

CEQA FINDINGS OF FACT

of the

TOWN COUNCIL OF THE TOWN OF LOS GATOS

for the

ALBRIGHT OFFICE PARK

May __, 2013

I. Introduction

The Albright Office Park project (“the Project”) will involve the development of up to 550,000 square feet of office/research & development (R&D) space (including office-serving amenities), one parking garage, surface parking areas, new access driveways, and new landscaping and private open space. The Project will require the removal of ten existing buildings totaling approximately 250,000 square feet of office/R&D space and entail the construction of up to four new larger office/ R&D buildings at full build out, for a total net increase of 300,000 square feet of office/R&D space.

The Town of Los Gatos (“Town”), as lead agency, prepared a Draft Environmental Impact Report (EIR) for the Project in January, 2013 (State Clearinghouse No. 2012082020)¹. This document was made available for review on January 29, 2013, for a forty-five (45) day review period. Accordingly, written comments were solicited until March 14, 2013. The Town of Los Gatos prepared responses to comments on the Draft EIR, and published both comments and responses to comments in the April 2013 Final EIR, which was posted on the Town’s website on April 11, 2013.

These findings have been prepared in accordance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and its implementing guidelines (“CEQA Guidelines”) (Cal. Code Regs., tit. 14, § 15000 et seq.).

II. Project Description

The project applicant proposes to develop up to 550,000 square feet of office/research and development (R&D) space (including office-serving amenities), one parking garage, surface parking areas, new access driveways, and new landscaping and private open space on the subject property located at 90-160 Albright Way and 14600 Winchester Boulevard. The site is located in the northern part of the Town of Los Gatos, immediately east of Winchester Boulevard and south of the State Route 85 (SR 85) freeway. As noted above, the Project will require the removal of ten existing buildings totaling approximately 250,000 square feet of office/R&D space and allow the construction of up to four new larger office/R&D buildings at full build out. Project implementation would result in a net increase of 300,000 square feet of office/R&D space. The Albright Way loop road will be eliminated to accommodate the new buildings, and new driveways will be constructed to provide access to the new buildings as well as to provide emergency vehicle access. The driveways will serve the parking lots and one new parking garage. (Draft EIR, p. 2-1.)

The Project proposed a new Planned Development (PD) overlay zone to replace the existing CM: PD (Controlled Manufacturing, Planned Development) zoning designation

¹ See Cal. Code Regs., tit. 14, section 15367 for a definition of “lead agency.”

on the property. The PD overlay would allow the development of the site for expanded office/R&D space (including office-serving amenities). The PD overlay zone is a specially tailored development tool that designates site-specific zoning regulations consistent with the General Plan, sets development standards for a site, and establishes site design guidance. The PD overlay zone is intended to ensure orderly planning and quality design that will be in harmony with the existing or potential development of the surrounding neighborhood. The development of the Albright Project site will comply with the standards and guidelines established in the PD overlay, as determined by the Town through the Architecture and Site (“A&S”) approval process. (*Ibid.*)

The PD overlay requires A&S approval, in conformance with the use and development standards and design guidance in the PD Overlay, prior to construction of new buildings. (*Ibid.*)

A. Location

The subject property is located at 90-160 Albright Way and 14600 Winchester Boulevard in the northern part of the Town of Los Gatos, immediately east of Winchester Boulevard and south of the State Route 85 (SR 85) freeway. Winchester Boulevard and a Union Pacific Railroad right-of-way bound the project site on the west, while SR 85 bounds the northern side of the property. The Los Gatos Creek Trail, which separates the property from and runs along Los Gatos Creek, bounds the property on the east, and the Charter Oaks residential neighborhood bounds the project site on the south. The headquarter offices of the Santa Clara County Fire Department are adjacent to the south side of the 14600 Winchester Boulevard office building, and adjoin the southwestern site boundary. (Draft EIR, p. 3-1.)

The project site consists of ten developed parcels within the Los Gatos Business Park at the intersection of Albright Way and Winchester Boulevard. Albright Way is a loop road providing the principal access to the property; however, vehicular access to the project site is also available via a driveway on Winchester Boulevard at the southwest corner of the site. The subject property is developed with ten one-story and two two-story office/R&D buildings along with associated driveways, parking areas, and landscaping. The buildings were constructed on the site in the 1970s and 1980s. The rear parking lot for 151 Albright Way adjoins the paved Los Gatos Creek Trail, which extends northward under SR 85 to downtown San Jose and southward past the Charter Oaks residential subdivision, connecting to Vasona Reservoir, and eventually ending at Lexington Reservoir. Vasona Reservoir is located approximately 0.6 miles to the south of the project site. (*Ibid.*)

The project site is bounded on the north by SR 85, with offices and residential development immediately north of this freeway. The Vasona Light Rail station is proposed for a site also located immediately north of the freeway and the Valley

Transportation Authority has acquired all required right-of-way to extend the existing rail line to this location. The Santa Clara Valley Water District has jurisdiction over the Los Gatos Creek and the Los Gatos Creek Trail, which adjoin the project site on its eastern boundary. Across the Water District's property from the site, there is a mobile home facility, the Bonnie View Park and a remnant orchard parcel. Single-family attached homes (townhomes) of the Charter Oaks neighborhood adjoin the southern perimeter of the project site. The headquarter offices of the Santa Clara County Fire Department are adjacent to the south side of the 14600 Winchester Boulevard office building. West of Winchester Boulevard and 100 to 150 feet from the subject property are the Courtside Club facilities, residences on Smith Ranch Court, and vacant parcels adjoining the southbound off-ramp from SR 85 to Winchester Boulevard. Union Pacific railroad property and tracks are located along a portion of the western property boundary between the project site and Winchester Boulevard. (Draft EIR, pp. 3-1, 3-5.)

B. Purpose and Objectives

CEQA Guidelines section 15124 requires that the "Project Description" portion of a Draft EIR set forth "[a] statement of the objectives sought by the proposed project." The Town's Draft EIR for the Albright Project identified "project objectives" for both the project applicant and the Town. The following are the applicant's objectives:

1. Develop a project that is consistent and compatible with the existing land uses in the surrounding area.
2. Develop an office/R&D park of sufficient size and quality that enable it to attract and accommodate large corporate tenants.
3. Develop an office/R&D park of sufficient density to take advantage of the site's proximity to the existing and planned transit facilities.
4. Design office/R&D buildings that satisfy modern tenant demands for site configurations, amenities, and efficient/effective employee collaboration space.
5. Provide adequate parking spaces to accommodate the operations of the new occupants as well as adequate spaces for business invitees.
6. Construct an environmentally sensitive design with green building techniques.
7. Develop office/R&D buildings that maximize on-site open space through project massing and sensitive design.
8. Develop a project that will create construction jobs and employment opportunities in the Town of Los Gatos.

9. Develop a project of sufficient density to support the proposed project amenities, and to be financeable and financially feasible.

In issuing the Draft EIR, the Town did not want to prejudge the proposed project by embracing the applicant's project objectives at the outset of the environmental review process. Instead, in order to be able to respond to the applicant's proposal in light of the Town's own legislative policies, the Town staff chose to formulate the Town's own project objectives based on what staff believed were key relevant policies from the Town's 2020 General Plan.

Because the project site is located within the part of the Town subject to the Vasona Light Rail (VLR) Element of the General Plan, the Town's objectives reflect the goals and policies of that Element. The Town's objectives also reflect some important goals and policies of the Environment and Sustainability Element of the General Plan. The Town's objectives are listed below:

1. Encourage a mix of commercial, office, light industrial and recreational uses within the Vasona Light Rail area, especially in areas less suited to residential development due to noise (Policy VLR-3.3).
2. Work with developers and agencies to ensure that the Vasona Junction sub-area (located just north of the project site) is developed in a manner that takes full advantage of the mass transit opportunities afforded by the Vasona Light Rail (Policy VLR-9.2).
3. Encourage site plans in the Vasona Light Rail area to be designed to minimize traffic impacts and preserve sufficient open space (Policy VLR-6.2)
4. Facilitate and encourage pedestrian activity through the siting, scale, and design of buildings in relationship to each other (Policy VLR-6.3).
5. Provide opportunities for a variety of non-residential land uses within the Vasona Light Rail area (Goal VLR-4) and limit impacts of non-residential development projects on existing residential uses (Policy VLR-4.2).
6. Orient development to take advantage of the amenities of Los Gatos Creek and the Creek Trail (Policy VLR-5.2).
7. Contribute to the Town's efforts to reduce overall greenhouse gas (GHG) emissions to 1990 levels by 2020 (Goal ENV-14) by reducing use of non-renewable energy resources and expanding the use of renewable resources and alternative fuels (Goal ENV-16), and promoting green buildings that minimize consumption of energy and natural resources (Goal ENV-17).

8. Encourage the use of energy conservation techniques and technology in order to improve energy conservation (Policy ENV-16.1).
9. Encourage new development to incorporate measures that reduce energy use through solar orientation by taking advantage of shade, prevailing winds, landscaping, and sun screens (Policy ENV-16.6).
10. Require new construction to use energy- and resource-efficient and ecologically sound designs, technologies, and building materials, as well as recycled materials to promote sustainability (Policy ENV-17.1).
11. Encourage reductions in the use of nonrenewable resources in building construction, maintenance, and operations (Policy ENV-17.3).

(DEIR, pp. 3-5 to 3-8.)

III. Environmental Review Process

On August 2, 2012, the Town published a Notice of Preparation (NOP) for the Draft EIR (see DEIR, Appendix A), thereby notifying responsible agencies, trustee agencies, adjacent local agencies, transportation planning agencies, the public, and other interested parties of the scoping period and giving them the opportunity to transmit their concerns and comments on the scope and content of the Draft EIR.

On January 29, 2013, the Town published the Draft EIR for the Albright Project, commencing a 45-day public review period that ended on March 14, 2013.

On April 11, 2013, the Town issued the proposed Final EIR for consideration by the Town's Planning Commission and, subsequently, by the Town Council.

IV. Record of Proceedings

In accordance with Public Resources Code section 21167.6, subdivision (e), the record of proceedings for the Town of Los Gatos' decision on the Project includes the following documents:

- The Record of Proceedings from *Los Gatos Citizens for Responsible Development et al. v. Town of Los Gatos et al.* (Santa Clara County Superior Court Case No. 111 CV 209214);
- The January 2013 Draft EIR and its appendices;
- The April 2013 Final EIR and its appendices;

- All documents cited or referenced in the Draft and Final EIRs;
- The Mitigation Monitoring and Reporting Program for the Project;
- All findings and resolutions adopted by the Town of Los Gatos in connection with the Project and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the Town of Los Gatos relevant to the Town's compliance with the requirements of CEQA and the Town's action on the Project;
- All documents submitted to the Town by the applicant, by other public agencies or members of the public in connection with the Project, up through the close of the final public hearing on Project before the Town Council held on May __, 2013;
- Any minutes and/or verbatim transcripts of public meetings and public hearings held by the Town of Los Gatos in connection with the Project;
- Any documentary or other evidence submitted to the Town of Los Gatos at such public meetings and public hearings;
- Any and all resolutions adopted by the Planning Commission and the Town Council of the Town of Los Gatos regarding the Project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- Matters of common knowledge to the Town of Los Gatos, including, but not limited to federal, state, and local laws and regulations;
- Town of Los Gatos 2020 General Plan;
- Town of Los Gatos 2020 General Plan Final Environmental Impact Report;
- Town of Los Gatos General Plan Update Background Report;
- Los Gatos Town Codes;
- Los Gatos Sustainability Plan;
- Any documents expressly cited in these findings, in addition to those cited above;
and

- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The documents constituting the record of proceedings are available for review by responsible agencies and interested members of the public: from 8:00 a.m. to 1:00 p.m., Monday through Friday, at the Los Gatos Community Development Department at 110 East Main Street; from 8:00 a.m. to 5:00 p.m., Monday through Friday, at the Town Clerk office at 110 East Main Street; and during regular business hours, at the Town Library at 100 Villa Avenue. The custodian of these documents is the Community Development Department. This information is provided in compliance with Public Resources Code section 21081.6.

The Town's decision makers have relied on all of the documents listed above in reaching their decisions on the Project even if not every document was formally presented to the decision makers. Without exception, any documents set forth above not found in the project files fall into one of two categories. Many of them reflect prior planning or legislative decisions with which the Town of Los Gatos was aware in approving the proposed project. (See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-392; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6.) Other documents influenced the expert advice provided to the Town of Los Gatos staff or consultants, who then provided advice to the Town Council as final decision makers. For that reason, such documents form part of the underlying factual basis for the Town's decisions relating to approval of the proposed project. (See Pub. Resources Code, § 21167.6, subd. (e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155.)

V. Findings Required Under CEQA

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of Projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. This mandate to adopt findings is found in Public Resources Code section 21081, subdivision (a), and CEQA Guidelines section 15091, subdivision (a). Under these provisions, for each significant environmental effect identified in an EIR for a Project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR. The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by, or can and should be adopted by, such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines, § 15091.) “[F]easible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.” (CEQA Guidelines, § 15364.)

Here, as set forth in Table A to CEQA Findings, the Town Council has adopted the first permissible finding with respect to all significant effects identified in the EIR, concluding that all such effects can be mitigated to less than significant levels. The Town Council therefore has no need to consider the feasibility of any project alternatives. (Pub. Resources Code, § 21002; *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521 (*Laurel Hills*); see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.)

Under CEQA, where the significant impacts of a project cannot be avoided or substantially lessened, either by mitigation measures or a project alternative, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a “statement of overriding considerations” setting forth the specific reasons that the agency found the project’s benefits outweigh its unavoidable adverse environmental effects. (CEQA Guidelines, § 15093; Pub. Resources Code, § 21081, subd. (b).) Here, however, as noted above, the Town of Los Gatos has identified and adopted feasible mitigation measures that mitigate all significant environmental impacts of the Project to less than significant levels. Thus, just as the Town is not required to address the feasibility of alternatives, the Town is also not required to adopt a Statement of Overriding Considerations for the Project.

VI. Mitigation Monitoring and Reporting Program

Subdivision (a) of Public Resources Code section 21081.6 requires lead agencies to “adopt a reporting and mitigation monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment.” For the Albright Project, the Town satisfied this obligation by preparing a Mitigation Monitoring and Reporting Program (MMRP), which was attached as Appendix L to the Final EIR. The MMRP provides a list of all adopted project mitigation measures, identifies the parties responsible for implementing such measures, and identifies the timing for implementing each measure. The MMRP is being approved concurrently with the adoption of these Findings of Fact.

VII. Significant Effects and Mitigation Measures

The Draft EIR identified a number potentially significant environmental effects (or impacts) that the Project will cause or contribute to. All of these effects can be mitigated to less than significant levels through the adoption of feasible mitigation measures. The Project thus will not result in any significant and unavoidable impacts. The Town of Los Gatos’ findings with respect to the Project’s significant and potentially significant effects and mitigation measures are set forth in the table attached to these findings (Table A to CEQA Findings). The findings set forth in the table are hereby incorporated herein by reference.

This table does not attempt to describe the full analysis of each environmental impact contained in the Draft and Final EIRs. Instead, the table provides a summary description of each impact, describes the applicable mitigation measures identified in the Draft EIR or Final EIR and adopted by the Town of Los Gatos, and states the Town’s findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Draft EIR and Final EIR, and these findings hereby incorporate by reference the discussions and analyses in those documents supporting the Final EIR’s determinations regarding mitigation measures and the Projects’ impacts and mitigation measures designed to address those impacts. In making these findings, the Town of Los Gatos ratifies, adopts, and incorporates into these findings the analyses and explanations in the Draft EIR and Final EIR, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of those documents relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.