



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 7, 2010

Approved

Date

6/7/10

COUNCIL DISTRICT: 6
SNI AREAS: Burbank/Del Monte

SUBJECT: PUBLIC HEARING ON AN APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (FSEIR) FOR THE BASEBALL STADIUM IN THE DIRIDON/ARENA AREA (MODIFIED PROJECT) GENERALLY BOUNDED BY AUTUMN STREET, BIRD AVENUE AND LOS GATOS CREEK TO THE EAST AND SOUTH, CALTRAIN RAILROAD TRACKS TO THE WEST, AND JULIAN STREET TO THE NORTH (File No. PP05-214).

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 Supplemental EIR; and
2. The Final SEIR has been completed in compliance with the California Environmental Quality Act (CEQA); and
3. The Final SEIR 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 SEIR 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 SEIR will allow the City Council to consider future actions related to the construction of a ballpark in the Downtown for a major league baseball team, such as the placement of a measure on a ballot to authorize the use of public funds pursuant to the requirements of Chapter 4.95 of the San Jose Municipal Code.

EXECUTIVE SUMMARY

On May 19, 2010, the Planning Commission held a public hearing on the Final SEIR for the Baseball Stadium (Modified Project). After public testimony and discussion, the Planning Commission (4-1-2, Platten opposed, Cahan and Campos absent) certified the Final SEIR as having been completed in compliance with the requirements of CEQA. On May 24, 2010, Marc Morris, Michael Wilson on behalf of "Stand for San Jose" and Misty Macias on behalf of Silicon Valley Sports and Entertainment, LLC filed a timely appeal of the certification. The FSEIR certification appeal hearing of the City Council is a de novo hearing.

Three timely appeals were filed by Marc Morris, Michael Wilson on behalf of Stand for San Jose (San Jose Giants) and Misty Macias on behalf of Silicon Valley Sports and Entertainment, LLC (San Jose Arena Management). Generally, the appeals question the validity of the Baseball Stadium Final SEIR on the following premises:

- DSEIR fails to adequately analyze and disclose potential traffic impacts
- DSEIR provides an inaccurate and incomplete parking analysis and does not apply City's significance criterion
- DSEIR does not adequately analyze the potential impacts on transit service
- DSEIR analysis of day game scenario is flawed with unjustified assumptions
- DSEIR does not adequately quantify noise impacts from non-baseball events
- DSEIR erroneously assumes and relies on completion of Autumn Street extension
- DSEIR identifies an undefined TPMP to address many issues
- DSEIR does not adequately analyze concurrent event scenarios
- DSEIR avoids the issue of land use conflicts
- DSEIR does not accurately analyze and consider cumulative impacts
- DSEIR does not adequately address safety issues
- FSEIR fails to adequately respond to comments on the DSEIR

Staff has prepared a detailed response to each issue raised above which is contained in the **ANALYSIS** section of this report. The issues raised were previously raised prior to or at the

Planning Commission meeting held to consider the certification of the draft SEIR. Staff and the consultant team responded issue by issue in the draft SEIR, the First Amendment to the SEIR, and at the Planning Commission SEIR certification hearing.

The Baseball Stadium in the Diridon/Arena Area (Modified Project) Final Supplement 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 SEIR has been completed in compliance with the requirements of CEQA and represents the independent judgment and analysis of the City of San Jose.

BACKGROUND

CEQA Requirements for Certification of an EIR

The DSEIR, taken together with the First Amendment (containing responses to comments received on the DSEIR during the public review period of the document), constitute the Final SEIR. The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final SEIR has been completed in compliance with CEQA, (2) the Final SEIR 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 SEIR before approving the project, and (3) the Final SEIR reflects the independent judgment and analysis of the lead agency.

On May 19, 2010, the Planning Commission held a public hearing on the Final SEIR for the Baseball Stadium. After public testimony and discussion, the Planning Commission (4-1-2, Platten opposed, Cahan and Campos absent) certified the Final EIR as having been completed in compliance with the requirements of CEQA.

Appeal of an EIR

When a (S)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 May 24, 2010, Marc Morris, Stand for San Jose, and Silicon Valley Sports and Entertainment, LLC each 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 SEIR 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 SEIR 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 SEIR. If the City Council finds that the Final EIR has not been completed in compliance with CEQA, the Council must require the Final SEIR to be revised and the City may not take any action on the project analyzed under that FSEIR. All decisions of the City Council are final.

ANALYSIS

The attached letters, received from Marc Morris; Pillsbury Winthrop Shaw & Pittman, LLP on behalf of "Stand for San Jose" (San Jose Giants); and Cox, Castle & Nicholson, LLP on behalf of Silicon Valley Sports and Entertainment (San Jose Sharks) constitute formal appeals of the Planning Commission's certification on May 19, 2010, of the Final SEIR for the Baseball Stadium in the Diridon/Arena Area (Modified Project). The appeals and the City of San Jose's responses to issues raised are discussed below.

CEQA requires the City to evaluate and respond to comments received on the DSEIR during the public review period of the document. The City has fulfilled this requirement as a part of its preparation of the First Amendment to the DSEIR, which First Amendment contains the City Administration's responses to those comments received on the DSEIR (the First Amendment taken together with the DSEIR constitute the Final SEIR). In addition, a few persons submitted additional letters to the City after the close of the public review period of the DSEIR. While CEQA does not require City to respond to those additional letters, the Administration has nevertheless prepared answers to those additional remarks as a courtesy. Please note that while CEQA does require City to perform a good faith, reasoned analysis in responding to the comments received on the DSEIR during the public comment period, and to not simply summarily dismiss those comments in a conclusory fashion unsupported by factual information, CEQA does not require the City to be exhaustive and perform every study, test, research or experiment to ascertain the precise scope of every environmental element noted by a commenter. Good faith and reasoned analysis in responding to comments received on the DSEIR during the comment period and good faith disclosure of environmental impacts serve the purposes of CEQA.

RESPONSES TO MARC MORRIS APPEAL, DATED MAY 24, 2010.

RESPONSE TO APPEAL OF EIR: The following are responses to the aforementioned Marc Morris appeal, which questions the validity of the Baseball Stadium (Modified Project) Final SEIR on several basic premises which are generally in common amongst all three appeals. Unlike the other two appellants, as an individual Mr. Morris did not submit comments on the DSEIR during the public review period of the document under CEQA processes. However, the essence of his stated reasons for appeal were included in the DSEIR comments submitted by others in one form or another and were responded to by the City in the FSEIR First Amendment. Specific responses to Mr. Morris' stated reasons for appeal are provided below.

MORRIS Remark 1: The SEIR fails to adequately analyze and disclose the potential environmental impacts of this project from traffic in at least two significant areas.

- a. The SEIR does not quantitatively analyze traffic in the 6 to 7 PM time period - the time period when the project will generate its highest levels of traffic.
- b. The SEIR does not adequately analyze and report the impact on downtown intersections.

In these cases, the SEIR inappropriately uses policy as a mask and excuse to avoid analyzing and disclosing potential significant actual impacts (form over substance). Policy may explain the decision not to mitigate the impacts; it does not justify not reporting them.

City Answer 1: The City disagrees with this remark. The issue raised in this reason for appeal #1 is addressed and fully discussed in the First Amendment, Responses to Comments, in Master Responses to Transportation, Circulation and Parking #1 through #7 (pp. 7-22). This remark was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 2: The SEIR provides an inaccurate and incomplete analysis of parking. The net result is to overstate supply by more than 1,500 spaces and to understate demand by more than 7,500 spaces. Errors and omissions include:

- a. incorrect numbers for the demand from HP Pavilion patrons;
- b. incorrect basic arithmetic in calculating the background parking occupancy rate;
- c. leaving out demand from HSR, BART, and other downtown events, even though numbers are readily available (and are certainly much more accurate than the de facto estimate of zero);
- d. an unjustified failure to apply the industry standard practice of using an 'effective parking supply' factor.

City Answer 2: The City disagrees with this remark. The issue raised in reason for appeal #2 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #4 (pp. 14-17). Similar to Remark #1, this remark was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 3: The parking analysis in the SEIR does not apply the city's own significance criterion ("result in inadequate parking for existing land uses or cause parking intrusion into existing residential neighborhoods"). Instead, it replaces that criterion with an incorrect and far fetched interpretation of a very recent change to a CEQA checklist. The result is to ignore potential impacts on existing businesses and venues in the Diridon Station area created by baseball parking demand.

City Answer 3: The City disagrees with this remark. The issue raised in reason for appeal #3 is addressed in the First Amendment, Responses to Comments, in Response to Comment C7-15 (p. 126). This remark was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 4: The SEIR does not adequately analyze the potential impacts on transit service in Diridon Station area, including

- a. potential impact of traffic congestion on bus routes and schedule;

- b. potential impact on light rail capacity, and need to fund additional service.

City Answer 4: The City disagrees with this notion. The issue raised in reason for appeal #4 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #6 (pp. 18-21) and in Responses to Comments #B5-6 (pp. 46-47) and B5-11 (p. 48). This notion was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 5: The SEIR's analysis of a day game scenario has several major flaws and unjustified assumptions:

- a. day games start at noon (not 12:30 or 1 PM, as seems to be more common);
- b. 30% of fans will leave before a game is over (this assumption appears to be wholly invented);
- c. BART parking demand (which is at its height during the day) is completely ignored

The result is to avoid any analysis of potential traffic and parking impacts on other businesses and activities in the Diridon Station area.

City Answer 5: The City disagrees with this thought. The issue raised in reason for appeal #5 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #1 (pp. 7-10), #4 (pp. 14-17) and #6 (pp. 18-19). This remark was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 6: Noise impacts are not quantified adequately in the SEIR, particularly for concerts or other non-baseball events.

City Answer 6: The issue raised in reason for appeal #6 is addressed in the Draft SEIR in Chapter IV, Noise, pages 71-78. Impact NOISE 3 ("Proposed on-site concert and other events could result in noise impacts on adjacent residential uses") specifically analyzes this issue. Figure IV.B-3 (Noise Exposure Map for a Concert) was prepared using a sophisticated computer noise model that shows quantified noise contours for a concert in the stadium. Mitigation Measure NOISE 3 addresses the impact, but would not reduce it to a less-than-significant level and, therefore, the impact is deemed in the Draft SEIR to be significant and unavoidable. Because this notion was alluded to by other persons who commented on the SEIR during the formal comment period, it was fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 7: The SEIR unjustifiably assumes and relies on completion of transportation infrastructure improvements (e.g. the full Autumn St. extension) before the stadium opens. These assumptions are not reasonably supported by current evidence – there is no identified funding, the city has yet to acquire the right of way, etc.

City Answer 7: The City disagrees with this notion. The issue raised in reason for appeal #7 is addressed in the First Amendment, Responses to Comments, in Responses to Comments C7-40 (p. 132) and C11-21 (pp. 171-172). This notion was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 8: The SEIR unjustifiably puts forth a magic bullet TPMP as the answer to many issues (but then denies that TPMP is a mitigation measure, leaving open the question of who pays for it, or how to monitor its effectiveness). The TPMP is undefined. No explanation is given as to why we should assume that existing TPMP practices will work at a much larger scale. No solution can be automatically assumed to work at a larger scale.

City Answer 8: The City disagrees with this assumption. The issue raised in reason for appeal #8 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #5 (pp. 1718). Because this notion was alluded to by other persons who commented on the SEIR during the formal comment period, it was fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 9: The SEIR does not adequately analyze concurrent event scenarios. One rationalization given for this omission is that costly transportation improvements can't be made to mitigate the possible impacts. This may be true, but does not justify the refusal to analyze and identify the potential impacts.

City Answer 9: The City disagrees with this idea. The issue raised in reason for appeal #9 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #1 and #2 (pp. 7-13). This thought was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this idea raises no new issues.

MORRIS Remark 10: The SEIR inappropriately cites the model of 'other urban ballparks in many other cities'. But the examples cited are not comparable to San Jose. San Jose neighborhoods are much closer to the stadium site, and are long established (versus built after the stadium). The result is that the SEIR avoids the issue of land use conflicts.

City Answer 10: The issue raised in reason for appeal #10 is addressed in the First Amendment, Responses to Comments, in Response to Comment D6-4 (pp. 231). The Draft SEIR does not "avoid the issue of land use conflicts," but rather analyzes these issues in Appendix B (Initial Study) on pages 41-49, and concludes that the impacts of the Modified Project would be essentially the same at the 2006 Stadium proposal. This remark was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 11: The SEIR does not accurately consider the cumulative impact of other major projects in the Diridon Station Area (HSR, BART, Diridon Station Area Plan). Instead, the

SEIR assumes that the stadium takes precedence over all other projects. Again, the result is to evade critical issues of land use conflicts.

City Answer 11: The City disagrees with this remark. The issue raised in reason for appeal #11 is addressed in the First Amendment, Responses to Comments, in Master Response to Transportation, Circulation and Parking #6 (pp. 18-21). This notion was alluded to by other persons who commented on the SEIR during the formal comment period and was, thus, fully responded to previously as noted. For this reason, this remark raises no new issues.

MORRIS Remark 12: The SEIR does not adequately address the safety issues – in particular, emergency vehicle access in and through the Diridon Station Area - raised in comments. The answers provided so far – traffic light control, driving on road shoulders, etc. – would not be sufficiently effective in severe traffic congestion.

City Answer 12: The City disagrees with this remark. The issue raised in reason for appeal #12 is addressed in the First Amendment, Responses to Comments, in Master Responses to Transportation, Circulation and Parking #1, #2, #3, #4, #5 and #7 (pp. 7-22) and in Responses to Comments C7-8 through C7-61 (pp. 124-136). As Mr. Morris notes, this remark was alluded to by other persons who commented on the SEIR during the formal comment period. Thus, it was fully responded to previously as noted. For this reason, this remark raises no new issues.

**ADDITIONAL RESPONSES TO STAND FOR SAN JOSE (SAN JOSE GIANTS)
APPEAL, DATED MAY 24, 2010.**

RESPONSE TO APPEAL OF EIR: The following are responses to the aforementioned Stand for San Jose (Giants) appeal filed by Michael Wilson on their behalf. Their stated reason for appeal is to “see attached (three) letters [previously submitted by them, respectively dated December 16, 2009 (response to Notice of Preparation), March 29, 2010 (comments on the DSEIR) and May 19, 2010 (remarks to Planning Commission on FSEIR)], as well as public remarks on draft EIR and those made orally and in writing at the May 19, 2010 Planning Commission hearing.” Their most recent letter, dated May 19, 2010, questions the validity of the Baseball Stadium (Modified Project) Final SEIR on four basic premises: 1) improper transportation, circulation and parking analysis, 2) failure to analyze feasibility of downtown intersection mitigation, 3) failure to adequately respond to comments on DSEIR, and 4) is inadequate for a number of additional reasons.

GIANTS Letter dated December 16, 2009: This letter was submitted in response to the Notice of Preparation (NOP) and provided comments on the appropriate scope for the DSEIR.

City Answer to December 16, 2009: Some of the NOP comments were considered and taken into account in the preparation of the DSEIR. For example, updated freeway segment analysis is included in the FSEIR. Another example is that an urban decay analysis was prepared for the area around the Coliseum. Some comments were considered and rejected because they were not required or appropriate. As explained in Response to Comment No. C12-3 (page 202-203) of the First Amendment, the City disagrees that the entire 2007 FEIR needed to be updated and

recirculated because no action had been taken utilizing the 2007 FEIR. The FSEIR has been completed in compliance with the requirements of CEQA in that approving a prior project is not required for the preparation of a supplemental EIR.

GIANTS Letter dated March 29, 2010: This twenty-two (22) page letter was submitted in response to the public circulation of the DSEIR and provided numerous comments on the DSEIR. Since a copy of this letter was attached to the appeal and for the sake of staff report brevity and unnecessary repetition, the comments are not recited again here. The letter is also reproduced in the First Amendment Response to Comments as comment letter number "C12" on pages 180–201.

City Answer to March 29, 2010: The City has already provided responses to these comments. As required by CEQA the City provided a response in the First Amendment, Response to Comments of the FSEIR to all of the comments included in the March 29, 2010 letter. Specific responses to each comment are included on pages 202-211, as well as in the Master Responses at the front of the document. These responses are incorporated into this staff report by reference.

GIANTS Letter dated May 19, 2010: This letter was submitted to the Planning Commission (on the day of the hearing) on the FSEIR and includes ideas in support of four basic reasons why the FSEIR should be revised and recirculated. Staff did respond to these notions orally at the Planning Commission hearing, which are incorporated by reference. Additional written responses are provided in this staff report since there was not adequate time to do so prior to the Planning Commission hearing.

GIANTS Remark 1: The SEIR improperly circumscribes the analysis of the modified project's impacts on transportation, circulation and parking and must be revised and recirculated to correct this deficiency. This remark goes on to restate numerous comments previously included in their March 29, 2010 comments on the DSEIR, such as improper reliance on the City's Transportation Level of Service Policy to limit impact analysis. The remark also references to various court cases which they contend supports their deficiency argument.

City Answer 1: As acknowledged in the letter, the City did respond to the comments on this issue primarily in Master Response No. 1 in the FSEIR, as well as other responses to specific comments. The City continues to stand by the adequacy of the analysis and responses contained in the FSEIR as the appellant has not provided any new compelling supporting evidence from that submitted during the public review period that indicates a new or different response is needed from the City. The City has provided adequate responses to essentially the same comments in the First Amendment to the SEIR. The FSEIR concludes the project will have significant, unavoidable impacts on 15 freeway segments during the worst case traffic scenario.

GIANTS Remark 2: The Final SEIR fails to analyze the feasibility of mitigation that would reduce impacts to local intersections. This remark goes on to restate numerous comments previously included in their March 29, 2010 comments on the DSEIR, such as the failure to identify feasible mitigation measures that would reduce impacts to local intersections in

Downtown San Jose. The author also references a court case which they contend supports their deficiency argument.

City Answer 2: As acknowledged in the remark, the City did respond to the comments on this issue primarily in Master Response No. 1 in the FSEIR, as well as other responses to specific comments. The City continues to stand by the adequacy of the analysis and responses contained in the FSEIR as the appellant has not provided any new compelling supporting evidence from that submitted during the public review period that indicates a new or different response is needed from the City. The City has provided adequate responses to essentially the same comments in the First Amendment to the SEIR. The FSEIR does analyze signalized intersections under various scenarios and concludes the project will not have a significant impact on any of the study intersections in accordance with City and Congestion Management Program levels of service standards.

GIANTS Remark 3: The Final SEIR fails to adequately respond to comments on the Draft SEIR. This author believes that the City's written responses to comments do not demonstrate a good-faith, reasoned analysis because in many cases the responses are wholly conclusory. The author cites one example as a VTA comment on potential project effects on existing bus and shuttle service to Diridon Station and the SVRTC project. Another example is alleged omission of Bird Avenue narrowing from the project description. Lastly, the author restates a concern about the list of projects included in the cumulative analysis.

City Answer 3: Implicit in this remark is that the City did respond to these comments in the FSEIR, which is the case. With regard to narrowing Bird Avenue, regardless of whether it is specifically called out in the project description, the potential impacts were analyzed in the FSEIR. CEQA does not require a project description to include extensive detail beyond that needed for the evaluation and review of potential environmental impacts. The list of projects included in the FSEIR for purposes of cumulative impact analysis is complete and no relevant projects have been excluded. The City continues to stand by the adequacy of the analysis and responses contained in FSEIR as the appellant has not provided any new compelling supporting evidence from that submitted during the public review period that indicates a new or different response is needed from the City. The City has provided adequate responses to essentially the same comments in the First Amendment to the SEIR. The Modified Project does result in several significant, unavoidable cumulative impacts.

GIANTS Remark 4: The SEIR is legally inadequate for a number of additional reasons. The author includes restated comments previously submitted in their March 29, 2010 letter on the DSEIR regarding the use of an inaccurate environmental baseline and inadequacy of analysis for several topic areas.

City Answer 4: The City did respond to these comments in the Response to Comments of the FSEIR, as well as other responses to specific comments. The City continues to stand by the adequacy of the analysis and responses contained in the FSEIR as the appellant has not provided any new compelling supporting evidence from that submitted during the public review period

that indicates a new or different response is needed from the City. The City has provided adequate responses to essentially the same comments in the First Amendment to the SEIR.

GIANTS Remark 5: The Draft EIR must be revised and recirculated. This remark recites the CEQA guideline regarding recirculation of an EIR if significant new information is added to a Draft EIR. The note concludes with three summary failures of the DSEIR.

City Answer 5: The City disagrees with this notion because no new significant information has been added to the Draft SEIR. The author identifies three alleged failings of the SEIR. The author does not, however, identify any new significant information which has added to the DSEIR that shows a new significant impact, a substantially worsened identified impact, or a considerably different feasible alternative or mitigation measure that was not adopted. The FSEIR is adequate and was completed in compliance with the requirements of CEQA.

RESPONSES TO SILICON VALLEY SPORTS & ENTERTAINMENT, LLC APPEAL, DATED MAY 24, 2010.

RESPONSE TO APPEAL OF EIR: The following are responses to the aforementioned Silicon Valley Sports and Entertainment (Sharks) appeal filed by Misty Macias on their behalf. Their stated reason for appeal is the City's failure to comply with the requirements of CEQA for the reasons set forth in their three letters on the NOP, DSEIR and First Amendment to the SEIR, dated December 17, 2009, March 29, 2010 and May 18, 2010 respectively, which they attached to their appeal. Their most recent letter, dated May 18, 2010, makes further remarks on the First Amendment to the SEIR and states that the Response to Comments failed to remedy the SEIR lack of compliance with the mandate of CEQA as detailed in their March 29, 2010 letter. The letter includes four major premises with various examples for each idea.

SHARKS Letter dated December 17, 2009: This letter was submitted in response to the Notice of Preparation (NOP) and provided comments on the appropriate scope for the DSEIR.

City Answer to December 17, 2009: Several of the NOP comments were considered and taken into account in the preparation of the DSEIR. For example, updated traffic analysis was conducted and included in the FSEIR. The remaining comments were considered and rejected, such as suggested assumptions for some of the technical analysis. The FSEIR has been completed in compliance with the requirements of CEQA and Title 21 of the San Jose Municipal Code.

SHARKS Letter dated March 29, 2010: This thirty-nine (39) page letter was submitted in response to the public circulation of the DSEIR and provided numerous comments on the DSEIR. Since a copy of this letter was attached to the appeal and for the sake of staff report brevity and unnecessary repetition, the comments are not recited again here. The letter is also reproduced in the First Amendment Response to Comments as comment letter number "C7" on pages 78-122.

City Answer to March 29, 2010: The City has already provided responses to these comments. As required by CEQA the City provided a response in the First Amendment, Response to Comments of the FSEIR to all of the comments included in the March 29, 2010 letter. Specific responses to each comment are included on pages 123-137, as well as in the Master Responses at the front of the document. These responses are incorporated into this staff report by reference.

SHARKS PREMISE I: The Response to Comments fails to adequately respond to comments regarding the understatement of traffic impacts. This premise restates an argument previously submitted on the DSEIR that the potential traffic impacts are understated as exemplified by seven inadequacies.

SHARKS Remark 1: The response to comments fails to adequately respond to comments regarding the understatement of traffic impacts as a result of limiting analysis to the 5:00 – 6:00 P.M. single event scenario. This comment was submitted on the DSEIR and is identified as number C7-30 in the Response to Comments.

City Answer 1: The primary response to this remark is addressed in Master Response 1, as well as other specific individual responses. The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS Remark 2: The response to comments fails to adequately respond to comments regarding the understatement of traffic impacts as a result of failing to apply any significance criteria.

City Answer 2: The primary response to this remark is addressed in Master Response 1, as well as other specific individual responses. The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS Remark 3: The response to comments does not adequately respond to comments regarding the understatement of traffic impacts.

City Answer 3: The primary response to this remark is addressed in Master Response 1, as well as other specific individual responses. The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS Remark 4: The response to comments fails to adequately respond to comments regarding the understatement of traffic impacts as a result of relying on the proposed Autumn Street extension.

City Answer 4: The City disagrees that that traffic impacts were understated by relying upon the approved Autumn Street extensions. The previous comments on the Autumn Street extension are addressed in the First Amendment in Responses to Comments C7-40 (p. 132) and C11-21 (pp. 171-172).

SHARKS Remark 5: The response to comments does not adequately respond to comments regarding the understatement of traffic impacts as a result of failing to analyze impacts at the intersection of Alameda and Race Street.

City Answer 5: The response to this remark was addressed in response to comment C7-13 (page 125-126). The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS Remark 6: The Response to Comments does not adequately respond to comments regarding the understatement of traffic impacts as result of failing to adequately analyze impacts associated with Park Avenue narrowing.

City Answer 6: The primary response to this remark is addressed in Master Response 3, as well as other specific individual responses. The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS Remark 7: The Response to Comment does not adequately respond to comments regarding the understatement of traffic impacts as result of failure to analyze demolition and construction traffic impacts.

City Answer 7: The response to this remark was addressed in response to comment C7-14 (page 126) and response to comment C7-43 (page 132). The City disagrees that the FSEIR understates the traffic impacts for the reasons previously stated.

SHARKS PREMISE II: The Response to Comments fails to adequately respond to comments regarding the understatement of parking impacts.

SHARKS Remark 8: The Response to Comments fails to adequately respond to comments regarding the City's "non-viability" parking significance criterion. The Commenter suggests that City ignored its own significance criteria for parking impacts. This is not the case. The City noted on page 46 of the DSEIR that additional significance criteria includes where a project results in inadequate parking capacity for existing land uses or causes parking intrusion into existing residential neighborhoods. The author refers to the "non-viability" discussion as if further explanation or refinement of the scope and application of significance criteria within a particular context is not allowed. The author provides no support for such a faulty allegation, however. In fact, CEQA analysis is supposed to take into account the particular environmental context in which that analysis is occurring, which is precisely what the City has performed and elaborated upon through its analysis in the DSEIR and its subsequent responses to comments to the DSEIR. For these reasons, Master Response and Response to Comment C7-44 comport with the requirements of CEQA and are responsive to the further remarks received on this topic.

SHARKS Remark 9: The Response to Comments fails to adequately respond to comments regarding the overstatement of parking supply.

City Answer 9: The City disagrees with this remark. To the extent that City parking lots are cheaper than private lots, the assumptions in this additional comment would not be supported. The second paragraph in this remark has some misstatements, such as that City was going to enter into agreements for private lots to open. The City is relying on market forces, for parking as has occurred in the past. The author assumes that HP Pavilion events generate sufficient financial incentive for private lots to open, when past experience indicates that the events have to be larger (like the Grand Prix).

SHARKS Remark 10: The response to comments fails to adequately respond to comments regarding the DSEIR's omission of *any* cumulative parking analysis.

City Answer 10: Comments on cumulative parking analysis are addressed in the First Amendment Master Responses No. 4 and 6. The City disagrees that the FSEIR omits any cumulative parking analysis.

SHARKS PREMISE III: The Response to Comments does not adequately respond to comments regarding the failure to identify and mitigate significant emergency access impacts resulting from traffic congestion.

SHARKS PREMISE IV: The Response to Comments fails to adequately respond to comments regarding the inadequacy of the DSEIR cumulative impact analysis.

SHARKS Remark 11: The Response to Comments does not adequately respond to comments regarding the DSEIR's failure to address probable future projects, including the High-Speed Rail project and Diridon Station Plan.

City Answer 11: Master Response #6 (pp. 18-21) considers and responds to a series of questions related to cumulative development in the vicinity of the project site. It individually addresses the BART Extension, High Speed Rail, and Diridon Station Area Plan. The City believes that the explanation provided there substantiates the ways in which these potential future projects are covered in the Draft SEIR.

SHARKS Remark 12: The Response to Comments does not adequately respond to comments regarding the DSEIR's failure to consider cumulative transit impacts.

City Answer 12: See City Response to SHARKS Comment 11 (immediately above) in regard to cumulative development assumptions. In Master Response #6, potential cumulative impacts to transit systems are specifically addressed on page 19. The City believes that the explanation provided there, in addition to the original analysis provided in the Draft SEIR, substantiates conclusions reached about cumulative impacts on transit.

SHARKS Remark 13: The Response to Comments does not adequately respond to comments regarding the DSEIR's failure to consider cumulative pedestrian impacts.

City Answer 13: See City Response to SHARKS Comment 11 in regard to cumulative development assumptions. In Master Response #6, potential cumulative impacts on pedestrian travel are specifically addressed on pages 19 and 20. The City believes that the explanation provided there, in addition to the original analysis provided in the Draft SEIR, substantiates conclusions reached about cumulative impacts on pedestrian access and safety.

SUMMARY

In summary, the additional letters received after the comment period for the DSEIR had expired have added no significant new information or analysis to the DSEIR that would trigger any need to significantly revise or recirculate the SEIR. As evidenced by the many comments and letters received, both during and after the public review period for the DSEIR, the public has had a meaningful opportunity to participate in a review of the environmental impacts posed by the ballpark project described in the DSEIR, and the Administration has welcomed the opportunity to review and respond to all of the comments received. However, CEQA was not intended to promote endless and exhaustive rounds of comments, revisions and recirculation of environmental impact reports. Because the FSEIR reflects sound, good faith analyses and disclosures of the environmental impacts of the ballpark project described in the FSEIR and because the FSEIR was prepared in accordance with the requirements of CEQA, the FSEIR is ready to be certified as complete and reflecting the City's independent judgment and analysis of those environmental impacts.

ALTERNATIVES

If the Council does not uphold the Certification of this FSEIR, then Council should indicate the supplemental analysis needed to complete the FSEIR. This analysis would need to be completed, the SEIR re-circulated and certified by Planning Commission prior to consideration of any Ballpark project related actions by the City Council, Planning Commission or 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)**
- 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 SEIR

On February 12, 2010, 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 of property contiguous to 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 ballpark, is of "statewide, regional, or area-wide significance".

The Draft EIR was circulated for public review for 45 days, beginning on February 12, 2010 and ending on March 29, 2010, 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 SEIR. Notice of the May 19, 2010 Planning Commission SEIR certification hearing and the June 15, 2010 City Council SEIR appeal hearing was provided through direct mailing to the appellants and contiguous property owners and occupants of the project site, and 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 FSEIR appeal has been coordinated with the City Attorney's Office.

FISCAL / POLICY ALIGNMENT

Not applicable.

COST SUMMARY / IMPLICATIONS

Not applicable.

Honorable Mayor and City Council

June 7, 2010

Subject: Appeal of the Ballpark Modified Project FSEIR certification, File No. PP05-214

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BUDGET REFERENCE

Not applicable.

CEQA

Resolution to be adopted.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Please contact Darryl Boyd, Principal Planner, at 535-7898 for any questions.

cc: Appellants
Applicant

Attachments:

1. Appeal dated May 24, 2010 by Marc Morris with attachment
2. Appeal dated May 24, 2010 by Michael Wilson on behalf of Stand for San Jose with attached letters dated May 19, 2010, March 29, 2010 and December 16, 2009
3. Appeal dated May 24, 2010 by Misty Macias on behalf of Silicon Valley Sports and Entertainment, LLC with attached letters dated December 17, 2009, March 29, 2010 and May 18, 2010
4. First Amendment, Response to Comments from Silicon Valley Sports and Entertainment, pages 76-137, and Response to Comments from Stand for San Jose, pages 180 -211