

RESOLUTION 2016-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA ADOPTING THE INITIAL STUDY, MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM FOR PROJECT DR 2014-101 AND CUP 2014-101, AT 404-408 THE ALAMEDA, CONSISTING OF A FUEL STATION, CONVENIENCE STORE AND QUICK SERVE RESTAURANT

WHEREAS, Harbhajan (Harvey) Dadwal (sometimes herein referred to as “Applicant”), pursuant to Title 11 (“Zoning”) of the San Juan Bautista Municipal Code, has applied for a conditional use permit (No. CUP 2014-11) and a site plan and design review permit (No. DR 2014-11), on property designated in the General Plan as general commercial and zoned accordingly, and located at 404-408 The Alameda (APN: 002-52-012) in the City of San Juan Bautista, for a development (sometimes herein referred to as “Project”) consisting of a 6,144 square foot single story building, covered fuel island with 12 fuel dispensing stations, 35 on-site parking spaces, trash enclosure, open space landscaping, on-site storm drain retention and bio filter system, entrance and existing driveways for free flow traffic, bicycle parking, directional signage, traffic channelization and striping, and on-site lighting; and

WHEREAS, the building is proposed to be divided into two commercial functions with (1) a small convenience store, central retail and fuel checkout counter, and (2) a restaurant with dining room accommodations and no drive-thru window; and

WHEREAS, the applications were reviewed and considered by the San Juan Bautista Planning Commission at duly noticed meetings and hearings held on January 7, 2014, January 23, 2014, and February 4, 2014; and

WHEREAS, following hearings, the Planning Commission approved a mitigated negative declaration for the Project, and then proceeded to approve the Project, i.e. CUP 2014-11 and DR 2014-11, with mitigation measures and conditions, all as set out in Planning Commission Resolution 2014-04; and

WHEREAS, on February 11, 2014, Daniel J. DeVries, Esq., on behalf of Leal Vineyards, Inc. (sometimes referred to herein as “Appellant”) filed an appeal of the Planning Commission approvals described immediately above; and

WHEREAS, a hearing on the appeal was held by this Council on March 18, 2014, and April 9, 2014; and

WHEREAS, on April 9, 2014, this Council continued the appeal hearing to a date after the 30 day review and comment period ended from the State Clearinghouse. (September 4, 2014) pursuant to the California Environmental Quality Act, which allowed the City to accept public comment and revise the environmental documents accordingly.

WHEREAS, the Initial Study and Mitigated Negative Declaration “MND” prepared for the project was completed in July 2014. It was submitted, on August 1, 2014, to the State Clearinghouse for a 30 day review period and circulation by the Clearinghouse to selected state agencies, with the review and comment period for this Project extended for 20 days from September 9, 2014 to September 29, 2014 and a public hearing was set for October 21, 2014, which was continued to November 18, 2014; and

WHEREAS, at the hearing on appeal on November 18, 2014, the Council, having reviewed all materials included with the agenda packet regarding the appeal, heard and considered all comments and materials made and submitted by Appellant, Applicant, staff, and other interested parties approved the project and adopted Resolutions 2014-43 and 2014-44 approving the Project; and

WHEREAS, the Project approvals were challenged by Writ of Mandate filed by the Alliance of Concerned Citizens Organized for Responsible Development, on December 19, 2014; and

WHEREAS, the matter was briefed and heard on March 14, 2016, and the Honorable Steven R. Saunders remanded the Project back the City for reconsideration of the potential noise issues because the noise analysis used for the Project was for an earlier version of the Project and not specific to the Project before the Court. The Court found that the remainder of the Project was in compliance with CEQA. As such, the City was ordered by the Court to “undertake such further studies and proceedings as may be necessary and appropriate to evaluate and consider the proposed Project’s noise impacts on the environment, determine whether any such impacts that may be significant can be mitigated to less than significant levels, and if appropriate and feasible, adopt mitigation measures. Such compliance may take the ultimate form of adoption of a negative declaration, mitigated negative declaration, focused EIR, rejection of all of the above, such other actions consistent with CEQA as may be appropriate;” and

WHEREAS as ordered by the Court, on April 19, 2016, the City adopted Resolutions 2016 -21 setting aside Resolutions 2014-43 and 2014-44, which approved the Project; and

WHEREAS, because the Mitigated Negative Declaration was found by the Court to be in compliance with CEQA, except that noise impacts were to be reconsidered, the City undertook a new noise analysis using the current Project description and hired Charles M. Salter Associates Inc. to prepare such new noise analysis; and

WHEREAS, a noise analysis, which was specific to the Project was prepared by Charles M. Salter Associates Inc. on April 18, 2016; and

WHEREAS, the noise associated with the Project was found to be less than significant and any noise associated with the construction of the Project could be mitigated to a level which was less than significant, with mitigations; and

WHEREAS, a new Initial Study-Mitigated Negative Declaration was prepared, by Hatch, Mott, McDonald on 7/11/2016 which incorporated the new noise analysis but otherwise remained essentially the same, since the Court found that the remainder of the analysis complied with CEQA; and

WHEREAS, the public was provided with the Notice of Intent to adopt a Mitigated Negative Declaration for the Fuel Station, Convenience Store, and Quick Service Restaurant Project at 404-408 The Alameda in San Juan Bautista Project as legally required. To wit, on July 22, 2016 and a refiled on July 26, 2016 for the recirculation with the State Clearing House, 15 copies of the, Summary Form for the Electronic Document Submittal, and one (1) Notice of Completion/ Environmental Document Transmittal Form with the State Clearinghouse. The City filed the Notice of Intent to Adopt the MND with the San Benito County and it was legally posted. The City mailed the Notice of Intent to Adopt the MND to mailing lists consisting of property owners within the 300' radius, interested person whom asked to receive notice, the SSL Law Firm LLP, Idell & Seitel LLP, Frank Leal (Hacienda de Leal), Harbhajan S. Dadwal (applicant) and the San Juan Elementary School District. Staff also sent digital copies of the MND to; SSL Law Firm LLP, Idell & Seitel LLP, Frank Leal (Hacienda de Leal), and Harbhajan S. Dadwal (Applicant). The Notice of Intent to Adopt the MND was published in the Free Lance, a San Benito County newspaper, on July 29. The Notice of Intent to Adopt the MND was also posted on the three (3) regular posting sites for the City, City Hall, City Library, the Post Office and was also posted on the City Website. City made the revised MND available at City Hall, the City Library, and the County Library. City staff also posted the revised MND on the City website; and

WHEREAS, the MND was circulated beginning on July 26, 2016, which resulted in more than thirty days of review, as required by law; and

WHEREAS, the project was noticed for a Public Hearing on September 20, 2016, as required by law. On September 9, 2016, staff mailed out the Public Hearing Notices to the mailing lists consisting of, 300' radius property owners, interested persons list, SSL Law Firm LLP, Idell & Seitel, Frank Leal (Hacienda de Leal), Harbhajan S. Dadwal (applicant), the State Water Resource Control Board and CalTrans. The Public Hearing Notice was posted at the three (3) regular city posting locations (City Hall, City Library, and Post Office). Staff also posted the Public Hearing Notice on the City website and on every post on The Alameda surrounding the project; and

WHEREAS, said Initial Study-Mitigated Negative concluded that the implementation and construction of the Project could result in a number of significant effects on the environment and identified mitigation measures that reduce the significant effects to a less than significant level, and

WHEREAS, the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Program are by this reference incorporated into this Resolution as if fully set forth herein, and

WHEREAS, the Council, has reviewed all materials included with the agenda packet regarding the appeal, heard and considered all comments and materials made and submitted by Appellant, Applicant, staff, and other interested parties including all materials previously submitted for the Project, as set forth in the Administrative Record filed as a part of the Writ of Mandate proceeding and all of the comments and information provided after the Court’s remand to the City; and

WHEREAS, in connection with project approval involving an initial study/mitigation negative declaration that identifies one or more significant environmental effects, CEQA requires the decision making body to incorporate feasible mitigation measures that reduce the significant effects, to a less than significant level, and

WHEREAS, approval of a project requiring implementation of mitigation measures to mitigate or avoid significant effects on the environment also requires adoption of a Mitigation Monitoring or Reporting Program to ensure compliance with mitigation measures during project implementation , and

WHEREAS, the City of San Juan Bautista is the lead agency on the Project, and the San Juan Bautista City Council is the decision making body for the Project on the basis of remand by the Court directing the City Council to reconsider noise impacts, and

WHEREAS, the City Council has reviewed and considered the Initial Study-Mitigated Negative Declaration for the project and intends to take action on the Project in compliance with CEQA and state Guidelines implementing CEQA, and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Fish and Wildlife Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA, HEREBY RESOLVES AS FOLLOWS;

- Section 1.** This Council makes the findings, attached as Exhibit “A” and;
- A. This Council has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record prior to proceeding to consider action on the Project.
 - B. The Initial Study/Mitigated Negative declaration prepared for the Project has been completed in compliance with CEQA and is consistent with State Guidelines of the California Environmental Quality Act.
 - C. The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
 - D. The City Manager, with offices in City Hall, City of San Juan Bautista, is designated as the custodian of documents and records of proceedings on which action taken by this Resolution are based.
 - E. The Initial Study/Mitigated Negative Declaration, with the mitigation measures, mitigation monitoring program and conditions of approval for Project, shows that

there is not substantial evidence in light of the whole record that the project as revised by the mitigation measures and conditions of approval may have a significant effect on the environment.

Section 2. The Initial Study, Mitigated Negative Declaration and Mitigation Monitoring Program hereby are approved.

Section 3. Consideration of Project approval, and disposition of the appeal of Project approval from the decision of the Planning Commission and remand from the Court, shall follow passage and adoption of this Resolution. If the Project is approved, this Council shall require mitigation monitoring in compliance with CEQA.

PASSED AND ADOPTED, at a duly noticed meeting of the City Council of the City of San Juan Bautista held on the 18th day of October, 2016 by the following vote:

AYES: West, Martorana, Boch, Lund, Edge

NOES: None

ABSENT: None

ABSTAIN: None

Rick Edge, Mayor

ATTEST:

Trish Paetz, Deputy City Clerk

EXHIBIT “A”

FINDINGS

Based upon the Initial Study, the Mitigated Negative Declaration, the application of mitigation measures as imposed through the Mitigation Monitoring Program, and conditions of approval that the applicant has agreed to, and after considering the staff reports and accompanying documentation, oral testimony, written comments, electronic e-mail correspondences, public input presented at the appeal hearing of the project by Leal Vineyard Inc., the City Council finds:

CEQA FINDINGS

- 1.** This Council has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record prior to proceeding to consider action on the Project.
- 2.** The Initial Study/Mitigated Negative declaration prepared for the Project has been completed in compliance with CEQA and is consistent with State Guidelines of the California Environmental Quality Act.
- 3.** The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
- 4.** The City Manager, with offices in City Hall, City of San Juan Bautista, is designated as the custodian of documents and records of proceedings on which action taken by this Resolution are based.
- 5.** The Project will minimize any potential adverse effects to the surrounding properties and the environment to a less than significant level by establishing mitigation measures, implementing a mitigation monitoring program, and implementing conditions of approval.
- 6.** The Project will not take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown. The findings set forth at page 47 of the Mitigated Negative Declaration, that the Project is an auto or highway use which will not impact the downtown area is specifically adopted by this Council. There has been no other evidence submitted which would lead a reasonable person to conclude otherwise.
- 7.** The Initial Study/Mitigated Negative Declaration, with the mitigation measures, mitigation monitoring program, and conditions of approval for Project, shows that there is not substantial evidence in light of the whole record that the project as revised by the mitigation measures and conditions of approval may have a significant effect on the environment.
- 8.** In light of the whole record before this Council, the Project conforms to the goals, policies, and objectives of the 1998 General Plan, design review policies and the requirements of the City Code and there is no evidence to support a fair argument that the Project will have a significant effect on the environment of the site and surrounding area.

