

**TO:** Jennifer Castillo

**FROM:** Michael Martin

**SUBJECT:** CEQA Compliance for Evergreen Circle  
Easement Quitclaim

**DATE:** June 30, 2017

## **RECOMMENDATION**

The District is considering quitclaiming an easement with Arcadia Development Company (Applicant) to allow the realignment of Lower Silver Creek on the Evergreen Circle project site. This memorandum provides a basis for the recommendation that the District utilize the Environmental Impact Report (EIR) and related environmental analysis prepared by the City of San Jose in considering the request.

## **BACKGROUND / PROJECT DESCRIPTION**

The Applicant is proposing up to 310,000 square feet of retail commercial uses, 250 residential units, and the dedication of approximately 17 acres of public park land on approximately 80 gross acres located on the south side of Quimby Road, west of Capitol Expressway in the City of San José (near Eastridge Mall), which is referred to as Evergreen Circle (Project). The District owns an easement over Lower Silver Creek which is contained in a 72-inch diameter cast-in-place pipe on the property. The Applicant will realign a portion of the creek to accommodate the development of the Project.

## **CEQA REVIEW**

The City of San Jose prepared an EIR in 2006 for the Evergreen-East Hills Vision Strategy, which provides a vision and framework of land use policies for future development within the greater Evergreen-East Hills area of the City, including the subject property. The City actions included the adoption of a revised Evergreen Development Policy; changes in General Plan land use designations and zonings on approximately 542 acres of land in the Evergreen area; and construction of various transportation and community amenity projects. The City certified the Final Evergreen-East Hills Vision Strategy Project Environmental Impact Report on December 12, 2006. The City approved revisions to the Evergreen Development Policy in 2008 and prepared a Supplemental Environmental Impact Report. The revisions provided traffic allocations for future development in the area, but without specifying the locations of potential development within the Evergreen area. The City approved the revisions and made findings pursuant to CEQA on December 16, 2008.

On December 16, 2014 the City considered and approved the Project while considering the potential environmental impacts of the action with an Addendum to the Evergreen-East Hills Vision Strategy Environmental Impact Report and Supplemental Environmental Impact Report.

The District is considering quitclaiming an easement as a Responsible Agency and must consider the EIR and related environmental review prepared by the City before reaching its own conclusion on whether and how to approve the property exchange. The process for a Responsible Agency to consider a previously prepared CEQA document is set forth in §15096.

## **ANALYSIS**

### ***Potential Impacts***

Approval of the quitclaim would allow the Applicant to realign Lower Silver Creek. The realignment of the creek would contribute to three significant impacts identified in the EIR and related documents certified by the City.

1. Construction disturbance during bird breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment.

2. Two prehistoric archaeological sites are located on the northerly portion of the project site. Construction could occur in the areas occupied by these sites.
3. The EIR identified potential geologic and geotechnical hazards in the area, which included seismicity, expansive soils, and related conditions. Due to its location in a seismically active region, the project would be subject to strong seismic ground shaking during its design life in the event of a major earthquake on any of the region's active faults.

Mitigation measures were proposed in the EIR to avoid or reduce these effects to less than significant levels.

The EIR identifies a number of other significant impacts related to development permitted under the Evergreen-East Hills Vision Strategy in general and the Project in particular. However, the District's actions related to the realignment of Lower Silver Creek do not contribute to these impacts. These impacts include:

- Light and glare impacts on nearby residents and on aircraft operations associated with Reid-Hillview Airport from the outdoor playing fields.
- Removal of ordinance-sized trees
- Emissions from vehicles allowed by the Evergreen Development Policy in excess of BAAQMD thresholds
- Noise associated with pile drivers during construction
- Noise from traffic and existing uses on new residences
- Increase in the demand for school facilities
- Increase in the demand for park facilities
- Unacceptable traffic level of service at 14 intersections
- Impacts on Freeway Operations
  - US 101, northbound between Yerba Buena Road and Capitol Expressway-AM peak
  - US 101, northbound between Capitol Expressway and Tully Road -AM peak
  - US 101, southbound between Capitol Expressway and Tully Road -PM peak
  - US 101, southbound between Tully Road and Story Road -PM peak
  - US 101, southbound between Story Road and 1-280 -PM peak
  - 1-280, eastbound between SR 87 and Tenth Street-PM peak
  - 1-280, westbound between SR 87 and Tenth Street -AM peak
  - 1-280, westbound between Tenth Street and McLaughlin Avenue -AM peak
  - 1-280, westbound between McLaughlin Avenue and US 101 -AM peak
- Increase in energy demand

There are no feasible mitigation measures or alternatives within the District's power that would substantially lessen or avoid any of the significant effects.

## CONCLUSION

Prior to taking any action, the District must consider the EIR, Supplemental EIR, and Addendum as a Responsible Agency and determine whether and how to approve the quitclaim. Staff has determined that the City's EIR and subsequent documents are adequate for the District's action.



Michael Martin  
Environmental Planner

Attachments: Draft Board Resolution and Findings

*Evergreen-East Hills Vision Strategy Project Environmental Impact Report and Revision of the Evergreen Development Policy Supplemental Environmental Impact Report* can be found at: <http://www.sanjoecacounty.gov/index.aspx?nid=5374>

*Addendum to the Evergreen East Hills Vision Strategy & Supplemental Environmental Impact Reports* can be found at: X:\Temporary\Current Month\MikeM

# CEQA FINDINGS BY THE SANTA CLARA VALLEY WATER DISTRICT FOR APPROVING CONVEYANCE OF REAL PROPERTY RELATING TO THE EVERGREEN CIRCLE PROJECT

This document presents findings made by the Santa Clara Valley Water District ("District") in accordance with Sections 15091, 15093 and 15096 of the California Environmental Quality Act ("CEQA") Guidelines and Section 21081 of the Public Resources Code.

## **I. BACKGROUND**

### **A. District's role in the Evergreen Circle Project**

1. The City of San Jose (City) has approved the Evergreen Circle Project (Project), which includes development of approximately 315,000 square feet of retail commercial uses, 250 residential units, a public softball complex, and related infrastructure on approximately 80 gross acres located in the City of San Jose (City) within an area commonly known as Evergreen.
2. Civic South Bay, LLC (Developer) owns the land on which the Project is located.
3. The District owns fee title property and two easements to operate and maintain 2,730 feet of Lower Silver Creek contained in a 72-inch diameter cast-in-place pipe located within the development.
4. The City and Developer have requested the District quitclaim the District's real property interest to remove certain portion of the Lower Silver Creek and re-align another portion of the creek to accommodate the development.

### **B. District's Role as a Responsible Agency under CEQA.**

1. The City, as the lead agency for the Project under CEQA, prepared an *Environmental Impact Report for Evergreen-East Hills Vision Strategy Project*, which included the adoption of a revised Evergreen Development Policy; changes in General Plan land use designations and zonings on approximately 542 acres of land in Evergreen; and construction of various transportation and community amenity projects in the Evergreen-East Hills area. The City certified the Final Evergreen-East Hills Vision Strategy Project Environmental Impact Report on December 12, 2006.
2. On December 16, 2008, the City certified a Supplemental Environmental Impact Report and approved *Revisions to the Evergreen Development Policy*. The revisions provided traffic allocations for future development in the area, but without specifying the locations of potential development within the Evergreen area.
3. On December 16, 2014, the City approved the Project after considering the Project's potential environmental impacts as described in an Addendum to the Evergreen-East Hills Vision Strategy & Supplemental Environmental Impact Reports (Addendum).
4. The District is a responsible agency for the Project under CEQA, and as responsible agency the District is required to consider the environmental review documents prepared

by the City and make findings regarding the environmental effects of those parts of the Project which the District decides to carry out or approve.

### **C. District's Review and Consideration of the EIR**

Prior to taking action on the Project, the District considered the information contained in the record of proceedings, including, but not limited to, the Final EIR, Supplemental EIR, Addendum, staff reports, oral and written comments, and all other matters deemed material and relevant.

The District designates the Community Projects Review Unit of Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118, as the custodian of documents and record of proceedings on which the decision was based.

## **II. CEQA Findings**

The District has reviewed and considered the EIR, Supplemental EIR and Addendum prepared for the Project. In accordance with the requirements of CEQA and the Guidelines promulgated thereunder, the District makes the following findings based upon substantial evidence in the record.

### **A. SIGNIFICANT IMPACTS WHICH CAN BE MITIGATED TO A LESS THAN SIGNIFICANT LEVEL**

The District's approval of the real property conveyance will allow the conduit for Lower Silver Creek to be removed and realigned. This action will contribute to the following significant impacts identified in the Final EIR and Supplemental EIR.

#### **1. Nesting Birds**

##### Impact

Construction disturbance during bird breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the California Department of Fish and Wildlife. Any loss of fertile eggs or any activities resulting in nest abandonment would constitute a significant impact. Construction activities such as tree removal, site grading, construction etc., that disturb a nest onsite or immediately adjacent to the site constitute a significant impact.

##### Mitigation

**MM 4.6-16** A qualified ornithologist shall conduct a protocol-level, pre-construction survey for nesting raptors onsite not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (Feb. 1 to Aug. 31).

**MM 4.6-17** If a nesting raptor is detected, an appropriate construction buffer shall be established. Actual size of buffer will be determined by the ornithologist and will depend on species, topography, and type of construction activity that would occur in the vicinity of the nest but would be a minimum of 250 feet.

**MM 4.6-18** A report summarizing the results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of Planning Building and Code Enforcement.

Finding

Implementation of the mitigation measures will reduce the impacts to nesting birds to a less than significant level by minimizing disturbance to nesting birds through appropriate buffers around nesting birds that are found during pre-construction surveys.

**2. Disturbance of known cultural resources**

Impact

Two prehistoric archaeological sites are located on the northerly portion of the project site. Construction could occur in the areas occupied by these sites. Such construction would directly impact these sites by disturbing and/or destroying the cultural artifacts contained within them which is a significant impact.

Mitigation

**MM 4.5-1** Prior to the start of construction, the two areas encompassed by CA-SCL-215 and CASCL-327, including a sufficient buffer determined by an archaeologist, shall undergo additional testing. The delineation of the areas to be tested shall be based upon the figures and information contained in the following report: "Subsurface Archaeological Testing: Evergreen Smart Growth Strategy Study Area (Arcadia Homes Site)", Holman & Associates, December 2004. Testing shall consist of controlled mechanical stripping, under the direction of a qualified archaeologist, within the two delineated areas.

Controlled stripping shall continue until all archaeological material is removed, or to the maximum depth construction impacts will occur in a given area. Once the controlled stripping has been completed, the archaeologist shall determine whether any monitoring of actual construction is warranted.

If suspected human bone or important archaeological features are encountered, work in the immediate area of the discovery shall be halted. The finds shall be exposed, recorded, and removed by an archaeologist. Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements.

All human remains and burial-associated artifacts shall be repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

Finding

Implementation of the mitigation measure will reduce impacts to known cultural resources to a less than significant level by establishing the extent of resources in the field and development of a plan for their preservation or controlled removal.

### 3. Geologic Hazards

#### Impact

The EIR identified potential geologic and geotechnical hazards in the area, which included seismicity, expansive soils, and related conditions. Due to its location in a seismically active region, the project would be subject to strong seismic ground shaking during its design life in the event of a major earthquake on any of the region's active faults.

#### Mitigation

**MM 4.7-1** A detailed, design-level geotechnical investigation for the project shall be completed by the applicant and shall be reviewed and approved by the City Geologist prior to Public Works clearance and issuance of a permit for any phase of the project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid potential geologic hazards on the site.

#### Finding

Implementation of the mitigation measures will reduce the impacts from geologic hazards to a less than significant level by identifying and incorporating practices to reduce or avoid hazards.

### **B. IDENTIFIED IMPACTS NOT ASSOCIATED WITH DISTRICT APPROVALS**

The EIR identifies a number of other significant impacts related to development permitted under the Specific Plan. However, the District's actions related to the removal and realignment of Lower Silver Creek within the development do not contribute to these impacts. These impacts include:

- Light and glare impacts on nearby residents and on aircraft operations associated with Reid-Hillview Airport from the outdoor playing fields.
- Removal of ordinance-sized trees
- Emissions from vehicles allowed by the Evergreen Development Policy in excess of the Bay Area Air Quality Management District's thresholds
- Noise associated with pile drivers during construction
- Noise from traffic and existing uses on new residences
- Increase in the demand for school facilities
- Increase in the demand for park facilities
- Unacceptable traffic level of service at the intersections of:
  - Capitol Expressway and Silver Creek Road
  - Capitol Expressway and Nieman Boulevard
  - Capitol Expressway and Quimby Road
  - Capitol Expressway and Story Road
  - Evergreen Commons and Tully Road
  - White Road and Quimby Road
  - White Road and Steven Lane
  - White Road and Aborn Lane
  - San Felipe Road and Yerba Buena Avenue (North)
  - San Felipe Road and Delta Road
  - San Felipe Road and Yerba Buena Avenue (South)
  - Nieman Boulevard and Aborn Road

- Nieman Boulevard and Yerba Buena Road
- Capitol Expressway and Aborn Road
- Impacts on Freeway Operations
  - US 101, northbound between Yerba Buena Road and Capitol Expressway-AM peak
  - US 101, northbound between Capitol Expressway and Tully Road -AM peak
  - US 101, southbound between Capitol Expressway and Tully Road -PM peak
  - US 101, southbound between Tully Road and Story Road -PM peak
  - US 101, southbound between Story Road and 1-280 -PM peak
  - 1-280, eastbound between SR 87 and Tenth Street-PM peak
  - 1-280, westbound between SR 87 and Tenth Street -AM peak
  - 1-280, westbound between Tenth Street and McLaughlin Avenue -AM peak
  - 1-280, westbound between McLaughlin Avenue and US 101 -AM peak
- Increase in energy demand

The impacts listed above are associated with development of residential, commercial, and recreational uses permitted under the City's approval. These impacts will occur regardless of District actions. There are no feasible mitigation measures within the District's powers that would substantially lessen or avoid any of the significant effects listed above.

### **C. ALTERNATIVES ANALYSIS**

The EIR considers a reasonable range of alternatives for the City to permit new development in the Evergreen-East Hills area. None of the alternatives considered in the EIR are feasible for the District to implement. There are no feasible alternatives within the District's powers that would substantially lessen or avoid any significant effects from the Project.