



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2009

**COUNCIL DISTRICT:** 8  
**SNI AREA:** N/A

## SUBJECT

**FILE NO. GP08-08-02. General Plan Amendment request to change the Land Use/ Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) on a 9.1 acre site, located on the northeasterly side of San Felipe Road, approximately 400 feet northwest of Silver Creek Road.**

## RECOMMENDATION

The Planning Commission voted 6-1-0 (Cahan, opposed) to recommend that the City Council approve the proposed General Plan Amendment request to change the Land Use/ Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) on a 9.1 acre site, located on the northeasterly side of San Felipe Road, approximately 400 feet northwest of Silver Creek Road.

## OUTCOME

Should the City Council approve the General Plan Amendment, the applicant would be able to move forward with a Planned Development Rezoning to allow for 20 single-family detached residential units on the subject site.

## BACKGROUND

On May 27, 2009, the Planning Commission held a public hearing to consider the proposed General Plan Amendment. The Director of Planning, Building and Code Enforcement recommended approval of the proposed General Plan Amendment. The project was on the evening's consent calendar however was put on the public hearing after a speaker card was received.

Bonnie Mace, an adjacent neighbor to the site spoke on the item. While she supported the General Plan Amendment, she was concerned that the Memorandum of Understanding (MOU) that the developer entered into with the neighborhood would be politically upheld that a road configuration connecting Grand Oak Way and San Felipe Road would have a traffic and noise impact and that a traffic study should be completed. Staff responded that site design issues will

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be further evaluated at the Planned Development Permit stage and that the City has no legal requirement to uphold the MOU that is between the developer and the neighborhood. Commissioner Cahan was concerned about the loss of open land and the increase in the number of units. She did not support the proposal in that if approved, the site would no longer be rural in nature.

The Planning Commission voted 6-1-0 (Commissioner Cahan opposed) to recommend approval of the project.

### **ANALYSIS**

A complete analysis of the issues regarding this project, including General Plan conformance, is contained in the attached staff report.

### **EVALUATION AND FOLLOW-UP**

The applicant would be required to file subsequent development permits with the Planning Division in order to implement the increased density on the subject site.

### **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. A community meeting was held on April 27, 2009. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The General Plan Amendment was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### **COORDINATION**

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

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**FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

The environmental impacts of this project were addressed by a Mitigated Negative Declaration adopted for File Nos. GP08-08-02 and PDC09-007 on May 26, 2009. The Mitigated Negative Declaration states that no significant impacts will result from the subject project.

  
 JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Lesley Xavier, Project Manager at 408-535-7852.

Attachments:

General Plan Amendment Staff Report

**RESPONSE TO COMMENTS RECEIVED ON THE MITIGATED  
NEGATIVE DECLARATION FOR LANDS OF DAL PROPERTIES –  
File Nos. GP08-08-02 and PDC09-007**

**LIST OF AGENCIES & ORGANIZATIONS COMMENTING ON THE  
INITIAL STUDY**

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A. California Regional Water Quality Control Board, May 18, 2009

**RESPONSES TO COMMENTS RECEIVED ON THE INITIAL STUDY**

The following section includes all of the comments on the Initial Study that were received by the City of San José during the review period. The comments have been excerpted from the letters and are presented as “Comment” with each response directly following (“Response”). The actual letters submitted follow the responses to comments.

**LETTER A from the California Regional Water Quality Control Board, May 18, 2009**

**Comment A-1:**

The proposed use of pervious concrete pavers and the discharge of roof runoff to landscaped areas are consistent with the requirements of Provision C.3 of the Santa Clara County NPDES Permit for stormwater discharges (Board Order No. 01-024; NPDES Permit, CAS0299718, as amended by Order Nos. 01-119 and 2005-0035), issued to the Santa Clara Valley Urban Runoff Pollution Prevention Program. However, the proposed use of continuous deflection separator (CDS) units to treat runoff from the public street areas is not appropriate. CDS units belong to a class of treatment devices referred to as “hydrodynamic separators”. Water Board staff discourage the use of hydrodynamic separators at sites with significant areas of currently undeveloped open space. These devices are more appropriate at dense infill sites that lack adequate surface area for landscape-based treatment devices. At sites with available, unused surface area, such as the Project site, it is possible to design the Project to set aside sufficient surface area for appropriate stormwater treatment BMPs. When they are used, hydrodynamic separators are only appropriate if used in combination with BMPs that are capable of removing the fine particulate matter that is not amenable to removal by hydrodynamic separators, and in combination with filter media that permanently absorbs hydrocarbons. CDS units should discharge to landscape-based treatment measures to treat the CDS effluent to remove fines and hydrocarbons. Research sponsored by a CDS unit manufacturer has demonstrated that hydrocarbons removed by a CDS unit during one storm tend to be washed out of the units by subsequent storms, unless the units are equipped with hydrocarbon absorbing media.

Response A-1:

Since this is a Planned Development Zoning the Stormwater Treatment Plan is conceptual only. At the Planned Development Permit stage the City will continue to explore this approach, as well as other feasible approaches for stormwater treatment on the public streets in this project.

Comment A-2:

Water Board staff encourage the project proponents to consider replacing the existing culvert with a free span bridge, rather than extending the existing 48-inch diameter culvert or constructing a second 48-inch diameter culvert. Free span bridges have much smaller impacts on creek habitat and creek stability. Extending the existing culvert or constructing a second culvert will require a permit from the Water Board. This permit will cover all of the Project's impacts on water quality, including the treatment provided for stormwater runoff.

Response A-2:

In the existing condition, the culvert passes the low flow while the road acts as a weir in a larger storm event and helps to attenuate the higher flows and minimize downstream erosion. Replacing the culvert with a free span bridge would allow large flows to pass through unchecked and create significant downstream erosion and sediment pollution in Misery Creek and Thompson Creek.



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Secretary for  
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

May 18, 2009  
CIWQS Place No. 737470 (bkw)

Sent via electronic mail: No hardcopy to follow

Department of Planning, Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113-1905

Attn: Lesley Xavier ([lesley.xavier@sanjoseca.gov](mailto:lesley.xavier@sanjoseca.gov))

Re: Initial Study and Mitigated Negative Declaration for the Lands of DAL Properties San Felipe General Plan Amendment (GP05-10-01) and Planned Development (PD and Rezoning (PDC09-007), San Jose, California

SCH # 2009042117

Dear Ms. Xavier:

Regional Water Quality Control Board (Water Board) staff have reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) for the Lands of DAL Properties San Felipe General Plan Amendment (GP05-10-01) and Planned Development (PD) and Rezoning (PDC09-007). The IS/MND evaluates the potential environmental impacts that might reasonably be anticipated to result from the implementation of the proposed General Plan Amendment, which will allow the construction of 35 single family residences on a 19.13-acre site located on the northeasterly side of San Felipe Road, about 400 feet northwesterly of Silver Creek Road. Water Board staff have the following comments on the IS.

### Comment 1

#### Section 8, Hydrology and Water Quality, Water Quality, page 101.

The proposed use of pervious concrete pavers and the discharge of roof runoff to landscaped areas are consistent with the requirements of Provision C.3 of the Santa Clara County NPDES Permit for stormwater discharges (Board Order No. 01-024; NPDES Permit, CAS0299718, as amended by Order Nos. 01-119 and 2005-0035), issued to the Santa Clara Valley Urban Runoff Pollution Prevention Program. However, the proposed use of continuous deflection separator (CDS) units to treat runoff from the public street areas is not appropriate. CDS units belong to a class of treatment devices referred to as "hydrodynamic separators". Water Board staff discourage the use of hydrodynamic separators at sites with significant areas of currently undeveloped open space. These devices are more appropriate at dense infill sites that lack adequate surface area for landscape-based treatment devices. At sites with available, unused surface area, such as the Project site, it is possible to design the Project to set aside sufficient surface area for appropriate stormwater treatment BMPs. When they are used, hydrodynamic separators are only appropriate if used in combination with BMPs that are capable of removing

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the fine particulate matter that is not amenable to removal by hydrodynamic separators, and in combination with filter media that permanently absorbs hydrocarbons. CDS units should discharge to landscape-based treatment measures to treat the CDS effluent to remove fines and hydrocarbons. Research sponsored by a CDS unit manufacturer has demonstrated that hydrocarbons removed by a CDS unit during one storm tend to be washed out of the units by subsequent storms, unless the units are equipped with hydrocarbon absorbing media.

**Comment 2****Section 8, Misery Creek Culvert, page 101.**

Water Board staff encourage the project proponents to consider replacing the existing culvert with a free span bridge, rather than extending the existing 48-inch diameter culvert or constructing a second 48-inch diameter culvert. Free span bridges have much smaller impacts on creek habitat and creek stability. Extending the existing culvert or constructing a second culvert will require a permit from the Water Board. This permit will cover all of the Project's impacts on water quality, including the treatment provided for stormwater runoff.

Please contact me at (510) 622-5680 or [bwines@waterboards.ca.gov](mailto:bwines@waterboards.ca.gov) if you have any questions. All future correspondence regarding this Project, should reference the Site Number indicated at the top of this letter.

Sincerely,

*Brian K. Wines*

Brian Wines  
Water Resources Control Engineer  
Southeast Bay Counties Section

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044  
([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))

**Xavier, Lesley**

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**From:** bgoldmace@aol.com  
**Sent:** Wednesday, May 27, 2009 1:02 PM  
**To:** Enderby, Mike; Xavier, Lesley; mlazzarini@dalpropertiesllc.com  
**Cc:** mikemace@att.net  
**Subject:** comments on GP08-08-02 for PC and CC hearings; use this email since other one had software errors

Mike and Lesley,

Please ignore the earlier email; there were typos where my software program didn't work properly. Here are our comments for the Planning Commission (May 27) and City Council (June 16) hearings concerning the General Plan Amendment change for GP08-08-02. Thanks.

Bonnie and Michael Mace

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Planning Commission and City Council members:

Re: GP08-08-02 (Near San Felipe Road); change from Very Low Density Residential to Low Density Residential

- We support the staff recommendation to change the General Plan designation from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) on the 9.1 acre back portion of this site with the following comments:

- **Memorandum of Understanding (December 6, 2006):** The developers and neighboring homeowners signed a Memorandum of Understanding guiding development on this parcel in December 2006. City staff advised us during the development of the MOU and participated in reviews of it. This agreement was placed into the public record by the City Council during the last public hearing process for the front portion of this parcel. This MOU states that the developer will apply for a maximum of 35 units on the entire 17.98 gross acre parcel, an average of about two homes per gross acre, a density consistent with the surrounding community. Because of the city's rules, we understand that it is necessary to make a General Plan change to part of the parcel to 5 DU/AC. We're willing to support this change only because it is in the context of an overall plan for the site which preserves riparian habitat and ensures that the spacing and number of the resulting homes will fit with the surrounding neighborhood. Although this MOU is not legally binding, we view it as politically binding on the developer and city, and it establishes a precedent for future development in this area of San Jose.

- **Density:** We support the change in land use designation with the understanding that the developer only seeks approval for 20 allocations on this back portion of the site (6 units permitted under PDC06-092 filed previously plus 14 additional units filed under PDC09-007). Since there is no land use designation for 3 DU/AC, the developer applied for a 5 DU/AC designation with the understanding that only 20 units would be requested for approval. Our consent to change the land use designation does not establish a precedent for changing any other properties in the community to 5 du/ac. Consistent with the Evergreen/East Hills development policy, any future development in the area should be consistent with the surrounding community, which is roughly two homes per gross acre.

- **Road Configuration:** A key issue for the neighborhood is the road configuration on the back portion of the parcel. This issue will be dealt with at the rezoning hearing, but since the road configuration was mentioned in the current Staff Report, we want to state for the record that most neighbors favor no connection except for emergency vehicle access. This is for two reasons:

The first concern is a dramatic change in traffic patterns in the neighborhood. The parcel being developed is currently a pasture, extremely quiet and rural, with zero through traffic. If there is a

through road to San Felipe, the neighbors are extremely concerned that there will be a huge increase in traffic, changing the character of the neighborhood dramatically. We request that staff do a **traffic analysis** to determine how many houses in California Oak Creek would have a shorter driving distance if they came through the new development rather than using the current connection from California Oak Creek to San Felipe. If a new cut-through road is approved, we estimate that the traffic on this road will not only come from the new potential 20 homes on the back part of the property but will also include traffic from approximately 80-100 homes in California Oak Creek.

The second concern is speeding. Because of speeding problems in the neighborhood, most of the residents prefer a strongly curved road in the new development rather than the relatively straight road shown in some proposals. A strongly curved road was called for in the MOU, as reviewed by city staff and acknowledged by the City Council.

Thanks for your time.

Sincerely,  
Bonnie and Michael Mace  
Members of the California Oak Creek/Meadowlands Concerned Neighbors Group

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