) apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site; 4) sweep daily or as often as needed with water control dust; 5) sweep public streets daily, or as often as needed; 6) hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas; 7) enclose, cover, water twice or daily or apply non-toxic soils binders to exposed stockpiles (dirt, sand, etc.); 8) limit traffic speeds on unpaved roads to 15 mph; 9) install sandbags or other erosion control measures to prevent runoff to public roadways; and 10) replant vegetation in disturbed areas as quickly as possible.
 - o A City-approved Airborne Asbestos Control Plan shall be developed prior to the issuance of a Grading Permit. Control Plan shall be approved to the satisfaction of the Director of Public Works.
 - o The structures to be removed will be surveyed for the presence of asbestos-containing materials at the demolition permit stage.
 - o As part of project grading, the top two feet of soil shall be replaced with clean soil, so as to avoid impacts from naturally-occurring asbestos. The contaminated soils shall be removed and disposed of at an appropriate facility, to the satisfaction of the Director of Public Works, and
 - o The future homeowners association and/or homeowners shall be notified that they may encounter asbestos in any subsurface excavations greater than two feet in depth. Future homeowners shall also be advised of

11/13/2006

the excavation precautions necessary if they plan to install a spa or pool.

2. As described in the Initial Study doc, the proposed building site exceeds government standards on noise and pollution. It is mentioned in the doc, it's possible to build some walls to reduce the noise for a sitting person inside a house. (But the doc also describes that proposed housing units are going to be 3 stores high). We constantly hear from the government officials that they are striving to make San Jose a great place to live and raise families, but it does not seem that offering people housing right on the Monterey Highway with substandard conditions corresponds to the message about desirable living.

Staff Response: [Corrales, Ben] This is a privately initiated project. Planning staff's responsibility is to evaluate, and analyze the project and make a recommendation to Planning Commission and City Council. This project includes two major applications, a General Plan amendment and a Rezoning. Planning staff is recommending denial of the General Plan amendment. The Rezoning application will go to Commission and City Council only if City Council approves the General Plan amendment. Regarding your comment about substandard conditions, these should be evaluated at the development stage (Rezoning). Pages 85 and 86 describe the standard requirements and mitigation measures to be included in the project to reduce the impacts to a less than significant level. A summary of those requirements and measures follows:

- o Mechanical ventilation will be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control, to the satisfaction of the Chief Building Inspector.
- o 42-inch-high solid railing shall be constructed at all second floor balconies in the row of duet homes nearest Monterey Road, the solid railing shall block the line-of-sight between seated persons and the roadway bellow.
- o Installation of high rated windows and glass doors at different locations of the dwelling units.
- o Railway noise shall be disclosed in sales contracts or leases.
- o Prior to the issuance of a building permit, building plans for all units shall be checked by a qualified acoustical consultant to ensure that the interior and exterior noise levels are attenuated.
- o Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m.

3. Since the proposed building site is located right on a very busy street, right in front of a Union Pacific railroad where a quite zone is not established and passing trains blast their horns at 100 decibels day and night, and right under the landing strip for San Jose International Airport with planes flying quite low (the airport is only 10 miles away) every few minutes from 5 pm 'till 7 pm 7 days a week, and since this building site is located down the street from a quarry and stone crashing facility (hence more dust and dirt in the air), all these conditions are not making the proposed building site a desirable place to live. The vast majority of housing units (all except 2) are going to have 5 bedrooms, so I think these units will be occupied by extended families; families that have multiple sources of income and can afford the housing in a bad location, but still quite expensive. That means that traffic estimates from the Initial Study is incorrect, and local schools will be affected more than estimated. Morning traffic on the Monterey Highway and Highway 87 is bad enough. If this proposal is approved, the traffic will be terrible, which will worsen living conditions even more.

Staff Response: [Corrales, Ben] The Initial Study on page 98 analyzes the impacts (if any) and addresses the Long-Term Traffic issues. The City's Department of Transportation has concluded that the p.m. peak hour trips generated by the General Plan amendment are below the exemption threshold of 250 trips, therefore exempt from the model analysis.

One more note: none of my neighbors received the notice of public hearing regarding this proposal.

Staff Response: [Corrales, Ben] Planning staff has confirmed that more than 200 notices were mailed out on October 13, 2006 and her name appears in the mailing list as a property owner living within 1000-foot radius from the subject site.

Thank you,
Elena Shur

This message and the information contained herein is proprietary and confidential and subject to the Amdocs policy statement,
you may review at http://www.amdocs.com/email_disclaimer.asp



Department of Planning, Building and Code Enforcement
200 E Santa Clara Street, 3rd Floor
San Jose, CA 95113

Hearing Date/Agenda Number:
P.C. 11/13/2006 Item: **79**

File Number:
GP05-02-06

Council District and SNI Area:
District 2

Major Thoroughfares Map Number:
115

Assessor's Parcel Number(s):
684-02-004, 010, 012

Project Manager:
Ben Corrales

GENERAL PLAN AMENDMENT STAFF REPORT FALL 2006 HEARING

PROJECT DESCRIPTION:

General Plan amendment request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 dwelling units per acre) on 4.55 acres and General Commercial on 0.2 acres to Medium Low Density Residential (8 dwelling units per acre) on a 4.75-acre site.

LOCATION: east side of Monterey Highway, approximately 800 feet northwest of Skyway Drive

ACREAGE: 4.75 acres

APPLICANT/OWNER:

Monterey Town Center, LLC, Owner / Sabercat Holding, LLC, Developer

GENERAL PLAN LAND USE / TRANSPORTATION DIAGRAM DESIGNATION:

Existing Designation: Very Low Density Residential (2 DU/AC) on 4.55 acres and General Commercial on 0.2 acres.

Proposed Designation: Medium Low Density Residential (8 DU/AC) on 4.75 acres.

ZONING DISTRICT(S):

Existing Designation: R-1-2 Residence Zoning District on 4.55 acres and CP Commercial Pedestrian Zoning District on 0.2 acres.

Proposed Designation: Planned Development Zoning District on 4.75 acres.

SURROUNDING LAND USES AND GENERAL PLAN DESIGNATION(S):

North: Residential / Very Low Density Residential (2 DU/AC)

South: Major Arterial, Residential / Medium Low Density Residential (8 DU/AC)

East: School, commercial and mobile home park / Very Low Density Residential (2 DU/AC), Public/Quasi-Public.

West: Commercial / Combined Industrial/Commercial

ENVIRONMENTAL REVIEW STATUS:

Mitigated Negative Declaration circulated on October 13, 2006

PLANNING STAFF RECOMMENDATION:

No change to the General Plan

Approved by:

Date:

Stanley Veto
Nov. 8, 2006

PLANNING COMMISSION RECOMMENDATION:

CITY COUNCIL ACTION:

CITY DEPARTMENT AND PUBLIC AGENCY COMMENTS RECEIVED:

Memoranda received for the General Plan amendment request:

- Santa Clara Valley Transportation Authority (VTA) provided a memorandum on October 19, 2005 indicating that they did not have comments on the proposed project.
- San Jose Fire Department, Bureau of Fire Prevention indicated on October 19, 2005 that comments will be provided with subsequent permit applications.
- The Department of Public Works (DPW) provided a memorandum on November 7, 2005 indicating that the subject site is in a Geological Hazard Zone, a State Landslide Zone and a State Liquefaction Zone, and that a Near-Term Traffic Impact Analysis is required at the development permit stage. Staff recommended early coordination with DPW.
- The Santa Clara Valley Water District (SCVWD) sent an electronic mail on November 29, 2005 indicating that the proposed project is not subject to flooding. However, supplemental information available to the SCVWD indicates that the site would be inundated up to 1-foot of depth if a 100-year flood event occurred.
- The U. S. Fish and Wildlife Office, Endangered Species Program sent an electronic mail on December 13, 2005 indicating that the proposed project represents a potential adverse effect to the threatened Bay Checkerspot butterfly, endangered Metcalf Canyon jewelflower, and endangered Santa Clara Valley dudleya and other listed species.
- The California Department of Fish and Game provided a letter on December 15, 2005 indicating that they cannot provide complete comments on the project and they recommend that a map of the serpentine habitat be provided in order to evaluate any potential impact.
- The Department of Transportation (DOT) provided a memorandum on April 18, 2006 indicating that this General Plan amendment is exempt from a computer model traffic impact analysis.

GENERAL CORRESPONDENCE:

- Phone call from neighbor, who lives on the adjacent property in the large residence. He asked about the status of the project and if he would have access to his property if development occurs.
- Phone call from neighbor requesting general information about the project. When informed about the community meeting, she mentioned she never received an invitation to attend the meeting.

ANALYSIS AND RECOMMENDATIONS:

RECOMMENDATION

Planning staff recommends that the Planning Commission forward a recommendation to the City Council for No change to the existing General Plan Land Use/Transportation Diagram designation of Very Low Density Residential (2 dwelling units per acre) on a 4.55-acre portion and General Commercial on a 0.2-acre portion of a 4.75-acre site.

PROJECT DESCRIPTION

This staff report addresses a privately initiated General Plan amendment request (File No. GP05-02-06) to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 dwelling units per acre) and General Commercial to Medium Low Density Residential (8 dwelling units per acre) on 4.75 acres.

The proposal to change the Land Use/Transportation Diagram designation to a higher residential density designation is intended to intensify the residential uses on the site. The applicant's intent

is to develop thirty-eight single-family units on the subject site, as submitted in the associated Planned Development Rezoning application, File No. PDC06-004, should the proposed General Plan amendment be approved.

BACKGROUND

The subject site is located along Monterey Road, one of the major gateways to San Jose and the only point of access to the site. The site, which is mostly undeveloped, is surrounded by residential, commercial, and school uses. The topography of the site varies from very steep adjacent to Monterey Road to very moderate on top of the hill. There are two structures on the site, an abandoned duplex and a shed. Both have been determined not to be of historical merit. An existing single-family residence is located to the north, and the only access to this dwelling is through the subject site.

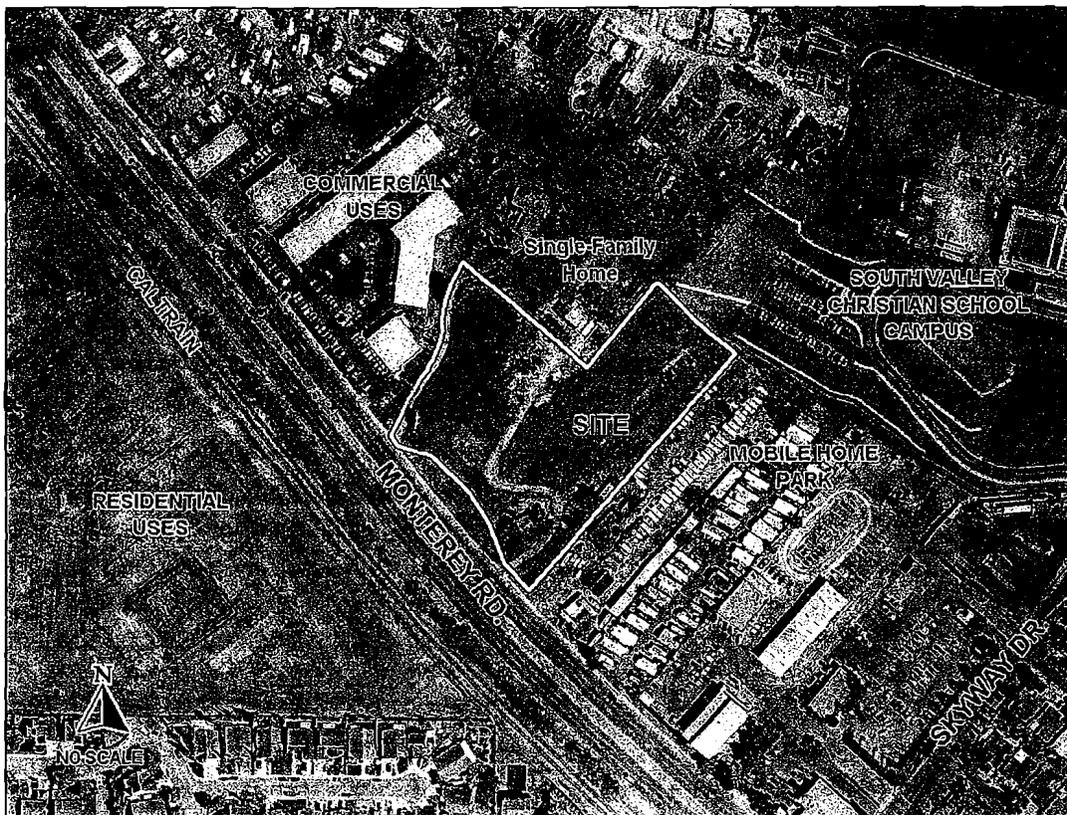
Site and Surrounding Uses

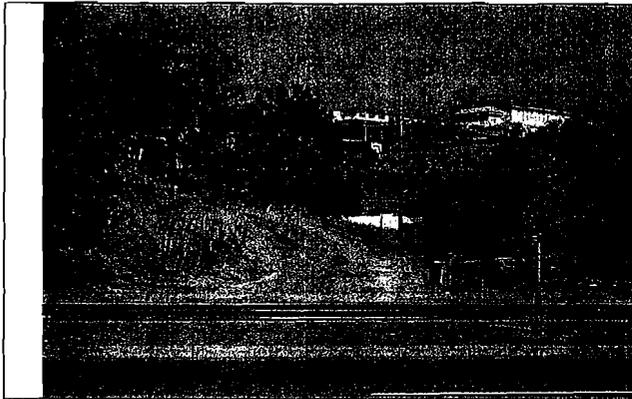
The subject site is located along Monterey Road, approximately 800 feet north of Skyway Drive, and is surrounded by residential uses to the north, Monterey Road, the railroad tracks and residential uses to the south, commercial uses to the west, and school, commercial, and mobile home park and church uses to the east.

General Plan Amendment

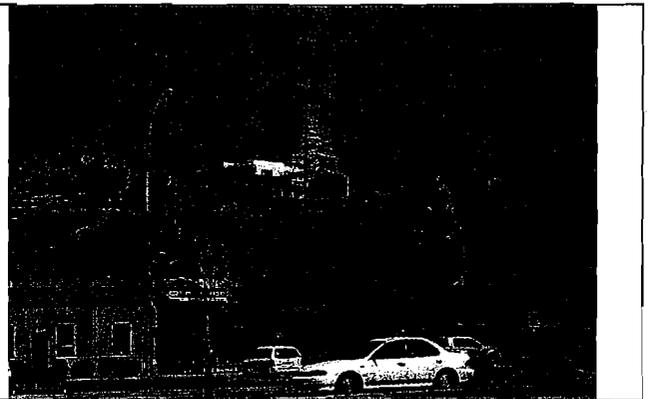
(Source: Department of Public Works, 2001, City of San Jose)

Existing site and surrounding land uses





Main access to subject site



Single-family home north of subject site



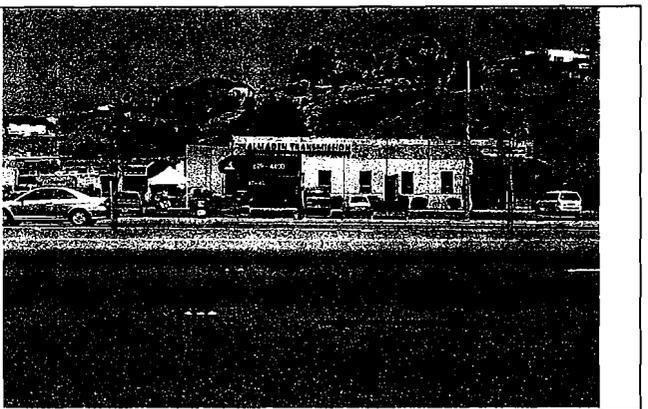
View of the site, looking southeast



Commercial, school uses (back) to the east



View northwest of the site



View west of the subject site

ANALYSIS

The key issues in analyzing the proposed General Plan amendment are: 1) consistency with the *San Jose 2020 General Plan* goals and policies; and 2) land use compatibility.

Consistency with the San Jose 2020 General Plan Goals and Policies

If approved, the General Plan amendment would potentially allow the intensification of the site from the current allowed density of 2 dwelling units per acre to accommodate a proposed

residential development of 38 single-family units. Ingress and egress to the site occurs at one point and offers direct frontage or access to a six-lane Major Arterial (Monterey Road).

Residential Land Use Goal and Policies

The *San Jose 2020 General Plan's* Residential Land Use goals and policies stem from the fact that there are a wide variety of residential neighborhoods in San Jose, each with its own character. These goals and policies reflect concerns for the protection of neighborhoods from incompatible land uses, the adequacy of public facilities and services, and protection from hazards. The proposed intensification of residential uses on the site is not consistent with the following policies.

Residential Land Use Policy No. 14

- *Single-family and duplex residential development should be designed with limited access to arterial streets as follows:*
 - *No direct frontage or access on six-lane arterials or within 350 feet of the intersection of two arterials.*
 - *No direct frontage or access on four-lane arterials; direct frontage or access is strongly discouraged.*
 - *The use of frontage roads, corner lots, open-end cul-de-sacs or other street design solutions for access is encouraged.*

The proposed amendment is located along a Major Arterial, Monterey Road. One of the changes that the proposed General Plan amendment would generate, if approved, is that the main access to the project would be from Monterey Road only, which is a six-lane Major Arterial designed to accommodate several different travel modes, such as transit and automobile travel. In general, such a corridor provides poor access to abutting properties and its primary function is traffic movement.

Hillside Development Policy No. 2

- *Clustering of residential development in hillside areas should be encouraged to minimize the exposure of development to environmental hazards and maximize the preservation of natural resources in the hillsides.*

By developing the subject site, exposure to environmental hazards would increase. The subject site is located in a geological hazard zone as well as landslide and liquefaction zones. Preservation of natural resources would not be accomplished if the proposed General Plan amendment were approved. While the Initial Study identified sensitive habitat issues as feasible to mitigate through relocation and other measures, the overall disruption of the site would not meet the intent of this policy.

Hillside Development Policy No. 4

- *The City should continue to apply strong architectural and site design controls on all types of hillside development for the protection of the hillsides and to minimize potential adverse visual and environmental impacts.*

Hillside Development Policy No. 6

- *In general, grading on hillsides should be minimized. When grading or re-contouring of the terrain is necessary, it should be designed to preserve the natural character of the hills and to minimize the removal of significant vegetation.*

The pending Planned Development Zoning is not under review at this time. However, the above policies identify issues that will need to be carefully addressed should the General Plan amendment be approved. The nature and extent of proposed grading and retaining walls proposed raise concerns with the feasibility of achieving this level of residential development on the site.

Land Use Compatibility

The project site is surrounded by industrial-commercial uses to the northwest and commercial uses to the south of the subject site, low density residential to the north, and high-density residential to the south of the subject site. Approval of the proposed General Plan land use amendment would intensify residential uses, and would not be compatible with the neighboring industrial-commercial uses.

Areas that are designated Very Low Density Residential (2 dwelling units per acre) are typified by large residential lots. These areas are generally not suited for more intensive development because of the topography and geologic constraints of the terrain. The Public Works memo (see attached) received on November 9, 2005 indicates that the subject site is located in a Geologic Hazard Zone, Landslide Zone and Liquefaction Zone. Geo-hazard clearance would be needed if development is proposed.

This site has been compared to other hillside areas within the Urban Service Area, such as Communications Hill. This site is distinct from Communications Hill in several ways, including: 1) The residential development on Communications Hill was masterplanned through the Specific Plan process, providing the opportunity to incorporate hillside design standards and clustering of development to avoid similar sensitive habitat as that found on the subject site; 2) the Communications Hill area is directly adjacent to the Guadalupe Corridor Light Rail line, providing convenient transit access to help achieve the City's goals for transit-oriented development.

The subject site is a small, remainder piece of hillside between existing primarily non-residential surrounding uses. Increased residential development on the site would create an isolated pocket of housing not integrated with a surrounding neighborhood.

ENVIRONMENTAL REVIEW

A Draft Mitigated Negative Declaration was circulated on October 13, 2006 for public review and comments. The Mitigated Negative Declaration included mitigation to reduce any potential impacts to a less than significant level per the California Environmental Quality Act (CEQA). The Mitigated Negative Declaration concluded that the project would have a less than significant impact with mitigation measures in the following categories: Aesthetics, Air Quality, Biological Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, and Noise.

The U. S. Fish and Wildlife Office, Endangered Species Program sent an electronic mail on December 13, 2005 indicating that the proposed project represents a potential adverse effect to the threatened Bay Checkerspot butterfly, endangered Metcalf Canyon jewelflower, and endangered Santa Clara Valley dudleya and other listed species.

The Initial Study addressed these issues and concluded that approximately 800 individual mature Santa Clara Valley dudleya were found within the project site growing on serpentine outcrops, primarily in the northeast, northwest and west portions of the site. The proposed development, if approved, would impact approximately 178 individual dudleya plants on five rock outcrops. The mitigation measures proposed to reduce these impacts to a less than significant level were to avoid and minimize contact with the Santa Clara Valley dudleya plant as well as relocation of rock outcrops supporting Santa Clara Valley dudleya.

PUBLIC OUTREACH

A community meeting was held at the Carolyn Davis Intermediate School Library located at 5035 Edenvue Drive on April 3, 2006. No one from the general public attended the meeting.

Property owners and tenants within a 500-foot radius of the subject site received a notice of the public hearings to be held on the General Plan amendment request before the Planning Commission on November 13, 2006 and City Council on December 12, 2006. The Department web site contains information regarding the General Plan amendment process, zoning process, staff reports, and hearing schedules. This web site is available to any member of the public and contains the most current information regarding the status of the applications.

As a result of the recently updated *City Council Policy on Public Outreach* (Public Outreach Policy), staff requested the installation of an on-site sign describing the proposed project, large enough so it is legible from the street. No proof of installation was ever submitted to Planning staff.

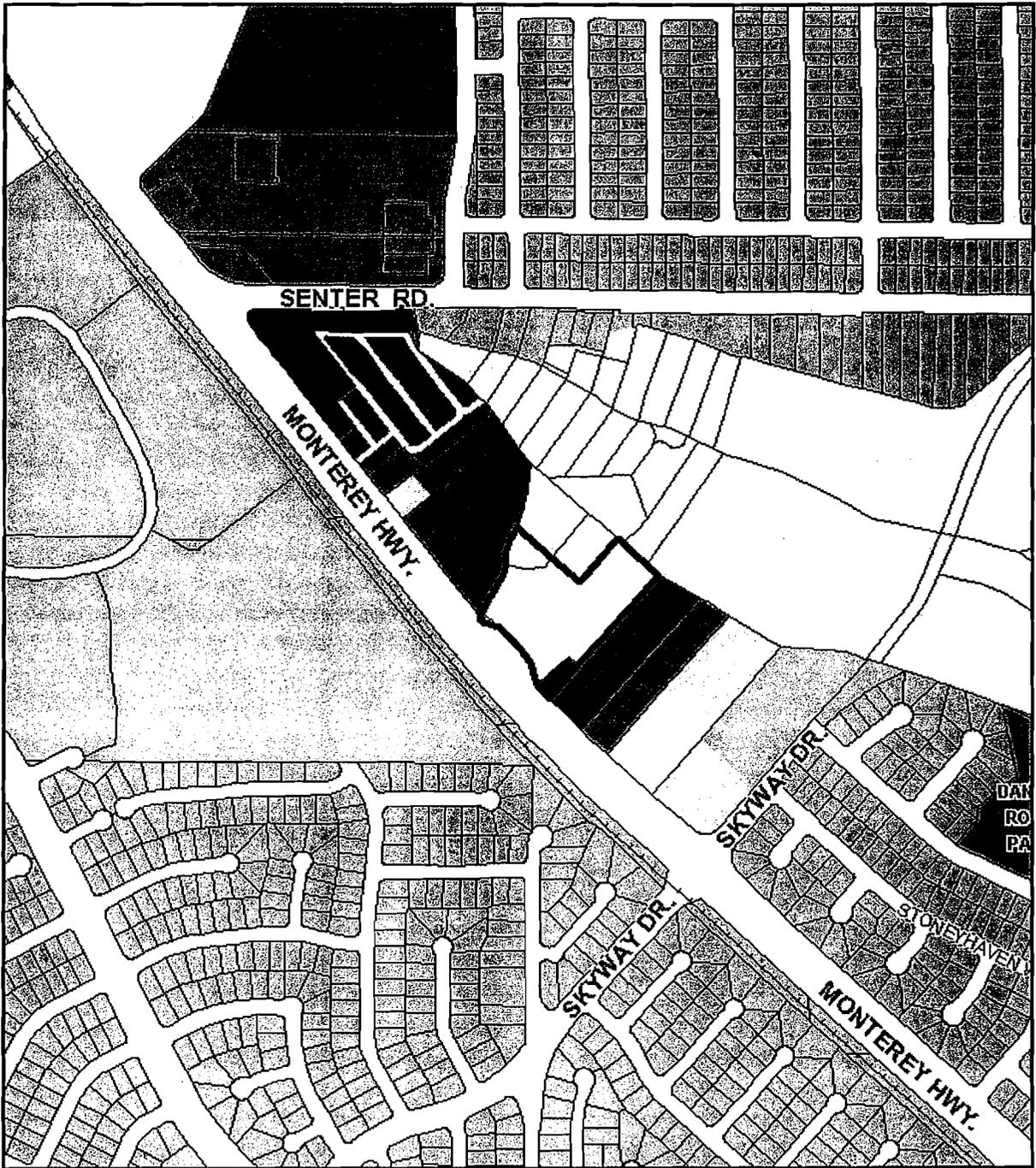
Tribal Consultation

This General Plan amendment is subject to the State of California Tribal Consultation Guidelines. Comments from one of the tribal representative was received by Planning staff on the subject General Plan amendment and, these were addressed in the Initial Study prior to Environmental Clearance.

Attachments

- I. Mitigated Negative Declaration
- II. Correspondence from City's Departments

GP05-02-06




CITY OF
SAN JOSE
ESTABLISHED 1850
© 2005 City of San Jose
Department of Planning, Building
and Code Enforcement
Planning Services Division

 SITE


NORTH
Scale 1" = 500'
Quad: 115

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Monterey Estates

PROJECT FILE NUMBER: GP05-02-06 and PDC06-004

PROJECT DESCRIPTION: A General Plan amendment request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 dwelling units per acre) on approximately 4.5 acres and General Commercial on approximately 0.2 acres to Medium Low Density Residential (8 dwelling units per acre) on an approximately 4.75-acre site; a Planned Development Re-zoning application from R-1-2 Residence and CP Commercial Pedestrian Zoning Districts to A (PD) Planned Development Zoning District to allow up to 38 single-family detached residences; and subsequent related permits and subdivision maps on an approximately 4.75 gross-acre site.

PROJECT LOCATION & ASSESSORS PARCEL NO.: East side of Monterey Road, approximately 800 feet northwesterly of Skyway Drive (4240 Monterey Road); APN 684-02-004, -010 and -012; and a portion of -007.

COUNCIL DISTRICT: 2

APPLICANT CONTACT INFORMATION: Sabercat Holdings LLC, 5689 Algonquin Way, San Jose, CA 95138, 408-425-2522, (fax) 408-270-2405, Attn: Michael Luu, mikelluu63@yahoo.com

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

I. AESTHETICS

- The westerly section (approximately 240 feet) of the southerly retaining wall shall be a stepped wall with trees planted at the base and on the bench between the two walls.

II. AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY

- Occupational Safety and Health Administration (OSHA) regulations regarding working conditions for workers shall be implemented as specified.
- The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site: 1) water all active construction areas at least twice daily or as often as needed to control dust emissions; 2) cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard; 3) apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site; 4) sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust; 5) sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material; 6) hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more); 7) enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust; 8) limit traffic speeds on unpaved roads to 15 mph; 9) install sandbags or other erosion control measures to prevent silt runoff to public roadways; and 10) replant vegetation in disturbed areas as quickly as possible.
- A City-approved Airborne Asbestos Control Plan shall be developed and implemented with such measures as watering and/or use of a dust palliative for dust control, air sampling and monitoring programs, and travel route restrictions.

IV. BIOLOGICAL RESOURCES

- Impacts to Santa Clara Valley dudleya plants shall be avoided and/or minimized. Temporary and permanent encroachment near known populations of Santa Clara Valley dudleya on the project site shall be avoided to the maximum extent practicable; during the development of final grading plans, every effort to avoid outcrops containing dudleya, even by incorporation of dudleya *in situ* into the project's landscaping, shall be made. Populations to be preserved shall be clearly demarcated with Environmentally Sensitive Area fencing to avoid inadvertent disturbance during construction activities; all temporary staging areas and construction access roads, if necessary, shall be located away from these areas.
- To avoid the loss of individual plants to the extent practicable, rock outcrops supporting Santa Clara Valley dudleya that cannot be avoided shall be relocated to a suitable area, as detailed in the Biotic Assessment report by H.T. Harvey and Associates dated April 21, 2006. The most suitable areas on the project site for translocation of the outcrops are the areas above the cut slopes in the northeastern part of the site and the areas in the

northwestern part of the site where 13 outcrops containing 619 individual dudleya (that will not be impacted by the project) currently exist. A conservation easement shall be placed over areas containing the transplanted dudleya. The success of the plants shall be monitored annually for a period of 10 years, with annual reports provided to the City of San Jose.

- If populations of Santa Clara Valley dudleya on the project site cannot be preserved or relocated, other existing rock outcroppings on the site that currently support dudleya shall be preserved at a 2:1 ratio, calculated on the basis of individual plants; this may be satisfied by preservation of the outcrops containing dudleya in the northwestern part of the site. The mitigation area shall be preserved in perpetuity via a conservation easement that removes development rights from the remaining portions of the property.
- If possible, construction should be scheduled between September and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

V. CULTURAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

VI. GEOLOGY AND SOILS

- As a part of project grading, the top 2 feet of soil shall be replaced with clean soil, so as to avoid impacts from naturally occurring asbestos. The contaminated soils shall be removed and disposed of at an appropriate facility, to the satisfaction of the Director of Public Works
- The future homeowners association and/or homeowners will be notified that they may encounter asbestos in any subsurface excavations greater than two feet in depth and that special precautions will be required to comply with adopted standards to reduce risks to an acceptable level. Future homeowners will also be advised of the excavation precautions necessary if they plan to install a spa or pool.

VII. HAZARDS AND HAZARDOUS MATERIALS

- A well destruction permit shall be obtained from the Santa Clara Valley Water District if a well is discovered, and the well shall be destroyed in accordance with District standards.
- If a septic system is discovered, it shall be abandoned in accordance with the requirements of the Santa Clara County Sewage Disposal Ordinance.
- The structures to be removed shall be surveyed for the presence of asbestos-containing materials at the demolition permit stage; and if any suspect ACM are present, they shall be sampled prior to demolition in accordance with NESHAP guidelines, and all potentially friable ACM shall be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with NESHAP, Cal-OSHA and BAAQMD requirements.
- The structures to be removed shall be surveyed for the presence of lead based paint at the demolition permit stage; and if any suspect LBP is present, it shall be sampled prior to demolition, and all potential LBP shall be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with EPA and OSHA requirements:
- The project site shall be viewed by a qualified environmental professional during demolition and pre-grading activities to observe areas of the property that may have been obscured by existing structures or pavement for such items as stained soils, septic systems, underground storage tanks, and/or unforeseen buried utilities; and, if found, a mitigation program shall be developed, submitted to the City's Environmental Principal Planner, and implemented with such measures as soil testing, removal and/or offsite disposal at a permitted facility.

VIII. HYDROLOGY AND WATER QUALITY

- A Notice of Intent and a Storm Water Pollution Prevention Plan that addresses both construction and post-construction periods and specifies erosion and sediment control measures, waste disposal controls, maintenance responsibilities and non-stormwater management controls, shall be submitted to the RWQCB and maintained onsite, respectively, to comply with the stormwater discharge requirements of the NPDES General Permit.
- Stormwater treatment control measures shall be hydraulically sized prior to issuance of a Planned Development (PD) Permit in conformance with provisions of the City's Post-Construction Urban Runoff Management Policy and to adopted Santa Clara Valley Pollution Prevention Program NPDES Permit C.3 provisions to the satisfaction of the Director of Public Works.
- A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls, including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMPs) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by use of open

vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.

- The project shall incorporate site design, source control, and treatment measures such as the following to minimize the discharge of stormwater pollutants and limit the volume, velocity and duration of runoff:
 - Hydraulically-sized bioswales incorporated into the stormwater drainage design.
 - Pervious paving.
 - Underground detention.
 - Roof drains that discharge and drain into landscaped areas located away from the building foundation to an unpaved area wherever possible.
- A maintenance and monitoring program shall be developed at the PD Permit Stage to the satisfaction of the Director of Planning.
- The maintenance and monitoring program shall be implemented to ensure that all stormwater treatment BMPs will be permanently maintained by the Homeowners' Association (HOA) for the life of the development, to the satisfaction of the Director of Planning.

IX. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

X. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. NOISE

- Mechanical ventilation shall be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control.
- 42-inch-high solid railings shall be constructed at all second floor balconies in the row of duet homes nearest to Monterey Road, and having a direct or side view of the roadway; the solid railings shall block the line-of-sight between seated persons and the roadway below.
- Additional measures such as redesign of the units along Monterey Road or the addition of a common open space area within the project shall be investigated and implemented at the PD Permit stage to provide exterior open space at 65 dB DNL or less, to the satisfaction of the Director of Planning.
- Windows and glass doors shall be maintained closed and STC 35 or higher rated windows and doors shall be installed at all upper floor and unshielded ground floor living spaces of the units nearest to and facing Monterey Road.

- Windows and glass doors shall be maintained closed and STC 26 to 28 or higher rated windows and doors shall be installed at all upper floor and unshielded ground floor living spaces of the units in the northern portion of the site.
- Bedrooms shall be located away from the UPRR tracks; and kitchens, bathrooms and other spaces shall be used as buffers, as feasible.
- Railway noise shall be disclosed in sales contracts or leases.
- Prior to the issuance of an occupancy permit, building plans for all units shall be checked by a qualified acoustical consultant to ensure that noise levels are attenuated sufficiently to the satisfaction of the Director of Planning.
- Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

XII. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIII. PUBLIC SERVICES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIV. RECREATION – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

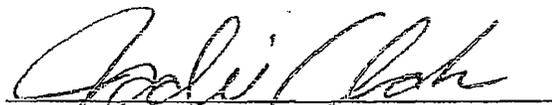
PUBLIC REVIEW PERIOD

Before 5:00 p.m. on November 13, 2006 any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Circulated on: ^{SA 12} 10/13/06


Deputy

Adopted on: _____

Deputy

MND/JAC 8/26/05



October 19, 2005

City of San Jose
Department of Planning and Building
200 East Santa Clara Street
San Jose, CA 95113

Attention: Jenny Nusbaum

Subject: City File No. GP05-02-06 / Monterey - Skyway

Dear Ms. Nusbaum:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the general plan amendment to medium-density residential (8 du/ac) on 4.5-acre site on the east side of Monterey Highway, approximately 800 feet north of Skyway Drive. We have no comments at this time.

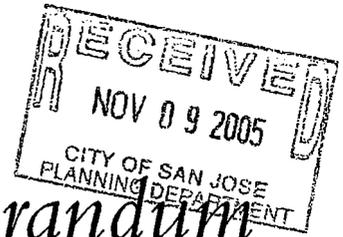
Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read "R Molseed", is written over the typed name.

Roy Molseed
Senior Environmental Planner

RM:kh



Memorandum

TO: Jenny Nusbaum
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

**SUBJECT: RESPONSE TO GENERAL PLAN
AMENDMENT APPLICATION**

DATE: 11/07/05

PLANNING NO.: GP05-02-06
DESCRIPTION: GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Very Low Density (2.0 DU/AC) on 4.3 acres and General Commercial on 0.2 acres to Medium Low Density Residential (8.0 DU/AC) on a 4.5-acre site. (Monterey Town Center, LLC, Owner/Michael Luu, Applicant).
LOCATION: east side of Monterey Highway, approximately 800 feet north west of Skyway Drive
P.W. NUMBER: 3-13430

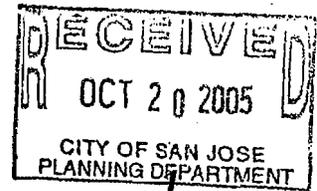
Public Works received the subject project on 10/17/05 and submits the following comments:

[D] Flood Zone
[YES] Geological Hazard Zone
[YES] State Landslide Zone
[YES] State Liquefaction Zone
[NO] Inadequate Sanitary capacity
[NO] Inadequate Storm capacity
[NO] Major Access Constraints
[YES] Near-Term Traffic Impact Analysis

Please contact the Project Engineer, Andrew Turner at 535-6899 if you have any questions.

EBRAHIM SOHRABI
Senior Civil Engineer
Transportation and Development Services Division

ES:AT:jw



Memorandum

DATE: 10/19/05

TO: Jenny Nusbaum
FROM: Nadia Naum-Stoian

Re: Plan Review Comments

PLANNING NO: GP05-02-06
DESCRIPTION: GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Very Low Density (2.0 DU/AC) on 4.3 acres and General Commercial on 0.2 acres to Medium Low Density Residential (8.0 DU/AC) on a 4.5-acre site. (Monterey Town Center, LLC, Owner/Michael Luu, Applicant).
LOCATION: east side of Monterey Highway, approximately 800 feet north west of Skyway Drive
ADDRESS: east side of Monterey Highway, approximately 800 feet north west of Skyway Drive (4280 MONTEREY RD)
FOLDER #: 05 055932 AO

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

The application provided does not include adequate information for our review; Fire Department staff will provide further review and comments when additional information is received as part of subsequent permit applications.

Site flow requirement may be as high as 4,500 GPM.

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

Corrales, Ben

From: Nusbaum, Jenny
Sent: Tuesday, November 29, 2005 10:18 AM
To: Corrales, Ben
Subject: FW: General Plan Amendments GP05-06-04, 03-05, 02-06

From: Vincent Stephens [mailto:vstephens@valleywater.org]
Sent: Tuesday, November 29, 2005 10:16 AM
To: jenny.nusbaum@sanjoseca.gov
Cc: maria.angeles@sanjoseca.gov
Subject: General Plan Amendments GP05-06-04, 03-05, 02-06

The Santa Clara Valley Water District (SCVWD) received the subject General Plan Amendments which were transmitted to us in October. Due to other obligations and priorities were not able to provide comments to meet the identified deadlines.

The SCVWD has no objections to the proposed land uses, however we want to let your staff know that each site is located in a known flood plain.

GP05-06-04: This site is located on Campbell Avenue in San Jose. The residual flood plain analysis recently completed for the Guadalupe River Flood Control Project indicates that ponding from the local storm drain system would result in inundation of greater than 1 foot on the site. Any grading and fill for the development should not create an induced flooding condition or reroute water on to adjacent properties. Please consult with the CSJ Flood Plain Manager.

GP05-03-05: This site is located on N. 10th Street in SJ. The flood plain map for this location indicates that it was in Zone AO and originally subject to 1 to 3 feet of flooding. With the construction of the Lower and Downtown Guadalupe River Flood Control Project, the site will be removed from the flood plain map. However, FEMA has not published the new map and this area has been designated Zone A99. The SCVWD would like to review and comment on the environmental reports for any proposed project on the site.

GP05-02-06: This site is located on Monterey Hwy in SJ. The flood plain map does not show this site as subject to flooding. However, supplemental information available to the SCVWD indicates that the site would be inundated up to 1-foot of depth if a 100 year flood event would occur. The waters are from Coyote Creek which spill out of the river south of the site and travel overland along Monterey Highway.

If you have any questions please feel free to call and thanks for the opportunity to review the GP Amendments for these properties.

Thanks,

Vincent Stephens, PE
Santa Clara Valley Water District
Community Project Review Unit
5750 Almaden Expressway
San Jose, CA 95118
phone (408) 265 2600, ext. 2439
fax (408) 979-5635

11/29/2005

Corrales, Ben

From: Chris_Nagano@fws.gov
Sent: Tuesday, December 13, 2005 10:33 AM
To: Ben.Corrales@sanjoseca.gov
Cc: djohnston@dfg.ca.gov; Ryan_Olah@fws.gov; Darryl.Boyd@sanjoseca.gov; Michael.Mena@sanjoseca.gov
Subject: General Plan Amendment File GPO5-02-06 for the property located on the eastside of Monterey Road, approximately 800 feet north of Skyway Drive (4.5 acres) in the City of San Jose, Santa Clara County, California

Dear Mr. Corrales:

This electronic mail message is in response to the General Plan Amendment File GPO5-02-06 for the property located on the east side of Monterey Road, approximately 800 feet north of Skyway Drive (4.5 acres) in the City of San Jose, Santa Clara County, California. At issue are the potential adverse effects of the proposed project on the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and other listed species. This review is based on the information dated November 14, 2005, that was provided to the U.S. Fish and Wildlife Service (Service) by the San Jose Department of Planning, Building, and Code Enforcement. The information was received by the Service on November 15, 2005. Based on the information provided by your agency, 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, Metcalf Canyon jewelflower, and other listed species, or is otherwise naturally accessible to them. The information provided to us stated that the Santa Clara Valley jewelflower has been located at the proposed project site.

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 is the bay checkerspot butterfly protected from such activities as collecting, but also from actions that damage or destroy 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 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 (including its larval foodplants), Metcalf Canyon jewelflower, and other listed species in the action area. The information provided to us by the City Jose contained a letter from the applicant's biological consultant regarding the Santa Clara Valley dudleya dated October 5, 2005. They located individuals of this listed plant in the northeast section of the southern parcel near the eastern boundary. They noted that their surveys were conducted during the month of October, a time of year that made it difficult to identify and locate

12/13/2005

the Santa Clara Valley dudleya, as well as other listed plant species. Therefore, we recommend a habitat assessment and survey be conducted for the Santa Clara Valley dudleya, other listed plants, and plant species of concern during the proper season. 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, Metcalf Canyon jewelflower, Santa Clara Valley dudleya, and/or other federally listed species, 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 loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), and nesting raptors be completed in the action area. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these avian species will be adversely affected by the proposed project.

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



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500



December 15, 2005

DEC 20 2005

Ben Corrales
City of San Jose
Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower, 3rd Floor
San Jose, CA 95113-1905

Dear Mr. Corrales:

Interim Project Comment Sheet
Monterey Road General Plan Amendment
San Jose, Santa Clara County # GP05-02-06

The Department of Fish and Game (Department) is making comments on the above referenced project pursuant to the Department's role as the trustee agency with jurisdiction over the State's fish and wildlife, as well as the habitats that support them, as a trustee agency under the California Environmental Quality Act (CEQA) and as a partner in the Santa Clara Habitat Conservation Plan/Natural Communities Conservation Plan(HCP/NCCP) process. The Planning Agreement for the HCP/NCCP requires that the Department comment on Reportable Interim Projects and recommend mitigation measures or project alternatives that will help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value.

The project referenced is to change the General Plan designation to potentially allow up to 36 single family dwellings on a 4.5 acre site. The property is currently occupied by a few scattered structures and driveway. The habitat type is grassland with a few scattered trees. Surveys for rare plants and burrowing owls were carried out by HT Harvey and Associates and summarized in a letter report dated October 5, 2005. The report notes that the property should be considered unoccupied by burrowing owls due to a lack of ground squirrels and tall grasses. The report also describes an undefined area of a sensitive habitat (serpentine) in the northeast corner of the property and reports the discovery of a population of Santa Clara Valley dudleya centered on this area. Since the surveys were carried out outside of the normal blooming season for most serpentine annual plants, it is not known if other species might be present.

Based on the information provided, the Department cannot provide complete comments on the project. We recommend that a map of the serpentine habitat be provided, so that the potential impacts can be evaluated. In addition, appropriately timed surveys should be carried out for the other plants potentially occurring on the



Memorandum

TO: Laurel Prevetti
Planning, Building
and Code Enforcement

FROM: Hans F. Larsen

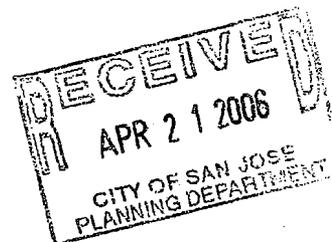
**SUBJECT: TRAFFIC IMPACT ANALYSIS
FOR GP05-02-06**

DATE: 4-18-06

Approved

Date

File Number: GP05-02-06
Location: E/o Monterey Hwy., approx. 800 feet N/W of Skyway Dr.
Acreage: 4.5 ac.
Description: Very Low Density Res. (2 DU/AC) and General Commercial
to Medium Density Res. (8-16 DU/AC)
(Add 27 HH)
Outside Special Subarea (Remainder of City)



We have reviewed the subject General Plan Amendment (GPA) and submit the following comments. The estimated number of new PM peak hour trips resulting from the proposed land use change is below the exemption threshold established for this area. Therefore, this GPA is exempt from a computer model (CUBE) traffic impact analysis.

If an Environmental Impact Report (EIR) is required for this GPA for other reasons, the EIR must include a traffic impact analysis report for the project and a cumulative analysis for all GPAs on file this year. Additional traffic data will be provided to the applicant's traffic engineering consultant for the preparation of the report.

Please contact Paul Ma at 975-3272 if you have any questions.


HANS F. LARSEN
Deputy Director
Department of Transportation

HFL:PM

cc: Jenny Nusbaum
Ben Corrales