

# BRANDT-HAWLEY LAW GROUP

## Environment/Preservation

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Ms. Gloria Sciara, Project Manager  
City of Santa Clara, Planning Division  
1500 Civic Center Drive  
Santa Clara, CA 95050  
By Fax: (408) 247-9857

Re: Comments on Santa Clara Gardens Development Project EIR

Dear Ms. Sciara,

These comments on the Cultural Resources section of the Santa Clara Gardens Development Project EIR are submitted on behalf of the Save BAREC preservation group. Save BAREC opposes the proposed demolition of the historic Bay Area Research and Extension Center (BAREC) buildings and environs.

By way of introduction, this law firm focuses its statewide practice on historic resources and the California Environmental Quality Act. Published CEQA cases handled by this office include *Friends of Sierra Madre v. City of Sierra Madre* and *Sierra Club v. San Joaquin LAFCO*, both at the California Supreme Court, and *Preservation Action Council v. City of San Jose*, *108 Holdings v. City of Rohnert Park*, *The Pocket Protectors v. City of Sacramento*, *Architectural Heritage Association v. County of Monterey*, *20<sup>th</sup> Century Architecture Alliance v. City of Los Angeles*, *League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland*, *Stanislaus Natural Heritage Project v. County of Stanislaus*, *Galante Vineyards v. Monterey Peninsula Water Management District*, *Friends of the Santa Clara River v. Castaic Lake Water Agency*, and *Sierra Club v. County of Sonoma*, at the California Court of Appeal.

The EIR is inadequate and incomplete in its evaluation of BAREC's historic significance and integrity. Key historical information was not included in the historic resources report prepared by Ward Hill in October 2002. The EIR did not treat the demolition of the BAREC buildings and environs as a significant impact requiring the adoption of feasible alternatives and mitigation measures, largely because the resource was not considered historic for purposes of CEQA based upon the data relied upon in the Hill report.

From 1920, BAREC was the agricultural research center for the Santa Clara Valley and California's Central Coast, and produced internationally and nationally important research. This history is considered so important that the California History Center plans to write a book on BAREC's history.

Historic and cultural resources can be determined eligible for listing in the California Register of Historical Resources if they meet at least one of four established criteria. Criterion 1 encompasses resources that are "associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States." The Hill report acknowledges that two buildings on the BAREC site, the lab/office and the shop building, are over 50 years old. Hill stated that the lab retains a high degree of integrity, has not been altered, and that the interior finishes are intact. Similarly, the shop building does not appear to have been altered since it was originally constructed. Hill's report stated that the buildings are potentially significant under Criterion 1 for the California Register because of their association with agricultural history of the Santa Clara Valley and the research program of the University of California, but believed that more research was needed to assess the significance of the buildings in relation to the contribution that the research facility made to the development of strawberry varieties. That research is available and further supports BAREC's historic significance.

The Northern California Historic American Landscape Survey (HALS) has provided information to the state regarding BAREC's role in the introduction of strawberry varieties, including data relating to the establishment of the Santa Clara Valley as a strawberry growing region and the influence on the post World War II Japanese American community's return to the labor market. HALS noted that BAREC was the state's center for the Strawberry Breeding and Cultural Project. This information is being submitted to the City for inclusion in the EIR analysis.

The EIR should be revised to include additional evidence of BAREC's historic significance contained in the following documents. We believe these documents have either been recently submitted to the City or will be submitted soon:

- Nomination forms for the California Register of Historical Resources and the National Register of Historic Places, which further document BAREC's historic significance and integrity.
- HALS' recently submitted Threatened Landscape Application, which confirms that BAREC qualifies as a Historic American Landscape.
- Information submitted by Sharon McCray, local resident and President of the

Prusch Farm Park Foundation. McCray carefully recounted the many omissions and inaccuracies in the EIR regarding BAREC's historic significance in her comment letter. McCray has extensive personal knowledge of the property and is considered the primary resource on BAREC's history.

- An article by McCray commissioned by the California History Center at De Anza College about BAREC in its periodical, *The Californian*, published in August 2005.
- Information about BAREC submitted by McCray to the Santa Clara Library in 2005, which was omitted from the Hill report.
- Information about BAREC submitted to the City in an EIR comment letter by Paul Duchsherer, one of California's leading historic preservation landscape architects and educators. Duchsherer has 40 years of private practice as a landscape architect and has taught garden/landscape history at the University of California Berkeley's Landscape Architecture Department for 12 years, and at the UC Extension for 14 years. He is incoming President of the California Gardens and Landscape History Society.

The EIR should be revised to conclude that BAREC is historically significant and that its destruction would cause a significant environmental impact.

Once the revised EIR acknowledges the significant impact, it should be further amended to consider a reasonable range of feasible project alternatives and mitigation measures to retain the historic structures and avoid demolition.

All relevant project information that is required for an adequate, complete EIR must be in the EIR itself. (*Environmental Defense Fund, Inc. v. Coastside County Water District* (1972) 27 Cal.App.3d 695, 706, *Russian Hill Improvement Association v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158, 167.) In *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4<sup>th</sup> 1344, the Court found that the use of outdated information rendered an EIR inadequate to "meet the standard of 'a good faith effort at full disclosure' required by CEQA. (Guidelines § 15151.)" Historic status is not a political or policy decision. CEQA makes clear that if a project "may cause" a substantial adverse change in the significance of an historic resource, it will thereby be determined to have a significant environmental impact. (Public Resources Code § 2104.1.) A "substantial adverse change" encompasses "demolition . . . such that the significance of an historical resource would be materially impaired." (CEQA Guideline § 15064.5 (b)(1).

In two very recent CEQA cases, the Supreme Court of California and the Sixth Appellate District emphasized the critical importance of an adequate EIR alternatives

analysis. In the 2006, *City of Marina v. Board of Trustees of the California State University*, the California Supreme Court held that a public university abused its discretion when finding that the off-campus effects of a proposed major campus expansion “cannot feasibly be mitigated.” The Court emphasized CEQA’s substantive mandate “that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . .”

In the 2006 case, *Preservation Action Council v. City of San Jose*, the Court of Appeal held that the City of San Jose improperly certified an EIR and unlawfully approved a proposed Lowe’s Home Improvement Warehouse project that would require the demolition of a significant historic resource. The Court explained that the City had failed to adequately analyze a reduced-size project that would avoid demolition of the historic resource. The Court comprehensively reviewed relevant statutory provisions, CEQA Guidelines, and case law addressing alternatives and the Court invalidated an EIR that contained an extended discussion of at least six alternative designs and several alternative sites, unanimously finding the scope of the analysis to be insufficient.

In addition, the EIR should acknowledge that the City of Santa Clara is a Certified Local Government, and that while it is therefore required to oversee the compiling, recording, and updating of inventory information on cultural resources within its jurisdiction, its inventory does not include the BAREC resource.

The EIR should reflect that other active organizations that support the retention of BAREC as an important historic resource include: Northern California Historical American Landscape Survey (HALS), California History Center and Foundation, California Garden and Landscape Historical Society, Daughters of the American Revolution, Civil War Roundtable, Argonauts Historical Society, Pioneer Club of Santa Clara County, Saratoga Historical Museum, E Clampus Vitus, Yvonne Jacobson (author of “Passing Farms Enduring Values, Santa Clara Valley”), Dr. Russell Skowrenek (Santa Clara University Archeology Professor, foremost expert on California Missions, author of historical Santa Clara City book, and Smithsonian consultant), Lorie Garcia (former Santa Clara County Historical Commissioner, author of book on Santa Clara’s history, and former Chair of the Santa Clara City Planning Commission), Preservation Action Council of San Jose, and Jim Arbuckle (Past President of the Pioneers Society of Santa Clara County and son of Clyde Arbuckle who wrote the most definitive historical book titled “History of San Jose”), and local historian and author Leonard McKay.

As the California Supreme Court held in *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165, CEQA reflects “the policy of the state to ‘preserve . . .

examples of the major periods of California history’.”

Please let us know if this office can provide you with any further information regarding CEQA compliance.

Sincerely,

Paige J. Swartley  
Rachel Howlett