



Memorandum

TO: PLANNING COMMISSION

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: October 26, 2011

COUNCIL DISTRICT: Citywide
SNI AREA: all

SUPPLEMENTAL MEMO

SUBJECT: CP11-049. DISTRIBUTION OF THE FIRST AMENDMENT TO THE MOE'S STOP GAS & SERVICE STATION ENVIRONMENTAL IMPACT REPORT (EIR)

REASON FOR SUPPLEMENTAL

This memo is to distribute the First Amendment to the Moe's Stop Gas and Service Station EIR to the Planning Commission. The comment period for the Draft EIR (State Clearinghouse #2011062068) ended on October 17, 2011, and the First Amendment, which consists of comments received from the public and the City's responses, was prepared after the close of the comment period. Taken together, the Draft EIR and the First Amendment represent the Final EIR.

BACKGROUND

The applicant, Amir Shirazi, has submitted an application for a Conditional Use Permit to expand his gas station, located at the southeast corner of McKee Road and N. 33rd Street. The project consists of the demolition of an existing single-family detached residence and the expansion of an existing gas and service station. Three additional gas pumps and a canopy for the new pumping facility will be constructed. The driveway into the station on 33rd Street will be relocated to allow a new exit and entry.

The City originally prepared an Initial Study/Negative Declaration for the project in 2009. A neighboring business sued the City on the grounds that the Negative Declaration did not adequately address traffic. The case went to the California Superior Court for Santa Clara County on March 11, 2011 (case no. 1-10-CV-0176412). The court issued a Writ of Mandate requiring the City to prepare an EIR for the project, specifically to address traffic impacts.

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ANALYSIS

During the comment period, the City received one comment letter from Mr. James Dombroski, the attorney for a neighboring business. In the comment letter Mr. Dombroski contends that:

1. The EIR does not analyze leaking underground storage tanks at the subject site;
2. The EIR relies on inaccurate data for the traffic analysis; and
3. The EIR does not address the applicant's failure to comply with state and local laws.

The First Amendment includes responses to these comments. Specifically:

1. The EIR includes an analysis of hazardous materials impacts, including releases from fuel tanks on the site, and concluded, based on substantial evidence, that the impacts would be less than significant. The analysis is contained within the Initial Study, Appendix A of the Draft EIR. Groundwater monitoring reports are also included as Attachment 1 of the First amendment.
2. The EIR bases trip generation rates on surveys collected from the adjacent gas station, which is appropriate given the similarities in location, amenities, and price (a one cent difference at the time of the counts) between the two uses. Based on these similarities, the traffic surveys represent typical conditions based on current data.

In addition, the number of pass-by trips was determined using standard traffic engineering methodology based on the Institute of Transportation Engineers Trip Generation Manual.

3. Failure to comply with state and local laws is not an issue requiring CEQA analysis as part of an EIR.

The comments raised do not identify any new significant environmental impacts, nor do they change the significance determinations made in the Draft EIR.

RECOMMENDATION

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

1. The Planning Commission has read and considered the Final EIR;
2. The Final EIR has been completed in compliance with CEQA; and
3. The Final EIR reflects the independent judgement and analysis of the City of San Jose.



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement