



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: January 24, 2007

SUBJECT: FILE NO. PDC05-109. PROTEST OF A MITIGATED NEGATIVE DECLARATION FOR A PLANNED DEVELOPMENT REZONING FROM A AGRICULTURE ZONING DISTRICT TO A(PD) PLANNED DEVELOPMENT ZONING TO ALLOW THE DEMOLITION OF THE EXISTING FEED AND FUEL STRUCTURE AND THE CONSTRUCTION OF UP TO 13 SINGLE-FAMILY DETACHED RESIDENCES ON A 1.24 GROSS ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF ALMADEN EXPRESSWAY AND ALMADEN ROAD.

COUNCIL DISTRICT: 10

BACKGROUND

This staff report addresses the protest of a Mitigated Negative Declaration (MND) for a Planned Development Rezoning from A Agriculture to A(PD) Planned Development Zoning to allow for the demolition of the Almaden Feed and Fuel structure on the site and construction of up to 13 single-family residences on a 1.24 gross acre site located at the southeast corner of Almaden Expressway and Almaden Road. The subject site is surrounded by single-family detached residences to the north and east across Almaden Expressway, to the south, and to the west across Almaden Road.

If the Planning Commission upholds the Director's decision to adopt a Mitigated Negative Declaration, the Commission may consider the proposed Planned Development Rezoning immediately following this item.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that a MND may be prepared if the Initial Study identifies a potentially significant effect for which the project proponent has made or agrees to make project revisions that clearly mitigate the effects. Additionally, a MND may not be used if substantial evidence indicates that the revised project with mitigation would have a significant effect on the environment.

Mitigated Negative Declaration

On August 29, 2006 the Director of Planning, Building, and Code Enforcement (PBCE) completed an Initial Study, and circulated a Mitigated Negative Declaration (MND) for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available (1) at the Department of Planning, Building, and Code Enforcement, (2) at the Main Martin Luther King Jr. Main Library, (3) the Santa Teresa Branch Library, 290 International Circle, San José, CA and (4) on the Department's website. The public review period began on August 29, 2006 and ended on September 18, 2006. The Director of Planning, Building and Code Enforcement adopted the MND on January 11, 2007.

Letter of Protest

On September 18, 2006, the appellant, Denelle Fedor, filed a written protest regarding the adequacy of the Draft MND at the Department of Planning, Building, and Code Enforcement. The issues raised in the letter are discussed and addressed in the ANALYSIS section below. A copy of the letter is attached to this report.

MND Protest Hearing Procedure

The Negative Declaration protest process has recently been changed since the subject Mitigated Negative Declaration protest was filed. Title 21 of the San Jose Municipal Code has been amended to eliminate the Negative Declaration protest process. However, this project is being processed according to the Title 21 procedures in place at the time the Negative Declaration was circulated.

At the time this protest was filed, the San José Municipal Code Section 21.06.030 set forth the following MND protest hearing procedure. If, after reviewing the protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the MND protest to consider whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds there is a "fair argument" based on substantial evidence that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director, the Commission may then consider the project for which the Negative Declaration has been prepared.

The Commission's decision regarding the Negative Declaration may be appealed to the City Council. If the City Council determines it is adequate, the Mitigated Negative Declaration becomes final and no further appeals on the matter may be considered, and the City Council may then take action on the project.

ANALYSIS

The following is a response to the concerns raised in the letter of protest noted above. The protestant's comments are followed by the City's response.

Response to Comments Received from Denelle Fedor dated September 18, 2006 (See attached protest letter and environmental record).

Comment 1:

This letter is a Formal Protest to the Planning Departments recommendation to demolish the building at the southeast corner of Almaden Expressway and Almaden Road. Please see attached e-mails of correspondence from myself (Denelle Fedor) and the Planning Department with various media and community members copied, and letters and other attachments for further historic clarifications.

Response 1:

The e-mails the protestant refers to are attached to the letter dated September 18, 2006 to Joe Horwedel, Director of Planning, from Denelle Fedor.

Comment 2:

The first reason for my formal protest is that the Planning Department is basing its decision; to demolish a building that has stood for over a century, on a biased report. In addition, city staff has offered their analysis in support of Mr. Cartier, but they are not experts in the field of historic buildings or architecture nor are they historians. Mr. Cartier, the author of the report, who is paid by the owner, Jon Carson has left out many historic points or has mentioned historic points without regards to validating their importance. Please see Art Boudreault's letter and information attached.

Response 2:

Comment 2 alleges the Planning Department has based its decision to demolish the Feed and Fuel building on a biased report. The protestant objects to the Integrity analysis prepared by staff in the initial study because the protestant believes that Planning staff does not have expertise s in history, architectural history, or historic preservation. Further, the protestant believes the Historical Evaluation of the Almaden Feed & Fuel by Dr. Robert R. Cartier has omitted important information and failed to document the information in the report. The protest letter refers to information in a letter dated September 14, 2006 to the San Jose Planning Department from Arthur L. Boudreault.

The Planning Department has not decided to recommend demolition of the Feed and Fuel building because the City Council will make the ultimate decision regarding the disposition of

the building when it takes action on the proposed Planned Development Rezoning file no. PDC05-109.

California Environmental Quality Act (CEQA) Guidelines 15063 requires the lead agency to conduct an initial study to determine if a project may have a significant effect on the environment. One purpose of an initial study is to provide the lead agency with information to use as the basis for deciding to prepare an EIR or Negative Declaration. A Lead Agency may require a private applicant to submit data and information, which enables the Lead Agency to prepare an Initial Study. The applicant, Jon Carson, hired a historic resource consultant to prepare the Historic Report for the Feed and Fuel Structure, and staff reviewed the report for conformance with City and State guidelines. Staff prepared the Integrity analysis contained in the initial study using criteria and methodology adopted by the U. S. Department of the Interior, National Park Service, National Register, History and Education. Further, the State Office of Historic Preservation has accredited the City of San Jose historic preservation staff, Commission, and procedures as a Certified Local Government (CLG) historic preservation program eligible for State expertise and programs. City Historic Preservation Staff meets the Secretary of the Interior's professional qualification standards for history, architecture, and historic architecture pursuant to the Code of Federal Regulations, 36 CFR Part 61, Appendix A.

The City of San Jose augmented the cultural resources analysis in the initial study with a Supplemental Report (Attachment page A-115) prepared by a historic consultant not previously involved in the evaluation, in order to address questions raised by the protestant in this letter. The supplemental historic report included an integrity analysis that confirmed the integrity analysis prepared by staff. The Director of Planning, Building and Code Enforcement need not change the conclusion of the initial study based on Comment 2.

Comment 3:

The second reason for my formal protest is that there are experts in Mr. Cartier's field who do not agree with Mr. Cartier's report, but they will not come forward and refute the report because they fear a backlash from the Planning Department. This is a major concern.

Response 3:

The protestant asserts that other professional historians disagree with the Cartier report but are afraid to speak out for fear of reprisal from the Planning Department. No information exists in the environmental record to support this allegation. In addition, the independent consultant who prepared the supplemental report addressed this statement at the November Historic Landmarks Commission hearing, stating that professional ethics guide consultants to evaluate resources in an objective manner, regardless of the goals a particular developer or project.

Comment 4:

My third concern lies with the Planning Departments General Plan (GP) designation for this property. The property was (is) A (Agriculture) however at some point in time; the GP was

changed to housing. How can the Planning Department and/or the City Council change the zoning of a property that is operating as a commercial property to housing without doing an EIR or determining the historic value of the building? If a study was done at this time, I don't remember seeing it in the documents. If an EIR and Historic evaluation was not done, then changing the zoning to housing was ill conceived and the GP should not be upheld in this case due to the negligence of the Planning Department and the City of San Jose for not conducting a historical evaluation and EIR on the property before changing the GP zoning from agricultural to housing.

Response 4:

In 2000, the City Council adopted a General Plan amendment to the Land Use/Transportation Diagram from Office to Medium High Density Residential (12-25 DU/AC) on the subject site. On October 31, 2000, the Director of Planning, Building and Code Enforcement adopted a Negative Declaration for the project. The Negative Declaration contained a finding that, "The project is located in an area of potential archaeological and cultural sensitivity and may contain historic structures. Prior to development, a report will be required to determine potential impacts on archaeological resources and historic structures and to identify appropriate mitigation."

Utilizing the Historic and Supplemental Historic Reports, planning staff has conducted a cultural resources analysis for the proposed Planned Development Rezoning. The analysis concludes the Feed and Fuel building qualifies as a Structure of Merit using the City of San Jose Historic Evaluation Criteria. Removal of the building would not be a significant impact under CEQA. The Historic and Supplemental Historic Report support the conclusion that the building does not appear to qualify as a Candidate City Landmark, or for listing on the California Register of Historic Resources, because the location of a tavern, likely established in the vicinity of the property by the turn of the 20th Century, cannot be confirmed at this location, and the 1919 USGS map for this area fails to show the structure at the subject site. While the building is documented as the Hillsvieiw Inn and Gas Station in the mid-twentieth century, the building lacks the integrity to convey that significance, as it is missing major character defining features from that period of significance. On December 6, 2006, the Historic Landmarks Commission supported the conclusion that the building qualifies as a Structure of Merit.

Comment 5:

My fourth reason is regarding the gas pumps stored underground on the property. The property could have contaminated soil. The Planning Departments drawings that were sent to me are incorrect. The gas pumps that were once stored underground on the property are inside the portico, not outside the portico as the drawing depicts (letter and pictures attached validating this claim). This is a serious issue. The potential for contamination is high; therefore I request that a complete EIR be done to determine whether or not contamination lies in the soil. The testing that was done on the property for the negative declaration was not sufficient. Watson Park in San Jose is a perfect example of contamination being found after the fact; when the responsible decision for conducting an EIR was not done.

Response 5:

The protestant is correct that the former pumps were located beneath the former portico that is now enclosed by the Feed and Fuel building. The protestant believes soil contamination exists on the site from underground gas tanks used for the former gas pumps. Pages 8 through 10 of the initial study address environmental impacts regarding hazards and hazardous materials. The City of San Jose Environmental Services Department staff reviewed and concurred with the findings and recommendations of the Phase I investigation prepared by Terrasearch Inc. in September 2005. The Director of Planning, Building and Code Enforcement need not change the initial study based on the Comment 5.

Comment 6:

The final reason for my formal protest is regarding the pond or gully and surrounding land on the property. The pond/gully has been in existence for a very long time. The recent negative declaration does not include any analysis regarding the habitat of the pond or the surrounding land that has never been developed. I have seen many forms of habitat in this area. The current structure does not interfere with the habitat currently there, however further development would.

Response 6:

The protestant alleges the initial study and Negative Declaration do not include an analysis of the pond or gully adjacent to Almaden Expressway as habitat for special status species. Planning staff inspected the rear portion of the subject site adjacent to Almaden Expressway. The triangular-shaped portion of the site contains a long, shallow gully located adjacent to, Almaden Expressway that functions as a seasonal drainage. The gully contains weeds and ruderal vegetation. No wetland plants, such as foxtails, or animals, such as amphibians, were observed in the gully. If the proposed project were constructed, the gully would function as a stormwater detention area.

The initial study contains a biotics section that concluded the project would not “have a substantial adverse effect on any aquatic, wetland, or riparian habitat or other sensitive community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or the U. S. Fish and Wildlife Service.” The subject site is surrounded by urban development. This conclusion is based on an inspection of the subject site by planning staff and a review of the California Department of Fish and Game California Natural Diversity Database, 2001.

Comment 7:

I request a complete E IR for the southeast comer of Almaden Expressway and Almaden Rd, in addition I request that another historic evaluation be done, one that is not conducted by the Planning Dept nor the owner of the property in question, but by an outside party paid by the City

of San Jose or the Councilmember's office in which this property resides. The information in this letter and packet provides a "fair argument" of this issue

Response 7:

The protestant requests the City require preparation of an EIR, and that a consultant not previously involved with the project complete an additional historic evaluation.

Planning staff has responded to this comment by requiring a supplemental historic report prepared by a qualified consultant not previously involved in the project. Staff recommends the Planning Commission uphold the Director's decision to adopt a Mitigated Negative Declaration for the proposed project based on the initial study that incorporates the Cartier initial historic report dated August 16, 2006, and the Archives and Architecture supplemental historic report dated November 14, 2006, completed in order to respond to the questions raised in the protest letter. The Director of Planning, Building and Code Enforcement need not change the conclusion of the initial study.

**Response to Comments Received from Arthur L. Boudreault dated September 14, 2006
(See attached protest letter and environmental record).**

Comment 8:

I am writing you to request that the Planning Department grant city historic landmark status to the building and site commonly known as Almaden Feed and Fuel. As a professional historian and author I have spent much of my volunteer time for the past seven years in computerizing the extensive archives present at the New Almaden Quicksilver County Mining Museum. I also recently co-authored a new book called Images of America: New Almaden with Mike Boulland. Through this process I have been able to see clearly how many of our potentially historic landmarks have not been thoroughly investigated before being destroyed.

As you may know, members of the community brought eleven copies of my earlier report to the Planning Department at the Planning Department's request to be distributed to the Historic Landmarks Commission in time for their meeting of August 6. Unknown to us the Planning Department did not deliver this report to the Historic Landmarks Commission prior to your last meeting on August 6th. It is my understanding that the Planning Department made our report available to the author, Mr. Cartier, of the Official Historic Report and asked him to modify his report.

I have reviewed the new report and am disturbed that the author, Dr. Cartier, included many of the facts from my report but did not alter his point score to agree with those new facts nor cite the report in the bibliography. In my earlier report, I indicated that Dr. Cartier may not have been aware of some facts that would show the historic importance of the building and site commonly known as Almaden Feed and Fuel. Now I believe he deliberately distorted the facts in his new report.

Response 8:

The co-protestant, Art Boudreault, asserts that information previously submitted to the Planning Department was not distributed to the Historic Landmarks Commission prior to its August 6, 2006 meeting. The information received from the appellant was included in the project file as public information available to the historic consultant and staff for consideration, and distributed as an attachment to the staff report with the Initial Study that was referred to the Historic Landmarks Commission at their scheduled September 20, 2006 meeting, per the established procedure. The co-protestant believes Dr. Cartier used this information in the historic report, but did not alter the score on the City of San Jose Historic Evaluation Criteria form to accurately reflect that information.

According to the Biography of Arthur Boudreault, he is not a qualified historian according to the professional qualifications standards used by the National Park Service previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following: (1) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or (2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

All of Art Boudreault's opinions are not supported by facts such that his comments constitute "substantial evidence." For example, his assertion that the Almaden Quicksilver Mining Company owned the Feed and Fuel site cannot be documented in his information or the two historic reports. The co-protestant's opinion is noted for the record.

The City Criteria forms, completed by Dr. Cartier with the initial Historic Report and by Archives and Architecture with the Supplemental Historic Report, reflect the conclusion that the building does not meet the City Landmark or California Register of Historical Resources significance and integrity criteria.

Comment 9:

Here are my concerns.

As now stated in Dr. Cartier's report, the building property is adjacent to the "railroad stop" and near the "Almaden Train Station." Use of incorrect names for this rail station makes the familiar location appear very unfamiliar. It was the "New Almaden Train Depot" at the end of the line for the "San Jose Branch of the Southern Pacific Railroad." Leland Stanford, one of the "famous four" from San Francisco and the founder of Stanford University, owned the Southern Pacific Railroad. Dr. Cartier did not point out the significance of this rail depot to city and county history. This history is significant to San Jose. The Railroad Depot and the building and site commonly known as Almaden Feed and Fuel are adjacent to each other.

Response 9:

The appellant is concerned that the report did not accurately name the railroad depot and railroad line adjacent to the subject site, and their significance to the history of San Jose. The historic names are included in the environmental record.

Consideration was given to the subject site's association with the railroad. As stated on page 4 of the Cartier report, and pages 3-6 of the supplemental report, the South Pacific Coast right-of-way approached the New Almaden terminal near McKean Road (then called Uvas Road) just northeast of San José Almaden Road, and north of the small knoll that lies to the north of the subject property. The Southern Pacific line was also laid to the north along the Alamos Creek near the base of the Santa Teresa foothills. It's likely that the subject site served as a coach stop on San Jose/Almaden Road for passengers' transferring to the rail lines short distance away. However this statement cannot be substantiated with factual evidence. The Cartier report dated August 16, 2006, page 3, paragraph 5, states, "This bar was one of approximately ten that were placed along Almaden Road between San Jose and the New Almaden Mines. These saloons provided food and refreshment for people traveling between San Jose and the New Almaden Mines. Thus, the Feed and Fuel building was important not only as a stop on Almaden Road between San Jose and the New Almaden Mine, but also as an establishment located in proximity to railroad terminal.

Comment 10:

He mentions that the property is "loosely connected with the Almaden Quicksilver Mining Company". In addition, the name he used for the company is confusing. There were two mining companies the first, the Barron, Forbes, Company, which called the New Almaden location "New Almaden Mining I Company" and the second company, the "Quicksilver Mining Company". The second mining company purchased the assets of the first in 1863. The statement "loosely connected" seems to imply that its connection with the mining company is unimportant or undocumented. In fact, the "Quicksilver Mining Company" owned the site where the building commonly known as Almaden Feed and Fuel is located from about 1855 until 1910 when the company sold the land. This 55-year-old ownership is not a loose connection. Most of the land involved in that 1863 suit is now designated as a Registered National Historic Landmark. The battle over ownership of the land between the two companies listed above was in the courts for several years. The U.S. Supreme Court eventually ruled on the appeals in 1863 in a historic land case that continues to be used today when judging disputes concerning Mexican Land grants.

Abraham Lincoln signed a writ just a few days after the Gettysburg address and ordered that military troops seize the “New Almaden Mining Company” for the U.S. Government. Dr. Cartier also neglects to mention that it was the President of the “Quicksilver Mining Company” who personally signed one of the title transfers. When the “Quicksilver Mining Company” owned this property, it was the largest producer of mercury in the world, and the largest exporter of goods from California. I believe this land connection to the building and site commonly known as Almaden Feed and Fuel is intimate.

Response 10:

The appellant believes the Quicksilver Mining Company and the Almaden Feed and Fuel building were intimately connected because the Quicksilver Mining Company owned the property where the Feed and Fuel is located when it was the largest producer of mercury in the world.

The City of San Jose Historic Evaluation Criteria states that when assessing a site’s history/association to a person/organization, the feature may be considered “intimately connected” if that resource was intimately associated with an important period in the life or activities of the group, organization, or institution, otherwise they are considered only “loosely connected”.

The Supplemental Report, page 3, paragraphs 2 and 3, states that in the 1880s, the Quicksilver Mining Company, which then owned much of the lands of the early Rancho de los Capitancillos, was in steady production, mining mercury in the New Almaden area. Further, mining operations in New Almaden under the Quicksilver Mining Company peaked in 1892, marked by a period of steady decline during the last two decades.

The Supplemental Report, page 4, paragraphs 2-4, states that in 1892, Gus Orozco began operating a saloon/boarding house somewhere in the New Almaden area until his death in 1901. In 1895, Nicolosa Orozco, his wife, acquired a 5.04-acre parcel adjacent to Almaden Road that included the subject site located just beyond the edge of Quicksilver Mining Company lands. In 1903, James Gilleran purchased the 5.04-acre parcel. He is first identified as operator of the Hillview Saloon in New Almaden in the 1905-1907 directories.

Based on historic research, it cannot be conclusively proven that the Quicksilver Mining Company owned the original 5.04-acre parcel containing the Almaden Feed and Fuel during the Company’s period of significance from circa 1880 to 1892. It appears the, appellant has drawn conclusions from unsubstantiated information.

In addition, the property does not retain integrity from that period. Therefore, the Almaden Feed and Fuel Building received a rating of Fair to Poor and 0 points for History/Association to a Person/Organization on the City of San Jose Historic Evaluation Criteria tally attached to the supplemental historic report.

Comment 11:

While Dr. Cartier mentions the Calcaterra and Pfeiffer families in his analysis, he gives no credit to the importance of these families. Various members of the Pfeiffer family owned this property for almost 4 decades. This family has significance not only within the city, but throughout the western states because of their ownership of the Goodrich Quarry, now known as the Greystone Quarry. Stone quarried from this area was used in several buildings throughout the west, including Stanford University, the U. S. Mint in Carson City, Nevada and our own U.S. Post Office in San Jose, now used as the San Jose Art Museum. The Pfeiffers also owned several grocery stores in the area, including the stagecoach stop and grocery store at Robertsville (now the Orchard Supply Hardware store complex) and the general store in New Almaden, which burned to the ground in 1973. The Pfeiffers owned these locations while owning the Valley View Inn, now known as the Almaden Feed and Fuel.

Response 11:

The appellant states that the analysis does not give credit to the importance of the Calcaterra and Pfeiffer families and their relationship to the Feed and Fuel. According to the U.S. Department of the Interior, National Park Service National Register, Bulletin entitled, "How to Apply the National Register Criteria for Evaluation," properties may be eligible for the National Register if they are associated with the lives of persons significant in our past. Properties eligible under this Criterion are usually those associated with a person's productive life, reflecting the time period when he or she achieved significance. In some instances this may be the person's home; in other cases, a person's business, office, laboratory, or studio may best represent his or her contribution. Properties that pre- or post-date an individual's significant accomplishments are usually not eligible. A property must also retain integrity from the period of its significant historic associations. Associations that, by themselves, would generally not be sufficient to qualify a property as an important representation of a person's historic significance include ownership, ownership by a relative or associate, a single visit, or other types of brief or tangential relationships.

David and Margery (Pfeiffer) Calcaterra purchased the subject 1.4-acre parcel containing the Feed and Fuel in 1954. They sold the property in 1972. During the 1950's, the structure was known as Andy's Hillview Inn, however it appears to have never operated as a motel. Margery (Pfeiffer) Calcaterra is a member of the Pfeiffer family, who were early pioneers in the Almaden Valley. Her great grandfather, Jacob Pfeiffer, came to California on 1875 and operated the Graystone Quarry during during the late 19th century until his death in 1905 (see page 5 of the Cartier historic report and page 8 of the supplemental historic report).

The association of the Feed and Fuel to Margery Calcaterra Pfeiffer is not sufficient to qualify the subject property as an important representation of a person's historic significance because Jacob Pfeiffer, operator of the Graystone Quarry, did not own the Feed and Fuel during his productive life. Margery Calcaterra Pfeiffer, great grand daughter of Jacob Pfeiffer, owned the

Feed and Fuel. Therefore, the Almaden Feed and Fuel Building received a rating of Fair to Poor and 0 points for History/Association to a Person/Organization on the City of San Jose Historic Evaluation Criteria tally sheet dated 12/07/06 attached to the supplemental historic report.

Comment 12:

Dr. Cartier does not mention that the community has used the building and site commonly known as Almaden Feed and Fuel for many celebrations, especially the New Almaden holiday (now called New Almaden Days)- first announced in the 1870s by mine manager, James Butterworth Randol (Almaden Times - Sep 2006) as a way to increase the morale of his workers, and their families. Residents of Almaden Valley and New Almaden observed New Almaden Days this year on September 9th. In my report, I provided photographs from the 1930s of the celebration when the parade began in front of this building. Kitty Monahan, current president of the New Almaden Community Club, told me that the parade began at the building and site commonly known as Almaden Feed and Fuel as late as the 1970s.

Response 12:

The appellant states that the analysis did not give credit to the fact that the New Almaden Days event took part on the subject site. The Cartier report did not mention that this event took place at the subject site, but did state on page 5 that the Almaden Feed and Fuel has served as an important community hub for the area hosting several groups and clubs from the area. The revised City of San Jose Historic Evaluation Criteria tally dated 12/7/06 in the supplemental report did give credit to the History/Association of the New Almaden Days event. The Historic Evaluation Tally was revised to change the rating from FP Fair/Poor to G Good resulting in the addition of points to the tally for a total score of 47.70. The rating of 47.70 using the City of San Jose Historic Evaluation Criteria qualifies Feed and Fuel as a Structure of Merit.

Comment 13:

Dr. Cartier did not mention in his revised or his original report the two murals in the building. Blondie Barndt, owner for 18 years, commissioned a painting commemorating the 100-year history of the building and site commonly known as Almaden Feed and Fuel. John Pugh, then a local artist, is now an internationally recognized Trompe L'oeil artist, with murals painted throughout California, the United States, Asia and Europe. His unique style is called Narrative Illusionism. It is my understanding that existing law provides this artist with certain rights for his work, which itself may hinder the destruction of this building. You may recognize another mural of John Pugh at the Honda dealership on Los Gatos Boulevard. His murals have received international acclaim. Reports of the value of his murals are upwards of \$150,000. When you look at the photo of the mural, you might note John Pugh's plan to extend BART to New Almaden with the final stop at this building.

Response 13:

The period of significance for the Feed and Fuel structure is the 1930's gas station era. Under the National Register Criterion, properties may be eligible for the National Register if they are associated with the lives of persons significant in our past. The specific individual must have made contributions or played a role that can be justified as significant within a defined area of American history or prehistory. The California Register of Historic Resources Criteria is similar in that a property must have an "Association with the lives of persons important to local, California, or national history." Properties associated with living persons are usually not eligible because sufficient time must have elapsed to assess both the person's field of endeavor and his/her contribution to that field.

The artist, John Pugh, created the murals located on the interior walls of the Feed and Fuel structure between circa 1985 and 2000, well after the building's period of significance during the 1930s gas station era. The protestant describes a vision to extend BART to New Almaden with the final stop at the Feed & Fuel building in John Pugh's mural on the Honda Dealership building on Los Gatos Boulevard in Los Gatos. In addition, it is possible for the murals to be removed and relocated. The applicant/property owner is not proposing to relocate the murals.

Comment 14:

Blondie Barndt believed strongly that the building and location have important historic significance. I have attached a copy of a \$2.00 off food coupon that she used in 1987. This coupon clearly shows that the management of the Almaden Feed and Fuel then knew the site's historic importance.

Response 14:

The subject coupon is neither a piece of historic evidence that dates to the structure's period of significance during the 1930s, nor is it a primary source that would substantiate the significance of the building.

Comment 15:

Dr. Cartier's original report stated that while changes were made to the structure of the building, it would be relatively easy for the architecture to be restored if necessary. His revised report practically condemns the building. When community members contacted the owner in order to independently examine the building structure earlier this summer, they were denied access. That of course is the owner's right. Last week, I interviewed Blondie Barndt, previously identified as the owner for 18 years, for this letter. She says she made some of the modifications listed in Dr. Cartier's report while she owned it. She deliberately avoided altering the original structure when she modernized the privies (previously installed in the 1930s), added a walk-in cooler, a storage room and extended the porch at the rear by eight feet. She also enclosed the portico. Looking at the structure from the street, the portico structure is still evident to those interested in the unique architecture of gas stations of the 1930s period. She reports that one can still see the hand-hewn beams in the building and notes that the wood strips decorating the ceilings are original. The modern aluminum windows can easily be replaced with period wood windows should the owner

wish to renovate the building. I have also examined the drawing labeled “Modification to the Subject Structure” recently provided to Denelle Fedor by Joe Horwedel of the Planning Department. This drawing is not signed, attributed or dated. This drawing incorrectly places the gas pumps outside the portico. It is obvious from period 1930s photos that the gas pumps are under the portico. When Ms. Barndt sold the property, she sold it with an agreement that the property would remain as a historic site.

Response 15:

The appellant asserts that the portico structure is still evident to those interested in the unique architecture of gas stations of the 1930s period, and it would be relatively easy for the architecture to be restored if necessary. The appellant states the current owner has denied the public access to inspect the building to evaluate its integrity.

Pages 15 and 16 of the supplemental report state the exterior of the building was significantly altered in the 1930s, and then again later in the century. The alterations include the reconfiguration of the overall form, exterior finishes and trim, windows, doors, and other structural components, and removal of the front and rear walls. The exterior of the building does not represent 19th-century architectural styles, forms, materials, or feelings. Also, the encapsulated older portions of the structure are not adequate to represent these associations because the structural changes are irreversible. Also, the more recent additions could not be removed in a way that would continue to impart the earliest history of the property. In addition, case law holds that interior features are not integral to the CEQA analysis of a structure's integrity and significance when they are not visible from the public realm. The protestant's allegations about the condition of the interior are immaterial to the CEQA process.

The building does embody some associations with its mid-twentieth century use and is clearly documented as a service station and later as a bar. This use could be conveyed in some ways through the present configuration of the Almaden Feed and Fuel bar and restaurant building. However, the building is missing major character-defining features from the 1930s gas station period of significance such as the front wall, exposed columns, gas pumps, and lattice. The historic context of the gas station includes patterns of travel and commercial use in San José.

The Cartier and supplemental historic reports both acknowledge that there are parts of the 20th Century building embedded into the building fabric; however, these features do not fully represent the feelings and associations of the earlier patterns of development. Such important character-defining features as walls, windows, doors, and trim, as well as the building's setting, have been lost. The historic integrity of this building has been compromised so that it no longer conveys its sense of significance as a gas station during the 1930s.

On December 6, 2006, the property owner opened the building for inspection to the public, City staff, and the Historic Landmarks Commission so that the integrity of the structure could be reviewed. Later that evening, the Historic Landmarks Commission passed a motion that the Feed and Fuel building qualifies as a Structure of Merit.

Comment 16:

I have included a copy of my earlier report. It contains the reasons why we believe the Almaden Feed and Fuel Building and location deserve to be listed as a City Historic Landmark. In that report, I added 35 points above what Dr. Cartier had listed in his first report. My further analysis clearly should be added to the points required for consideration as a city landmark which places it over 90 points, well above the minimum of 66 required and demonstrates that this building and site commonly known as Almaden Feed and Fuel deserves to be registered as a City landmark.

Response 16:

The initial study, including the Cartier and supplemental historic reports, addresses the environmental impacts of the project regarding cultural resources. As a result of public comments received with the MND protest, and Historic Landmarks Commission review of the environmental record in September and December 2006, the City of San Jose Historic Evaluation Criteria tally has been revised to add points for History/Association with the New Almaden Days Event resulting in a revised total score of 47.7. The revised score of 47.7 qualifies the Almaden Feed and Fuel structure as a Structure of Merit on the City of San Jose's Historic Resources Inventory.

Also, as stated in Response 8, Arthur Boudreault, is not a qualified historian according to the professional qualifications standards used by the National Park Service previously published in the Code of Federal Regulations, 36 CFR Part 61.

As a Structure of Merit, the Almaden Feed and Fuel does not meet the City of San Jose's threshold of significance as a Candidate City Landmark or for listing on the California Register of Historical Resources. As a result, removal of the building would not constitute a significant impact to historic resources under the California Environmental Quality Act.

CONCLUSION

The Initial Study identifies the project could result in potentially significant impacts in the areas of Hazards and Hazardous Materials and Noise but concludes that the incorporation of identified feasible mitigation measures will reduce all impacts to a less than significant level. CEQA allows a lead agency to find that a project will not have a significant effect on the environment if an initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level. The project applicant has agreed in writing to include the referenced mitigation measures into the project.

Based upon the environmental record, none of the comments submitted with the MND protest constitute substantial evidence of a “fair argument” pursuant to CEQA Guidelines Sections 15064, 15070 and 15369.5 that the project would result in a significant effect on the environment according to the CEQA Guidelines and the City’s thresholds of significance. Therefore, as described in the responses above, Planning staff believes the Mitigated Negative Declaration meets the requirements of CEQA, and preparation of an EIR is not required.

RECIRCULATION OF A NEGATIVE DECLARATION PRIOR TO ADOPTION

The CEQA Guidelines (Section 15073.5) state that a lead agency is required to recirculate a Negative Declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. As used in this section, a “substantial revision” of the Negative Declaration means:

- 1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- 2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

- 1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- 2) New project revisions are added in response to written or verbal comments on the project’s effects identified in the proposed negative declaration which are not new avoidable which are not new avoidable significant effects.
- 3) Measures or conditions of project approval are added after circulation of the negative declaration, which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- 4) New information is added to the Negative Declaration, which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The letter protesting the adoption of the Mitigated Negative Declaration does not require “substantial revision” of the Mitigated Negative Declaration, as defined above. A supplemental historic report was prepared after circulation of the Draft MND that clarified the historic facts regarding the Almaden Feed and Fuel building, but did not change the conclusion of the MND regarding historic resources.

The comments do not require recirculation of the Mitigated Negative Declaration because none of the comments discussed above identifies a new avoidable, significant effect; provides evidence that the project would result in any impact of greater severity than already identified in the Initial Study; or determines that the proposed mitigation measures will not reduce potential environmental effects to a less than significant level. For these reasons, the Mitigated Negative

Declaration, as currently written, satisfies the requirements of CEQA and does not require recirculation.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Mitigated Negative Declaration for the proposed project; or (2) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Attachments:

- Location Map
- Mitigated Negative Declaration Protest Letter
- Mitigated Negative Declaration Public Hearing Notice
- Mitigated Negative Declaration
- Initial Study
- Technical Reports:
 - Historical Evaluation of the Almaden Feed and Fuel by Archeological Resource Management
 - Supplemental Historic Report, Almaden Feed and Fuel Building by Archives and Architecture
 - Geotechnical Investigation
 - Phase I Environmental Site Assessment
 - Fire Flow Availability
 - Noise Study Report

cc. Denelle Fedor, 101 Glen Eyrie Avenue, San Jose, CA 95125