

**From:** Kirk Vartan [mailto:kirk@kvartan.com]  
**Sent:** Thursday, July 31, 2008 1:02 AM  
**To:** 'Allen, Katy'; 'Shippey, Christine'  
**Cc:** 'Andy Gremett (agremett)'; 'Fedor, Denelle'; 'Oliverio, Pierluigi'; 'Borden, Timm (PW)'; 'mayoremail@sanjoseca.gov'  
**Subject:** RE: Copy of petition for the neighborhood  
**Importance:** High

Hi Katy,

Thank you for the reply.

Can we agree that both the neighborhood and the Council District 6 office did NOT concur with the proposed modification? I think we can and I will assume that to be the case. If you feel otherwise, please let me know why.

Proceeding under the above assumption being true, the City of San Jose is not obligated to challenge the Final EIR. The Final EIR is not invalid because they did not consider alternative designs to the two presented. That is not my argument.

My argument is this: Now that the development has an approved Final EIR and is ready to move forward, the developer now has to do the necessary design work to satisfy the City of San Jose's request. If they do not, the City of San Jose has already stated that they will not approve the second design if the neighborhood and the Council District 6 did not concur.

There really is not much to discuss. The developer now needs to go back and come up with designs that:

1. Are safe (i.e., not design 1)
2. Are compatible with San Jose residents (i.e, not design 2)

I do not understand what the confusion on this is. San Jose does not need to challenge the EIR because the developer and the City of Santa Clara agreed that San Jose had issues with both designs and that San Jose had jurisdiction and final say.

If you look at the EIR comments, there is much dissention about this traffic issue. Yes, the EIR includes it. How does that translate into San Jose approving something it said it would not approve?

Regards,

-Kirk

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**From:** Allen, Katy [mailto:Katy.Allen@sanjoseca.gov]  
**Sent:** Wednesday, July 30, 2008 4:37 PM  
**To:** 'kirk@kvartan.com'; Allen, Katy; Shippey, Christine  
**Cc:** 'Andy Gremett (agremett)'; Fedor, Denelle; Oliverio, Pierluigi; Borden, Timm (PW)  
**Subject:** RE: Copy of petition for the neighborhood

Hello Kirk,

Chris Shippey and I met yesterday to go over a few things after your message to her Monday night. She is heading out of town, and we both wanted to get back to you as

soon as possible to clear up what is still an area of confusion related to the City of San Jose's requirement for evaluation of alternative design options.

When I reread paragraph 3-3, page 4-9, Comments and Responses on the DEIR, I believe that the area of different understanding between ourselves is in our statement that "...The report should analyze other design options, **should** the affected San Jose neighborhood and City Council District 6 Office not concur with the modification, such as ...."

During public meeting process, project information is presented, public comments are exchanged, and though there may not be consensus - the EIR process pulls together the applicants response to comments. After a series of public meetings, the council office did not advance opposition or a formal challenge to the EIR. For this reason, the alternative analysis that we reviewed was related to Winchester & Forest (west) with or without the signal.

Options outside the two shown in Exhibit 4-11A were not evaluated because the analysis by Hexagon (Valley Fair's traffic consultant) and Fehr & Peers (Barec's traffic consultant) answered our questions and there was no challenge by the City to the EIR.

Hopefully this is helpful in understanding how we managed our review of the project.

Regards,

Katy

-----Original Message-----

From: Kirk Vartan [<mailto:kirk@kvartan.com>]

Sent: Monday, July 28, 2008 8:45 PM

To: 'Allen, Katy'; 'Shippey, Christine'

Cc: 'Andy Gremett (agremett)'; 'Fedor, Denelle'; 'Oliverio, Pierluigi'

Subject: RE: Copy of petition for the neighborhood

Importance: High

Hi Katy,

Thank you for reviewing the material. Before you sign the document, please make sure you address the outstanding questions and issues. I hear and understand you comments below, but it does not accurately reflect the issues we brought to you. In an effort to explain them again, I have tried to hit the points your responded to below, clarifying the misunderstandings:

1. Evaluation of design alternatives

- You mention that there are two. We know that and they are also identified in the original letter sent to Santa Clara. The are NOT any new alternatives researched or designs put forward.
- There has been no involvement with the District 6 Office nor the neighbors. What have you uncovered about this? How is this being addressed?
- The letter clearly states that the Department of Public Works is not comfortable approving either design, yet they

now are? Why?

What changed? The RDEIR and Final EIR do NOT address the issues; rather, they identify it as a "Significant and Unavoidable Impact."

It is not resolved. The issues with safety with the first solution and neighborhood livability with the second are very real and have NOT been addressed. You have not responded to this.

- We spoke about the FEIR addressing alternative solutions and that you were confident they were addressed in the RDEIR or FEIR. As you can now see, they were not. Why, now, is it OK to simply move forward at the expense of the neighborhood?

## 2. 2nd Driveway on Winchester

- The second driveway out of the proposed development does exist and is accessible to all residents, both senior and market rate. I was at the meetings with Santa Clara and this was confirmed.

- The issue is not whether it exists or not, it is how does San Jose look at it when evaluating the basic traffic patterns? Now you have a right turn exit that goes right into the relocated Dorcich light. Again, your maps and diagrams NEVER show this entrance onto Winchester and that alone is an opportunity to terminate any LOU. They have not provided complete drawings and are not representing the facts accurately.

The key issue is this: San Jose stated in the Draft EIR that became part of the Final EIR that it was not going to approve either of the two options proposed by the developer regarding the signal at Winchester/Forest (west). San Jose made it quite simple: Look at other alternatives.

Did SummerHill look at other alternatives? No.

Did they try to explore new driveway designs? No.

Was it too complicated to try other design ideas? Maybe, but that is part of the process and the burden of building 265 units on open land.

Why should San Jose residents and tax payers suffer because the developer does not want to explore alternatives.

Let's be clear, the developer DID NOT explore alternatives. San Jose is not obligated to approve a design it objected to in the first place. Just because the project is approved does not relieve San Jose of its responsibilities to its citizens. Your job is to look out for us, not make it easy for a developer that didn't listen to your suggestions.

If it is your contention that the developer explored alternatives, please share it. I have shown you how the developer did not listen to San Jose's recommendations.

If you approve this signal removal, you are rewarding behavior that says no one needs to listen to San Jose when they say something.

San Jose said they would not approve the designs as presented, yet, now you about to do so. What kind of message are you sending to this developer? They put themselves in the awkward position of not having an approved driveway design for the site, not San Jose. San Jose needs to look at the original message sent to Santa Clara for the Draft EIR. It says things are not OK. If you approve the LOU, you basically show that San Jose has no ability to stick up for their citizens and if the developers keep pushing, they will get their way, no matter what.

This is a sad message and one that should not be taken lightly. It could be seen as a precedence that others may use.

I still do not have a response to some of the open questions, including how I can escalate this. I would like to know who I can take this to. The neighborhood is pretty upset about this and completely caught off guard. The issue has been highlighted over the past two years and you have the emails that show this. The residents are not happy.

Regards,

Kirk Vartan  
598 N Henry Ave  
San Jose District 6  
Cel: 408-666-6661

-----Original Message-----

From: Allen, Katy [<mailto:Katy.Allen@sanjoseca.gov>]  
Sent: Monday, July 28, 2008 6:55 PM  
To: 'kirk@kvartan.com'; Shippey, Christine; Allen, Katy  
Cc: 'Andy Gremett (agremett)'  
Subject: RE: Copy of petition for the neighborhood

Hello Kirk,

Thank you for forwarding the wording on the petition that you and your neighbors signed. As you read through my follow up on outstanding items from our meeting last week, I want to mention that San Jose recently completed updates to our traffic calming program. In the event that traffic patterns in your neighborhood are not as projected and neighborhood traffic calming is needed consistent with our policy's criteria, the City will pursue the installation of traffic calming amenities from both the Valley Fair and BAREC projects.

Over the last several days I've independently reviewed the Transportation & Circulation Section 4.10 and Appendices J & K of the Recirculated Draft EIR dated July 21, 2006.

I believe that you have copies of these documents and/or access to the City of Santa Clara's website. Let me know if this is not the case.

\* First - Evaluation of design alternatives:

The option to leave the traffic signal at Winchester & Forest (west leg) was evaluated in the Transportation and Circulation section of the Recirculated Draft EIR and illustrated in Exhibit 4-11A of the same document. Design alternatives were also evaluated in Appendices K (Potential Neighborhood Impacts) & J (Revised Transportation Impact Analysis) of the same document. In my review of this material I was looking for two things to be addressed in the report: impacts from the Project on capacity and/or operations.

Capacity - New trips generated by the BAREC project are low and do not impact the intersection level of service with or without the traffic signal modification. Using Syncho/SimTraffic Analysis with or without the modification, the level of service did not change.

Operations - As you pointed out, the traffic report does state that the addition of the project's driveway could cause potential safety problems and therefore recommended the removal of the traffic signal on Forest Avenue (west).

Therefore, when you evaluate the number of cars turning left onto Winchester from Forest Boulevard (18 in the AM peak and 19 in the PM peak), the low impact of the project to the operation of the signal and the potential to reduce confusion, reduce conflicting turning movements and the advantages of a more typical (and safer) design, in conjunction with the project, the City supports the recommendation to remove the signal.

\* Second - the 2nd driveway on Winchester

The 2nd driveway was included in the traffic report - please refer to Figure 2 of Appendix J in the Recirculated Draft EIR. Although it appears to be true that the single family housing project will have access to this driveway, the site design will likely preclude this from being a viable cut-through alternative. The City of Santa Clara is the better source of information regarding the internal circulation within the project.

\* Third - Neighborhood impacts

Neighborhood impacts are addressed in Appendices J & K. The findings indicate that the proposed project will have less than significant impacts based upon the reasonable volume threshold developed for the project and that all increases in volume would be less than 150 vehicles per day.

The Letter of Understanding with the City of Santa Clara related to design, construction and inspection is in my office and I will forward a copy after it is signed tomorrow.

This information is most likely not the outcome you desire, I do appreciate meeting you and the opportunity to respond to your concerns.

Katy Allen