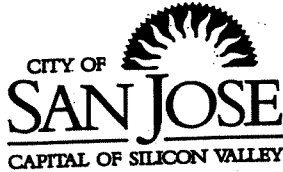
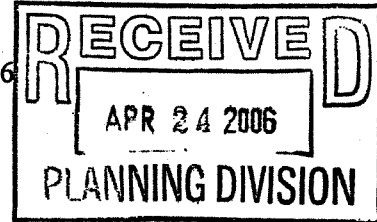


4 COMMENTS AND RESPONSES ON THE DEIR

The written and oral comments received on the DEIR and the responses to significant environmental points raised in those comments are provided in this section. Each comment letter and the public hearing transcript are reproduced in their entirety and are followed by responses to comments raised in them. Each individual comment is assigned a number (e.g., 1-1) that corresponds with the response following the comment.



April 21, 2006



Gloria Sciara, Project Manager
City of Santa Clara, Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

SUBJECT: DRAFT EIR FOR THE 90 N. WINCHESTER DEVELOPMENT PROJECT (SANTA CLARA GARDENS)(File No. OA06-001)

Dear Ms. Sciara:

The City of San Jose (CSJ) appreciates the opportunity to review and provide comments on the Draft Environmental Impact Report (EIR) prepared for the proposed Santa Clara Gardens project located at 90 N. Winchester Boulevard, adjacent to the CSJ. The project proposes to develop up to 110 single-family dwelling units, 165 senior housing units and one acre of park uses on the former 17-acre Bay Area Research Extension Center (BAREC) site.

The CSJ has reviewed the Draft EIR for the project, and has the following comments:

Traffic

Page 3-7, Section 3.5 Trustee and Responsible Agency Actions. Revise description of City of San Jose as follows:

The City of San Jose has jurisdiction over the public right-of-way along Forest Avenue and Winchester Blvd., and therefore, the project sponsor must obtain an encroachment permit from the City of San Jose Department of Public Works to allow improvements in the public right-of-way along Forest Avenue and Winchester Blvd. for emergency vehicle and pedestrian access, and any other traffic improvements in the City of San Jose jurisdiction required for the project, to the satisfaction of the Director of Public Works.

3-1

Page 4-112, Impact 4.10-9 Neighborhood Impacts, Mitigation for Impact 4.10-3.

The City of San Jose agrees with the EIR statement that a significant safety impact will occur with the addition of the project roadway as a new leg to the existing offset intersection, under City of San Jose jurisdiction, at Forest Ave. and Winchester Blvd. To address the impact, the EIR presents two options, both of which present concerns.

3-2

Option 1) The access configuration Exhibit 4-11a labeled "New site driveway with existing access" would not be acceptable because of potential operational and safety conflicts with the existing Forest Ave. neighborhood's signalized access west of Winchester Blvd.

Option 2) Furthermore, the solution proposed in the report, illustrated in Exhibit 4-11a labeled "New site driveway with modified Forest Ave. access" which includes removal of the signalized access to the existing Forest Ave. neighborhood west of Winchester Blvd, appears acceptable from an engineering perspective, but causes neighborhood impact or livability impacts to the existing Forest Ave. neighborhood which may cause the City of San Jose to ultimately reject the proposed improvement.

3-2
Cont'd

Therefore, the City of San Jose is not prepared to commit to approving the recommended new site driveway with modified Forest Avenue access without input from the affected San Jose residents westerly of Winchester Blvd. who would lose the signalized access and concurrence from the San Jose City Council District 6 Office, which represents those residents. The proposed signal modification appears to primarily benefit the Santa Clara Gardens Development Project in the City of Santa Clara at the expense of City of San Jose residents' existing access to Winchester Blvd. at Forest Ave. The report should analyze other design options, should the affected San Jose neighborhood and City Council District 6 Office not concur with the modification, such as construction of a right-turn in/out only driveway or relocating the main project driveway outside of the operations of the current offset Forest Ave./Winchester Blvd intersection.

3-3

The EIR should also disclose that the project's proposed park will itself attract some additional trips from outside the immediate neighborhood which will move through the Forest Ave. neighborhood west of Winchester Ave.

3-4

Hazardous Materials

Pages 4-54 to 4-67 – Hazards and Hazardous Materials.

The Draft EIR indicates that a Removal Action Workplan (RAW) has been prepared which addresses the removal of soils containing dieldrin and arsenic contaminants. The emphasis of the RAW appears to be primarily on soil removal construction worker safety. Potential impacts on area residents from contaminated soil removal activities should also be addressed through the preparation of a Community Health and Safety Plan (CHSP). The CHSP should, among other things, address an emergency response plan in the event of a truck accident or spill and identify a contact person and the notification process for community awareness.

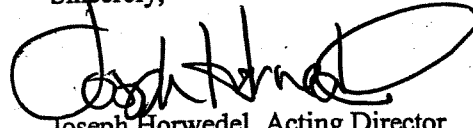
3-5

Gloria Sciara
RE: CSJ COMMENTS ON DRAFT EIR FOR SANTA CLARA GARDENS PROJECT (File No. OA06-001)
April 21, 2006
Page 3 of 3

Thank you for the opportunity to comment on the Draft EIR for this project. The CSJ looks forward to reviewing the Final EIR, as soon as it becomes available for public review. Please send a copy of the complete Final EIR, all future staff reports and notification of all public hearings for this project to my attention.

If you have specific questions concerning any of the transportation comments, please contact Karen Mack, City of San Jose Department of Public Works (408) 535-6816. For additional discussion on hazardous materials, please contact Napp Fukuda, City of San Jose Department of Environmental Services at (408) 975-2594. If you need to contact me, you may reach me directly at (408) 535-7815.

Sincerely,



Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

C: Karen Mack
Napp Fukuda
Janis Moore

OA06-001 90 CSC N. Winch DEIR Ltr.doc/JAM

LETTER 3

City of San Jose
Department of Planning, Building, and Code Enforcement
Joseph Horwedel
Acting Director
April 21, 2006

- 3-1 The commenter states that the project sponsor must obtain an encroachment permit from the City of San Jose Department of Public Works to allow improvements. The applicant would obtain all necessary permits from relevant agencies prior to construction of the project. The City of San Jose is identified as a responsible agency on page 3-7, Section 3.5, “Trustee and Responsible Agency Actions.” The following changes have been made to page 3-7, bullet 1 of the DEIR. The revised text is presented below and in Chapter 5.0, “Revisions to the DEIR and Recirculated DEIR.” This change does not alter the conclusions of the EIR.
- ▶ City of San Jose: The Applicant shall obtain an encroachment permit from the City of San Jose Public Works Department has authority to issue an encroachment permit that would to allow improvements in the public right-of-way along to Forest Avenue and Winchester Boulevard for emergency vehicle and pedestrian access, and any other traffic improvements in the City of San Jose jurisdiction required for the project, to the satisfaction of the Director of Public Works in the City of San Jose limits.
- 3-2 The commenter expresses concerns regarding the mitigation of proposed traffic impacts. The commenter states that the City of San Jose is not prepared to commit to approving this mitigation without input from the affected San Jose residents. Since the publication of the DEIR (March 2006), the project applicants have conducted several public outreach meetings including meetings focused on proposed traffic improvements. These meetings occurred on August 18, 2004, August 23, 2004, August 25, 2004, November 14, 2005, November 16, 2005, May 17, 2006, September 28, 2006, and October 10, 2006. The applicants will coordinate with the City of San Jose regarding the design of the proposed intersection. The City of San Jose will have final approval authority for the improvement.
- 3-3 The commenter states that the DEIR should analyze other design options for the intersection improvement. The DEIR and Recirculated DEIR presented two design options for the proposed modified intersection at Forest Avenue and Winchester Boulevard. The purpose of these design options was to present potential solutions that were feasible from a design and safety standpoint and that would achieve the primary purpose of reducing the project’s potential safety impact (see Impact 4.10-9 of the Recirculated DEIR). The recommended design options also present the anticipated worst-case environmental conditions that could occur with implementation of mitigation. The DEIR and Recirculated DEIR complied with the requirements of State CEQA Guidelines Section 15126.4 by providing feasible mitigation and evaluating the environmental effects of that mitigation. The City of Santa Clara recognizes that the City of San Jose has final approval of the proposed mitigation at Forest Avenue and that modification to the design could occur during the design review phase subsequent to approval of the Santa Clara Gardens Development. Further, the City of San Jose, City of Santa Clara, and the project applicants may not be able to come to agreement regarding the proposed mitigation that should be implemented for this intersection. The DEIR and Recirculated DEIR concluded that this improvement would be under the City of San Jose’s control and it is unknown whether this improvement would be implemented. Therefore, for purposes of

CEQA, the project's site access impacts would be significant and unavoidable. Consistent with the requirements of State CEQA Guidelines Sections 15091 and 15093, the City of Santa Clara would be required to make one of several findings for this impact and prepare a Statement of Overriding Considerations describing why, despite the project's significant and unavoidable impacts, the project should proceed.

3-4

The commenter states that the EIR should disclose additional vehicle trips from visitors to the project's proposed park. The DEIR evaluated the impacts that would occur from vehicle trips generated by the project, which includes the park. As described on page 4-105 of the DEIR, data collected from a nearby city park was used to estimate trips generated by the proposed park. The approach of using traffic data from an analogous nearby park to help predict traffic generated by the proposed park provides reasonable evidence to support the traffic analysis. The expected trips to the proposed park were combined with other project-related trips to evaluate the traffic impacts of the Proposed Project and were determined to be less than significant.

3-5

The commenter states that potential impacts on residents from contaminated soil should be addressed through the preparation of a Community Health and Safety Plan (CHSP). As described in Section 4.6, "Hazards and Hazardous Materials," of the DEIR, the project includes the preparation of a Removal Action Workplan (RAW) under the oversight of the California DTSC. This plan identifies the proposed actions for removal of contaminated soils from the Project Site and identifies specific health and safety measures that would be implemented to ensure public safety during remediation activities.

The potential impacts to human health during soil removal primarily occur from exposure to wind-borne dust and through accidents or spills at the Project Site. Sections 5.4 and 5.5 of the Draft Removal Action Workplan (RAW) describe dust control and air monitoring methods that are to be used to prevent nearby residents from being exposed to contaminants during soil removal. These methods include, but are not limited to, the following:

- ▶ Wet suppression of exposed soil areas (using water which leads to the formation of a surface crust to reduce the available reservoir of dust);
- ▶ No excavation work during high wind (25 mph or greater) conditions;
- ▶ Installation of wind fences and a dust screen around excavation areas;
- ▶ Covering of soil stockpiles (except when stockpile is being loaded); and
- ▶ Continuous dust monitoring along the property fence line to ensure that dust levels remain below action levels. If dust levels exceed action levels, additional dust control measures would be implemented and/or soil removal work stopped until dust levels are below action levels.

To prevent spills or the accidental release of contaminants during on-site remediation activities and during the transportation of contaminated soil off the Project Site, DGS and the project developers would implement a Transportation Management Plan (provided in Appendix A of the Draft RAW) that would require all waste haulers to develop a contingency plan for emergency situations, such as spills. This plan would identify the proposed transportation routes and the measures that would be implemented in the event of a spill or accident that would provide adequate protection to residents in compliance with DTSC's standard requirements for such plans.

A Community Health and Safety Plan (CHSP) is a plan required by the federal Environmental Protection Agency for the clean up of contaminated sites. As described above, DTSC is the state agency responsible for the overseeing the clean up of contaminated properties in California. DTSC required the preparation of a RAW. A RAW is similar to a CHSP in that it identifies the clean up levels for the site and the measures that would be implemented to remediate the site. Because a RAW has been prepared for the project site under the direction of DTSC, the preparation of a CHSP would not be required.

3-6

The commenter requests a copy of the FEIR when it becomes available. A copy of this Response to Comments document will be forwarded to the City of San Jose for at least 10-days review prior to the City of Santa Clara considering certification of the document, as required by Section 15088(b) of the State CEQA Guidelines.