



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** August 17, 2018

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**COUNCIL DISTRICT: 8**

**SUBJECT: FILE NOS. PDC14-051 AND PD16-019. PLANNED DEVELOPMENT REZONING FROM THE A AGRICULTURAL ZONING DISTRICT TO THE PQP(PD) PLANNED DEVELOPMENT ZONING DISTRICT OF AN APPROXIMATELY 21.0-GROSS ACRE SITE TO ALLOW A MEDICAL CARE FACILITY WITH UP TO 248 BEDS ON AN APPROXIMATELY 3.0 ACRE PORTION OF THE SITE WITH THE REMAINING 18.0 ACRES TO BE RESERVED AS OPEN SPACE; A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF APPROXIMATELY 25 BUILDINGS/STRUCTURES, THE CONSTRUCTION OF A MEDICAL CARE FACILITY WITH UP TO 248 BEDS, AND THE REMOVAL OF SEVEN ORDINANCE-SIZE TREES ON AN APPROXIMATELY 3.0-ACRE PORTION OF A 21.0-GROSS ACRE SITE, ON THE EAST SIDE OF DOVE HILL ROAD, APPROXIMATELY 500 FEET NORTH OF HASSLER PARKWAY (4200 DOVE HILL ROAD).**

## **RECOMMENDATION**

The Planning Commission voted 5-0-2 (Commissioners Vora and Griswold absent) to recommend that the City Council:

1. Adopt a resolution adopting the Dove Hill Medical Care Facility Project Mitigated Negative Declaration, for which an Initial Study was prepared, in accordance with the California Environmental Quality Act (CEQA), as amended, and adopting a related Mitigation Monitoring and Reporting Plan; and
2. Adopt an Ordinance of the City of San José to rezone certain real property located at the East side of Dove Hill Road, approximately 500 feet north of Hassler Parkway (4200 Dove Hill Road), from the A Agricultural Zoning District to the PQP(PD) Planned Development Zoning District on an approximately 3.0-acre portion of an approximately 21.0-gross acre site to allow a Medical Care Facility with up to 248 beds, with the remaining 18.0 acres to be kept as open space.

3. Adopt a resolution approving, subject to conditions, a Planned Development Permit to allow the demolition of approximately 25 buildings/structures, the construction of a Medical Care Facility with up to 248 beds, and the removal of seven ordinance-size trees on an approximately 3.0-acre portion of a 21.0-gross acre site.

### **OUTCOME**

If the City Council approves the Planned Development Rezoning and Planned Development Permit, the applicant would be able to move forward with a building permit application for the demolition of approximately 25 buildings/structures, the construction of a Medical Care Facility with up to 248 beds, and the removal of seven ordinance-size trees on an approximately 3.0-acre portion of a 21.0-gross acre site.

### **BACKGROUND**

On July 25, 2018, the Planning Commission held a public hearing and considered the Planned Development Rezoning and Planned Development Permit for the subject project.

During the oral presentation, staff provided a brief history of the subject site and a summary of the analysis in the staff report. Staff also discussed modifications to the Planned Development Permit resolution conditions to include:

- a) a requirement for an Affordable Housing Impact Fee (AHIF) compliance plan; and
- b) a three-way stop intersection sign and markings.

Additionally, staff provided details regarding a permit condition and Development Standard that require a new Planned Development Permit or Amendment for any extension beyond the customary two year permit expiration date.

The project applicant, Sal Caruso, provided an overview of the history of the subject site and summarized revisions from the original residential assisted care facility to the current medical care facility proposal. Mr. Caruso stated that the proposed project has 42 fewer beds than the original proposal and a reduction of one floor from the buildings. Additionally, as the project proposes on-site medical services for the seniors, less traffic would be generated than a typical residential assisted care facility. He also provided visual renderings of how the project would be integrated into the hillside and concealed with landscaping and designed to be consistent with architectural styles of surrounding residences. The applicant also stated the benefits of the proposed new water, sewer, and sanitary system that would not only service the project site, but also provide opportunities for lateral connections for existing nearby residences that currently rely on individual septic systems. Mr. Caruso stated his disagreement with the inclusion of the condition requiring a discretionary hearing for permit extensions because of his concern about potential delays in the City's review of building permits prior to the expiration of the permit.

### Public Testimony

Public testimony included fourteen members of the public. The testimony included residents from the Ranch development north (uphill) of the project site. These residents voiced the following concerns: increase traffic congestion, lack of emergency access, increase danger from fires, additional noise, lack of infrastructure improvements (road improvements), and disturbances of protected plant and animal species. Attached is a petition, a copy of a PowerPoint presentation, and a letter commenting on the IS/MND. The residents stated that they are not opposed to new development, but that the proposed project should provide infrastructure improvements to the area prior to construction.

Additional public testimony included other nearby residents who live outside The Ranch Development and were generally supportive of the proposed medical care facility. They stated that the project would have limited impact, and provide much needed infrastructure improvements, such as sewer lateral connections to older homes in the area. They shared that the project would not add significant traffic to the area, that it would not be a nuisance, and that the improved infrastructure would enhance fire prevention and emergency fire access. Other public testimony included several members of various labor unions who spoke in support of the project. Some of these comments in support of the project included the provision of local jobs and needed care for seniors in the area. One member of the public expressed concern about the open space being potentially converted to other uses in the future.

Michael Lozeau, of Lozeau Drury LLP, representing Laborers International Union of North America Local 270 raised concerns about potential environmental impact for the project. He indicated that while staff has provided Response to Comments and Text Changes (RTC) to their original public comment letter during the IS/MND public comment period (April 9, 2018 to April 30, 2018, available <http://sanjoseca.gov/index.aspx?NID=6068>), there are still outstanding concerns regarding cumulative impacts in air quality and biological resources. Specifically, Mr. Lozeau indicated that cumulative air quality impacts were not adequately analyzed. In addition, he stated there was no baseline or surveys presented to fully understand if certain species, such as burrowing owls, salamanders, and other avian special-status species are present on the project site. Additionally, Mr. Lozeau provided a new letter written by Shawn Smallwood, with concerns about staff's previous RTC (see Attachment D).

The applicant responded to the public comments and questions from the Commissioners. In response to Commissioner Yesney's question about the services provided on site, Mr. Caruso clarified that the project differs from other assisted care facilities, in that it provides significantly more on-site medical and mental care to the clients on-site. He stated that the project is estimated to provide a total of three on-site doctors, 24 skilled nurses and 18 medical aides along with other office, kitchen, and facility staff. In response to the comment about fire danger, the applicant stated that the project would likely reduce the fire danger by providing well-maintained landscaping and new on-site access for fire emergency responders to reach any potential fires on the hill. Mr. Caruso stated that the project is required to meet higher fire resistance standards, as the project's use would be classified the same as a hospital. In response to the concern about traffic, the applicant emphasized that the traffic report estimates approximately 42 AM peak hour trips and 55 PM peak

hour trips. This would equate to an average of approximately a trip at the intersection every two or three minutes during the peak hours generated by the project.

#### Staff and Planning Commission Discussion

Chair Allen and Commissioner Yesney expressed concern about limiting the permit expiration to two years and whether to allow flexibility in granting an extension if the applicant submits a Building application. Staff clarified that a two-year expiration is a standard condition for most development permits. Pursuant to the Municipal Code Section 20.100.500, two one-year extensions may be granted at the sole discretion of the Director. Given the issues with the limited allocated remaining traffic capacity for the Evergreen-East Hills Development Policy (EEHDP), to ensure timely development and to discourage this and other developments from holding onto entitlements without development, staff would include this condition for this project and all future projects utilizing the EEHDP capacity. The two-year expiration requiring a new discretionary permit would be an ongoing condition for projects in this area and not unique to the subject project.

Staff provided a summary response to the public comments regarding environmental impacts. Many of the concerns the commenter raised were addressed in the RTC and staff reiterated that based on the analysis in the IS/MND, air quality reports, and RTC, the project impacts are below the City's threshold for significant impact with regards to air quality. In addition, staff reiterated that because of the IS/MND and biological analysis completed for this project, the project has identified appropriate conditions and mitigation measures to address biological impacts. Conformance with the Habitat Conservation Plan (HCP) and project specific mitigation measures that require pre-construction surveys, monitoring, and follow-ups before and during constructions as enforcement mechanisms will address potential impacts to biological resources on the site. Although the environmental concerns raised at Planning Commission have already been addressed in the IS/MND, Response to Comments and Text Changes document, as well as associated technical documents available on the public website, staff has provided additional responses to the new document submitted by the commenter in order to provide a complete public record (see Attachment E).

Public Works staff provided further clarification that the project would be required to provide infrastructure improvements, pay traffic impact fees pursuant to the EEHDP policies, and that the project would have limited traffic impact based on the projected number of trips during the AM and PM peak hours. Staff reiterated that the Fire Department has reviewed the project to ensure compliance with fire codes and requirements, including the review of the fire access roads.

Commissioner Yesney made a motion, seconded by Commissioner Marquez, to recommend that the City Council adopt a resolution adopting the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program, Rezoning Ordinance, and Planned Development Permit Resolution (5-0-2, Commissioners Vora and Griswold absent).

## **ANALYSIS**

A complete analysis of the issues regarding this project are contained in the attached Planning Commission Staff Report and CEQA documents, including the RTC and most recent response to the comments from Mr. Lozeau.

## **EVALUATION AND FOLLOW UP**

If the City Council approves the Planned Development Rezoning and Planned Development Permit, the developer would need to obtain building permit(s) for the demolition of approximately 25 buildings/structures and the construction of a medical care facility with up to 248 beds on an approximately three-acre portion of a 21-gross acre site.

## **PUBLIC OUTREACH**

Staff followed Council Policy Public Outreach Policy 6-30, in that notices for the public hearings for the project were mailed to the owners and tenants of all properties located within 1,000 feet of the project site. An electronic version of this memorandum has been available online, accessible from the City Council Agenda for the August 28, 2018, hearing. Staff has been available to discuss the proposal with members of the public.

## **COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office.

## **CEQA**

An Initial Study (IS) and Mitigated Negative Declaration (MND) were approved with intent to adopt on April 4, 2018, by the Director of the Department of Planning, Building and Code Enforcement for the subject Planned Development Rezoning and Planned Development Permit. The environmental review evaluated 3 acres ("development footprint") of the 21-acre site from Agriculture to A(PD) Planned Development for the demolition of all existing buildings, structures, trees and landscaping, and associated improvements, and to construct a medical care facility with two buildings containing a total of 155 patient rooms and up to 248 beds, all within the development footprint of the 3 acres. The remaining 18 acres would remain zoned in the Planned Development Zoning District as open space and would be maintained as undeveloped, permanent private open space.

The documents were circulated for public comments from April 9, 2018 to April 30, 2018. During the circulation period, the City of San José received comment letters and email messages from 1) the representative from Amah Mutsun Tribal Band, 2) the Santa Clara Valley Transportation Authority (VTA), 3) Lozeau Drury LLP, and 4) local resident, Deepesh Chouhan. Concerns highlighted in the comment letters include: traffic and pedestrian safety, air quality analysis, greenhouse gas analysis,

impact to biological resources, and “fair argument” that the project may have unmitigated adverse environmental impacts.

Environmental comments have been addressed in a formal Responses to Comments document and staff’s response to Mr. Lozeau’s most recent comments. The primary environmental issues that required mitigation measures are biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and transportation. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regards to lighting requirements, nuisance, and maintenance of the site are included in the Planned Development Permit as conditions of approval to ensure all potential impacts have been addressed.

The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <http://sanjoseca.gov/index.aspx?NID=6068>.

/s/  
ROSALYNN HUGHEY, SECRETARY  
Planning Commission

For questions, please contact Interim Planning Official, Sylvia Do, at (408) 535-7907.

Attachment:

- A) Planning Commission Staff Report and Attachments.
- B) Late Correspondence: Resident’s PowerPoint, Petition and Revisions to the Planned Development Resolution Conditions.
- C) Applicant’s PowerPoint Presentation.
- D) Letter from Michael Lozeau, representing Lozeau Drury LLP (Written by Shawn Smallwood) in response to the RTC.
- E) Formal CEQA staff response to the letter from Michael Lozeau.