CC AGENDA: 1/13/09
ITEM: 4.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: **Joseph Horwedel**

SUBJECT: SEE BELOW

DATE: November 17, 2008

Approved Paul Krutko Date 11/23/08

COUNCIL DISTRICT: 3
SNI AREAS: 13th Street NAC

SUBJECT: PUBLIC HEARING ON AN APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR THE DEMOLITION OF THE SAN JOSE MEDICAL CENTER for a Planned Development Permit (PD07-008) to demolish the San Jose Medical Center located at 675 East Santa Clara Street in central San Jose.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council adopt a resolution to certify:

1. The City Council has read and considered the Final EIR; and
2. The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA); and
3. The Final EIR reflects the independent judgment and analysis of the City of San Jose; and
4. The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to the Applicant and to any other decision-making body of the City of San Jose for the project.

OUTCOME

Rejection of the appeal and certification of the Final EIR will allow the Director of Planning, Building and Code Enforcement to consider the Planned Development Permit, PD07-008, for the demolition of the San Jose Medical Center.

EXECUTIVE SUMMARY

On September 24, 2008, the Planning Commission held a public hearing on the Final EIR for the Demolition of the San Jose Medical Center. After public testimony and discussion, the Planning Commission (7-0-0) certified the Final EIR. On September 29, 2008, the California Nurses Association/National Nurses Organizing Committee (CNA) filed a timely appeal. The certification appeal hearing of the City Council is de novo.

Appeal. The California Nurses Association/National Nurses Organizing Committee questions the validity of the San Jose Medical Center Final EIR on the following premises:

1) DEIR Does Not Adequately conduct testing with regulatory oversight
2) DEIR Fails to Disclose groundwater and soil testing results
3) DEIR Fails to Disclose evidence of site contamination obtained in April, 2008
4) DEIR Fails to Disclose all potential direct and indirect impacts
5) DEIR Does Not Assess the actual extent of contamination
6) DEIR Fails to Disclose potentially significant hazardous waste impacts
7) DEIR's Inadequacy Regarding Mitigation Measures for impacts on worker health and safety

Response. For a detailed response to each issue raised above, refer to the **ANALYSIS** section of this report.

The San Jose Medical Center Final EIR meets the requirements of CEQA by disclosing the significant environmental effects of the project, identifying feasible ways to mitigate the significant effects, and describing reasonable alternatives to the project. The Final EIR complies with the substantive and procedural requirements of the CEQA guidelines. The Final EIR has been completed in compliance with the requirements of CEQA. It also represents the independent judgment and analysis of the City of San Jose.

BACKGROUND

CEQA Requirements for Certification of an EIR

The DEIR, taken together with the First Amendment, constitute the Final EIR. The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and (3) the Final EIR reflects the independent judgement and analysis of the lead agency. On September 24, 2008, the Planning Commission held a public hearing on the Final EIR for the San Jose Medical Center. After public testimony and discussion, the Planning Commission (7-0-0) certified the Final EIR.

Appeal of an EIR

When an EIR is certified by a non-elected decision-making body with the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body. On September 29, 2008, the California Nurses Association/National Nurses Organizing Committee filed a timely appeal. San Jose Municipal Code (SJMC) Chapter 21.07 requires the Director of Planning, Building and Code Enforcement to schedule a noticed public hearing on a timely appeal of the Commission's certification of the Final EIR before the City Council. The certification appeal hearing of the City Council is de novo. Upon conclusion of the certification appeal hearing, the City Council may find that the Final EIR has been completed in compliance with the requirements of CEQA. If the City Council makes such a finding, it shall uphold the Commission's certification of the Final EIR. If the City Council finds that the Final EIR has not been completed in compliance with CEQA, the Council must require the Final EIR to be revised and the city (in this case Planning Director) may not take any action on the project. All decisions of the City Council are final.

ANALYSIS

The attached letter, received from Adams, Broadwell, Joseph and Cardozo on behalf of the California Nurses Association/National Nurses Organizing Committee, constitutes a formal appeal of the Planning Commission's certification on September 24, 2008 of the Final EIR for the demolition of the San Jose Medical Center project. The appeal and the City of San Jose's response are discussed below.

RESPONSES TO THE CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES ORGANIZING COMMITTEE APPEAL, DATED SEPTEMBER 29, 2008.

RESPONSE TO APPEAL OF EIR: The following are responses to the aforementioned CNA, which questions the validity of the San Jose Medical Center Final EIR on three basic premises; 1) failure to timely and fully disclose potentially significant hazardous waste impacts, 2) failure to disclose the extent of contamination, and 3) failure to disclose testing results.

CNA Comment 1: We write on behalf of the California Nurses Association/National Nurses Organizing Committee (hereinafter "CNA") to appeal the City of San Jose Planning Commission's September 24, 2008 decision to certify the final environmental impact report for the Planned Development Permit, PD07-008, to demolish the San José Medical Center located at 675 East Santa Clara Street, San Jose ("Project"). Based upon all of the evidence in the record, there can be little doubt that the site is contaminated with chlorinated solvents and other hazardous waste based on its historic uses as a laundry, IBM punch card plant and medical facility.

However, as shown below, the actual extent of the contamination is still not clear because it has just come to our attention that the EIR omitted some testing results and mischaracterized other tests. Until the City fully discloses the results of all contaminant testing conducted at the site, and fully mitigates the potentially significant impacts on worker health and safety associated with the contamination, the City cannot certify the EIR. Accordingly, CNA respectfully requests

that the City withdraw the FEIR until full and proper groundwater, vapor and soil testing is conducted according to State guidance and with proper regulatory agency oversight. Then, once testing is complete, the City must recirculate the EIR for public review.

City Response 1: As described in the EIR, the historic uses at the site of Building 800 include the Temple Laundry (1919-1943) and an IBM punch card manufacturing facility (1943-1960). Possible contaminants of concern at the site do include petroleum hydrocarbons and chlorinated solvents.

Although historic use of the site could have resulted in release of these compounds, it does not necessarily follow that contamination has occurred. As documented in the First Amendment to the Draft EIR, further historic research concluded that dry cleaning (a possible source of chlorinated solvents) likely did not take place at the Temple Laundry.

The EIR did not omit available test results. The September 24, 2008 Supplement (attached) to the Planning Commission Staff Report included a Groundwater Investigation that was undertaken as part of early implementation of Avoidance Measure HAZ-1. The sampling date listed in the Groundwater Investigation Report was a typographic error. The correct sampling date is September 5, 2008 and the results of the groundwater sample analyses were included in a report dated September 23, 2008. The laboratory analysis of the samples was not complete prior to circulation of the First Amendment to the Draft EIR.

The EIR includes measures for further characterization around Building 800 and to avoid possible health and safety impacts during implementation of the proposed demolition project. The measures included in the project for handling materials during demolition activities, in accordance with local, state, and federal regulations for environmental and worker safety, are appropriate given the nature of the proposed project.

CNA Comment 2:

A. Background

CNA submitted comments on the EIR on July 21, 2008 and then supplemented those comments on September 24, 2008.[1] CNA's foremost concern with this Project has been the protection of public health and welfare, including their members who live and work in the direct vicinity, and the construction workers on site. Specifically, given the description of the site's former uses in the DEIR, CNA's hazardous waste expert, Mr. Matt Hagemann, obtained and examined high quality Sanborn Fire Insurance maps from San Jose State University library in order to fully analyze the site's potential for hazardous waste contamination. His findings evidenced the potential for a variety of contaminants such as petroleum hydrocarbons and chlorinated solvents such as 1, 1, 1-trichloroethane, tetrachloroethylene, 1, 1-dichloroethylene, and trichloroethylene.

[1] Those letters are provided here as Attachment A.

According to the DEIR, Building 800 had been a former laundry and IBM facility. Mr. Hagemann evaluated these former uses by examining the features of the Sanborn maps from 1932 until 1962, which indicated the potential for site contamination. Operation of the laundry may have involved onsite storage of fuels and may have included dry cleaning operations.

City Response 2: This comment repeats assertions contained in the July 21, 2008 comment letter on the Draft EIR by the appellant, which were responded to in the First Amendment to the Draft EIR (refer to Responses G1-G8 and text amendments on pages 32-33.) As documented in the First Amendment, fuel oil storage is shown Sanborn maps from the 1930's, but further historic research concluded that the dry cleaning likely did not take place at the Temple Laundry.

CNA Comment 3: In addition, as described in the DEIR's Phase I ESA, the operation of the IBM plant as a punch card manufacturing facility may have resulted in releases of solvents used in inks, printer ribbons and for cleaning fluids for the presses. The Phase I ESA concluded with reference to the IBM Plant:

> Any number of hazardous materials and petroleum products could have been involved in production, including coolants, oils, cutting fluids, etc. This site was not listed in any state or federal environmental databases. Based on the size of the former facility, and the length of time for which it was operational, PSI considers the former use of the subject property as an IBM manufacturing plant to represent a recognized environmental condition in connection with the subject property.[2]

Although Mr. Hagemann could not discern the specific use of chlorinated solvents at the IBM plant slated for demolition, he did document release of chlorinated solvents from an IBM punch card site in Dayton, New Jersey, as described below by the U.S. EPA:[3]

> IBM's manufacturing plant was constructed in 1956 and used until 1985 for manufacturing of computer tabulation cards, printer ribbons, and other information handling machine products. Chlorinated solvents – including 1, 1, 1-trichloroethane (TCA), tetrachloroethylene (PCE), 1, 1-dichloroethylene (1, 1 -DCE), and trichloroethylene (TCE) were used at the facility, especially for punch card and ink operations. Elevated levels of site-related chlorinated volatile organic compounds (VOCs) were detected in South Brunswick Township supply well SB-11 in 1977. Investigation of the former IBM property and off-site areas indicated the presence of DNAPL and dissolved-phase contamination in shallow and deep groundwater. This contamination is believed to be associated with leakage from underground storage tanks (USTs) and transfer lines formerly present at the manufacturing building.[4]

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2 Environmental Site Assessment, at p. 4.
3 See Attachment 3 to CNA's July 21, 2008 letter; http://www.epa.govlRegion2/waste/fsibmday.pdf
4 Id.

The chemicals detected at the IBM facility in Dayton are associated with the following health effects:

- TCA: effects in the liver and the nervous system of lab animals;[5]
- PCE: human nervous system effects;[6]
- DCE: human nervous system, liver, and lung damage;[7] and
- TCE: human nerve, kidney, and liver damage.[8]

Given that both facilities conducted identical operations during similar time frames, it was reasonable for the City to assume that many of the same chemical releases and contamination occurred at the Project site that occurred in Dayton. Underground storage tanks potentially used at the San Jose IBM plant were not identified in the Sanborn Maps, but, nonetheless, they may have been used for storage of solvents. Additionally, floor drains or dry wells may have been used for disposal of solvent-containing wastewater.

City Response 3: Please see Response 2. No new evidence of the presence of chlorinated solvents similar to those used at the IBM plant in Dayton, New Jersey has been presented.

CNA Comment 4: The above data is just a sample of the evidence CNA provided in its initial comment letter on the DEIR. In response to CNA's comments, the Planning Commission adopted a first amendment to the EIR on September 12, 2008 and then a supplemental to the FEIR on September 24, 2008.

B. The City Must Consider Critical New Information Regarding Site Contamination

To repeat, on September 24, 2008, well after the public comment period closed, the City issued a "Supplemental" to the final environmental impact report. According to the FEIR Supplemental, further testing was conducted after September 12, 2008 which revealed low level petroleum hydrocarbons in the vicinity of Building 800.[9] Curiously, the actual study appended to the Supplemental was undated. However, upon closer examination, it became clear that the reported groundwater testing occurred on April 17, 2008, several months ***before*** the City's release of the June DEIR. That particular testing indicated contamination of the underlying groundwater at two test sites at concentrations that ***exceed*** Regional Water Quality Control Board screening levels for total hydrocarbons as diesel.[10] Unfortunately, this testing was carried out absent regulatory agency oversight, thus its efficacy is called into question; moreover, there is no indication that the regulatory agencies were ever notified of the results. More worrisome still, the Supplemental shows that soil samples were also taken, but the results of those samples were

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5 http://www.atsdr.cdc.gov/tfacts70.html.
6 http://www.atsdr.cdc.gov/tfacts18.html.
7 http://www.atsdr.cdc.gov/tfacts39.html.
8 http://www.atsdr.cdc.govltfacts19.html.
9 Supplemental to the FEIR, at p. 1 (September 24, 2008).
10 See letter from Matt Hagemann to Gloria D Smith, at p. 2 (September 29, 2008), provided here as Attachment B.

not disclosed at all.[11] As a result of the City's failure to timely and fully disclose the potentially significant hazardous waste impacts, the public was unable to determine the actual scope and status of the site's contamination. The City must rectify these omissions.

City Response 4: The EIR (consisting of the Draft EIR and First Amendment to the DEIR) was certified on September 24, 2008 by the City of San José Planning Commission. Results of groundwater testing (as called for in the EIR as Avoidance Measure HAZ-1) were provided as a Supplement to the Planning Commission Staff Report. The groundwater sampling report of September 23, 2008 was made available on the City's website and in the Planning Commission staff report in an abbreviated format. The sampling date of April 17, 2008 (Page 3) was a typographic error in the report production, and the correct sampling date is September 5, 2008. Only groundwater samples were collected for this report, and no soil samples were obtained or analyzed.

As stated in the September 24, 2008 Staff Report ("Supplemental") to the Planning Commission, the sampling results provide information that is consistent with what has already been identified in the EIR, and does not present any new impacts. The groundwater sampling is an implementation of Avoidance Measure HAZ-1 ahead of the planned schedule, and will be used to implement Avoidance Measure HAZ-2, including the development of a Site Management Plan, and possibly further characterization of the site. The implementation of these avoidance measures would have taken place in the same manner after the approval of the demolition permit and the close of the public comment period, but were undertaken before the EIR certification process was complete. As with the groundwater investigation currently in progress on the site near the corner of North 14th Street and East John Street, the County of Santa Clara, Department of Environmental Health has oversight responsibility and will be notified of the results of the analyses.

CNA Comment 5:

C. Argument

Since July 21, 2008 when CNA initially commented on the Project, it has come to our attention that the vicinity around Building 800 is contaminated and that such contamination has been improperly tested and improperly disclosed to decision makers and the public. And the small amount of testing that has occurred was not done so under regulatory agency oversight nor were the agencies notified of the groundwater quality exceedances.

An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the

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[11] Id.

environment but also informed self government."[12] To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[13] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[14] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[15]

Here, the City squarely failed the test. The Project's soil and groundwater impacts have come to light in a confusing and disjointed fashion in direct violation of CEQA. Independent investigation and analysis are critical to the CEQA process because information and analysis allows decision-makers and the public to make an "independent, reasoned judgment" about a proposed project.[16] Public notification serves the public's right "to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision."[17] Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance. The City's reliance on the 11-hour Supplemental to disclose evidence of site contamination that the City was aware of before it issued the DEIR violates CEQA. Indeed, it is manifest under CEQA that "whatever is required to be considered in an EIR must be in the report itself."[18]

City Response 5: The appellant submitted a letter (attached) to the City of San José on September 24, 2008, the day of the Planning Commission hearing when the EIR was certified. This letter states, "We appreciate the City adding important mitigation measures to the first amendment to the EIR that will protect the health and safety of construction workers at the demolition site" (Appendix B).[19] While the letter goes on to again request State of California regulatory oversight of the site, the appellant clearly does not disagree with the avoidance measures included in the First Amendment to the Draft EIR.

The groundwater sampling completed in September 2008 was an early implementation of these avoidance measures, and the resulting levels of petroleum hydrocarbon contamination detected was a possibility anticipated in the EIR, which included an additional avoidance measure (Avoidance Measure HAZ-2) if contamination was discovered. Therefore, the groundwater sampling in question was not information that would be required for the decision-makers to consider the project.

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12 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
13 CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
14 See *Citizens of Goleta Valley v. Board of Supervisors*, supra, 52 Cal.3d at 568.
15 Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).
16 *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
17 *Id.* at 938.
18 *San Joaquin Raptor, supra*, 27 Cal.App.4th at 727.
19 Gloria D. Smith, Adams Broadwell Joseph & Cardozo, "Re: Supplemental CEQA Comments on San José Medical Center Demolition Project," letter to Rachel Roberts, City of San José, September 24, 2008.

CNA Comment 6: In short, a primary function of the City's DEIR was to allow the public and outside agencies to comment on the proposed Project's potential for site contamination. No such right exists at the final EIR stage where we now find ourselves. Thus, the City's deferral of a critical issue until the Supplemental impermissibly insulated it from public review.[20] Based on the foregoing, CNA respectfully requests that the City withdraw the FEIR until full and proper groundwater, vapor and soil testing is conducted according to State guidance and with regulatory agency oversight. Then once testing is complete, the City must recirculate the EIR for public review.

City Response 6: Since the detection of the contamination in the September 2008 groundwater sampling was discovered through the early implementation of an avoidance measure included in the First Amendment to the Draft EIR, which the appellant did not contest, no new significant impacts have been identified and recirculation is not required. If the project applicant had completed the sampling following the Planning Commission hearing of September 24, 2008, it would have been considered part of the mitigation and avoidance measures required by the City for project implementation, and would not have been completed during a period of public review. It was anticipated the sampling would have been conducted after project decision, but applicant decided to undertake the testing while the project was still pending.

As stated previously, no new significant impacts have been identified. Therefore, recirculation of the EIR is not required.

ALTERNATIVES

If the Council does not uphold the Certification of this EIR, then Council would need to indicate the specific analysis needed to complete the EIR. This analysis would need to be completed, the EIR re-circulated, and considered by Planning Commission prior to any consideration of the San Jose Medical Center Planned Development Permit by the Director of Planning, Building and Code Enforcement.

PUBLIC OUTREACH/INTEREST

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

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[20] *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1052.

☐ **Criterion 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)**

Public Notice and Review of Draft EIR

On May 29, 2008, the Director of Planning, Building and Code Enforcement caused a Notice of Availability (NOA) to be published in the San Jose Mercury News, mailed to owners/occupants within 1000 feet of the project boundary, and posted for review with the County Clerk. As required by Pub. Res. Code secs. 21092(b), 21092.6; CEQA Guidelines secs. 15087, 15105, the NOA contains (1) a project description and location, (2) identification of significant environmental impacts, (3) specification of the review period, (4) identification of the public hearing date, time, and place, (5) information about where the Draft EIR is available, (6) and whether the project site is a listed toxic site.

The Director filed a Notice of Completion (NOC) with the State Clearinghouse to coordinate the systematic review of the Draft EIR with State Agencies such as the Department of Transportation. CEQA requires State Clearinghouse review of an EIR when a project, such as the Demolition of the San Jose Medical Center, is of "statewide, regional, or area-wide significance".

The Draft EIR was circulated for public review for 45 days, beginning on June 4, 2008 and ending on July 21, 2008, in accordance with the 45-day review period required by Pub. Res. Code sec. 21091 and CEQA Guidelines 15087 and 15105. The Draft EIR was available for review in the Department of Planning, Building and Code Enforcement, at the Martin Luther King Junior Main Library and a local branch library within the project area, and online on the Department's website. In addition, the Draft EIR was mailed to Federal and State Agencies, Regional and Local Agencies, and private organizations and individuals listed in Section I of the First Amendment to the Draft EIR. Notice of the 9/24/08 Planning Commission EIR certification hearing and the 12/9/08 City Council EIR appeal hearing was provided through direct mailing to a 1000' radius of the project site, to all who commented on the Draft EIR, through publication in the San Jose Mercury News, and online on the Department's website.

COORDINATION

Preparation of the responses in this memo to the FEIR appeal has been coordinated with the City Attorney's Office.

FISCAL / POLICY ALIGNMENT

Not applicable.

COST SUMMARY / IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Resolution to be adopted.

Akoni Danielsen

for JOSEPH HORWEDEL DIRECTOR
Planning, Building and Code Enforcement

Please contact Akoni Danielsen, Principal Planner, at 535-7823 for any questions.

cc: Appellant
Applicant

Attachment:
-Appeal dated 9/29/08 by California Nurses Association/National Nurses Organizing Committee
-Letter dated 9/24/08 to Planning Commission by California Nurses Association/National Nurses Organizing Committee
-Supplemental Memo dated 9/24/08 to Planning Commission from Planning Director Joseph Horwedel

Attachment 1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

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 ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF	
FILE NUMBER	RECEIPT #
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT DATE BY

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

PD07-008

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

(SEE ATTACHED)

PERSON FILING APPEAL

NAME California Nurses Association/National Nurses Organizing Committee c/o Gloria D. Smith		DAYTIME TELEPHONE ( )	
ADDRESS Adams Broadwell, Joseph & Cardozo 601 Gateway Blvd. Suite 1000, South San Francisco, CA 94080	CITY	STATE	ZIP CODE
SIGNATURE		DATE 9-29-08	

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME SEE ABOVE			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE 650 589-1660	FAX NUMBER 650 589-5062	E-MAIL ADDRESS gsmith@adamsbroadwell.com	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

Reasons for appeal

Through this appeal, CNA is renewing its request that the City invoke regulatory agency involvement from either the regional water board or the Department of Toxic Substances Control, as appropriate, to oversee necessary testing at the Project site. CNA made this request to the Planning Commission at its September 24, 2008 hearing. At that hearing, the Planning Commission denied CNA's request, certified the EIR, and then introduced new information via a "supplemental to the final environmental impact report." That document along with new information posted on the City's official website on approximately September 24, 2008, indicates that the City failed to disclose evidence of site contamination it had in April, 2008.

The City was required to disclose this new information in its DEIR for public review. Given that this new information was not available during the public comment period, there was no way for CNA to raise the issue of additional testing and disclosure prior to this appeal. CNA is appealing the City's failure to withdraw the FEIR until full and proper groundwater, vapor and soil testing can be conducted according to State guidance and with proper regulatory agency oversight; then, once testing is complete, the City must recirculate the EIR for public review.

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September 29, 2008

VIA ELECTRONIC AND REGULAR MAIL

Ms. Rachel Roberts
City of San Jose
Planning Division
200 East Santa Clara Street, Tower 2
San Jose, CA 95113
Rachel.roberts@sanjoseca.gov

Re: Appeal of September 24, 2008 Planning Commission Decision San Jose Medical Center Demolition Project (PD07-008)

Dear Ms. Roberts:

We write on behalf of the California Nurses Association/National Nurses Organizing Committee (hereinafter "CNA") to appeal the City of San Jose Planning Commission's September 24, 2008 decision to certify the final environmental impact report for the Planned Development Permit, PD07-008, to demolish the San Jose Medical Center located at 675 East Santa Clara Street, San Jose ("Project"). Based upon all of the evidence in the record, there can be little doubt that the site is contaminated with chlorinated solvents and other hazardous waste based on its historic uses as a laundry, IBM punch card plant and medical facility.

However, as shown below, the actual extent of the contamination is still not clear because it has just come to our attention that the EIR omitted some testing results and mischaracterized other tests. Until the City fully discloses the results of all contaminant testing conducted at the site, and fully mitigates the potentially significant impacts on worker health and safety associated with the contamination, the City cannot certify the EIR. Accordingly, CNA respectfully requests that the City withdraw the FEIR until full and proper groundwater, vapor and soil testing is conducted according to State guidance and with proper regulatory agency oversight. Then, once testing is complete, the City must recirculate the EIR for public review.

printed on recycled paper

A. Background

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According to the DEIR, Building 800 had been a former laundry and IBM facility. Mr. Hagemann evaluated these former uses by examining the features of the Sanborn maps from 1932 until 1962, which indicated the potential for site contamination. Operation of the laundry may have involved onsite storage of fuels and may have included dry cleaning operations. In addition, as described in the DEIR's Phase I ESA, the operation of the IBM plant as a punch card manufacturing facility may have resulted in releases of solvents used in inks, printer ribbons and for cleaning fluids for the presses. The Phase I ESA concluded with reference to the IBM Plant:

> Any number of hazardous materials and petroleum products could have been involved in production, including coolants, oils, cutting fluids, etc. This site was not listed in any state or federal environmental databases. Based on the size of the former facility, and the length of time for which it was operational, PSI considers the former use of the subject property as an IBM manufacturing plant to represent a recognized environmental condition in connection with the subject property.[2]

Although Mr. Hagemann could not discern the specific use of chlorinated solvents at the IBM plant slated for demolition, he did document release of

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[2] Environmental Site Assessment, at p. 4.

chlorinated solvents from an IBM punch card site in Dayton, New Jersey, as described below by the U.S. EPA:[3]

> IBM's manufacturing plant was constructed in 1956 and used until 1985 for manufacturing of computer tabulation cards, printer ribbons, and other information handling machine products. Chlorinated solvents—including 1,1,1 -trichloroethane (TCA), tetrachloroethylene (PCE), 1,1-dichloroethylene (1,1 -DCE), and trichloroethylene (TCE)—were used at the facility, especially for punch card and ink operations. Elevated levels of site-related chlorinated volatile organic compounds (VOCs) were detected in South Brunswick Township supply well SB-11 in 1977. Investigation of the former IBM property and off-site areas indicated the presence of DNAPL and dissolved-phase contamination in shallow and deep groundwater. This contamination is believed to be associated with leakage from underground storage tanks (USTs) and transfer lines formerly present at the manufacturing building.[4]

The chemicals detected at the IBM facility in Dayton are associated with the following health effects:

- TCA: effects in the liver and the nervous system of lab animals;[5]
- PCE: human nervous system effects;[6]
- DCE: human nervous system, liver, and lung damage;[7] and
- TCE: human nerve, kidney, and liver damage.[8]

Given that both facilities conducted identical operations during similar time frames, it was reasonable for the City to assume that many of the same chemical releases and contamination occurred at the Project site that occurred in Dayton. Underground storage tanks potentially used at the San Jose IBM plant were not identified in the Sanborn Maps, but, nonetheless, they may have been used for storage of solvents. Additionally, floor drains or dry wells may have been used for disposal of solvent-containing wastewater.

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[3] See Attachment 3 to CNA's July 21, 2008 letter; http://www.epa.gov/Region2/waste/fsibmday.pdf
[4] Id.
[5] http://www.atsdr.cdc.gov/tfacts70.html.
[6] http://www.atsdr.cdc.gov/tfacts18.html.
[7] http://www.atsdr.cdc.gov/tfacts39.html.
[8] http://www.atsdr.cdc.gov/tfacts19.html.

The above data is just a sample of the evidence CNA provided in its initial comment letter on the DEIR. In response to CNA's comments, the Planning Commission adopted a first amendment to the EIR on September 12, 2008 and then a supplemental to the FEIR on September 24, 2008.

?

B. The City Must Consider Critical New Information Regarding Site Contamination

To repeat, on September 24, 2008, well after the public comment period closed, the City issued a "Supplemental" to the final environmental impact report. According to the FEIR Supplemental, further testing was conducted after September 12, 2008 which revealed low level petroleum hydrocarbons in the vicinity of Building 800.[9] Curiously, the actual study appended to the Supplemental was undated. However, upon closer examination, it became clear that the reported groundwater testing occurred on April 17, 2008, several months ***before*** the City's release of the June DEIR. That particular testing indicated contamination of the underlying groundwater at two test sites at concentrations that ***exceed*** Regional Water Quality Control Board screening levels for total hydrocarbons as diesel.[10] Unfortunately, this testing was carried out absent regulatory agency oversight, thus its efficacy is called into question; moreover, there is no indication that the regulatory agencies were ever notified of the results. More worrisome still, the Supplemental shows that soil samples were also taken, but the results of those samples were **not disclosed at all.**[11] As a result of the City's failure to timely and fully disclose the potentially significant hazardous waste impacts, the public was unable to determine the actual scope and status of the site's contamination. The City must rectify these omissions.

C. Argument

Since July 21, 2008 when CNA initially commented on the Project, it has come to our attention that the vicinity around Building 800 is contaminated and that such contamination has been improperly tested and improperly disclosed to

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[9] Supplemental to the FEIR, at p. 1 (September 24, 2008).
[10] See letter from Matt Hagemann to Gloria D Smith, at p. 2 (September 29, 2008), provided here as Attachment B.
[11] Id.

decision makers and the public. And the small amount of testing that has occurred was not done so under regulatory agency oversight nor were the agencies notified of the groundwater quality exceedances.

An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the environment but also informed self-government."[12] To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[13] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[14] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[15]

Here, the City squarely failed the test. The Project's soil and groundwater impacts have come to light in a confusing and disjointed fashion in direct violation of CEQA. Independent investigation and analysis are critical to the CEQA process because information and analysis allows decision-makers and the public to make an "independent, reasoned judgment" about a proposed project.[16] Public notification serves the public's right "to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision."[17] Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance. The City's reliance on the 11-hour Supplemental to disclose evidence of site contamination that the City was aware of before it issued the DEIR violates CEQA. Indeed, it is manifest under CEQA that "whatever is required to be considered in an EIR must be in the report itself."[18]

In short, a primary function of the City's DEIR was to allow the public and outside agencies to comment on the proposed Project's potential for site

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[12] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
[13] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[14] See *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at 568.
[15] Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).
[16] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
[17] *Id.* at 938.
[18] *San Joaquin Raptor, supra*, 27 Cal.App.4th at 727.

contamination. No such right exists at the final EIR stage where we now find ourselves. Thus, the City's deferral of a critical issue until the Supplemental impermissibly insulated it from public review.[19]

Based on the foregoing, CNA respectfully requests that the City withdraw the FEIR until full and proper groundwater, vapor and soil testing is conducted according to State guidance and with regulatory agency oversight. Then once testing is complete, the City must recirculate the EIR for public review.

Sincerely,

Gloria D. Smith

GDS:bh
Attachments

[19] *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1052.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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September 29, 2008

Ms. Gloria D. Smith
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the September 24, 2008 City of San Jose Memorandum

Dear Ms. Smith:

In a letter forwarded to your attention on September 19, 2008, we asked the City of San Jose to request voluntary oversight of soil and groundwater sampling at the former San Jose Medical Center. Under regulatory agency oversight, we believe environmental sampling as proposed in the September 2008 First Amendment to the EIR ("Final EIR"), in response to comments we submitted on July 21, 2008, would better ensure that any remaining contamination would be consistent with intended reuse of the property.

Since we prepared the September 19, 2008 letter, we received notification of a report of groundwater testing that was attached to a September 24, 2008 City of San Jose memorandum.[1] The memo states that it "transmits the results of additional soil and groundwater sampling since release of the Final EIR September 12, 2008."

The report, entitled Groundwater Investigation Report for Building 800, Former San Jose Medical Center and included with the September 24, 2008 memo as Attachment 2, is undated. Upon examination, we found the report includes results of groundwater samples collected from boreholes that were advanced on April 17, 2008. Contrary to the City's claim, groundwater samples were apparently collected on April 17, 2008, before the release of the June 2008 DEIR and well before the release of the September 24, 2008 Final EIR. (Please note that that Appendix A, Groundwater Sampling Protocol and Appendix B, Laboratory Results and Chain of Custody Procedure, which would clarify the date on which samples were collected, were not included at the website where the

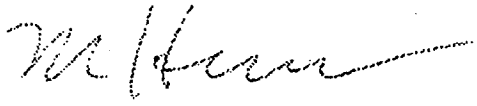
[1] http://www.sanjoseca.gov/planning/eir/SJMedical/rm-memo.pdf

City of San Jose posted the report.) The report also describes the collection of soil samples (p. 1); however, no soil analytical results are documented or are referenced in the appendices. In order for us to accurately assess the Project, the soil samples must be disclosed.

However, the results of the disclosed sampling show contamination of the underlying groundwater at two borings at concentrations that exceed Regional Water Quality Control Board screening levels for total petroleum hydrocarbons as diesel. We emphasize that the groundwater sampling was conducted without oversight and we have no indication from review of the documentation that the regulatory agencies were notified of the results.

To summarize, the results of the April 17, 2008 soil and groundwater sampling were not included in the June 2008 DEIR and they were not included in the September 2008 Final EIR, even after we had recommended soil and groundwater sampling in our July 21, 2008 letter we addressed to your attention. The lack of disclosure emphasizes, in our opinion, the need for regulatory agency oversight to ensure that potential contaminant sources at the site do not jeopardize worker health and to ensure adequate protection of underlying groundwater resources. Agency oversight would also better ensure protection of public health from intended reuse of the land.

Sincerely,



Matt Hagemann

Attachment 2

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September 24, 2008

VIA HAND DELIVERY

Ms. Rachel Roberts
City of San Jose
Planning Division
200 East Santa Clara Street, Tower 2
San Jose, CA 95113

Re: **Supplemental CEQA Comments on San Jose Medical Center Demolition Project**

Dear Ms. Roberts:

On behalf of the California Nurses Association/National Nurses Organizing Committee (hereinafter "CNA") we want to express our thanks to the City for taking our comment letter of July 21, 2008 into consideration. We appreciate the City adding important mitigation measures to the first amendment to the EIR that will protect the health and safety of construction workers at the demolition site.

In addition to the EIR's avoidance measures, the City may want to consider submitting an application to state regulatory agencies requesting their oversight in the testing phase described in avoidance measure HAZ-1. Then if hazardous waste is found, the regulatory agencies can ensure full and proper clean-up resulting in a clean bill of health at the site. Full clean-up will allow the City to approve future development proposals at the site.

Fortunately, the application process for the City to seek regulatory agency involvement is simple. Once the City makes the request, either the Water Board or DTSC would take it from there. For a better understanding of the process, please see the attached letter from our expert, former EPA senior scientist, Matt Hagemann.

printed on recycled paper

Thank you for your consideration of this additional recommendation. Please do not hesitate to contact me if you have any questions.

Sincerely,

Gloria D. Smith

GDS:bh
Attachment

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

201 Wilshire Boulevard, Second Floor
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September 19, 2008

Ms. Gloria D. Smith
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on September 2008 First Amendment, San Jose Medical Center Draft Environmental Impact Report, San Jose, California

Dear Ms. Smith:

In response to the comments we prepared and included in a July 21, 2008 letter, the City of San Jose, in the September 2008 First Amendment to the DEIR, has required soil and groundwater testing at the former San Jose Medical Center in San Jose, California as follows (p. 17):

> Text has been added to the EIR to clarify and expand upon measures included in the project to avoid substantial risks to demolition workers and the environment from possible historic contamination encountered during demolition. These measures also include pre-demolition groundwater testing around the perimeter of Building 800 so that contractors can be aware of any substantial chlorinated solvent contamination in groundwater and use appropriate equipment and trained personnel where exposure to vapors is possible.

We applaud the City for responding to the conditions we described to better ensure the protection of construction worker health and safety. We note, however, that because the site is not under active oversight by a California environmental regulatory agency, the sampling would be conducted without any agency review and therefore the adequacy of the investigations with respect to future land uses would be uncertain. Therefore, we suggest the City approach California environmental regulatory agencies to ensure that the groundwater sampling and soil and vapor testing is conducted according to State guidance. Under agency oversight, the results of the environmental sampling can be

reviewed to ensure any remaining contamination is consistent with intended reuse of the property.

In recent years, voluntary cleanup agreements have been employed at numerous sites that are not under active regulatory agency oversight but where contaminants are known or suspected to exist. These sites, when slated for development, are called Brownfields and voluntary cleanup agreements are seen as a tool that can ensure appropriate reuse consistent with environmental conditions.

Developers of Brownfield sites typically request oversight with submittal of an application to California environmental regulatory agencies (the State Water Resources Control Board or the Department of Toxics Substances Control) which can be found online at:
http://www.dtsc.ca.gov/SiteCleanup/Brownfields/upload/VCP_App_DTSC_1460.pdf
The application process is simple and requires documentation of basic site information to allow the agencies to confirm the need for oversight and the appropriate lead agency.

If, following the completion of the planned soil and groundwater investigations, contaminants are found at the site, the use of land use covenant or deed restrictions should be considered to ensure that future development does not include uses such as residential housing, hospitals, schools, or day care centers that may put future residents and occupants at risk. We urge, in conjunction with regulatory agency discussions regarding voluntary cleanup agreements that land use covenants and deed restrictions be considered as a tool to ensure that inappropriate land uses are prohibited.

Sincerely,

Matt Hagemann

PRESERVATION ACTION
COUNCIL OF SAN JOSE
Dedicated to Preserving San Jose's Architectural

CALIFORNIA NURSES ASSOCIATION
A Voice For Nurses ~ A Vision For Healthcare

September 24, 2008
Jim Zito, Chair
San Jose Planning Commission
Department of Planning, Building, and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

RE: PD 07-008 – Demolition of the San Jose Medical Center

Dear Chair Zito and Commissioners:

We are writing on behalf of the California Nurses Association/National Nurses Organizing Committee (CAN/NNOC) and the Preservation Action Council of San Jose (PAC-SJ) respectively to express our concerns about the preservation of Building 800 on the former San Jose Medical Center site. On August 6, 2008 the City's Historic Landmarks Commission voted to recommend listing the qualifying property on the historic resources inventory as a candidate city landmark.

As you are aware, in July, PAC-SJ submitted comments on the DEIR for the above referenced project. Specifically, PAC-SJ expressed concern for the potential damage to the historical portion of Building 800 that will be caused by the proposed demolition of the 1928 portion of the same building. Contained in those comments, PAC-SJ expressed support for Alternative 7.3 (Retention of 1928 Portion of Building 800) contained in the DEIR.

Since these comments were submitted, CNA, which also filed DEIR objections, has expressed support of PAC-SJ's position regarding the historic preservation of the entirety of Building 800. Most recently, members of both PAC-SJ and CNA spoke at the Historic Landmarks Commission meeting on August 6, 2008, echoing PAC-SJ's written comments. Following the public testimony, the Historic Landmarks Commission adopted a resolution, by a 7-0 vote, to recommend listing the entirety of Building 800 on the City's Historic Resources Inventory as a Candidate City Landmark, a distinction superior to the standard Structure of Merit the applicant was seeking.

CNA and PAC-SJ support the resolution passed by the Historic Landmarks Commission, and strongly encourage the Planning Commission to select Alternative 7.3 as outlined in the DEIR. It has become clear that Building 800 is a valuable historic resource for the City of San Jose, and protecting it in its entirety is the only way to ensure 100% protection of any of it.

Sincerely,

Brian Grayson
Interim Executive Director
PAC-SJ
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Attachment 3

AGENDA: 09/24/08
ITEM: 3.b.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

TO: PLANNING COMMISSION **FROM:** Joseph Horwedel

SUBJECT: SEE BELOW **DATE:** September 24, 2008

COUNCIL DISTRICT: 3
SNI: 13th Street NAC

SUPPLEMENTAL

SUBJECT: Certification of Final Environmental Impact Report (EIR) prepared for the proposed Planned Development Permit, PD07-008, to demolish the San Jose Medical Center located at 675 East Santa Street. The project would include the demolition of ten existing buildings (many attached), totaling approximately 339,000 square feet that comprise the San José Medical Center, located at 675 East Santa Clara Street in central San José. All ten buildings would be demolished as part of the proposed project, with the exception of an approximately 5,400 square foot portion of Building 800.

REASON FOR SUPPLEMENT

This memo transmits the results of additional soil and groundwater sampling since release of the Final EIR September 12, 2008.

The investigation was conducted to implement, ahead of schedule, Avoidance Measure HAZ-1 of the First Amendment to the Draft Environmental Impact Report (see attached). Residual groundwater contamination of low-level petroleum hydrocarbons was detected at two of the six drilling locations within the vicinity of Building 800. However, no evidence of other contaminants, such as volatile organic compounds, was detected.

The levels and type of contaminant found is not uncommon but rather is in keeping with the contaminants often found at commercial and industrial sites that have been in use for multiple decades. Per the consultant's recommendation, the results of the investigation will be incorporated into the Site Management Plan (SMP) to safely govern demolition activity and will be shared with the County Health Department, which has oversight responsibility.

Recent projects developing older commercial and industrial properties, such as Hitachi, Sobrato/Race Street, Markovits & Fox and several sites in North San Jose, have typically encountered more significant contamination. The low levels of hydrocarbons detected on the SJMC site would not pose a significant risk to workers, the surrounding community, or the environment during demolition or post-demolition while the site remains vacant.

The sampling results provide information that is consistent with what has already been identified in Section 3.5.2.2 of the EIR, *Hazards and Hazardous Materials Impacts, On-site Project Impacts,* that "The site may have remaining contamination from soil and groundwater from historic uses on the site" and that "residual groundwater or soil contamination would not impact demolition or security workers on the site." Furthermore, the investigation has implemented Avoidance Measure HAZ-1 ahead of schedule. The sampling would otherwise have occurred after a project decision and prior to demolition activity. Therefore, the sampling results do not trigger the need to re-circulate the Draft EIR, nor prepare a revised First Amendment.

Akemi Omichen
for JOSEPH HORWEDEL, DIRECTOR
Planning, Building, and Code Enforcement

Attachments
Attachment 1- Avoidance Measure HAZ-1
Attachment 2- PSI Groundwater Investigation Report

ATTACHMENT 1

the contamination, if present. Additional analysis and remediation of the site, such as soil sampling, may be required as part of a future development project.

Although contact with soil or groundwater by demolition workers is unlikely, since Building 800 is the oldest building on site, and records of chemical use at the building are not complete, the following avoidance measures shall be implemented prior to and during demolition:

AVOIDANCE MEASURE HAZ-1: During the partial demolition of Building 800, there is the potential for coming into limited contact with impacted soil and or soil vapor associated with the former site uses, although no mass grading or excavation of soil beneath the building is to be performed. The following measures will be followed to address the health and safety concerns associated with former site uses.

- A groundwater investigation will be completed for contaminants of concern (petroleum hydrocarbons and chlorinated solvents) at the site prior to demolition. Due to the shallow groundwater at the site, the primary contaminant migration pathway at the site would be groundwater. A preliminary groundwater investigation of the subject property to collect groundwater samples for analysis of contaminants will aid in developing the Site Management Plan and Health and Safety Plans for the demolition project described below.

AVOIDANCE MEASURE HAZ-2: A Site Management Plan (SMP) shall be developed to establish management practices for handling contaminated soil or other materials (including groundwater) if encountered during demolition activities. A hazardous materials licensed contractor shall conduct demolition activities with properly trained employees in areas where contaminated soil or groundwater may be present.

- Each contractor working at the site that may come in contact with impacted materials shall prepare a site-specific health and safety plan (HSP) that addresses the safety and health hazards of each phase of demolition that includes the requirements and procedures for employee protection.

- As the buildings are demolished and concrete floors broken, an environmental consultant will monitor air quality and collect soil samples if soil is exposed. Samples will be analyzed for chlorinated solvents and petroleum hydrocarbons, as appropriate.

- Prior to or following demolition, there is the possibility that additional soil and/or groundwater sampling may be necessary. Additional sampling would be based on observations and discovery of contamination in collected samples. In the event elevated levels of contaminants of concern are found during demolition activities (based upon RWQCB Environmental Screening Levels (ESLs)), characterization and remediation shall be undertaken in conformance with applicable local, state, and federal regulations.

Page 43: REVISE *Section 3.5.2.2, On-Site Project Impacts,* as shown:

The project proposes the demolition of approximately ~~337,200~~ 339,000 square feet of 10 buildings on the site, many of which include asbestos-containing building materials and lead-based paint.

Page 44: REVISE *Section 3.5.2.2, On-Site Project Impacts,* as shown:

AVOIDANCE MEASURE HAZ-~~1~~3: To protect the monitoring wells on site from disturbance

ATTACHMENT 2

psi Information To Build On

Engineering • Consulting • Testing

GROUNDWATER INVESTIGATION REPORT

For

BUILDING 800
FORMER SAN JOSE MEDICAL CENTER
675 E. SANTA CLARA STREET
SAN JOSE, CALIFORNIA

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STATEMENT OF LIMITATIONS AND PROFESSIONAL CERTIFICATION

Information provided in this report (PSI Project Number 575-8G009) is intended exclusively for Hospital Corporation of America (HCA) for the evaluation of contamination in groundwater, as it pertains to the subject site. Professional Service Industries, Inc., (PSI) is responsible for the facts and accuracy of the data presented herein. The professional services provided have been performed in accordance with practices generally accepted by other geologists, hydrologists, hydrogeologists, engineers, and environmental scientists practicing in this field. No other warranty, either expressed or implied, is made. As with all subsurface investigations, there is no guarantee that the work conducted has identified all sources or locations of contamination.

Professional Service Industries, Inc.

Frank R. Poss, R.E.A. 05522
Principal Consultant

John Kavinga
Project Engineer

1.0 INTRODUCTION

The subject property is the former San Jose Medical Center located at 675 E. Santa Clara Street in San Jose, California. The approximate location of the subject property is depicted on the attached Site Location Map, Figure 1.

The scope of work for this investigation included:

- Drilling six direct-push soil borings;
- Collection of soil and groundwater samples to characterize soil and groundwater quality where tested; and
- Preparation of this final report detailing the results of the investigation.

1.1 SITE SETTING

Building 800 at the Subject Property is scheduled for partial demolition. Review of historical records indicates that this building was formerly used as a laundry and also an IBM facility. It appears that the building was operated as the Temple Laundry from approximately 1919 to 1943. It is unclear whether the laundry was used for dry cleaning and, if so, which solvent was utilized. Typically, a petroleum distillate would have been used as the dry cleaning solvent during this period. However, there is the possibility that perchloroethylene (PCE) was used at some time during the period the building was operated as the Temple Laundry, although no evidence has been discovered to document the presence of dry cleaning operations or the use of the solvents. Additionally, the site may have used fuel oil in power production. Contaminants of Concern (COCs) associated with the former Temple Laundry could include petroleum hydrocarbons and PCE.

From 1943 through 1960, the building was used by IBM, as a punch card manufacturing facility. There is no documentation as to whether the facility used chlorinated solvents such as PCE, trichloroethene (TCE), and dichloroethene (DCE) as part of the manufacturing process. However, a similar IBM plant in operation from 1956 until 1985 is reported by the U.S. EPA to have soil and groundwater impacts from chlorinated solvents.

PSI has recommended that to determine whether major impact to the subject property (Building 800) has occurred associated with the former site uses, a groundwater investigation be completed for the COCs at the site prior to demolition. Due to the shallow groundwater at the site and that it is over 40 years since historical site use of concern, the primary contaminant migration pathway at the site would be groundwater. A preliminary groundwater investigation of the subject property to collect groundwater

samples for analysis of COCs would aid in developing a Site Management Plan and Health and Safety Plans for the demolition project.

2.0 INVESTIGATIVE METHODS

2.1 PRE-FIELD ACTIVITIES

A minimum of 48-hours prior to initiation of field drilling activities, PSI marked the proposed boring locations with white paint and contacted Underground Service Alert (USA) to locate any potential buried utilities.

2.2 SOIL BORINGS

On April 17, 2008, six (6) soil borings, GP-1 through GP-6, were drilled at the subject property by V&W Drilling using a direct-push drill system (Figure 2). Based on groundwater data from wells installed adjacent to a former UST at the Subject Property, groundwater flow is to the southwest. Therefore, boring locations were selected on the western, southern, and eastern perimeter of the building. As the northern perimeter was hydraulically gradient and would have also required an encroachment permit from the City of San Jose, borings were not drilled in this area. The direct-push borings were advanced to approximately 30 feet below ground surface to facilitate the collection of groundwater samples. Fieldwork for drilling and soil sampling activities were conducted in general accordance with the field procedures described in Appendix A. Groundwater was encountered at approximately 20 to 24 feet bgs in the borings. The depth to groundwater in monitoring wells on the northwestern portion of the former San Jose Medical Center is typically 10 to 14 feet bgs. The discrepancy between the depths first groundwater was detected could be due to the fine grained material encountered during drilling not allowing groundwater to enter the boring until 20 to 24 feet bgs. At the completion of drilling, each boring was backfilled with cement grout.

2.3 GROUNDWATER SAMPLING

A groundwater sample was collected from boring SB-1 using a dedicated disposable bailer lowered through 1-inch diameter, slotted PVC casing, which was temporarily placed in the hole. Groundwater was decanted from the bailer directly into laboratory-supplied 40-ml glass vials, each preserved with 0.5 milliliter of 1:1 hydrochloric acid.

Immediately following groundwater sample collection, the samples were labeled, logged on a chain-of-custody record, placed in an ice-chilled cooler for transport to the environmental laboratory for analysis. Sample containers and preservatives were utilized as instructed by the analytical laboratory. All transportation and handling of the groundwater samples followed chain-of-custody protocol. A copy of the Chain-of-Custody Record is presented at the end of Appendix B.

2.4 DECONTAMINATION PROCEDURES

Decontamination procedures were implemented to maintain sample integrity and to prevent cross-contamination between sampling locations. All re-usable equipment was cleaned with non-phosphate detergent and rinsed with de-ionized water prior to use at a new sampling location. Sampling equipment decontaminated includes stainless-steel sampling equipment and drilling equipment.

3.0 LABORATORY RESULTS & DISCUSSION

All of the groundwater samples collected during this investigation were submitted for chemical analysis to Sunstar Laboratories, Inc. (Sunstar) of Tustin California, a California Department of Health Services, Environmental Laboratory Accreditation Program certified laboratory.

The groundwater samples were analyzed for volatile organic compounds (VOCs) according to EPA Method 8260B and for TPH as Gasoline (TPH-G), TPH as Diesel (TPH-D) and TPH as Motor Oil (TPH-MO) according to EPA Method 8015M. Sample extraction and analysis were performed in accordance with the extraction and hold times specified in the EPA Methods. A copy of the laboratory report and chain of custody record are included in Appendix B.

3.1 CHEMICAL ANALYSIS RESULTS

The results of the groundwater analyses indicated the following:

- None of the groundwater samples had TPH-G, TPH-MO, or VOC concentrations greater than their respective laboratory detection limits.
- TPH-D was detected in only two of the groundwater samples. GP-1 had a TPH-D concentration of 0.76 milligrams per liter (mg/L), while GP-2 had a TPH-D concentration of 1.6 mg/L. In a conversation with Mr. John Shepler, Laboratory Director for SunStar, he stated that although the detection was in the diesel range, it did not exhibit the characteristic display of a diesel pattern.

A summary of the groundwater laboratory results is presented in Table 1.

3.2 CHEMICAL ANALYSIS DISCUSSION

TPH-D was detected in borings GP-1 and GP-2, which are on the hydraulically downgradient side of the subject property. As the TPH-D did not exhibit a diesel signature, it is possible that the contaminant detected is not related to the historic use of the building.

The groundwater sample results were compared to the Bay Area Regional Water Quality Control Board (RWQCB) Environmental Screening Levels (ESLs) for commercial properties with impacted shallow soil in non-drinking resource groundwater. The chemical results from both groundwater samples GP-1 and GP-2 (0.76 mg/L and 1.6 mg/L, respectively) had concentrations of TPH-D greater then the ESL (ESL of 0.64 mg/L).

4.0 CONCLUSIONS AND RECOMMENDATIONS

PSI drilled six borings and collected groundwater samples from each of the borings on September 5, 2008. The results of the investigation are summarized below.

- None of the groundwater samples had TPH-G, TPH-MO, or VOC concentrations greater than their respective laboratory detection limits.
- TPH-D was detected in only two of the groundwater samples (GP-1 at 0.76 mg/L and GP-2 at 1.6 mg/L). In a conversation with Mr. John Shepler, Laboratory Director for SunStar, he stated that although the detection was in the diesel range, it did not exhibit the characteristic display of a diesel pattern.
- The TPH-D concentrations detected in groundwater samples GP-1 and GP-2 were greater than their ESLs.

The purpose of the groundwater investigation was to determine whether a major release of contaminants had occurred at Building 800 associated with the historic use of this building. The lack of VOCs in the groundwater samples indicated that a major release has not occurred. PSI recommends that the results of this investigation be incorporated into the Site Management Plan (SMP) for the demolition of the subject property. The SMP will be developed to establish management practices for handling contaminated soil or other materials (including groundwater) if encountered during demolition activities. A hazardous materials licensed contractor shall conduct demolition earthwork activities with properly trained employees in areas where contaminated soil or groundwater may be present.

FIGURES

NORTH

0 1/2 1 MILE

SCALE

REFERENCES:

U.S.G.S. SAN JOSE EAST CALIFORNIA, 7.5 MINUTE SERIES TOPOGRAPHIC MAP, DATED 1978, PHOTOREVISED 1980.

U.S.G.S. SAN JOSE WEST CALIFORNIA, 7.5 MINUTE SERIES TOPOGRAPHIC MAP, DATED 1979, PHOTOREVISED 1980.

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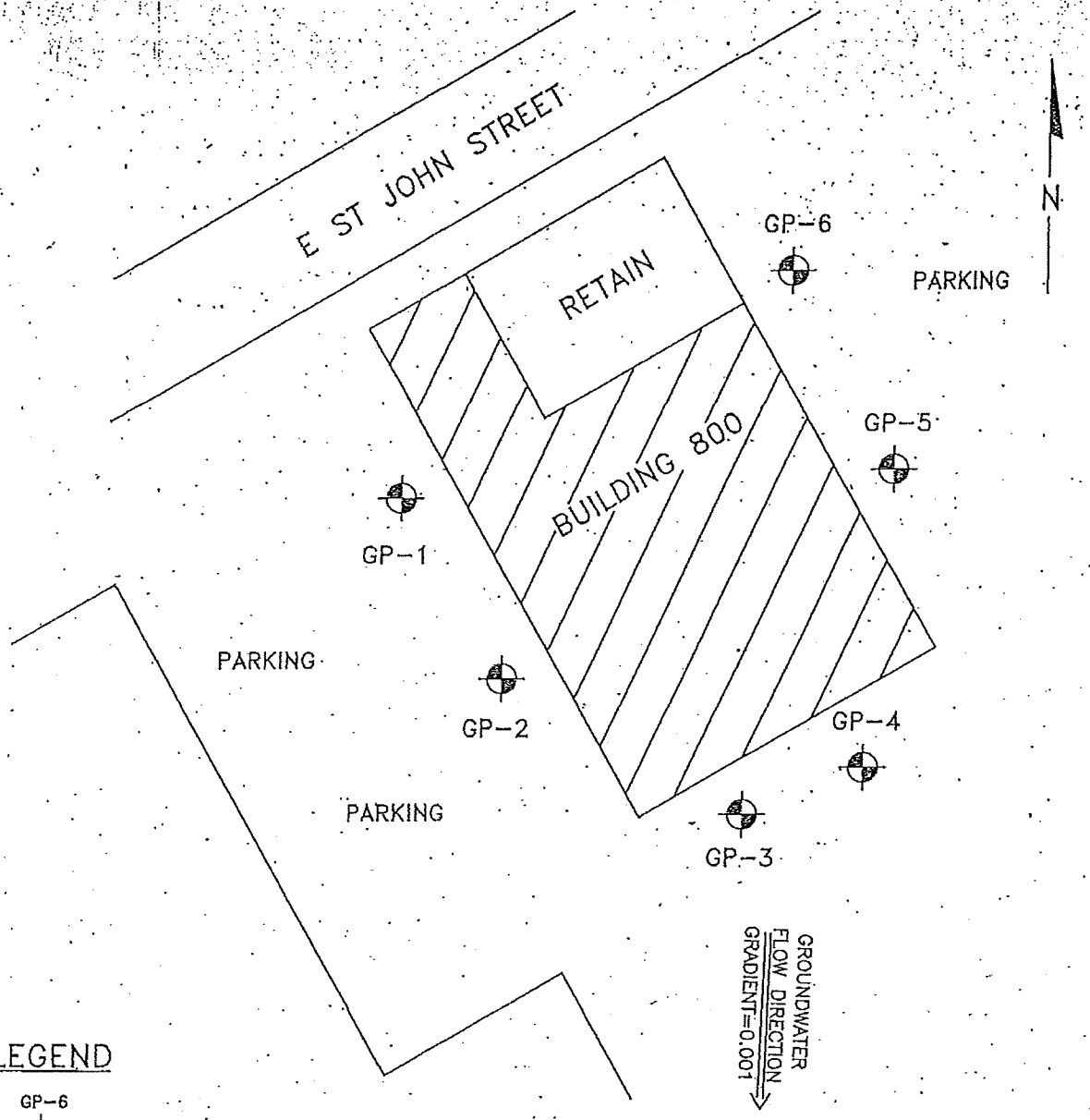
Project Name: SAN JOSE MEDICAL CENTER 675 E. SANTA CLARA STREET, SAN JOSE, CALIFORNIA	Drawn By: B.B.	Date: 12/07	File No.: 7G006-01	Figure No.: 1
Title: SITE LOCATION MAP	Approved By: F.P.	Project No.: 575-7G006		



LEGEND

GP-6 – APPROXIMATE GEOPROBE LOCATION

– EXISTING STRUCTURES

GROUNDWATER FLOW DIRECTION GRADIENT=0.001 – APPROXIMATE GROUNDWATER FLOW DIRECTION AND GRADIENT ASSERTAINED FROM WELLS ON THE PROPERTY LOCATED 400 FEET TO THE SOUTHWEST NEAR THE CORNER OF EAST ST. JOHN ST. AND N. 14TH ST.

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Project Name: FORMER SAN JOSE MEDICAL CENTER 675 E SANTA CLARA ST, SAN JOSE, CA	Drawn By: J.K.	Date: 9/08	File No.: 8G009-02	Figure No.: 2
Title: SITE PLAN AND BORING LOCATION MAP	Approved By: F.P.	Project No.: 575-8G009		