



MEETING DATE: 04/16/07

ITEM NO. 10

ADDENDUM

COUNCIL AGENDA REPORT

DATE: April 13, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING A REQUEST TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE ON PROPERTY ZONED R-1:20. APN 529-31-041. ARCHITECTURE & SITE APPLICATION S-07-21. PROPERTY LOCATION: **RESERVOIR ROAD, LOT 3** PROPERTY OWNER: MARK VON KAENEL & DIANNA ROBINSON; APPLICANT/APPELLANT: TONY JEANS, T.H.I.S. DESIGN

DISCUSSION:

Attachment 15 to the Council report for this application is a letter that was submitted by Lee Quintana. One of the concerns raised is preservation versus removal of the historic rock walls and stairways on the site. The intent of the mitigation measure relating to the rock walls is to require the possible incorporation of the rock from historic walls within the project site. The mitigation measure reads as follows:

The rock walls and stairways shall be preserved for possible incorporation into future residential development. Where the walls are in disrepair the remnants shall be incorporated into future landscaping or be made into an element for an entryway into the subdivision

In this particular case, portions of the rock wall bisect the building envelope and it would be impractical to try and preserve the wall in place. When the subdivision improvements were completed, some of the walls and stairs had to be removed and the rock was salvaged and stockpiled for future use. As stated in the staff report, the applicant is willing to preserve a portion of the wall that parallels the new driveway and to reuse the remainder of the rock on the new driveway walls.

PREPARED BY: Bud N. Lortz, Director of Community Development

Reviewed by: PS Assistant Town Manager _____ Town Attorney _____ Clerk _____ Finance
_____ Community Development

Revised: 4/13/07 2:51 PM

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: APPEAL FOR RESERVOIR ROAD LOT 3; FILE #S-07-21.

April 2, 2007

Condition #15 has been included to require the preservation and reuse of the walls on the site. The applicant has also offered to use rock from the subdivision stockpiles to complete the on-site walls. Staff will ensure reuse of the historic rocks as part of the building permit process.

Attachment 16 is a memorandum from Outside Counsel addressing the comment about the need for further environmental review relative to the Architecture & Site application.

Attachments:

- 1.-15. Previously received under separate cover
16. Letter from outside Counsel (1 page, w/attachment), received April 13, 2007

Distribution:

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Mark Von Kaenel & Dianna Robinson, 245 Carlton Court, Los Gatos, CA 95032

BNL:SD

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TO: BUD N. LORTZ
FROM: DAN K. SIEGEL AND SANDY SLOAN (ACTING CITY ATTORNEYS)
RE: RESERVOIR ROAD QUESTION REGARDING NEGATIVE DECLARATION
DATE: APRIL 13, 2007

QUESTION: Is the Negative Declaration that was performed for the site as part of the subdivision review and approval sufficient or does a new environmental assessment need to be performed for the Architecture and Site Application for Reservoir Road, Lot 3.

SHORT ANSWER: The Negative Declaration that was performed for the subdivision review is sufficient and no further environmental review must be performed.

A Negative Declaration was prepared when the subdivision was processed by the City and approved by the City Council. We understand that the Negative Declaration addressed the fact that four (4) homes would be built on the subdivided property and that some grading would occur on land that has a slope in excess of 10%. As the prior review anticipated a project similar to what has been proposed, we believe that the categorical exemption under Section 15303 as set forth in the staff report is appropriate. However, the City Council may also augment this exemption by performing the analysis set forth in CEQA Guideline 15162. Section 15162 sets forth the procedure to determine whether additional environmental review needs to occur when an EIR or Negative Declaration has been issued.

I have attached §15162. In short it states: When an EIR has been certified or negative declaration adopted for a project no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record that:

1. Substantial changes to the project will cause new significant environmental impacts.
2. Substantial change to the circumstance under which the project will occur which will cause new significant environmental impacts.
3. There is new information of substantial importance which was not known or could not have been known when the finding was made that there will be significant effects that were not discussed, the significant effects will be substantially more severe, mitigation that was found to be infeasible is feasible, or different mitigation measures which are considerably different from those analyzed before would substantially reduce the significant effects.

By performing the above analysis the City Council can confirm that this application does not trigger the need for environmental review or determine that the application does trigger the need for review.

ACTION: The City Council may rely on the categorical exemption of Section 15303 of the California Environmental Quality Act (CEQA) and/or the Council may go through the analysis set forth in §15162 to confirm that no additional environmental review is required.

- (C) Make or require certification to be made as described in Section 15090.
- (D) Make findings as provided in Sections 15091 and 15093 as necessary.
- (5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport or related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

Article 11. Types of EIRs

15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or

negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, and addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A