

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

Hearing Date/Agenda Number
P.C. 12/6/06 Item:
C.C. 1/9/07

File Number
PDC06-092

Application Type
Planned Development Zoning

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s)
660-02-013

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Reena V. Mathew

Location: East side of San Felipe Road, 700 feet north of Silver Creek Road

Gross Acreage: 17.98

Net Acreage: 15.3

Net Density: 1.43 DU/AC

Existing Zoning: A-Agriculture

Existing Use: Grazing land

Proposed Zoning: A(PD) Planned
Development

Proposed Use: Up to 22 single-family detached residential units

GENERAL PLAN

Completed by: Reena V. Mathew

Land Use/Transportation Diagram Designation
Very Low Density Residential (2 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Reena V. Mathew

North: Single-family residential

A(PD) Planned Development, R-1-1 Single-Family Residence

East: Single-family residential

A(PD) Planned Development

South: Single-family residential

A(PD) Planned Development, R-1-1 Single-Family Residence, &
A Agriculture

West: Single-family residential

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: Reena V. Mathew

Environmental Impact Report found complete
 Negative Declaration circulated on 11/15/06
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: Reena V. Mathew

Annexation Title: Evergreen No. 176

Date: 7/8/1992

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: 11/15/06

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER/DEVELOPER

Pan Clair General Partnership
P.O. Box 3047
Santa Clara, CA 95050

Mark Lazzarini
DAL Properties
255 West Julian Street, Suite 502
San Jose, CA 95110

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: RVM

Department of Public Works

See attached memorandum.

Other Departments and Agencies

Santa Clara Valley Water District

GENERAL CORRESPONDENCE

See attached correspondence from neighbors

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, DAL Properties, on behalf the Pan Clair General Partnership, is requesting to rezone the subject 17.98 gross-acre site from the A-Agriculture zoning district to the A(PD) Planned Development zoning district to allow up to 22 single-family detached homes. The applicant applied for a previous rezoning on the site (file number PDC05-035), and that proposal was denied by City Council on June 20, 2006. The previous proposal included 21 units on the west side of Misery Creek and one large lot, 8.74 acres in size, on the east side of Misery Creek. The Council denied the application primarily on the grounds that development was overly concentrated on the west half of the site and the large remainder lot, Lot 22 on the east side of Misery Creek, was set up for potential future development. The existing residents of the Meadowlands and California Oak Creek developments, both adjacent to the project site, were largely dissatisfied with the original rezoning proposal based on concerns regarding the potential future subdivision beyond what was being presented and the perceived incompatibility of lot sizes to the adjacent developments. Section 20.120.080 of the Zoning Code states that if a petition is denied by the City Council, no new petition requesting the “same rezoning” for the same property, or any part thereof, shall be filed with one (1) year from and after the date of the Council’s denial.

The proposed current rezoning (PDC06-092) was filed with the Department of Planning, Building, and Code Enforcement on August 18, 2006 and was deemed to be a “substantially different” project than the previous rezoning which was denied months earlier because it included a different site layout with only one public street connecting to San Felipe Road and six units on the east side of Misery Creek. The earlier proposal included two entry drives off of San Felipe Road only one large estate lot on the east side of the creek. The applicants indicated that in the months after the Council denial of the previous rezoning, PDC05-035, they participated in significant public outreach in order to work with the community on improving the site layout as well as confirming with the community their intentions for development on the site. While the

applicant has made promises to the community about any future development proposals beyond the current rezoning, it is not appropriate for the City to memorialize constraints put on any future rezoning or General Plan Amendment with this subject rezoning.

The current rezoning file, PDC06-092, proposes to subdivide the existing parcel into 22 lots. Fifteen (15) of the proposed 22 lots are to be located to the west of Misery Creek; the other 6 project lots are to be located in the northeasterly corner of the project site, on the east side of Misery Creek. A seventh lot on the east side of the creek, Lot 22, is proposed to be approximately 7.35 acres, which will allow one house. Lots 1-21 are proposed to each have an average lot size of 13,400 square feet, with a minimum lot size of 9,000 square feet. Any future development on Lot 22 beyond a single-family home is not approved through this rezoning and would necessitate the obtainment of pool units made available through the updated Evergreen Development Policy. At minimum a subsequent rezoning would also be required. The proposed updated Evergreen Development Policy, which was heard by the Planning Commission on November 8, 2006 and will be heard by the City Council on December 5, 2006, has a list of criteria for any developments seeking to utilize some of the proposed 500 pool units available in the Evergreen Development Policy Area. Future development on Lot 22 would need to conform to these minimum criteria listed in the updated Evergreen Development Policy in order to make use of the pool units.

There are two riparian areas within the subject site. Thompson Creek crosses the southerly corner and Misery Creek transverses the center. Single-family detached residences are located to the north, south, east and west. The site currently accesses San Felipe Road directly off of a private road that runs along the northwestern edge of the property. Several chicken coops exist on the southeast corner and the remainder of the property is used for grazing land. The topography of the site as a whole ranges in slope from 2 to 21 percent, with moderate slope along the western and eastern edge of the project site.

This project is subject to the current Evergreen Development Policy, which was originally adopted in 1976, with the latest revisions approved by City Council in May 1995. The Evergreen Development Policy guides current development potential and traffic improvements in the policy area, and is separate from the Evergreen East Hills Visioning Strategy, which is underway to create additional housing opportunities beyond what was anticipated through the current Evergreen Development Policy.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration circulated on November 15, 2006 indicates that the project will not result in a significant environmental impact when the identified mitigations are implemented. The Mitigated Negative Declaration addressed a multitude of issues such as agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation/traffic, and utilities and service systems. The section below highlights the key issues associated with this development. For the purposes of obtaining clearance through a Mitigated Negative Declaration under the California Environmental Quality Act, a project shall not result in significant unmitigated impacts. With the implementation of the proposed mitigation measures, which include related mitigation for aesthetics, air quality, biological resources, cultural resources, geology and soils,

hazards and hazardous materials, hydrology and water quality, and noise, the project will not have a significant impact on the environment. A more comprehensive accounting of the environmental mitigation measures required as part of this project can be found in the project's Initial Study. The full text of the Initial Study is available online at: <http://www.sanjoseca.gov/planning/eir/MND.asp>

Traffic

The 1976 Evergreen Development Policy (EDP) ensured that the total number of existing and proposed dwelling units would be able to maintain acceptable traffic standards for the area. Subsequent revisions to the EDP in 1995 identified a total of 4,759 dwelling units that were to be included in a benefit assessment district to further fund infrastructural improvements. This parcel was included in this benefit assessment district and given allocation for 21 dwelling units plus credit to develop one dwelling unit for a single family home documented to be in existence at the time the EDP was formulated. The applicant shall pay fees to the Benefit Assessment District for traffic improvements in exchange for their ability to develop their allocated units.

Geology

The presence of Misery and Thompson Creeks, as well as the site's topography, contributes to the potential for seismic, liquefaction, lateral spreading, soil erosion, and other geological hazards. A Geologic Hazards Clearance was issued for the site plan associated with the previous rezoning proposal (PDC05-035), which was contingent on setbacks from both creek banks as well as standard and special engineering techniques. A Geologic Hazards Clearance shall be obtained to reflect the current site plan proposed with the subject rezoning prior to the adoption of the Mitigated Negative Declaration.

Biological Resources

A biological assessment was prepared for the project site. The report did not identify the existence of any special status plant species on the site; however, a number of special-status plants occur in the vicinity. This is mainly due to the fact that the site supports no serpentine soils and has been grazed intensively for several years.

Four special status animal species were classified as rarely or occasionally occurring on site as transients or migrants. These special status animals include the sharp-shinned hawk, merlin, prairie falcon, and burrowing owl. Other special status species, including the white-tailed kite, Northern harrier, Cooper's hawk, golden eagle, loggerhead shrike, Townsend big-eared bat, pallid bat, California mastiff bat, and ringtail, were considered to potentially occur more frequently as regular foragers, transients, or as possible residents to the site. The biological assessment concluded that the project build-out would have no effect on the breeding success of these species and would, at most, result in a small reduction of foraging and/or roosting habitat that is available regionally. The project requires surveys for roosting bats and cliff swallows in all the outbuildings that are to be demolished, a pre-construction survey for burrowing owls prior to ground disturbance activities, and appropriate contingencies in the event these animals are discovered.

Thirty-eight (38) trees will be removed as a part of this project, of which 14 trees which will be removed as a result of the City's recommendation to widen San Felipe Road. The ordinance

sized trees, as well as the smaller trees removed, will be replaced according to the City's tree mitigation requirements resulting in the on-site planting of 114 24-inch box trees and nine 15-gallon trees. Although the removal of all 38 trees shall have environmental clearance under the circulated Mitigated Negative Declaration, Staff will work with the applicant during the Planned Development Permit stage to preserve as many trees as feasible along San Felipe Road. See public outreach section for further discussion.

The project proposes that all development be setback a minimum of 100 feet from Thompson Creek. Streets south of Misery Creek have a riparian setback of approximately 75 feet from the edge of the riparian corridor, and all development north of Misery Creek has a minimum 100-foot setback from the edge of the riparian corridor. The Santa Clara Valley Water District has expressed interest in accepting a dedication of the proposed setback area between the development and Thompson Creek. The developer and/or future homeowner's association will be responsible to maintain any area not accepted by the District. The proposed approximate 75-foot setback from Misery Creek's southern riparian edge shall be mitigated at a ratio of 1:1 with enhancement plantings prepared through a Riparian Mitigation and Monitoring Plan, which shall be submitted for review and approval by the Director of Planning prior to the issuance of a grading permit. See the analysis section of this Staff Report for further discussion of the project's conformance to the City's Riparian Corridor Policy.

Hydrology and Water Quality

The project would result in the addition of impervious surfaces, such as rooftops, driveways, and streets, thus increasing storm water runoff. This project is required to conform to the City's C.3 and HMP policy provisions. Both construction and post-construction measures have been included in the project. In particular, downspouts are to be directed into landscaped areas and grassy swales are to be located along the San Felipe Road frontage. All public streets shall drain into grassy swales, which shall be numerically sized to meet the provisions of the City's Post-Construction Hydromodification Management policy. The swales will then drain into an offsite line in San Felipe Road, which shall connect to the existing Misery creek culvert near Meadowfield Lane. The developer shall be responsible to develop a means of providing ongoing maintenance for the proposed swales to the satisfaction of the Director of Public Works.

GENERAL PLAN CONFORMANCE

The subject site is designated Very Low Density Residential (2 DU/AC) on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram. The area being utilized for streets (2.4 acres) and the area to be dedicated to the Santa Clara Valley Water District (0.70 acres) are not included in the density calculation. As such, the net acreage for the site is 15.3 acres and the proposal for 22 units on site results in a net density of 1.43 units per acre, consistent with this designation. The General Plan allows units to be clustered and does not require that all lots have a uniform size.

ANALYSIS

The primary issues for this proposed zoning include 1) site design and grading, and 2) conformance with Riparian Corridor Policy.

Site Design and Grading

The site layout generally complies with the principles contained in the Residential Design Guidelines to ensure compatible unit relationships and proper integration into the surrounding neighborhood. It should be noted that the Residential Design Guidelines are technically not applicable to single-family development with lot sizes larger than 6,000 square feet. In particular, the project utilizes lot sizes and unit designs that are comparable to the residential development just east of the project site, known as the California Oaks development.

Lots 1-15 are proposed to take access off one new public street extending from San Felipe Road, and Lots 16-22 are configured along both sides of a new cul-de-sac which takes access off of Grand Oak Way. The new public right-of-way off of San Felipe Road is proposed to be a width of 48 feet adjacent to San Felipe Road and would widen to a maximum of 52 feet. All internal roads are designed with sidewalks on both sides of the street. The cul-de-sac at the northern end of the new street from San Felipe is designed with limited encroachment into the 100-foot setback from Misery Creek's southern riparian edge.

The applicant's current proposal indicates the use of retaining walls as high as 4 feet tall along the project's border that will be visible from San Felipe Road. Such tall retaining walls in conjunction with fences could result in an unattractive interface with the rural character of the street. Given that the rear yards of Lots 1-4 share this border, some grading to provide usable rear yards is necessary; however, Staff believes that by reducing the width of the stretch of the proposed new public street to 48 feet, rather than the 52 feet proposed at that area of roadway, additional area will be provided to enable Lots 1-4 to shift closer to the new public street. The result would be a reduction in the height or elimination of the proposed retaining walls along San Felipe, thereby maintaining a more rural and natural character.

While the applicant's proposal is conceptual, Staff has added conditions to the General Development Plan notes to allow flexibility for the final determination of internal street widths with the goal of minimizing surface area for streets in order to reduce the need for retaining walls along San Felipe and create a more subtle transition in grade changes between San Felipe Road and the rear pads of Lots 1-4. In the same vein, the proposed development standards would allow for slightly smaller front setbacks for Lots 1-4 which back towards San Felipe Road, thereby shifting the structures to the east, away from San Felipe. San Felipe Road is approximately 25 feet lower in elevation than these lots. In order to reduce the appearance of this grade differential, increased setbacks for second stories of those homes have been added to the General Development Notes. These second story rear elevation setbacks for Lots 1-4 will reduce the verticality of massing immediately adjacent to San Felipe Road. The developer shall also be improving the public right-of-way along San Felipe Road to accommodate the extension of the Thompson Creek Master Trail.

In order to provide a 100-foot setback from Thompson Creek, Lot 10 has a unique configuration, including a substantial side yard in exchange for a smaller rear yard. As such, there are separate development standards for Lot 10, which anticipate and regulate what would normally typify backyard development, such as pools, decks, and spas, in this side yard. Due to the substantial slope and adjacency to Thompson Creek, lots 10-15 shall require more significant grading and use of retaining walls along the rear property lines. The use of taller retaining walls in this area is not deemed to be problematic since the wall will not be visible from public areas. The area on

site within the 50-foot setback from Thompson Creek shall be an easement dedicated to the Santa Clara Valley Water District.

Riparian Corridor Policy

The site layout has been modified from earlier proposals so that all development is setback a minimum of 100 feet from the edge of the riparian corridors of Thompson Creek and Misery Creeks, with the exception of the proposed cul-de-sac bulb and Lots 5, 9 and 15, which are all setback at least 75 feet from the southern edge of Misery Creek's riparian corridor. The northern edge of Misery Creek shall have a 100-foot setback from all development. In addition, the project proposal further enhances the area between all development on the site and Thompson Creek's riparian edge by removing the existing chicken coops that are adjacent to Thompson Creek along the southern corner of the property.

Setbacks from the riparian corridor are the principle means of minimizing impacts associated with human activities. The Riparian Corridor Policy Study recommends a setback of 100 feet from the edge of the corridor for any new development. Exceptions to the 100-foot setback can be considered as long as no reasonable alternative exists which avoids or reduces the encroachment into the setback area and the habitat protection objectives are achieved, with no less than 30 feet considered the minimum.

The General Plan designation on the site would allow for approximately 30-35 units on the site, however the site only has the capacity to build 22 units in order to conform to the Evergreen Development Policy. As a result, reducing the size of the proposed lots or reducing the proposed number of units is not a feasible proposition in order to maximize 100 foot setbacks from both Thompson and Misery Creeks, as the units available for development on a site of this size currently do not take full advantage of the General Plan density afforded to the site. Staff has worked with the applicant to provide the greatest setback from all riparian edges and still allow for a number of units which allows them to take advantage of their given allocation, which is albeit, a much smaller number of units than the General Plan density allows. Given that there is no reasonable alternative which avoids or reduces encroachment into the 100 foot setback area from Misery Creek, Staff looked at the exceptions listed in the Riparian Corridor Policy which would be applicable to the project site and may warrant consideration of setbacks less than 100 feet as it relates to Misery Creek's southern riparian edge.

The following two exceptions to the 100 foot setback are indicated in the Riparian Corridor Policy and apply to the project site:

- 1) Sites adjacent to small lower order tributaries whose riparian influence does not extend 100 feet.

Per the biological assessment provided for this project, Misery Creek is a lower order tributary, and its riparian influence does not extend 100 feet, but rather has riparian vegetation only one to three trees wide. In addition, the banks have been impacted by years of intensive grazing and are covered with non-native vegetation.

- 2) Instances where implementation of the project includes measures which can protect and enhance the riparian value of the corridor more than a 100 foot-setback.

Using a 1:1 mitigation ratio, enhancements are proposed along Misery Creek and shall off-set the area of encroachment into the 100-foot setback. Riparian plantings per the biological assessment will restore and improve wildlife value within this short reach of the creek.

A reduced setback along the southern edge of Misery Creek was further deemed appropriate by a qualified biologist.

PUBLIC OUTREACH

A notice of the public hearing was distributed to owners and tenants of all properties located within 1000 feet of the project location. This staff report was made available on the Planning Department's website one week prior to the Planning Commission hearing. Staff has been available to discuss the project with interested members of the public.

Various members of the community continued to participate with the applicant after the first rezoning proposal (PDC05-035) on the subject site was denied by City Council. On September 26, 2006, Staff met with these community members to share initial staff comments on the subject rezoning, PDC06-092. In addition, a community meeting was noticed to residents within 1000 feet of the project site and was held at the Laurelwood Elementary School on October 26, 2006. Approximately ten residents attended. Issues raised were concerns regarding preservation of trees on San Felipe Road, future development potential beyond the number of units currently proposed on the site with this rezoning, proposed lot sizes, and the size of proposed homes.

Widening of San Felipe Road and Existing Eucalyptus Trees on Site

The Department of Transportation (DOT) has evaluated the condition of San Felipe Road and determined that the roadway should be widened with the approval of this project in order to have the roadway width meet current standards for traffic safety. Regardless of the size of the development proposed, DOT has indicated that the road widening along the project's frontage with San Felipe is necessary to be constructed with any redevelopment on the site. DOT has conditioned the project to provide a total right of way section that is 30 feet wide, which includes 28 feet of roadway, plus two feet of separation from an existing guardrail on the west side of San Felipe, which is across the street from the project site. The minor road widening would result in approximately three feet of separation from the closest Eucalyptus tree and the edge of the improved roadway.

An arborist provided comments to the City that the Eucalyptus trees can be retained if the thickness of the proposed pavement is limited to match the road's existing thickness and/or if reinforced pavement on grade is used at the section of the proposed street which is closest to the Eucalyptus trees. Based on the arborist findings it has been determined that the existing three Eucalyptus trees can be retained with the widening of San Felipe Road to 28 feet in width as recommended by DOT. Further refinement of the plan shall be necessary at the Planned Development permit stage to provide adequate space to install a guardrail or similar barrier to protect the Eucalyptus tree closest to San Felipe Road. The community has expressed a strong desire to retain these existing Eucalyptus trees along San Felipe Road.

RECOMMENDATION

Staff recommends approval of the project for the following reasons:

1. The project conforms to the General Plan Land Use/Transportation Diagram designation of Very Low Density Residential (2 DU/AC).
2. The project conforms to the Evergreen Development Policy.
3. The project conforms to the Riparian Corridor Policy.
4. The project will be designed to be compatible with the surrounding neighborhood.

Attachments
Location Map
Public Works Memo
Santa Clara Valley Water District Memo
Correspondence for Neighbors

cc: owner
applicant