June 27, 2012
11:45-1:30 p.m.

1. Welcome and Self Introductions

2. Let’s Talk CEQA

   • 2012 CEQA Reform Efforts
     Jennifer Hernandez, Holland & Knight
     Sharon Rubalcava, Chamber CEQA Task Force Co-Chair
     Cindy Starrett, Chamber CEQA Task Force Co-Chair
   
   • June Silicon Valley Bus Tour Overview
   • Los Angeles bus tour ideas

3. Action Item

   • Paramount Studios Hollywood Project
     Sharon Keyser, Senior Vice President of Real Estate, Government & Community Relations, Paramount Pictures

Upcoming Events:

   • Transportation & Goods Movement Council, Tuesday July 10th 10-11:30
     o 10 & 110 Express Lanes

Next Meeting:
Wednesday, July 25th 12-1:30 pm
AGENDA
Mobile CEQA Conference
Friday, June 15th, 9am to 1pm

Welcome & Tour Kick-off (9am – 9:15am)
- Shiloh Ballard, Silicon Valley Leadership Group

Site 1: Los Gatos, “Netflix” (9:30am – 10am)
21 acre office park proposed for redevelopment to more intense office and housing
- Joe Pirzynski, Town of Los Gatos, Councilmember
- Michael Keeney, RBV Consulting, Vice President
- John Shenk, Adams Ventures, LLC

Site 2: Santa Clara, BAREC (10:20am – 10:45am)
17 acre former agricultural research center approved for market rate and affordable homes
- Gloria Sciara, City of Santa Clara, Project Planner
- Dan Potash, DVP Associates and State Dept of General Services
- Bob Hencken, Summerhill Homes

Site #3: Milpitas, Transit Area Specific Plan (11:00am – 11:30pm)
16 acre office site approved for 732 homes within the Milpitas TASP
- Sheldon Ah Sing, City of Milpitas, Senior Planner

Return to SunPower, Site #4 (11:45 – 1pm)
California Valley Solar Ranch
- Carl Guardino, Silicon Valley Leadership Group
- Tom Werner, CEO, SunPower
- Renee Robin, Director of Permitting, SunPower

Tour Concludes (1pm)
CEQA TOUR EVALUATION

Please indicate your evaluation of the following tour components on a scale of 5 (excellent) to 1 (unsatisfactory).

TOUR STOPS
Los Gatos – Netflix Expansion
Santa Clara – BAREC
Milpitas – Citation Homes

FOOD

OVERALL RATING FOR THE TOUR

OTHER QUESTIONS:

1. Were the folders/fact sheets helpful and informative?

2. Were your expectations for the tour met? If not, please explain.

3. Did the tour deepen your understanding of CEQA?

4. Were the speakers helpful at each site in providing you with good background information?

5. Are there organizations or individuals you think should be invited on the next tour? (please list)

Comments and/or suggestions for improvement:

Thank you for attending!
CEQA Tour Case Studies
June 15th, 2012
CEQA Case Study
#1 Los Gatos – Netflix Expansion

In August of 2011, the Los Gatos Business Park, LLC secured entitlements from the Town of Los Gatos for a Planned Development Rezoning to allow up to 168 senior homes and up to 550,000 square feet of office space. The 21 acre site is located at the corner of Winchester Boulevard and highway 85 in the heart of Silicon Valley. It is home to an existing office park comprised of 250,000 square feet of suburban style office buildings and surface parking lots. The site is bordered by Highway 85 to the North, a mobile home park to the East, office and a library to the South and medium density residential to the West. The site is within 1,000 feet of a future light rail extension and borders a very popular paved creek path, the Los Gatos Creek Trail.

Across the freeway to the North is the headquarters of Netflix, a local technology company that built its corporate campus in Los Gatos about ten years ago. It is 220,000 square feet and houses approximately 900 employees. When Netflix heard that the Los Gatos Business Park was considering plans to develop the site across the freeway they expressed interest in the site. The two entities have been working together, and if everything goes well, they envision that this will be the home of an expanded Netflix campus.

Because this site is proximate to a planned light rail station, the Town’s General Plan specifies that the area should intensify. The project was approved on a 3 to 2 vote and demonstrates the Town’s lukewarm attitude towards growth. As was the case with the existing Netflix campus, there was a great deal of opposition to the development. Los Gatos, nestled in the Southwest section of Silicon Valley is an extremely affluent community and opposition stems from a fear of the destruction of the “Town character.”

There were three main concerns with the proposal.

1) Opposition to the originally proposed 600 senior homes or 516 multi-family. The number of senior (only) was reduced down to 168. Multi-family homes were eliminated during the Council hearing process.

2) Aesthetics in the form of opposition to the height increase from two to five stories. The difference is between 35 feet or 85 feet.

3) Traffic impacts.

These types of development difficulties are common in the Town. Most recently, an affordable housing proposal was stopped for a number of reasons including school impacts and the potential loss of trees.

The applicant completed a mitigated negative declaration in order to comply with CEQA. After the project was approved by the Council, a group of residents filed a CEQA challenge alleging that potential impacts to traffic, biology, hydrology/water quality, long-term construction impacts, inconsistency with area plans/policies and scenic views must be studied in an EIR rather than a negative declaration. The project is now on hold due to the lawsuit.

Many land use attorneys advise their clients to perform a full EIR even when an MND will suffice in order to insulate the project against potential litigation. Given the anti-development attitude of a vocal
minority in Los Gatos, some would suggest that an MND instead of an EIR was a strategic mistake. The developer should have known there would be a CEQA challenge and therefore should have chosen to do an EIR when, according to the letter of the law, it was not required. Also, it is worth noting that Los Gatos completed an update of its general plan two years ago. Some would ask why the developer did not seek height and housing through the Town’s comprehensive land use review. If so, CEQA review at the general plan level may have helped insulate against today’s CEQA challenge.

The answers to those questions center around the need for speed in the world of business. At the time, Netflix had been moving towards a 2012 target date to hire new workers. General plan updates can be long and drawn out. In the neighboring city of San Jose, it took four years to update the general plan even though the City said it would take 18 months. As well, at the time that the general plan update started, the developer did not have any specific project in mind. Combined with the anti-development sentiment of the community, the developer made a strategic decision to not seek any changes through the general plan update because:

- If the update dragged out for years, the project would be stuck.
- If the community succeeded in denying the request via the general plan, that would have made it even more difficult to come back with an amendment and
- There was no real idea about what the developer would wish to seek at the time the update began.

The last week of April 2012, the judge issued the decision that a fair argument could be made that the project has significant environmental impacts related to aesthetics and traffic. There are two standards of review for determining the adequacy of a CEQA document. For EIRs, the standard of review uses “substantial evidence.” For MNDs, the standard of review is called “fair argument” which is an easier standard to meet. It means that if a fair argument can be made based on substantial evidence that there could be a significant environmental impact, then the MND can be found inadequate. The applicant must now complete an environmental impact report.
CEQA Case Study
#2 Santa Clara – BAREC

At the corner of Dorcich and Winchester Boulevard, (90 N. Winchester Boulevard) lies a 17-acre former agricultural research center called the Bay Area Research and Extension Center BAREC. The site is across from two hugely popular retail destinations, Valley Fair and Santana Row, both of which draw an incredible amount of traffic to the area. It is surrounded on three sides by single family homes in an area that is service-rich with groceries, restaurants, movies all within walking distance. It is also across the street from a VTA bus hub, the Valley Fair Transit Center. In recognition of the agriculturally-zoned site’s infill nature, it had been designated in the general plan for mid-density housing.

BAREC had been owned by the University of California and was used for urban agricultural research for 75 years. Under the Davis administration it was transferred to the State, made available to other State and local public agencies, and then made available for sale to private developers. At that time, a group was formed, Save BAREC, to preserve the property as an urban farm or open space. Prior to marketing the property, the State worked closely with the City of Santa Clara to determine general development parameters for the site.

Ultimately, SummerHill Homes and Charities Housing were selected as the developers of the site. The City Council decision was made in 2007 to allow 165 senior affordable homes, 110 single-family market rate homes and 1 acre of open space. As part of the project, the City purchased six acres from the State at a reduced price using redevelopment agency money in order to assist in the development of the senior affordable housing. Up to 3 acres of the senior development parcel will be reserved for landscaping and gardens for use by the residents of the senior project.

It was clear from the outset that a full EIR would be appropriate in order to develop the property with any meaningful number of homes. The key issues to be reviewed included conversion of prime farmland, toxics, historic resources and traffic. The loss of prime farmland was determined to be unavoidable. Through the process, it was found that the site was contaminated with naturally occurring arsenic and other hazardous materials from the prior agricultural use, which needed to be remediated. Traffic impacts were complicated. Key intersections are under the city of San Jose’s jurisdiction, not Santa Clara, including the intersection of Stevens Creek and Winchester, which was already operating at unacceptable levels.

There were also allegations that the site was of historical importance (e.g., research done there was supposedly influential to the re-establishment of post-World War II strawberry farming by interned Japanese-Americans) but analysis determined that this impact would be non-significant.

The CEQA process took roughly four years to complete. This included the recirculation of the EIR due to the subsequent expansion project of Valley Fair Mall. Upon approval of the project, SaveBAREC collected enough signatures to qualify a referendum for the ballot. In the ensuing election, the voters ratified the City’s approval of the project. While the referendum was in process, SaveBAREC also filed a lawsuit under the California Environmental Quality Act (CEQA). They raised many environmental issues, but the judge did not agree and ruled in favor of the City. SaveBAREC appealed the judge’s ruling but
did not follow through. SummerHill Homes reached out to SaveBAREC during the lawsuit to resolve their differences, offering money plus help in supporting urban farming in the area. Save BAREC declined.

As stated above, many would agree that a full blown environmental analysis was warranted at this site. It is estimated that the CEQA document itself cost in excess of $1 million while the costs of litigation added another $250k or more. As an aside, the referendum costs added up to about $1 million. The referendum and the EIR lawsuit also cost the City an estimated $200k to $300k.

The lawsuit was resolved in 2008 at the same time that housing market cratered. SummerHill was not in a position to move forward with the project and tried to renegotiate the terms of the deal with the State, unsuccessfully. In the meantime, the site was cleaned up by the State. Four years later and as the housing market begins to pick up, SummerHill Homes has finally broken ground.
CEQA Case Study
#3 Milpitas – Citation Homes

The City of Milpitas has been working to approve several residential developments that are within the City’s Transit Area Specific Plan and the MidTown Specific Plan. Four projects recently came forward for approval under these plans and the local carpenter’s union filed comments under CEQA for each.

Milpitas has been playing a growing role within Silicon Valley as a home to both jobs and housing. Along with the tech boom, the City has seen the approval and construction of 2,500 homes, the transformation of the old Ford Motors Company site into the Great Mall, extension of the light rail line, and the future extension of Bay Area Rapid Transit (BART). Rather than responding to development proposals on a site by site basis, the City of Milpitas undertook specific planning processes to provide a coherent vision for the future. Two specific plans were adopted and are detailed below. Portions of the planning areas are within what the region refers to as a Priority Development Area, a regionally designated area into which growth should and will be directed.

The Milpitas Transit Area Specific Plan was adopted in June of 2008. The Plan sets in motion the redevelopment of an approximately 437-acre area in the southern portion of the City that currently includes a number of industrial uses near the Great Mall shopping center. Based on City Council direction, the Draft Preferred Plan currently proposes redevelopment of this area with 7,109 homes, 993,843 square feet of office space, 340 hotel rooms and 287,075 square feet of retail space centered around the proposed Milpitas BART station and the VTA Light Rail system. The vision statement reads: “Create attractive high density urban neighborhoods with a mix of land uses around the light rail stations and future BART station in Milpitas. Create pedestrian connections so that residents, visitors, and workers will walk, bike, and take transit. Design streets and public spaces to create a lively and attractive street character, and a distinctive identity for each sub-district.” Because of the physical characteristics of the area, including major streets, railroads and creeks, the plan also established sub-districts with specific goals and policies to accommodate those unique characteristics.

In 2003, the Milpitas Midtown Specific Plan created a new vision for an approximately 850 acre area of land. The overall strategy in the Midtown Area is to create a mixed-use community that includes high-density, transit-oriented housing and a central community gathering place, while maintaining needed industrial, service, and commercial uses. Overall, the Plan envisions 2,860 homes, 351,000 square-feet of retail space and 720,000 square-feet of office space.

A programmatic Environmental Impact Report (EIR), pursuant to the requirements of the California Environmental Quality Act (CEQA), was prepared to provide an analysis of the potential impacts of both specific plans and to incorporate mitigation measures. In accordance with CEQA, projects that conform to the specific plan must only analyze those areas that were not explored in the original EIR. The City of Milpitas has been using the EIRs on these existing planning documents to approve projects with no problems or challenges until now.

Of the four previously mentioned projects, one is detailed below.
In October of 2011, Citation Homes sought a revision to an existing and approved project for 732 homes on 16 acres, 45 homes to the acre at five stories. The original project was approved at 639 homes at four stories. The site is zoned for high density housing, is adjacent to the future BART station and walking distance to existing light rail service. Formerly an industrial use, the site is surrounded by development; the Great Mall and industrial. The City determined the project did not need further environmental review under section 15168 of the CEQA guidelines however the carpenter’s union challenged the project on the basis that:

1) The project has additional traffic, GHG and park impacts that were not analyzed in the original EIR. Staff’s dismisses these concerns as having been addressed. The City has parkland dedication requirements that the developer will comply with and the traffic impacts do not exceed the previously cleared traffic counts. With regard to GHGs, the challenge suggests that because BAAQMD adopted GHG requirements, additional study for this project is needed. Additional study is required if “new information” is introduced. GHGs have been an issue for many years, including 2008 when the TASP EIR was adopted. Staff believes that the adoption of BAAQMD guidelines does not constitute new information and therefore no additional analysis is needed.

2) A Toxic Air Contaminant (TAC) analysis is needed because the project will be located next to existing sources of TACs, like gas stations and dry cleaners. The Transit Area Specific Plan, (TASP) EIR requires future projects to study TACs and that will be included as a condition of approval. If the analysis finds that TAC exposure exceeds the requirements, the City may require additional measures such as ventilation systems. Therefore, staff does not believe additional CEQA analysis is needed.

3) The site is on the Cortese list of contaminated sites due to PCBs that must be mitigated. It is true that the site is on the Cortese list which precludes it from obtaining a categorical exemption from CEQA. However, the site has been cleaned up and obtained all the necessary clearances.

4) The site exceeds the allowable density. Staff’s response is that the density maximum of 40 dua is an average for the entire plan. Individual parcels may exceed that maximum as long as the average density is maintained. Therefore, no further analysis is needed.

Due to the challenge, the project was delayed four weeks. Staff estimates that about 25 staff hours were spent responding to the challenge. On November 1st, the project, after having cleared the Planning Commission, was unanimously approved by the City Council. As of November 3rd, the Carpenter’s Union had not taken any further action.