

**FIRST AMENDMENT  
TO THE DRAFT PROGRAM  
ENVIRONMENTAL IMPACT REPORT**

**NORTH SAN JOSÉ  
DEVELOPMENT POLICIES  
UPDATE**

**CITY OF SAN JOSÉ  
SCH #2004102067**

**June 2005**

## **INTRODUCTION**

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This document, together with the Draft Environmental Impact Report (DEIR), constitutes the Final Environmental Impact Report (FEIR) for the proposed North San José Development Policies Update. The DEIR was circulated to affected public agencies and interested parties for a 45-day review period. This Amendment consists of comments received by the Lead Agency, the City of San José, on the DEIR, responses to those comments, and revisions to the text of the DEIR.

In conformance with the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR can be used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines require that, while the information in the FEIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the DEIR by making written findings for each of those effects. According to the State Public Resources Code (Section 21090), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
  - (1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effects on the environment.
  - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (B) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technical, or other benefits of the project outweigh the significant effects on the environment.

All documents referenced in this EIR are available for public review in the office of the Department of City Planning, Building and Code Enforcement, 801 North First Street, Room 400, San José California, on weekdays during normal business hours.

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# **I. LIST OF AGENCIES AND INDIVIDUALS WHO RECEIVED THE DRAFT EIR**

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Copies of the Draft Environmental Impact Report were sent to the following agencies, organizations and individuals.

## **Federal Agencies**

- U.S. Fish and Wildlife Service
- Federal Highway Administration
- Federal Aviation Administration
- Environmental Protection Agency, Region 9

## **State of California**

- Resources Agency
- Regional Water Quality Control Board, Region 2
- Department of Parks and Recreation
- Native American Heritage Commission
- Department of Housing and Community Development
- Department of Health Services
- Public Utilities Commission
- Department of Fish and Game, Region 3
- Department of Water Resources
- California Highway Patrol
- Caltrans, District 4
- Caltrans, Division of Aeronautics
- Air Resources Board, Transportation Projects
- Department of Toxic Substances Control (2)
- Guadalupe-Coyote Resource Conservation District

## **County and Regional Agencies**

- Santa Clara County Planning Department
- Santa Clara County Roads and Airports Department
- Santa Clara Valley Transportation Authority
- Santa Clara Valley Water District
- Santa Clara County Airport Land Use Commission
- Santa Clara County Historical Heritage Commission
- Alameda County Planning Department
- Association of Bay Area Governments
- Metropolitan Transportation Commission
- Bay Area Air Quality Management District

## **Local Governments**

- City of Campbell
- City of Cupertino
- City of Fremont
- City of Milpitas
- City of Morgan Hill
- City of Santa Clara



City of Saratoga  
City of Sunnyvale  
Town of Los Gatos

**City of San José**

Historic Landmarks Commission  
Main Library  
Alviso Branch Library  
Educational Park Branch Library  
Joyce Ellington Branch Library  
Berryessa Branch Library

**School Districts**

San José Unified  
Santa Clara Unified  
Orchard

**Public Utilities**

Pacific Gas and Electric Co.  
San José Water Co.  
Pacific Bell

**Organizations**

Sierra Club  
Audubon Society  
Greenbelt Alliance  
Preservation Action Council of San José  
Coalition for Responsible Airport Management & Policy  
California Pilots Association  
Committee for Green Foothills

**Individuals and Companies**

Adams, Broadwell, Joseph & Cardozo  
Walter Cohen  
Scott Knies  
Jere Hench  
Tracy Kaplan

## II. LIST OF AGENCIES AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

This is a list of agencies, organizations, and individuals commenting on the Draft EIR. The list also identifies the date of the letter received, and whether the comments submitted require substantive responses in the First Amendment. Comments that raise questions regarding the adequacy of the EIR and comments that speak to the analyses in the EIR require substantive responses, for example. Comments that contain only opinions regarding the proposed project do not require substantive responses in the First Amendment. Complete copies of all of the letters are included in Section V of this First Amendment.

One letter was received from the state Department of Transportation two weeks after the end of the review period. This letter does not raise any new environmental issues that are not either raised by others and/or are addressed in the Draft EIR and this First Amendment to the Draft EIR. Therefore, no responses are provided to that letter, consistent with §15088 of the CEQA Guidelines. A copy of the late comment letter is included in Section V of this First Amendment.

Comment Received From	Date of Comment	Date Received	Response Required?
<i>Public Agencies</i>			
<i>Federal Government Agencies</i>			
1. Federal Aviation Administration	4/15/05	4/21/05	Yes
<i>State Government Agencies</i>			
2. Department of Transportation	4/25/05	4/26/05	Yes
3. Department of Health Services	4/6/05	4/28/05	Yes
<i>Regional Government Agencies</i>			
4. Santa Clara Unified School District	3/31/05	4/1/05	Yes
5. Santa Clara Valley Transportation Authority*	4/25/05	4/25/05	Yes
6. Santa Clara Valley Water District	4/25/05	4/26/05	Yes
7. Bay Area Air Quality Management District	4/22/05	4/25/05	Yes
8. Guadalupe-Coyote Resource Conservation District	4/25/05	4/25/05	Yes
<i>County Government Agencies</i>			
9. Santa Clara County Roads and Airports Department	4/18/05	4/21/05	Yes
10. Office of County Counsel	4/25/05	4/25/05	Yes
<i>Local Government Agencies</i>			
11. City of Milpitas	4/21/05	4/25/05	Yes

<b>Comment Received From</b>	<b>Date of Comment</b>	<b>Date Received</b>	<b>Response Required?</b>
12. City of Santa Clara*	4/28/2005	5/8/05	Yes
13. City of Campbell	4/22/05	4/24/05	Yes
14. City of San José Historic Landmarks Commission	4/22/05	4/22/05	Yes
<i>Organizations</i>			
15. Committee for Green Foothills	4/25/05	4/25/05	Yes
16. Preservation Action Council of San José	4/24/05	4/25/05	Yes
17. San José Downtown Association	4/25/05	4/25/05	Yes
18. Western Waters Canoe Club	4/25/05	4/25/05	Yes
<i>Individuals and Companies</i>			
19. Cisco Systems	4/25/05	4/25/05	Yes
20. Ferrari Ottoboni LLP	4/25/05	4/25/05	Yes
21. Libby Lucas	4/25/05	4/25/05	Yes
<b>Letters Received After End of Comment Period</b>			
22. State Department of Transportation	5/11/05	5/12/05	No

\*Letters from these agencies were received earlier in the process, with final signed copies received on the dates indicated.

### **III. RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR**

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This section includes all of the comments contained in letters or emails received during the 45-day review period advertised for this DEIR, and responses to those comments. The comments are organized under headings containing the source of the letter and its date. The responses to all of the letters and emails are grouped in this section according to their source into the following categories:

- Public Agencies
- Organizations
- Individuals and Businesses

The CEQA Guidelines, in §15086, require that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this First Amendment to the DEIR lists all of the recipients of the DEIR.

Fourteen of the comment letters received are from public agencies, nine of whom may be Responsible Agencies under CEQA for the proposed project. The CEQA Guidelines require that:

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

The DEIR lists (on page 29) the public agencies that may have permitting or other authority for some aspect of this project.

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state:

Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate readily available guidelines or reference documents concerning mitigation measures. If the responsible agency or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

The CEQA Guidelines state that the lead agency shall evaluate comments on the environmental issues received from persons who reviewed the draft EIR and shall prepare a written response to those comments. The lead agency is also required to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. This First Amendment to the Draft EIR contains written responses to all comments made on the Draft EIR. Copies of this First Amendment have been supplied to all persons and agencies that submitted comments.

The specific comments from each of the letters or emails are presented as “Comment” below, with each response to that specific comment directly following. Copies of the actual letters and printouts of the emails received are attached in their entirety (with any enclosed materials) in Section V of this First Amendment.

**A. MASTER RESPONSE: Mitigation for Traffic Impacts Outside the City of San José**

A number of comment letters asked questions about mitigation for transportation impacts outside the jurisdictional boundaries of the City of San José. Because these comments and questions were very similar, a Master Response that addresses the issue of mitigation of traffic impacts outside San José is provided.

A traffic analysis was prepared that addresses impacts from implementation of the proposed North San José Area Development Policy project that is the subject of this EIR. Vehicular traffic impacts were evaluated using the methodology adopted by the City and the Congestion Management Agency, which methodology is also used by neighboring cities. In those instances where significant vehicular traffic impacts attributable to the proposed project were identified based on the levels of vehicular traffic congestion considered acceptable by each of the relevant jurisdictions, mitigation measures were also evaluated. Beginning on page 169, the Draft EIR lists the mitigation measures that were identified for roadway (non-freeway) facilities that are located in cities other than the City of San José, under the heading “Mitigation Measures Not Included in the Project”.

The introductory paragraph for this section states the following:

Project impacts would be significant at the intersections indicated below, based on the thresholds of significance identified at the beginning of this subsection. This section summarizes mitigation measures that would reduce and/or avoid project impacts at those intersections. The project is not proposing to implement the following mitigations because the intersections are not within the jurisdiction of the City of San José.

Questions asked about these impacts and mitigation measures included whether or not the fees discussed as being collected pursuant to the proposed Area Development Policy and Deficiency Plan would be used to fund mitigation outside the City of San José, and whether or not the mitigation measures for intersections outside San José would be implemented by the City of San José and, if not, why not.

The identified mitigation measures for these intersections are not proposed to be implemented as a part of the project because the City of San José has no authority to construct improvements outside of its own jurisdictional boundaries and cannot guarantee the implementation of the mitigation measures in a timely and appropriate manner.

As illustrated by the existing (2000) and background conditions at the intersections, congestion in this area is an existing, well-established regional problem. This existing and background data indicates that most of the congestion in and near North San José is not attributable to traffic from North San José, under either existing or future conditions. Traditionally, traffic impact analyses in Santa Clara County attribute individual trips to whatever project is the subject of the analysis at that point in time – which could be new jobs or new housing or new retail businesses, for example. In reality, each trip

has two ends. Most of the trips made during the peak hours that are typically analyzed are commute trips between jobs and residences. This encourages an analytic focus that assigns all of the impact to the proposed project being evaluated. It also encourages a tendency to see each trip as a new one.

The proposed North San José Area Development Policy project is unusual in that it includes a substantial quantity of both new jobs and new housing in close proximity to each other. It also includes many of the support functions (retail, schools, parks, etc.) that would serve these primary land uses. Even though the proposed land uses could support 68 percent of the new North San José work force in the nearby new North San José housing, the traffic analysis assumes that many of the workers would live elsewhere, and many of the residents would work elsewhere. The other ends of these trips will be somewhere else. For the purposes of this analysis it was assumed that most of the workers would live within San José, where the largest number of housing units (existing and planned) will be located within the region. Approximately 6,800 dwelling units that would be available during the appropriate time frame to house the work force for this project were identified in other jurisdictions.

The City of San José cannot, of course, ensure that North San José employees live in North San José, nor anywhere else in San José. Neither can the City ensure that North San José residents work in San José. Many of these new employees and residents will live, work, and shop in other cities in the county and the region. These are some of the reasons why traffic is a regional problem in the Bay Area.

Because the City of San José has for at least the last 60 years provided the largest supply of housing in the South Bay Area, it has supported the economic growth of Silicon Valley. Since CEQA became effective in the early 1970's, the CEQA documents prepared for most of the industrial/R&D development in the north part of Santa Clara County have assumed that most of their workers would live in San José. Traditionally, none of that development mitigated impacts to roads in San José that would be traveled for these workers to reach the jobs located in north Santa Clara County. At the same time, San José was approving substantial housing development that did not mitigate impacts from their traffic on roadways in other cities.

After formation of the Golden Triangle Task Force in the early 1980's, most of the north Santa Clara County cities accepted the premise that traffic was a regional issue and needed to be dealt with on a regional scale. This approach eventually led to the formation of the predecessor organization of the current Congestion Management Agency. The purpose of the organization was to approach traffic problems and problem solving through interjurisdictional means. The Congestion Management Plan prepared by the CMA pursuant to state law provides for preparation of a countywide deficiency plan that would allow all of the jurisdictions in the County to work together on solving the regional traffic problems.

Unfortunately, while the CMP provides for the preparation of localized and countywide deficiency plans and has since 1991, until recently the only such deficiency plan adopted in the County was the one prepared for North San José. The countywide deficiency plan that was intended to address regional traffic problems on a countywide basis was prepared but never adopted. Cities all over Santa Clara County have continued to approve development projects that have impacts on roadways and intersections in other cities, but do not require developments to mitigate impacts on streets or intersections outside their own jurisdictions.

The difficulties that arise in trying to require development within one city to mitigate impacts on roadways in other cities include:

1. The lead agency city cannot make sure that the mitigation improvements are built outside their own jurisdiction as required. On some facilities, there may even be multiple jurisdictions involved, as with County expressways.
2. In most cases, the project being considered is only part of the traffic problem. It contributes to congestion, but it is only one source among many.
3. It is rarely possible to mitigate the traffic impacts from a single project precisely. In most cases, a “fair share” contribution to a larger improvement project would be an appropriate mitigation, but no mechanism exists for providing or accepting the contribution and turning it into actual mitigation, consistent with CEQA and case law.

In the past, cities have sometimes improvised mitigation agreements for individual projects. This has generally occurred where the appropriate context for the mitigation is known and agreed upon, usually is already planned, and the improvements are due to be built within a reasonable time frame that would be timely for mitigating impacts from the project under consideration. The cities of San José and Santa Clara have, for example, reached agreements for contributions by development within one jurisdiction to be paid to the other city for intersection improvements where those improvements were already planned to occur in the same timeframe as the proposed development and would mitigate the impacts of that development.

Because there is no established mechanism for implementing and overseeing this kind of mitigation arrangement, its physical implementation cannot always be assured. As discussed above, the last proposal to fund mitigations in the County (the Countywide Deficiency Plan), failed to be adopted. Other than on an occasional basis (see discussion in the following paragraph), implementation of an interjurisdictional mechanism to fund and build mitigations in different cities has not been successfully accomplished in the past and no new method has been identified. Proposed text amendments in Section IV of this First Amendment to the Draft EIR include a discussion of a possible “Traffic Impact Fee” that might pay for mitigations outside San José. While the City of San José may believe that the physical improvements to intersections in other cities identified in this Draft EIR are feasible from an engineering and construction standpoint, those improvements may not be feasible in terms of their actual implementation because the lead agency, the City of San José, cannot require, implement, oversee, or accept their construction.

As mentioned above, the City of San José has reached agreements with other jurisdictions for contributions by development within one jurisdiction to be paid to another city for intersection improvements. Should the City Council choose to do so, the potential exists in the context of the North San José project for cooperative agreements to be reached between San José and other affected jurisdictions for fair share contributions to intersection improvements in the other jurisdictions.

Table 38 in Section IV of this First Amendment to the Draft EIR identifies the impacted intersections in each affected jurisdiction, the identified intersection improvement, and the project development phase under which the impact would occur. Should the Council choose to pursue agreements with other jurisdictions, the North San José project’s proportional trip contribution to the impact at a given intersection can be identified to gauge a fair share contribution toward the improvement cost. The funding for fair share contributions could then be factored into the traffic development impact fee assessed on future development.

A fair share contribution to intersection improvements in another jurisdiction is not mitigation as defined under CEQA, however, in that there is no guarantee as to the timing and ultimate completion of the improvements in relation to the implementation of the development that creates the impact. As

an example, San José could collect fees to cover a fair share contribution to an intersection improvement in another jurisdiction, but for a number of reasons (*i.e.*, inability to raise the remainder of the funding, or a decision to not construct the improvement), the other jurisdiction may not implement the improvement. Therefore, it would not be practical for San José to approve development in the project area based on the assumed completion of improvements in another jurisdiction that may or may not ever be constructed by that jurisdiction.

### ***Mitigation Proposed vs. Mitigation Not Proposed***

The proposed project includes a number of major regional transportation improvements that will significantly improve regional traffic conditions. Some of these improvements are to facilities over which the City of San José does not have jurisdiction, such as county expressways and state freeways. In all of the cases where such mitigation is proposed, the preliminary design for the improvement is already done and the jurisdiction in question (*e.g.*, the County or the State) has accepted or identified the need for the improvement. The DEIR acknowledges that the implementation of the improvement will require approvals and cooperation with the relevant jurisdictions. The need for these improvements is not solely the result of the proposed development in North San José; in all of the cases, the existing levels of vehicular congestion indicate that these improvements are already needed. The regional transportation capacity that will be created by these improvements will benefit not only North San José, but also the rest of San José, and other cities in Santa Clara County.

The proposed project includes proposed transportation improvements to regional roadway and transportation facilities within the City of San José, which facilities are owned and maintained by other jurisdictions, because the proposed improvements are already needed within the region and that need will be increased by the proposed project, and because the City can oversee, approve, facilitate, and/or otherwise manage and implement these improvements. Even construction on facilities over which the City does not have ultimate authority (county expressways, state freeways) requires coordination, some level of agreement, and facilitation from the city within which the construction is occurring. San José is proposing to provide not only the funding, but assistance in obtaining relevant approvals and permits from the appropriate jurisdiction (*i.e.*, Caltrans, VTA, or County), which San José would have no authority to do for projects in other cities.

### ***Future Cooperation***

The City of San José is also proposing to continue to participate in efforts to obtain funding from other sources for improvements to all of the regional transportation facilities in Santa Clara County identified in *VTP 2030*.



**B. RESPONSES TO COMMENTS FROM PUBLIC AGENCIES**

**1. RESPONSE TO LETTER FROM FEDERAL AVIATION ADMINISTRATION DATED APRIL 15, 2005:**

**COMMENT 1a:** The Environmental Engineering Section, AWP-472, of Engineering Services, Western Service Area, reviewed the Draft Environmental Impact Report (EIR) for the North San José Development Project. The following comments/requirements are provided:

1. Identify the location of the San Jose International - Norman Y. Mineta Airport on all site maps.

**RESPONSE 1a:** Labels are added to Figures 2 and 3 in the proposed Text Revisions in Section IV of this First Amendment to the Draft EIR. The airport is shown in the DEIR Figures 3, 4, 7, 21 and is labeled in Figures 10 and 26.

**COMMENT 1b:** 2. Pursuant to Title 14, Code of Federal Regulations, Part 77, Objects Affecting Navigable Airspace, the proponent must file a Notice of Proposed Construction or Alteration, FAA Form 7460-1, with the Federal Aviation Administration (FAA). (A blank form is attached.) This form must clearly identify the proximity of any ground structures around the airport. The form must also include information on construction equipment such as cranes and similar equipment. For further information, please visit the following web site:

<http://www.faa.gov/ats/ata/ATA400/oeaaa.html>

Please submit the completed Notice of Proposed Construction or Alteration to:

FAA Western Terminal Operations  
Air Traffic Division, AWP-520  
Attn: Karen McDonald  
P.O. Box 92007  
Los Angeles, CA 90009-2007

Once the form is received, an Obstruction Evaluation will be completed to ensure that the proposed project will not interfere with the safety of airport operations near San Jose International Airport.

**RESPONSE 1b:** This information is acknowledged. It is consistent with the discussion in the Draft EIR (beginning on page 79), entitled "Airport Operational Impacts". Any development within the project area will be required to comply with federal regulations and the City's own policies for ensuring compatibility with the airport.

**COMMENT 1c:** 3. Any and all future construction near or adjacent to the airport will need to be coordinated with the FAA. Not less than 30 days prior to construction, the proponent must notify the manager of the FAA Airport Traffic Control Tower of any construction equipment or activities in the approach to San Jose International Airport.

**RESPONSE 1c:** This comment is acknowledged. All FAA-required procedures will be observed during project implementation.

**COMMENT 1d:** 4. The draft EIR has been referred to the San Francisco Airport District Office of the FAA for independent comments specifically in the area of airport noise. The point of contact at that Airport District Office is Ray Chiang (650) 876-2778, ext. 620.

**RESPONSE 1d:** No comments were received from FAA staff on airport noise. Conditions associated with airport noise are discussed on pages 196-199, and 203-204 of the Draft EIR. Mitigation for aircraft noise impacts is discussed on page 210 of the Draft EIR.

**2. RESPONSES TO LETTER FROM CALIFORNIA DEPARTMENT OF TRANSPORTATION, DATED APRIL 25, 2005:**

**COMMENT 2a:** Thank you for continuing to include the California Department of Transportation in the environmental review process for the proposed project. We have reviewed the DEIR for the modification of relevant plans and policies to encourage a greater intensity of development within the Rincon de los Esteros Redevelopment Area and have the following comments to offer.

**Archaeological / Cultural**

A Cultural resource study of the project area, prepared by Basin Research Associates in September 2004, identified numerous archaeological sites, some of which are adjacent to and may extend into the Department's right-of-way (ROW). In compliance with CEQA, PRC 5024.5, and the Caltrans Environmental Handbook, Vol. 1, should ground disturbing activities within the Department's ROW take place as part of this project and there is an inadvertent archaeological or burial discovery, all construction within 35 feet of the find shall cease and the Department shall be immediately contacted. A staff archaeologist will evaluate the finds within one business day of being contacted. The CRSO contact person is Brian Ramos at (510) 286-5613.

**RESPONSE 2a:** This procedure is consistent with that required by the City of San José for all projects within areas of the City considered sensitive for cultural resources (see discussion on pages 249-251 of the DEIR). This comment is referred to the City's Department of Transportation for inclusion in all projects that take place in or adjacent to Caltrans right-of-way.

**COMMENT 2b:** Traffic

Should the installation of a signal be cited as a possible mitigation measure for traffic impacts to adjacent State facilities, at least one signal warrant will have to be satisfied at the intersection where the signal is proposed before it will be considered. A copy of the signal warrant analysis must be included for our review.

**RESPONSE 2b:** No traffic signals were identified as mitigation measures. The comment is noted that signal warrants must be met before consideration of a traffic signal on a state facility.

**COMMENT 2c:** Forecasting

**Level of Service Threshold for Basic Freeway Segments**

Our office is aware that the project adopts the Highway Capacity Manual (HCM) 2000 methodology to analyze traffic impacts. However, we found some inconsistent density (vehicles per mile per lane) thresholds to determine level of service (LOS) for basic freeway segment, when comparing Table 7, Freeway Level of Service Based on Density, with that contained in HCM 2000.

Level of Service	Density in Table 7	Density in HCM 2000
D	26.0-46.0	26.0-35.0
E	46.0-58.0	35.0-45.0
F	> 58.0	> 45.0

Please revise the Basic Freeway Segment traffic analysis and its LOS accordingly, including Table 7, Appendix C, Tables C-1, C-2 and the DEIR.

**RESPONSE 2c:** This comment is correct that the information in Table 7 of the TIA and in the DEIR is not consistent with densities identified in HCM 2000. The difference is due to the adjustment of the densities in the methodology developed for the Santa Clara County Congestion Management Program, as identified in the *Traffic Level of Service Guidelines*, June 2003. The changes to densities for LOS D, E, and F were made to more accurately reflect conditions within Santa Clara County.

**COMMENT 2d:** Cumulative Traffic Impact  
We believe cumulative (and/or 2025) traffic impact will differ from the traffic impact in Project Condition. Table C-2 only demonstrates traffic analysis on Freeway Segment Level of Service under "Project Condition", since future trips as future growth are assumed to be generated from this "Project." The Cumulative (and/or 2025) traffic impact should include a traffic impact analysis and LOS determination for basic freeway segments and intersections contained in the DEIR, as well as Draft North San Jose Deficiency Plan.

**RESPONSE 2d:** A freeway segment forecast of long term conditions was prepared for the No Project alternative, and is included in the TIA in Appendix D of the DEIR (see Table 15). The City of San José does not believe that a detailed analysis of intersection LOS is appropriate in a long-range traffic analysis and did not prepare a typical TIA for the cumulative condition. Such a detailed analysis would imply a greater level of accuracy in the forecasts than is warranted, given the numerous assumptions that must be made about future development type and location. The City's policy is that a screenline analysis, as discussed in the Draft EIR, is more appropriate for the long range and long range cumulative scenarios.

**COMMENT 2e:** Additional comments, if any, from our Highway Operations Branch will be forwarded as soon as they are received.

**RESPONSE 2e:** A second letter was received from Caltrans two weeks after the close of the review period. A copy of the letter is attached in Section IV of this First Amendment. Since the letter does not raise any significant environmental issues not addressed elsewhere in the DEIR and this First Amendment, no individual response is provided.

**3. RESPONSES TO LETTER FROM SANTA CLARA UNIFIED SCHOOL DISTRICT, DATED MARCH 31, 2005:**

**COMMENT 3a:** Santa Clara Unified School District (SCUSD) has reviewed the Draft Environmental Impact Report for the North San José Development Policies Update and we wish to comment on elements of the Plan that are detrimental to the school district.

We have two primary concerns: The projected yield of students coming from the proposed residential units would require SCUSD to procure land and build four new schools; and, there is no revenue source to cover the ongoing cost of providing an education to these students.

We are near capacity at our existing high schools, and, as a result of the planned residential development, we will have to build another high school in this area. Based on your projection of the number of students this development will produce for SCUSD, we would also need to build at least three more elementary schools. All four of these schools would require land (eight to fifteen acres for the elementary schools and forty to fifty acres of the high schools).

**RESPONSE 3a:** The DEIR states on page 320 that the SCUSD may be able to accommodate the middle and high school students without requiring construction of new facilities. This was based on information provided by the District in September 2004. The information in this comment, that a new high school would be required to accommodate the 368 new high school students that could be generated by buildout by development proposed within SCUSD boundaries, is added to the text in the proposed text revisions in Section IV of this First Amendment to the Draft EIR. It should also be noted that buildout of the residential development will be phased (see pages 15-16 of the DEIR) and the full impact may occur 20 to 30 years in the future.

**COMMENT 3b:** It currently costs approximately \$15,000,000 to build an elementary school and \$100,000,000 to \$150,000,000 to build a high school. This does not include the cost of the land. At our current "Developer Fee" rate, this project would produce \$35,000,000 with which to build new schools. We would ask that the City of San José provide the land and supplement the cost of building new schools.

**RESPONSE 3b:** The discussion in the Draft EIR is consistent with the requirements of Government Code §65996, which states that payment of a school impact fee should be considered as an acceptable method of offsetting a project's impact on the adequacy of school facilities.

The request that the City of San José provide land and money to build new schools should be directed to the City Council for their consideration during the project approval process. It should also be noted that City staff was unable to identify any City-owned land in North San José that would be considered suitable for a school site.

**COMMENT 3c:** Unlike most school districts in the State of California, Santa Clara Unified School District is funded by local property taxes. Most other districts are funded on the basis of their student county, or Average Daily Attendance (ADA). They get paid a set rate by the State independent of the local economy. SCUSD's historic property tax revenue has exceeded this

minimum guarantee by the State and therefore the majority of our funding comes from local property taxes. This means as we take in more students, we do not generate any more funding to help pay for the education of these students. The proposed North San José Development project is located within the Rincon de los Esteros Redevelopment Area, and as such, by law, SCUSD does not receive any tax revenue from the property or improvements in this area resulting in a substandard level of funding for students in the district.

Even if the project eventually yielded enough students to qualify SCUSD for ADA compensation from the State, this would happen gradually over a number of years as the project is phased in. In those intervening years, our schools and students would be seriously under funded.

To mitigate these undesirable conditions created by the development of North San José, we would ask for:

- A dedication of land on which to build schools
- Adequate funding to complete the needed new schools
- A release of tax revenue to SCUSD comparable to the amount received from developments outside of the Redevelopment Area.

We are ready to provide more input or comments regarding our concerns if the need arises.

**RESPONSE 3c:** While the issues related to schools and school funding are important ones for the community, the discussion in this comment does not speak to the adequacy of the EIR nor does it raise issues of impacts on the physical environment. The issue of school funding is specifically an economic and (perhaps) a social impact, but does not fall within the scope of analysis required by CEQA to be within an EIR.

With regard to the status of the Redevelopment Project Area, the redevelopment projects will expire as follows:

Original Rincon Redevelopment Project	July 2016
First Expansion Area	July 2021
Last Expansion Areas	June 2024

The San José Redevelopment Agency is, however, seeking legislation to allow extension of these dates.

These questions may, however, be referred directly to the City Council for their consideration during the project approval process.

**5. RESPONSES TO LETTER FROM THE SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY, DATED APRIL 25, 2005:**

**COMMENT 5a:** Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR to allow greater intensity of development in North San Jose. We have the following comments.

VTA strongly supports the City of San Jose's proposed plans to modify land use policies which will allow for the intensification and diversification of developments in the Rincon de los Esteros Redevelopment Area. VTA appreciates the efforts of City of San Jose staff to work collaboratively and seek out feedback from VTA regarding the Draft North San Jose Area Development Policy. VTA further commends the City of San Jose for including many policies and design/development strategies in the proposed policy which are consistent with the VTA Community Design & Transportation (CDT) Guidelines, which the City of San Jose endorsed in early 2004.

VTA is encouraged by the collaborative efforts to date with the City of San Jose on this significant and large-scale project, and looks forward to further collaboration. The North San Jose Development Policy is a critical first step in making this mass transit corridor a vibrant center of high density, pedestrian-oriented, mixed-use development, and proof that smart growth efforts and economic development can be mutually reinforcing efforts. Given the fact that there are no specific development plans included in the DEIR, VTA strongly encourages that the City of San Jose continue to afford VTA the opportunity to review future specific development plans in order to provide feedback and comment. The review process would typically include site layout, bicycle and pedestrian facilities and accessibility, transit connectivity, and parking.

**RESPONSE 5a:** It continues to be the City's policy to work with VTA on issues of mutual concern, and to seek input on projects of interest to VTA.

**COMMENT 5b:** General Comments

The Draft North San Jose Area Development Policy clearly identifies significant impacts to transportation facilities in the area, including VTA light rail and bus services, and VTA strongly supports the mitigation strategies proposed. However, while it is agreed that the mitigation strategies will substantially address impacts to the transit system, the information in the DEIR does not fully support the conclusion that all transit impacts are mitigated. Please provide documentation supporting this conclusion.

**RESPONSE 5b:** At the recommendation of VTA staff, the impact threshold for Light Rail that is used in the DEIR is based on the comfort level and expectation of the rider. The assumption and basis for using this type of threshold is that if it becomes uncomfortable and inconvenient to use transit—which might occur if too many people have to stand, fewer people would do so.

The mitigations provided will increase the overall comfort and experience by providing amenities to the system and additional amenities on and around transit corridors. The inclusion of these amenities was done at the recommendation of VTA staff. The current level of rider comfort is based on the underutilization of transit as a mode of transportation in the area.

As the transit system matures and ridership increases, it is reasonable to assume that riders will develop expectations more similar to those in other urban areas of the world, including San Francisco, Washington D.C., New York, Montreal, etc. In those locations, high ridership is not considered a significant adverse impact, but is the byproduct of a healthy and effective transit system. The best documentation available on this phenomenon is the growth of BART ridership in the urban areas north of Santa Clara County.

The City is also proposing to undertake, with VTA, an education program to give transit users a better understanding of what to expect when using transit.

It is acknowledged that both the threshold of significance and the mitigation measures are subjective in nature, but with a certain element of common sense. The purpose in using this type of threshold is to communicate the possible occurrence of an adverse effect from increasing transit ridership and to ensure that the responsible public agencies (both VTA and the City) are prepared to respond.

**COMMENT 5c:** VTA also notes that, while a substantial list of mitigation strategies are identified in the DEIR, full build-out of the project is projected to result in “substantial additional traffic to 72 freeway segments already operating at LOS F”, as well as “significant unavoidable impacts from increased traffic congestion at 38 intersections” within and outside of the project area including the cities of San Jose, Santa Clara, Milpitas and Campbell.

Impacts of this scale will undoubtedly cause measurable disruptions to the transportation network. However, we recognize that this DEIR differs from most DEIR's given there are no specific projects to review. This presents a new and special challenge to both the City of San Jose and VTA staff who are committed to providing helpful feedback on traffic mitigation strategies, as well as guidelines on site layout and design, which will address potential impacts to the transportation network. This fact underscores the need for a methodology (or process) for continued monitoring and evaluation of the development impacts, as the project area is built out, that goes beyond the strict interpretation of CEQA law. VTA suggests that a formal process be established that includes VTA staff to review future proposed individual building and site designs and corresponding traffic impacts. Small-scale local traffic studies should also be considered for specific developments, and most importantly, some sort of mechanism for adding or altering mitigations and for ensuring that the potential for transit use is maximized while traffic impacts are minimized.

**RESPONSE 5c:** The City of San José will continue to refer project plans and public infrastructure plans to VTA for review and comment.

Future development proposals in North San José will be reviewed for consistency with the assumptions reflected in this EIR, in conformance with CEQA and City policies and ordinances. Any process for “adding or altering mitigations” would have to be consistent with CEQA. Proposals for individual development projects will be required to provide operational analyses and improvements plans as necessary, to ensure that specific design, on-site circulation, driveway locations, and infrastructure (including right-of-way) improvements are consistent with the overall plans for the area and meet appropriate design criteria. This policy is consistent with the City’s practice in



all areas covered by program-level EIRs, and with existing development review procedures.

**COMMENT 5d:** The Draft North San Jose Area Development Policy identifies Development Impact Fees as the primary source of revenue for both traffic and transit improvements. VTA suggests that the DEIR clearly state what the fees cover, as well as the connection between the Draft North San Jose Area Development Policy and the Draft North San Jose Deficiency Plan. It is not clear if the fees described in the two documents are the same, and this should be clearly stated, including identification of the total amount and percentage for roadway, transit and other improvements.

In addition, please note that VTA will formally review the Draft North San Jose Deficiency Plan once it has been approved by the City of San Jose. VTA staff met with City of San Jose staff on April 11, 2005 to further discuss the Draft North San Jose Area Development Policy, which also included a discussion of the draft deficiency plan. For your convenience, most of our initial comments are repeated at the end of this letter.

**RESPONSE 5d:** The proposed Development Impact Fee incorporates the existing Deficiency Plan Fee and will be used to fund the improvements identified within the Deficiency Plan. Specific pedestrian, bicycle and transit facility improvements are described in the DEIR and are included within the \$520 million of improvements to be funded through the Development Impact Fee as described in the proposed North San José Area Development Policy.

Each of the individual comments included in this letter is responded to below. Comments that do not address environmental impacts or the adequacy of the EIR will be forwarded to the City Council for consideration during the project review process.

**COMMENT 5e:** VTA has made several recommendations to City of San Jose staff during previous opportunities to comment on this project. While many of the suggestions have been incorporated and comments addressed, staff were unable to find adequate discussion in the DEIR, as previously recommended, pertaining to proposed parking policies designed to encourage transit use and other alternate modes of travel. Subsequent conversations with City of San Jose staff clarified the City's goal of not allowing "over parking" for each new development. VTA recommends placing more emphasis on parking management strategies and supporting policies be reflected in the DEIR as a specific mitigation strategy. While we understand the desire that individual developers may have regarding a robust supply of free parking; however, as long as parking remains over-supplied and free, transit, pedestrian and bicycle modes will be far less successful in mitigating traffic impacts. Therefore, we strongly suggest that the North San Jose Area Development Policy include a set of parking strategies that could be implemented during all phases of development. Such strategies could be implemented as part of a TDM program and may include parking charges, buy-out programs, shared use facilities, and processes for converting surface lots over time to active land uses as demand for parking decreases.

**RESPONSE 5e:** The procedure for reducing minimum parking requirements near rail stations already exists in the City's Zoning Ordinance (Section §20.90.220).

**COMMENT 5f:** Specific Comments  
Land Use and On-Site Planning & Design  
Land Use Around Station Areas:

VTA recommends that the North San Jose Area Development Policy include a more detailed land use policy statement for developments around light rail station areas within the policy boundary (including the River Oaks, Tasman, Champion, Baypointe, and Cisco Way stations). The land use policy statement should include specific design guidelines to ensure these are vibrant, well-designed, pedestrian and bicycle friendly areas.

**RESPONSE 5f:** The substance of this comment is acknowledged. The City of San José does not believe that detailed development standards need to be included in a transportation policy. Language has, however, been added to the Policy that reflects the City's intent in this regard:

“All new development within the vicinity of light rail stations (e.g. within 2,000 feet) should in particular provide vibrant, well-designed, pedestrian and bicycle friendly areas onsite.”

The City intends to implement, as appropriate, the VTA Community Design and Transportation (CDT) Guidelines and the VTA Pedestrian Technical Guidelines when considering and approving specific proposals for development within the project Area boundary. Consistent with current development review processes, VTA input will be solicited as project are filed with the City.

**COMMENT 5g:** Also, VTA is concerned with the proposed change in land use designations near the River Oaks Station. Under previous iterations, the City of San Jose policy allowed for residential development along North First Street from Montague Expressway to River Oaks. Future residential development in this area would complement the currently approved, and under construction, North Park Development. However, the latest iteration of the proposed policy segregates residential development to a small edge of the Guadalupe River embankment.

**RESPONSE 5g:** Because regional drainage patterns still require provision for a north/south movement of overland flood waters, the previously considered land use designation changes that would encourage residential development from North Park to the Guadalupe River were found to be infeasible. Should future drainage improvements change the area-wide constraints relative to flooding and drainage, the City will evaluate land use patterns appropriate at that time.

**COMMENT 5h:** Development Layout and Design:  
The VTA Community Design & Transportation (CDT) Guidelines and the VTA Pedestrian Technical Guidelines should be used when designing these developments. These documents provide guidance on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements. Both documents are available upon request to agency staff. For more information please call Chris Augenstein, Development & Congestion Management Division, at 408-321-5725.

**RESPONSE 5h:** City of San José Planning staff have the VTA Guidelines and use them in reviewing development to implement City policies that require new development to be transit-friendly.

**COMMENT 5i:** Bicycle Parking:  
VTA recommends that the projects developed within the North San Jose Deficiency area include provisions for bike parking spaces based on VTA's Bicycle Technical Guidelines. This document provides additional guidance on estimating supply, siting and design for bicycle storage facilities. The Guidelines may be downloaded from [www.vta.org/news/vtacmp/bikes](http://www.vta.org/news/vtacmp/bikes).

For more information on bicycle systems and parking, please contact George Tacke, Development & Congestion Management Division, at 408-321-5865.

**RESPONSE 5i:** The receipt of the guidelines is acknowledged.

**COMMENT 5j:** Transportation System Planning and Design  
Transportation Demand Management (TDM):  
The TDM proposal should be expanded to include standards and programs including an implementation structure administered by a consortium of private interests to ensure that the TDM program achieves a transit ridership goal. An example of such a TDM program is the Pleasant Hill BART Station TDM program which is projected to achieve a 30% employee ridership on BART. Effective TDM programs may include:

- Parking Cash-Out
- Direct or Indirect Payments for Taking Alternate Modes
- Transit Fare Incentives such as Eco Pass and Commuter Checks
- Employee Carpool Matching
- Vanpool Program
- Preferentially Located Carpool Parking
- Bicycle Lockers and Bicycle Racks
- Showers and Clothes Lockers for Bicycle Commuters
- On-site or Walk-Accessible Employee Services (day-care, dry-cleaning, fitness, banking, convenience store)
- On-site or Walk-Accessible Restaurants
- Guaranteed Ride Home Program
- Carsharing

**RESPONSE 5j:** The proposed North San José Development policies include all but two of the listed programs. The two items not already included have been added to the draft policies.

The information on the Pleasant Hill TDM program is acknowledged. The City will evaluate the specifics of that program in determining the specific components of the programs required for North San José. At this time, the proposed TDM program does not incorporate a private implementation or oversight structure. It is the City's ongoing practice to require most TDM measures as permit conditions of approval, which can be enforced by the City.

**COMMENT 5k:** Projected Peak Hour Vehicle Trips:

Page 71 of the Transportation Impact Analysis (TIA) indicates that the travel demand model projects full build-out in the project area will result in an additional 41,300 PM peak hour vehicle trips. However, page 31 of the Draft North San Jose Deficiency Plan reports the estimate to be 49,325 PM peak hour vehicle trips, and the "per trip" development impact fees listed on page 12 of the Draft North San Jose Area Development Policy is based on this latter number.

While it is clear that the proposed development impact fees will be based on a per-square-foot methodology for industrial developments and a per-unit methodology for residential developments, VTA recommends that the DEIR reconcile the discrepancy in peak hour trip generation projections, or simply identify the correct projection to use for the Draft North San Jose Area Development Policy.

**RESPONSE 5k:** This comment is correct that there is a discrepancy in the projected number of peak hour trips. The Deficiency Plan will be revised to be consistent with the TIA, which predicts 41,300 PM peak hour trips.

**COMMENT 5l:** Freeway Segment Impacts,  
Page v of the DEIR Executive Summary and Page 115 of TIA states that the mitigation of freeway facility impacts has been deemed infeasible due to constraints in acquisition and cost of right-of-way and is therefore considered significant and unavoidable. Please provide information that an analysis was undertaken to review the constraints. In addition, the proposed project would impact 88 of the 124 directional freeway segments and 23 of the 55 segments with HOV lanes which will operate at Level of Service (LOS) F.

While the proposed mitigation strategies include the Immediate Implementation Action List delineated in the Congestion Management Program Deficiency Plan Guidelines as actions that can reduce the impact on deficient freeway segments, we recommend consideration of items on the "Deferred Actions" list, as well.

**RESPONSE 5l:** The only way to mitigate the identified freeway impacts would be to widen the impacted freeway segments such that they would operate at LOS E or better. This would require substantial – and extremely expensive – modifications to the existing freeways, well beyond the purview of an individual city.<sup>1</sup> All of the improvements proposed by this project to the regional transportation system were developed and adopted by the jurisdictions (such as the county or state) having authority over those facilities. The fact that no improvements are planned by the oversight agencies for the widening that would be required to reduce the project impacts on these freeway segments to less than significant is evidence that such extensive widening is probably infeasible.

The City reviewed and considered all regional mitigations that have had some level of feasibility review, analysis, conceptual approval, or that have been incorporated into future regional improvement plans or programs. The items on the Deferred Action list have not received any level of feasibility or interagency review, and are not, therefore, included as part of the proposed

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<sup>1</sup>To widen the 72 freeway segments that would be significantly impacted by this project is estimated to cost in excess of one billion dollars. Because these freeways are in the heart of the most heavily developed areas of Silicon Valley, right-of-way acquisition that also requires removal of hundreds or thousands of buildings would constitute the greatest portion of the cost.

project evaluated in this EIR. It would not be reasonable to assume that so many highly speculative projects, over which the City has no authority, could undergo feasibility analysis and approval by various responsible agencies even within the long term horizon of this project. Some of the listed items may eventually be pursued by the responsible agencies, but it would be speculative to try to anticipate which ones.

If, however, any of the improvements on the Differed Actions list are deemed feasible in the future, the City will work with Caltrans and VTA to participate in their implementation.

**COMMENT 5m:** Project Impacts and Mitigation Measures:  
The mitigation measures identified for several study intersections between Pages 76 through 115 state that there are no feasible improvements at certain intersections. Please explain why the mitigations at these intersections are infeasible.

**RESPONSE 5m:** The reference in this comment is assumed to be to the TIA in Appendix D of the DEIR.

Each of the intersections for which mitigation is discussed in the referenced section of the TIA is mitigated and the mitigation identified where mitigation could be identified. For some intersections, the TIA says that no feasible improvements were identified that could reduce project impacts to a less than significant level.

The feasibility of intersection mitigation measures was evaluated based primarily on right-of-way availability at each intersection. The consulting engineers determined, based on their review of aerial photographs, plans, and the existing conditions in the field, that widening or adding lanes at the referenced intersections would be infeasible due to the need to acquire an inordinate amount of right-of-way or because the right-of-way acquisition would take a large number of buildings. This statement, therefore, means that the consultants and the City of San José could not identify any additional physical improvements beyond those discussed that would both reduce project impacts and not also result in significant secondary land use impacts, and would be consistent with good engineering practice and the standards of the jurisdiction within which each intersection is located.

**COMMENT 5n:** Page 95 of the TIA states that the intersection at Old Oakland Road and Brokaw Road will degrade to LOS E and constitute a significant impact by both City of San Jose and CMP standards. However, the projected LOS E operation for the intersection meets the CMP LOS standard.

**RESPONSE 5n:** The reference is corrected in the proposed text revisions in Section IV of this First Amendment to the Draft EIR.

**COMMENT 5o:** Staff also recommends that specific mitigation strategies be identified for improvements to additional major transit/transfer centers that will directly feed into other transit

connections and work to mitigate traffic in the project area, for example, Caltrain and ACE stations, downtown San Jose facilities and the Montague BART station.

**RESPONSE 5o:** The City worked with VTA staff to determine appropriate improvements to the transit system included in the proposed project evaluated in this EIR, and included in the cost feasibility studies used to evaluate overall feasibility of the project itself. If improvements for major transit/transfer centers are deemed more desirable or effective by the regional transportation agencies, they could be incorporated into the proposed project, replacing equivalent improvements that are currently included.

**COMMENT 5p:** Draft North San Jose Deficiency Plan:  
As mentioned above, for your convenience, a list of initial comments and recommendations regarding the Draft North San Jose Deficiency Plan conveyed during our April 11, 2005 meeting with City of San Jose staff is repeated as follows:

Explain how the plan is linked with the North San Jose Area Development Policy, especially with regard to proposed roadway and transit improvements, funding and development fees.

Delete most of the discussion regarding the previous plan so as to reduce the potential for any confusion.

Add a column to Table 2, pages 8 and 9, to clearly indicate whether the mitigation is feasible.

State both the number of single-family and the number of multi-family residential units proposed as part of the policy.

Table 3 should delineate for which intersections there are "no feasible improvements" as suggested in the footnote.

Language should be added that clearly identifies the role of North First Street as a "transit" street, giving priority to transit over automobile traffic.

Page 21, Table 6, should list "B-7, Transit Traffic Signal Preemptions" as an action item.

The description on page 23 for the action item F-3 should be completed.

The fees discussed on pages 31 and 32 should be given a more prominent position nearer the beginning of the document.

Table 9, page 33, should include a TDM element.

The plan should include a methodology or process to afford affected agencies an opportunity to comment on improvements as they are being further developed. Smaller-scale local traffic studies should be used to better understand the current/existing circulation issues.

**RESPONSE: 5p:** These comments are specific to the Deficiency Plan. They do not speak to any aspect or part of the EIR. The comments are acknowledged and the suggested revisions will be considered by the City of San José in during the project approval process.

It can be noted that no single family detached residential units are proposed within the project area. All single family dwellings would be attached (*e.g.*, townhouses).

**6. RESPONSES TO LETTER FROM SANTA CLARA VALLEY WATER DISTRICT,  
DATED APRIL 22, 2005:**

**COMMENT 6a:** The Santa Clara Valley Water District (District) has reviewed the Draft Environmental Impact Report (DEIR) for the North San Jose Development Policies Update Project dated March 2005 and received by the District on March 16, 2005. The District understands that the North San Jose Development Policies Update project (Project) calls for a General Plan Text Amendment, (GPT04-04-06a and GPT04-04-06b), General Plan Land Use/Transportation Diagram Amendment (GPO4-04-06a and GPO4-04-06b), and revision of the North San Jose Area Development Policy and revision to the North San Jose Deficiency Plan to allow intensification of development within the Rincon de los Esteros Redevelopment Area in the north part of the City. The potential development includes up to 26.7 million square feet of new industrial/office/R&D building space, 32,000 new dwelling units and 1.7 million square feet of commercial space.

**RESPONSE 6a:** This comment summarizes information in the DEIR. No response is required.

**COMMENT 6b:** The District's water supply planning efforts are based upon projected growth and development included in the City's General Plan together with consideration of regional growth projections. Changes in General Plan projections as proposed and major new development can have a significant impact on water supply availability and reliability if the projected increase in water demand has not been considered. Based upon review of the DEIR, our primary concern related to the project is water supply to meet the projected increase in water use. The following comments regarding water supply together with hydrology, water quality, biological resources, and transportation document our concerns:

**WATER SUPPLY**

The DEIR does not sufficiently address overall water supply impacts. The conclusion that development allowed under the proposed project would not result in significant impacts to existing water supply systems is not supported by the evidence. Water Code Section 10910 (SB 610) requires that a water supply assessment be completed prior to the issuance of a DEIR. This means that projected water supplies must be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the City determines that water supplies will not be sufficient, the City shall include that determination in its finding for the project. The DEIR for this project concludes, based upon apparently incomplete information, that groundwater supply will meet the additional demand created by the proposed project.

**RESPONSE 6b:** The referenced section of the law only requires that a water supply assessment be included in the an environmental impact report. It does not stipulate that the document be included in the Draft EIR. Although requests for supplemental information were sent out in a timely fashion to the utilities and District staff, the City and San José Water Company did not receive all of the documentation necessary to complete the assessment prior to circulation of the Draft EIR. The conclusion that adequate water supply could be obtained to meet the proposed project needs was based on information available from the two utilities that serve this area, and from generally available District documents.

A draft water supply assessment for the project area served by the Municipal Water Utility and a water supply assessment provided by the San José Water

Company for the project area they serve are included with this First Amendment to the Draft EIR. Therefore, the assessments for the two retailers are included in the EIR as required by the Water Code, to inform the public and City Council in the decision-making process for the project. The assessments indicate water to supply the project will come from a variety of sources, including groundwater, raw surface water, treated imported water, recycled water, and aggressive water conservation, in a manner to be determined by the retailers in coordination with the Water District. Please see Section IV, Proposed Text Amendments to the Draft EIR.

**COMMENT 6c:** In the future, both the San Francisco Public Utility Commission (SFPUC) and the District have identified challenges related to dry year supply availability, at least within the near term period when significant investments in water supply improvements need to be made. Currently SFPUC cannot meet all of the existing dry year demands without implementation of its planned Water System Improvements Program to improve level of service. Additionally, the needs to evaluate a potential scenario where SFPUC provides less than the City's water purchase request is necessary because of uncertainties related to the pending SFPUC contract renewal process. Under such a scenario, the demand on District water supplies would increase.

**RESPONSE 6c:** Although the City of San José Municipal Water Utility has asked SFPUC for confirmation of future water supply, SFPUC is in the midst of evaluating requests from all of the agencies it serves. No confirmation is, therefore, available. Additionally, SFPUC will not accept requests for water supply to serve development that is not reflected in a City's approved General Plan. No request can be made at this time for water to serve the proposed increased level of intensity in North San José until after the General Plan is amended. It is, therefore, not possible to confirm water supply from SFPUC for this proposed project at this time.

**COMMENT 6d:** Through the District's Integrated Water Resources Planning 2003 (IWRP) and additional analysis, we have identified the need for additional water supply investments to protect and improve supply reliability. The projected increase in annual water demand (~9,000 acre-feet) related to the proposed project currently exceeds the ability of the groundwater basin to reliably meet water demand within the region into the future. Reliance on groundwater for water supply requires appropriate replenishment of the supply that is extracted. The DEIR does not address this concern nor does it address the impacts of adding additional recharge capacity to maintain groundwater as a reliable source of water across the region. Recharge ponds require a large land area and the siting of the facilities is a complex process dependent on hydrogeologic characteristics of the recharge area, land use, and land availability.

The District Water Utility Enterprise staff is currently analyzing how the increased demand associated with this project will affect reliability and what alternatives are available for additional water resources development. Our groundwater modeling work shows that this projected demand, which was not included in our IWRP 2003 or our Urban Water Management Plan (UWMP) 2001, would impact the regional water supply reliability as the proposed groundwater basin pumping would exceed recharge capacity. Previous modeling performed as part of the District's IWRP 2003 indicates that any significant increase in demand above our projections (ABAG 1998 projections) decreases the reliability of water supply to meet regional demand and significant shortages occur during multi-year droughts. Additional facilities and supply beyond that considered in IWRP 2003 would be required to



meet both the current project and the proposed cumulative demands (i.e., those not included in General Plan).

**RESPONSE 6d:** Although the level of development proposed for this project is greater than is presently allowed under the City's General Plan, it does not exceed the amount of development projected by ABAG for San José's Sphere of Influence in *Projections '97*. Since the assumptions in IWRP 2003 were based on ABAG's 1997 projections, this amount of growth is not inconsistent with the assumptions reflected in earlier District modeling.

Nearer term planning for water supply may, however, need to be modified for the City's proposed General Plan amendments. The attached draft water supply assessment reflects the City's understanding that planning for sufficient water supply to meet the County's needs will require cooperation among all of the utilities and planning agencies. It also reflects the City's commitment to continue to aggressively seek additional uses of recycled water and to expand water conservation efforts in the project area.

**COMMENT 6e:** The District and local water retailers are also currently preparing their 2005 Urban Water Management Plans (UWMP 2005) to be submitted to the Department of Water Resources by December 31, 2005. For the District's UWMP 2005, projected water demands will be based upon the City's General Plan which will serve as the critical source document for demand associated with additional development. The demand associated with this project will not be included in UWMP 2005 until the General Plan amendment is approved.

**RESPONSE 6e:** It is acknowledged that the District's Urban Water Management Plan is based on the adopted General Plans for the jurisdictions within its service area. Should the City of San José decide to approve the proposed General Plan amendments, the City will formally request that SCVWD revise the UWMP to reflect those changes.

However, current state law requires this information in advance of the General Plan amendment process.

**COMMENT 6f:** The District sees this project as an opportunity for the City to increase water conservation both indoor and outdoor to the maximum extent practicable and increase recycled water usage. The area is already served with the recycled water pipeline (i.e. the purple pipes) and recycled water and dual plumbing should be required for all new construction including landscape irrigation, ornamental features (fountains, ponds), toilet flushing as well as for industrial uses.

**RESPONSE 6f:** The City of San José also sees this as an opportunity to expand the use of recycled water in an area that is relatively close to the source of supply. The attached draft water supply assessment reflects both the assumptions about increased use of recycled water and the City's commitment to aggressive water conservation methods.

**COMMENT 6g:** We have provided additional detailed comments related to Water Supply in Attachment A. It is crucial that City staff work with the District and water retailers when developing

and updating planning documents. We, therefore, look forward to a close working relationship on this and other projects.

**RESPONSE 6g:** Each of the individual comments is responded to below. The attached water supply assessment also reflects the City's commitment to working closely with the Water District to plan for long term water supply in this area and for the rest of the City.

**COMMENT 6h: HYDROLOGY**

A significant portion of the project area is subject to inundation from tidal flooding and riverine flooding from the Guadalupe River and Coyote Creek as evidenced by the current Federal Insurance Rate Maps (FIRM). In 1995 as stated in the document, improvements were made to Coyote Creek to reduce flooding, and the FIRM maps were revised in 1997 to reflect the impacts on flooding due to these improvements. The District has recently completed flood control improvements along the Guadalupe River from Highway 280 to Alviso (replacement of the Highway 237 bridge is to be complete in October 2006) that, as of December 2004, reduce riverine flooding from the Guadalupe River as well.

As part of the Guadalupe River flood control improvement projects, in Fall of 2005 the District will be submitting an application to FEMA to re-designate areas affected by the constructed flood control improvements. This process will remove some properties from the flood zone and others, where the existing storm drain system is inadequate to convey the storm water to the river, will be re-designated to AO or AH (special flood hazard zones). Once the application is submitted, the redesignation by FEMA is anticipated to take about six months, with longer review time necessary if changes must be made to address FEMA concerns. In the meantime, the District is preparing to file an interim application with FEMA later this month to allow for a reduction in insurance premium costs until the final application for the map amendment is submitted later this year. The District is planning to request that FEMA provide interim re-designation, called A-99, in time for a planned celebration of the project in September 10, 2005. Upon achieving the A-99 designation, a significant reduction in premiums will occur and new development can be planned and designed to rely on the anticipated new FIRM maps. We suggest you consult FEMA directly for verification of this through the City's FEMA coordinator.

Though the flood control projects will protect the area from significant flooding from the river, note that localized flooding of the streets and low lying areas (not mapped in flood zone) may still occur due to the existing topography, storm drain capacity, and operational constraints of the storm water pump stations. Since flooding can still occur even with the completion of the flood control improvements and removal of properties from the FEMA special flood hazard zones, the District recommends that property owners carry flood insurance because traditional insurance policies do not cover damages due to flooding. Also, as noted in the DEIR, the District's flood control improvements do not provide protection from tidal flooding and areas subject to tidal flooding will not be affected by the map revisions.

**RESPONSE 6h:** This information is consistent with the discussion in the DEIR (pages 261-262).

**COMMENT 6i:** Page 261 states that the District's flood control improvements on the Lower Guadalupe River are designed to contain the 100 year design flow and the "potential increases from storm-water pump stations in the lower reach." In June 2002, the District conducted a study (Technical

Memorandum - Evaluation of Effects of Interior Drainage Flows on LGR Hydraulic Conditions), which is now in Appendix G of the Lower Guadalupe River Project Engineer's Report. This study evaluated the volume of water that would be reaching the various pump stations (operated by the City of San Jose, City of Santa Clara, Caltrans, etc.) along the river during a 100 year event. Based on the results of the study, the design flow was increased by 1,350 cfs to a total of 18,325 cfs, and the flood control improvements were constructed based on the higher design flow. The study modeled interior drainage based on existing storm drain conditions.

Upgrades to the existing storm drain system as discussed in the DEIR should be designed so as to not increase the flows entering the Guadalupe River from those included in the above referenced study and an analysis of the proposed storm drain improvements should be completed to verify there will be no increase.

**RESPONSE 6i:** Text is included in Section IV of this First Amendment that reflects the information provided in this comment.

**COMMENT 6j:** Development of the project should not alter the Guadalupe River and Coyote Creek watershed boundaries within the site, i.e., drainage from one watershed should not be directed to another. Development of the area should not require either increasing pumping capacity of the existing pump stations, require additional pump stations, or alter the agreed upon operation of the existing pump stations.

**RESPONSE 6j:** The City does not propose to take any actions that would alter the existing watershed boundaries. This EIR does not address the addition of pumping capacity to the area.

**COMMENT 6k:** Page 25 states that the flood plain map amendments will "remove virtually all of North San Jose from the 100-year floodplain." This statement should be revised to indicate that many areas will be removed from the flood zone as a result of the map amendments; however, the exact extent of the areas to be removed from the flood zone will depend on the interior drainage analysis that has yet to be finalized. District staff is currently meeting with City of San Jose public works department staff to discuss this analysis. Also, the discussion of flooding and drainage on page 261 should be revised as necessary for accuracy and completeness based on the above information.

**RESPONSE 6k:** The referenced text is in a paragraph that also says that "any remaining susceptibility to flooding will be the result of localized deficiencies in the capacity of the storm drain system. Since there has been no final determination made of exactly what areas will still be identified as susceptible to the 100 year flood, the text is revised in Section IV of this First Amendment to the Draft EIR to replace the words "virtually all" with the word "most".

**COMMENT 6l: WATER QUALITY**

To protect groundwater quality and in accordance with District Ordinance 90-1, all existing wells affected by new or redevelopment need to be identified and properly registered with the District and either be maintained or destroyed in accordance with the District's standards. Destruction of any well and the construction of any new wells proposed, including monitoring wells, requires a permit from the District prior to construction. Property owners or their representative should contact the District Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information.

**RESPONSE 6l:** This is a routine condition of approval for all development in San José.

**COMMENT 6m: BIOLOGICAL RESOURCES**

On page 232 under "Degradation of Aquatic Habitat," the document states that the increased development will increase the potential for degradation of runoff entering the Guadalupe River which is considered a significant impact. Though the majority of the project area is located within the Guadalupe River watershed, a portion of the site drains to Coyote Creek which also may be negatively impacted by due to pollutants in runoff. The document should discuss the potential impacts to surface water quality of both the Guadalupe River and Coyote Creek and the mitigation measures to address the impacts.

**RESPONSE 6m:** The discussion of water quality impacts and mitigation (pages 268-271) in the Hydrology and Water Quality section of the DEIR clearly addresses the drainage to both the Guadalupe River and Coyote Creek and the impacts to water quality in both waterways. Likewise, the mitigation measures for impacts to biological resources listed on pages 233-238 do not limit their scope to just the Guadalupe River (other than the mitigation for the loss of remnant cottonwood forest or sycamore riparian woodland). The text in the referenced section on page 232 should also have referred to impacts on Coyote Creek, and the omission is corrected in Section IV of this First Amendment to the Draft EIR. the necessary mitigation measures are already included in the DEIR, however.

**COMMENT 6n:** Page 236 states that removal of the remnant sycamore riparian woodland would result in a significant impact and would not be covered by the EIR "unless the project provides replacement of the habitat removed at a 1:1 ratio." Typically regulatory agencies require replacement ratios of 3:1 to mitigate for loss of habitat and the stated mitigation ratio may not be adequate.

**RESPONSE 6n:** The existing condition of the remnant woodland is unusual in that it has been separated from the riparian corridor for many years; it is on land bordered by Brokaw Road, Ridder Park Drive, and I-880. Its value as riparian habitat is therefore diminished (see pages 214-215 of the DEIR and page 42 of Appendix G). As reflected in Appendix G, it was the opinion of the consulting biologists that replacement habitat that filled in gaps along the Guadalupe River could be of equivalent value to the existing remnant.

**COMMENT 6o:** On page 79 there is a discussion of shade and shadow impacts that indicates that some shading can be anticipated to occur due to development and that the shading impact is less than significant. This discussion does not include a discussion of the impacts of this shading on the riparian corridor. Specific projects located along the riparian corridors should include an evaluation of the impact, if any, of shading of the riparian corridor and any critical habitat on the Guadalupe River.

**RESPONSE 6o:** As reflected in the discussion on pages 78-79 of the DEIR, there will be only occasional and intermittent shading that reaches the river itself. Likewise, as reflected in the discussion of shading that could impact the planned trail (which would be on the easterly bank of the river), there will be sunlight reaching the riparian corridor, even in the winter. The discussion of shade and shadow is based on a worst case assumption that all of the buildings along the westerly border of the industrial core area would be built to the maximum allowable

height of 250 feet. According to the consulting biologists for this project, shading from future buildings will not significantly impact the riparian corridor [Steve Rottenborn, 5/13/05].

**COMMENT 6p:** The document identifies a number of policies (Urban Forest Policy No. 8 and Urban Design Policy No. 17) that refer to the use of native plants adjacent to riparian areas. To protect the genetic integrity of the native riparian species native plants should be grown from watershed specific stock.

**RESPONSE 6p:** The recommendation is acknowledged. Planting with locally grown plant stock is encouraged, but cannot be guaranteed in every case due to limited availability of stock.

**COMMENT 6q:** The District supports the use of a 100 foot setback from the riparian corridor to minimize impacts to the riparian corridors of the Guadalupe River and Coyote Creek.

**RESPONSE 6q:** This recommendation is consistent with the proposed project and the impact analysis in this EIR (see page 232).

**COMMENT 6r: TRANSPORTATION**

The document identifies a number of road improvements that would be implemented as mitigation for traffic impacts as the area continues to develop. Some of the identified road improvements may require permits as defined in Ordinance 83-2, since they may impact District facilities. Identified road improvements that may require District permits include:

1. Widening of Montague Expressway between North First Street and Highway 880 - Montague Expressway crosses Coyote Creek and any work to widen the bridge and within 50 feet of the creek top of bank will require a District permit.
2. Lundy Avenue and Berryessa Road - The District's 66-inch diameter Central Pipeline is located under Berryessa Road and the proposed road improvements may require a District permit.
3. San Tomas Expressway and Stevens Creek Boulevard - San Tomas Aquino Creek is located within a box culvert under San Tomas Expressway and work within 50 feet of the box culvert will require a District permit.
4. San Tomas Expressway and Moorpark Avenue - San Tomas Aquino Creek is located within a box culvert under San Tomas Expressway and work within 50 feet of the box culvert will require a District permit.
5. King Road and McKee Road - Silver Creek crosses the roadway at this intersection and any work within 50 feet of the creek top of bank or within the District's right of way will require a District permit.
6. Capitol Avenue and Cropley Avenue - The District's 42-inch diameter Milpitas Pipeline is located under Capitol Avenue and the proposed road improvements may require a District permit.
7. Capital Avenue and Berryessa Road - The District's 66-inch diameter Central Pipeline is located under Berryessa Road and the proposed road improvements may require a District permit.

**RESPONSE 6r:** This information is provided to the City's Department of Transportation for inclusion in the project design and approval process that will be implementation of the proposed infrastructure.

NOTE: THE FOLLOWING COMMENTS ARE IN ATTACHMENT A TO THE WATER DISTRICT'S LETTER

**COMMENT 6s:** Observation from the DEIR: The discussion of water in the DEIR is almost completely limited to drainage/flood hydrology issues with some mention of the impacts of high groundwater levels. It mentions that the development of the project would result in a significant increase in energy use, and deems this a significant unavoidable impact. However, there is only brief discussion of the increase in water use and need for additional groundwater extraction facilities that will be required of the two impacted water retail agencies.

District Staff Comment: The conclusion that the increase in water demand resulting from this development (and the resulting impacts on water supply) is a less than significant impact is not supported by the evidence presented. There are serious omissions in the DEIR related to the discussion on water supply. The opinion of the two retailers provided in the report is unsubstantiated. No evidence is presented related [sic] to the source of additional water supply. Water taken from the groundwater basin needs to be replenished with additional supply.

**RESPONSE 6s:** Please refer to Responses 6b, 6d, and 6c above, and to the proposed text revisions in Section IV of this First Amendment to the EIR and the attached draft water supply assessment.

**COMMENT 6t:** Observation from the DEIR: The EIR assumes that the demand will be met through groundwater extraction. This is based upon a statement from the water retailers.

District Staff Comment: The DEIR does not include a Water Supply Assessment as required by Water Code Section 10910 (SB610). It should adequately discuss other alternatives for meeting the water supply needs: for example, the need could be partially met through increased water use efficiency measures and through recycled water use, in keeping with both District and City of San Jose policy.

**RESPONSE 6t:** Revisions to the text of the DEIR are proposed to better reflect the City's intentions regarding increased use of recycled water and ongoing water conservation programs. Water Supply Assessments prepared by the two retailers serving the project area are included in the Technical Appendix to Section IV of this First Amendment.

**COMMENT 6u:** -- Timeline/Triggers for Development  
Observation from the DEIR: There is no timeline for the four phases of the plan-triggers for phased development will be determined by growth and jobs within the project area.

District Staff Comment: Triggers need to be developed related to the timeline for adding development of additional water supply, water supply facilities, and other water management options. This will allow reliable supply of quality water to be available when needed.

**RESPONSE 6u:** There is no timeline for the phasing, and it is highly unlikely that a reliable timeline could be developed. This project area is not substantially different in

this respect than the rest of the County. The City of San José will continue to work with the District to refine near term and far term growth estimates for the entire City, based on economic and other information available.

**COMMENT 6v:** Page 27

Observation from the DEIR: The DEIR identifies additional infrastructure needed to serve the new water demand, specifically two new tanks, four additional wells, and four new pumps. This focuses on the additional extraction infrastructure needed. There is no mention of whether additional infrastructure or additional water supply is needed to ensure that the groundwater basin is replenished. There is little to no discussion on whether alternate supply sources may be available to the retailers.

District Staff Comment: The DEIR should also assess the water supply needed to replenish groundwater, discuss the availability of supply options, and describe the impacts that will result from procuring that additional supply (if it is not already available). Infrastructure needs for groundwater replenishment - additional recharge facilities, pipelines, etc. should also be discussed.

**RESPONSE 6v:** As reflected in the attached draft water supply assessments prepared by the Municipal Water System and San José Water Company (see also Response 6b through 6g above), the anticipated demand reflected in the District's modeling would include the amount of development proposed for North San José. The long term infrastructure planning already completed by the District and identified in the draft IWRP 2003 would therefore be the appropriate system improvements to meet the long term needs of this project, including the provision of water supply to replenish groundwater. The text in the DEIR that identifies the pumps and reservoirs are consistent with the backup infrastructure which Municipal Water Utility maintains to supply water in the event that the supply from Hetch-Hetchy is interrupted.

**COMMENT 6w:** Page 35

Observation from the DEIR: Sustainable City Strategy - ensures that development is designed and built in a manner consistent with the efficient use of resources and environmental protection. The proposed project includes infill sites adjacent to existing recycled water.

District Staff Comment: Consistency: The DEIR should state that the City intends to pursue higher level of water use efficiency and conservation above and beyond the minimum requirements of current building and plumbing codes. Dual plumbing for recycled water should be required for most if not all new construction and redevelopment.

**RESPONSE 6w:** While some of the proposed development and redevelopment sites are adjacent to existing recycled water lines, most are not. The City is, however, proposing to aggressively seek additional uses for recycled water. Text revisions in Section IV of this First Amendment, and the information in the attached draft Water Supply Assessment, provide additional details on the expansion of the recycled water system in North San José.

**COMMENT 6x:** Page 49

Observation from the DEIR: Level of Service Policy #9 - Water Conservation

District Staff Comment: Water conservation measures that should be promoted by the City for North San Jose include:

- Dual plumbing for both interior and exterior recycled water use;
- Construction standards that require high-efficiency fixtures (for example, high-efficiency 1.2-gallons-per-flush toilets);
- Construction standards that require high-efficiency devices for outdoor water uses (such as self-adjusting weather-based irrigation controllers);
- The use of fully advanced treated recycled water for irrigation of large landscaped areas;
- Enforcement of the City's Model Water Efficient Landscape Ordinance (as per AB325 1990);
- Promotion and use of drought tolerant and native plantings in landscaping.

**RESPONSE 6x:** These measures are included in the proposed project, and are reflected in the draft water supply assessment attached and in the proposed text revisions in Section IV of this First Amendment to the DEIR.

**COMMENT 6y:** Page 54

Observation from the DEIR: GP Water Resources Policies - Water is a finite resource. The DEIR should give appropriate consideration to effective management and protection of this resource. The General Plan's Water Resource Policies identify water supply concerns and this DEIR should discuss consistency with several of these policies in addition to WR 9. In particular, the City states that its intent to, limit the dependence on external sources of supply, avoid the overdrafting of the underground water basin, avoid to prevent additional land subsidence, and increase water recycling.

District Staff Comment: Add the reference to the following Water Resources Policies in DEIR:

2. Water resources should be utilized in a manner which does not deplete the supply of surface or groundwater, and efforts to conserve and reclaim water supplies, both local and imported, should be encouraged.

7. The city shall require the proper construction and monitoring of facilities storing hazardous materials in order to prevent contamination of the surface water, groundwater and underlying aquifers. In furtherance of this policy, design standards for such facilities should consider high groundwater tables and/or the potential for freshwater or saltwater flooding.

10. The City should encourage more efficient use of water by promoting water conservation and the use of water saving devices.

**RESPONSE 6y:** These policies (which are part of the City's adopted General Plan) have been added to the text of the EIR (see Section IV of this First Amendment to the Draft EIR), with Water Resources Policy #11, which also promotes use of recycled water.

**COMMENT 6z:** Page 255 Groundwater conditions, page 264 ground water levels, and elsewhere in the report

Observation from the DEIR: The DEIR does not correctly categorize the complex nature of the groundwater aquifers in the project area. The DEIR describes the high groundwater conditions that are often experienced in the shallow aquifer in the area, but does not acknowledge that the drinking water for the project depends on the supplies and pressures found in the deeper aquifers. The DEIR does not discuss the variability in water supply that can be experienced in the drinking water aquifers under different hydrologic conditions.



District Staff Comment: The DEIR descriptions of the groundwater conditions should be clarified to better capture the differences between local high groundwater conditions in the upper aquifer and the water supply conditions in the lower aquifer upon which this project's water supply depends. The variability of the water supply conditions that historically occurred due to changes in hydrology should be discussed together with water supply reliability.

**RESPONSE 6z:** The section of the DEIR that is referenced in this comment is in the description of existing geology and soils in the project area. The information in that section is intended to address the physical suitability of the area for the type and extent of development proposed and is not intended to provide a basis for a water supply assessment.

The DEIR identifies the need for additional wells and reservoirs as part of the system to serve this project. It is not proposed, however, that the primary source of supply would be groundwater in North San José. Rather, as discussed in the attached draft water supply assessment and reflected in the text revisions in Section IV of this First Amendment to the Draft EIR, the City assumes that the long term water supply for this project area will be met through the processes and sources identified in Urban Water Management Plan being prepared by the District, consistent with the draft IWRP 2003 already prepared by the District.

**COMMENT 6aa:** Page 255

Observation from the DEIR: "Extensive historic withdrawal of groundwater in the area resulted in regional land subsidence of as much as eight feet from 1938 to 1967. Control of groundwater withdrawal and regional programs of groundwater recharge managed by the SCVWD has halted subsidence in this area".

District Staff Comment: The District does not control groundwater withdrawal, but rather manages the groundwater sub basins through conjunctive use and other programs.

Although the risk of subsidence is being held in check by the District's water management activities, that does not mean that subsidence is no longer a threat. The DEIR should evaluate the potential for land subsidence resulting from the increased groundwater extraction in this DEIR.

**RESPONSE 6aa:** The language in the Draft EIR regarding ground water management is intended to convey a meaning similar to the information conveyed in this comment. The proposed text revisions, however, add language in this comment. Regarding the final comment, please see Response 6z above. The project is not proposing to directly withdraw groundwater to meet its own water supply needs.

**COMMENT 6bb:** Page 265

Observation from the DEIR: The DEIR lists the thresholds of significance for hydrologic impacts as follows: "For the purposes of this EIR, a hydrologic impact is considered significant if the project will:

- ...
- substantially degrade or deplete groundwater resources or interfere with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level;
- ...
- provide substantial additional sources of polluted runoff or otherwise substantially degrade surface or groundwater quality;
- ...

District Staff Comment: The depletion of groundwater is not adequately discussed in the DEIR. Groundwater extraction to meet this additional demand during a multi year drought results in increased rates of withdrawal and significant lowering of groundwater levels to below the point where ground subsidence would reinitiate. Appropriate evaluation of impacts on groundwater resources and on groundwater quality and additional discussion should be included in the EIR. No mitigation or avoidance measures for potential impacts are described.

**RESPONSE 6bb:** Please see Response 6z above. The project is not proposing to directly withdraw groundwater to meet its own water supply needs.

**COMMENT 6cc:** Page 302

Observation from the DEIR: "Development allowed under the proposed project would not result in significant impacts to existing water supply systems. (Less Than Significant Impact)" follows a discussion focused on groundwater extraction facilities and does not include any discussion on the need to replenish the groundwater resource itself.

District Staff Comment: The impacts on water supply, the need for additional water supplies to replenish groundwater, and additional groundwater recharge facilities should be described in the EIR.

**RESPONSE 6cc:** The last sentence in the referenced paragraph on page 302 of the Draft EIR is incorrect and is revised in the proposed text revisions in Section IV to reflect the intended use of the improvements for emergency and backup service.

**COMMENT 6dd:** Page 401

Observation from the DEIR: "... the projected cumulative increase in demand is approximately 39 MGD. The water retailers draw upon various sources for their water supply, including local groundwater and surface water supplies and importation of water from outside of San Jose's jurisdiction. While some growth in impacted water supply is expected (and currently under negotiation), the predominant source of additional water supply is local groundwater. The SCVWD is in the process of modeling their long term ability to provide groundwater to the three retailers, but their preliminary analysis suggests that they have adequate capacity to address the cumulative demand of the projects under consideration here."

District Staff Comment: This statement is inconsistent with the IWRP Study 2003: IWRP Study 2003 shows that additional water supply management activities will need to be developed to meet the long term needs of the businesses and residents in Santa Clara County. IWRP showed that alternatives do

exist for providing for the future (although the existing supplies and infrastructure system alone won't get us there). The District does not currently have adequate capacity for meeting this cumulative demand and additional facilities and supply beyond that considered in IWRP study 2003 would be needed.

**RESPONSE 6dd:** As reflected in the draft Water Supply Assessments included in this First Amendment to the Draft EIR, it is the City's intention to incorporate the additional water supply management activities identified in the IWRP Study 2003 into the City's long term water supply assumptions. Since the development proposed for North San José is within the amount of development included in the ABAG 1997 assumptions that formed the basis of the modeling done for IWRP Study 2003, it is appropriate for the City to rely on the conclusions in that study.

**COMMENT 6ee:** Page 401  
Observation from the DEIR: The DEIR states that approval of the cumulative projects would not result in significant impacts as a result of exceeding the identified water supply.

District Staff Comment: The DEIR has not appropriately quantified water supply impacts. The DEIR should describe the water supply source(s) and determine what cumulative impacts on water supply result from serving the water demand resulting from these projects.

**RESPONSE 6ee:** The Cumulative impacts section of the DEIR concludes that there will not be significant impacts resulting from water supply. This is based, in part, on the existing Water District planning documents, which reflect the District's commitment to meeting long term water demand associated with cities' approved General Plans. The draft IWRP Study 2003 reflects the constraints on future water supply, particularly associated with dry years, but also identifies the methods and plans the District has formulated for meeting the long term needs within its service area.

**COMMENT 6ff:** References  
Observation from the DEIR: Add: 1996 San Jose Water Policy Framework

**RESPONSE 6ff:** The document is added to the reference list in the proposed text revisions in Section IV.

7. **RESPONSES TO LETTER FROM BAY AREA AIR QUALITY MANAGEMENT DISTRICT, DATED APRIL 22, 2005:**

**COMMENT 7a:** Bay Area Air Quality Management District (District) staff have received and reviewed your agency's Draft Environmental Impact Report (DEIR) for the North San Jose Development Policies Update Project (project). The project proposes to intensify development allowed within the Rincon de los Esteros Redevelopment Area in the northern part of San Jose. Rincon de los Esteros is an established industrial park area approximately 4,987 gross acres in size, with scattered enclaves of high and medium-high density residential uses. The proposed intensification would add approximately 26.7 million square feet of new industrial/office/R&D building space (approximately 83,300 new employees) and up to 32,000 new housing units (approximately 56,640 persons) to the area. The project would encourage increased development density along the established light rail transit (LRT) line on North First Street.

The District strongly supports the City of San Jose's effort to locate housing and jobs closer to transit, particularly in urbanized areas. Shifting housing and jobs away from greenfield development towards in-fill and redevelopment can decrease dependence on automobiles for work trips, thereby reducing overall motor vehicle emissions. If a comparable number of new residents and employees were located in outlying areas like Coyote Valley (which was analyzed in project alternative D in the DEIR), air quality impacts would likely be greater because of more vehicle trips generated by the location.

While we support the City's efforts to promote transit oriented development, District staff urge the City to carefully consider the suitability of each new residential development's location given nearby land uses. The DEIR states on page 73 that "land use conflicts between proposed new residential development and existing industrial uses can be minimized by conformance with the City's adopted Residential Design Guidelines in design of new residential projects," thereby reducing the impacts to a less than significant level. The minimum setback outlined in the design guidelines for incompatible land uses is only 15 feet. We have concerns that this recommended mitigation measure for siting residential land uses near existing industrial uses may be inadequate. Studies show that the appropriate buffer zones for some land uses can be anywhere from 300 feet to one mile. We recommend that the Final Environmental Impact Report (FEIR) include a more detailed analysis of appropriate site-specific buffer zones and setback distances for potentially incompatible land uses, particularly for specific facilities or locations of concern.

**RESPONSE 7a:** The setback distances identified in the Residential Design Guidelines are minimums, and may be increased where appropriate. These setback distances are intended to minimize or avoid routine interface impacts such as those that can occur from day-to-day industrial operations, as discussed on page 75 of the DEIR. The discussion on page 75 also states that: "Future development proposals for residential projects will require rezoning and site design review, as well as site-specific CEQA review." It acknowledges that specific sources of impact, including noise and emissions cannot be precisely predicted now, and will be taken into account at the time of specific project review in requiring that design-related mechanisms such as site planning, setbacks, buffers, soundproofing, etc. be sufficient to reduce impacts.

Section II.I., Hazardous Materials, of the DEIR discusses possible impacts from hazardous materials used in the project area. The EIR identifies on page

291 the possibility that significant impacts could occur if new residential or residential support uses (such as schools) are proposed near users of hazardous materials. The Conclusion paragraph on page 295 also acknowledges that the circumstances that exist at the time a future development proposal is made to convert a specific property to residential uses may limit or preclude the conversion at that particular time.

The development addressed in this EIR is anticipated to occur over a time period that could be 30 years or more into the future. The City cannot predict which industrial businesses will still be occupying particular sites, or what their future business practices may include in the future. It is also not possible to predict which sites will redevelop for residential purposes at what point in time. The EIR states that a particular property may not be “ripe for development with residential or residential support uses” at any particular point in time, due to the proximity of acutely hazardous materials or other conditions that could adversely impact sensitive receptors.

This EIR does not address the near-term impacts associated with the future development of any particular residential project on any specific site. It is not, therefore, possible to provide the “appropriate site-specific buffer zones and setback distances for potentially incompatible land uses, particularly for specific facilities or locations of concern”, as requested in this comment. It is anticipated that conformance with City policies and ordinances, and with other relevant laws and regulations can and will be required sufficient to mitigate and/or avoid significant impacts that could adversely effect human health and safety.

**COMMENT 7b:** Various upgrades to the transportation network in the project area are being proposed, as well as changes to transportation policies that affect development, to address increased travel demand resulting from the proposed project. Air quality impacts from land use development stem from increasing demand for travel by automobiles. The DEIR proposes transportation projects that will help mitigate vehicle congestion through capacity improvements, such as roadway widening. The District believes that adding new traffic lanes for single-occupancy vehicle (SOV) use in the Bay Area is often only a short-term solution to congestion. New lanes increase overall system capacity, and then can be filled up by latent travel demand until the area again becomes congested. This can happen because driving temporarily becomes more convenient and there is less incentive to use transportation alternatives, carpool, work and shop closer to home, avoid discretionary trips and travel during non-peak periods. In the long-term, capacity expansions can result in greater dependence on automobiles, increased air pollution, and other significant environmental impacts. We commend the City for including arterial traffic management strategies that are beneficial to air quality under the proposed mitigation and avoidance measures (DEIR page 187). We recommend emphasizing arterial traffic management strategies that benefit air quality over expansions to roadway capacity. Such beneficial strategies could include improved signal timing (i.e. signal prioritization for transit), bicycle lanes, and pedestrian facilities that enhance the pedestrian experience. We recommend that the City address increased travel demand through the expansion of transit or other alternative modes of transportation. New lanes on Montague Expressway, for example, could provide dedicated right-of-way for bus rapid transit (BRT) and carpools. This could increase mobility and reduce air quality impacts from this project.

**RESPONSE 7b:** The City is proposing \$60 million of transit, pedestrian, and bicycle improvements as part of the proposed project. In addition, the City continues to expand its intelligent transportation system (ITS), which creates better traffic management and more efficient use of available capacity without additional roadway lanes.

**COMMENT 7c:** Locating more development along existing transit corridors increases the likelihood that residents and employees of those developments will use transit instead of drive. Given the potential for development to outstrip transit's potential to carry passengers, we recommend that the City consider phasing development based on the capacity of public transit to serve this area. The ability of transit service to meet the needs of this area should be confirmed before new development is approved, and if more transit service is necessary, the City should work with the Santa Clara Valley Transportation Authority and developers to provide transit improvements.

**RESPONSE 7c:** The impacts identified in the Draft EIR are constraints due to the riders' perceptions of comfort, not to any real physical limitations of the transit system. There is no proposal to actually expand the transit system's physical capacity, only to expand the amenities that make transit use more pleasant and convenient. It is not clear how development could be phased based on a capacity measurement that is linked to riders' subjective perceptions and not to the capacity of the trains.

**COMMENT 7d:** We recommend incorporating more neighborhood-serving commercial uses in the project area to create true mixed-use neighborhoods and reduce vehicle trips to shops and services. Commercial uses such as supermarkets, drycleaners, daycare, etc. serve local neighborhoods and have the potential to reduce the number of trips made by automobile - particularly if they are accessible by walking, biking or transit. In addition, we recommend that parking requirements for local commercial facilities be lowered to reflect the benefit of easier access for pedestrians and cyclists.

**RESPONSE 7d:** The proposed project allows for development of neighborhood-service commercial uses in both the proposed industrial core area and in the proposed residential areas, in mixed-use configurations (see page 22 of the DEIR). Only regional commercial uses (commercial development intended to serve more than the local area) are precluded by the proposed General Plan land use categories and are not included in the EIR assumptions. The project analysis assumed that up to 1.7 million square feet of new commercial land uses could be developed as part of the proposed project, including the uses described in this comment.

**COMMENT 7e:** An over-supply of parking is one of the reasons why people do not consider alternatives to the SOV. We recommend that the City reduce the number of required parking spaces for housing and commercial uses to help support a transit- and pedestrian-friendly environment. Reducing parking requirements, particularly near transit, can help reduce development costs. It can also increase the amount of land serving pedestrians rather than parking, thereby improving urban design by making the area more walkable. Developers should be encouraged to unbundle their parking (i.e. charge for off-street parking separately from rents). Carsharing programs and parking cash-out programs are other ways to reduce the amount of required off-street parking spaces. District staff commend the City for recommending innovative parking policies such as parking cash out (DEIR page 188), which can provide incentives for employees to take alternative transportation modes and

allow for a reduction in parking requirements. We also support the City's recommendation that transit passes be provided to new residents and employees in the project area (DEIR page 188). Therefore, we recommend that all new housing and commercial developments within one half mile of a transit route be required to provide EcoPasses to their residents / employees and that their parking requirements be reduced accordingly. To mitigate potential overflow parking issues, we recommend the City implement parking benefit districts where drivers pay for curbside parking and the resulting revenue is used to improve the pedestrian environment on the blocks where the revenue was generated (fixing/widening sidewalks, planting street trees, etc.). Residential parking permit programs could also be considered to help mitigate overflow parking resulting from reduced parking requirements. These measures can help decrease development costs, reduce the demand for parking, increase funding for public services and increase the use of alternative transportation modes.

**RESPONSE 7e:** As reflected in this comment, pages 187-190 include mitigation measures which the City is proposing to implement.

The City's existing Zoning Ordinance provides for reductions in minimum parking ratios for sites located within 2,000 feet of a proposed or existing rail station (§20.90.220A). Revisions are also proposed to the text of the Area Development Policy to require that providing more than five percent above the Ordinance-required minimum parking will trigger payment of the impact fees, since it will be viewed as an entitlement.

**COMMENT 7f:** We also recommend implementing all feasible control measures for fugitive dust emissions from grading, construction and demolition projects - including consideration of the optional control measures. The District does not typically require quantification of construction emissions associated with construction activities but instead bases its threshold of significance for fugitive dust on implementation of all feasible control measures listed in Table 2 of the BAAQMD CEQA Guidelines: Assessing the Air Quality Impacts of Projects and Plans (1999). District staff acknowledge that the City of San Jose has included most of the mitigation measures listed in this table (on pages 189-190 of the DEIR). However, depending on the size of a development project, the optional control measures may need to be implemented to further reduce the impacts of fugitive dust emissions from large construction projects. Further, the kinds of construction equipment commonly used in development projects are primarily diesel-powered, and with continuous use, can lead to significant diesel particulate matter emissions. The California Air Resources Board (ARB) has identified diesel engine particulate matter as a toxic air contaminant and known carcinogen. We recommend, whenever feasible, implementation of additional measures to reduce combustion emissions from off-road construction equipment - particularly diesel emissions. Such measures could include maintaining properly tuned engines, minimizing the idling time of diesel powered construction equipment, and using alternative fueled construction equipment or add-on control devices such as particulate traps.

**RESPONSE 7f:** As reflected in this comment, mitigation measures proposed by the project to control construction-related air quality impacts include all measures recommended by BAAQMD for sites smaller than, and larger than, four acres in size. The measures referred to as "Optional Control Measures" in the *BAAQMD CEQA Guidelines* are encouraged for large construction sites, those sites located near sensitive receptors, for sites that warrant additional emissions reductions for other reasons. The optional measures are included in the

proposed text revisions in Section IV of this First Amendment to the DEIR, and will be required by the City when warranted.

**COMMENT 7g:** District staff commend the City of San Jose for including a thorough analysis of energy use and the identification of mitigation measures that can reduce energy consumption in the project area. The DEIR states that the project will increase the demand for electricity, natural gas, and gasoline. Increasing the demand for these resources will result in increased emissions of criteria pollutants, as well as an increase in greenhouse gas emissions, that can impact air quality in the Bay Area. District staff support the mitigation measures in the Energy section and we encourage the City of San Jose to include all measures as conditions of approval for all future projects.

**RESPONSE 7h:** The recommendation is acknowledged and will be considered by the City Council when it considers the project.



**8. RESPONSE TO LETTER FROM GUADALUPE-COYOTE RESOURCE CONSERVATION DISTRICT, DATED APRIL 25, 2005:**

**COMMENT 8a:** Thank you for the opportunity to comment on the North San Jose Development Policies Update Project.

The project is located south of SR 237, north of 1-880, east of the Guadalupe River and west of the Coyote Creek. Alviso and the inter-tidal area of the SF Bay are downstream of the project area.

Page 267 of the report states "The project is located in an area of San Jose' subject to periodic flooding that could expose people or structures to significant risks. (Significant Impact)" The mitigation measures proposed to reduce this to "less than significant impact" are listed on page xxviii and include many desirable conservation features. Some of the listed mitigation measures are beneficial while others are costly projects that transfer the flood problem downstream while retaining future potential significant impact from flooding.

**RESPONSE 8a:** The mitigation measures that are listed on page xxviii of the Summary section of the EIR are all measures proposed to reduce or avoid significant water quality impacts associated with stormwater runoff.

Mitigations for flood impacts are summarized on pages xxvi and xxvii of the Summary. Mitigation for flood impacts proposed by the City of San José include conformance with General Plan policies and the City's Flood Hazard Management Ordinance. Mitigation to avoid impacts from localized flooding that could result from drainage capacity constraints include upgrading the drainage system and appropriate design of new development.

**COMMENT 8b:** The undesirable policies being considered include: over topping the levees, pumping into the river while at flood stage, site requirements that allow faster sheet flow of water to uplift stations, and expensive storm drain system enlargement so water can be discharged faster into swollen rivers.

**RESPONSE 8b:** It cannot be determined toward what part of the EIR this comment is directed. The project does not propose and the EIR does not state that the City has a policy of overtopping levees or any of the other actions listed in this comment. General Plan policies for minimizing and avoiding flood damage are listed on page 269 of the EIR, and do not include any of the actions mentioned in this comment.

As stated on page 271 in the section entitled "Controls to Minimize Changes in Volume, Flow Rate, Timing or Duration of Runoff", the project will also conform to new section C.3 requirements of the Municipal Stormwater NPDES Permit in all future development.

**COMMENT 8c:** What if these policies narrowly avert a flood disaster in the project area but increase flood damage in Alviso?

**RESPONSE 8c:** As stated in the previous response, there is no basis in the EIR for attributing the actions identified in the previous comment to this project. City policies and

the City's Flood Hazard Management Ordinance to which all future development must conform are specifically intended to avoid any downstream flood impacts.

**COMMENT 8d:** A 100 year flood is defined as 2300 CFS on page 4 of the flooding and drainage evaluation. The Oakmead Pumping station can pump 758 CFS into the river (drawing SD-1). This is approximately 25% of the total river flow! One or more of these reported numbers may be wrong

**RESPONSE 8d:** It is not clear why the commenter believes one of the numbers is wrong. The numbers are not supposed to be the same. The 2,300 CFS is not total river flow, it is defined as the spill during a 100-year event.

**COMMENT 8e:** The "Engineering Report of the Adequacy of Existing Utility Infrastructure" dated 7/97 makes reference to detention ponds at the lift stations into the river but conclude that this is not practical due to the "high cost of the available land" (page 5). This report recommends pumping storm water into the river at peak water levels instead.

**RESPONSE 8e:** The City of San José is not, however, proposing to pump stormwater into the river at peak water levels. Please refer to the EIR text, pages 269-271 and 306 for the actions which the City proposes to take to minimize impacts associated with flooding and stormwater runoff.

**COMMENT 8f:** GCRCDC recommends: Augmenting the proposed floodwater mitigation measures with water harvesting and/or detention basins in this project area and other upstream areas (i.e., SJ Airport) in order to slow and reduce the peak runoff through out the watershed.

Add long term value to the project area by constructing large size detention basins at the storm water lift stations that will allow storm water to be safely retained until it can be filtered, and used productively or slowly released into the river. These detention basins may need to temporarily hold millions of gallons of storm water. A possible solution is to build multi-level concrete parking structures for light rail users with the lower level serving as dry season parking and flood period detention basins. The upper parking deck should be at the 100 year flood elevation level.

Planning for reduced dependence upon importing of water into our watershed by better storm water control, containment, and re-use.

**RESPONSE 8g:** The EIR does not identify any significant unmitigated impacts associated with flooding or drainage. Neither are there significant secondary impacts identified as resulting from the proposed methods for avoiding impacts from flooding or drainage. The City is not proposing to build parking structures at LRT stations in North San José, since North San José is and will remain a destination for transit users.

It should be noted that the Santa Clara Valley Water District is the regional agency responsible for flood control and water supply management in Santa Clara County.

**COMMENT 8h:** GCRCDC rejects

Dumping the flood problems of this project area onto downstream neighbors.

Expensive capital "improvements" to the storm water drain system that intensify the flood crest.

**RESPONSE 8h:** The project is not proposing to "dump" flood problems downstream, nor are there improvements proposed that would intensify the flood crest. It cannot be determined what is the basis for this comment.

**9. RESPONSE TO LETTER FROM SANTA CLARA COUNTY ROADS AND AIRPORTS DEPARTMENT, DATED APRIL 18, 2005:**

**COMMENT 9a:** Your March 7, 2005 letter along with the attachment for the subject above have been reviewed. Our comments are as follows:

1. See attachment "A" (comments from Highway Design).
2. See attachment "B" (comments from Traffic Engineering).

**RESPONSE 9a:** Each of the individual comments in these attachments are responded to separately below.

**COMMENT 9b:** 3. The mitigation funds collected for Montague Expressway should be provided directly to the County, or placed in an account accessible by the County on demand, to allow County as lead agency to access and use the funds as needed to implement the mitigation projects.

**RESPONSE 9b:** It is presently anticipated that all funds will be collected and maintained by the City. The City will enter into funding and implementation agreements with the County for specific improvements on Montague expressway when the mitigation is required, as delineated by the phasing plan. The City of San José will work with Santa Clara County to implement the proposed mitigation measures to County facilities in a timely and appropriate manner, consistent with the City's responsibilities as lead agency for this project.

**COMMENT 9c:** increasing Development Density  
The environmental analysis includes discussion of potential impacts to expressway levels of service due to increased traffic as a result of the proposed policies, and discusses potential mitigations. See attached summary sheet. Our comments are as follows:

The City of San Jose is to be recognized for using an appropriately large study area. 35 expressway intersections were studied. On the negative side, 22 peak period intersection operations on the expressways were found to be negatively impacted, and mitigation was clearly proposed for only 6 impacted intersections.

The intersections not proposed for mitigations are generally not addressed under the logic that "the intersections are not within the jurisdiction of San Jose." The logic is inconsistent with San Jose's own past practice with regard to large developments such as the cases of Cisco and 3Com. We question the basis of this logic and whether it is legally defensible. We suggest review of this issue with County Counsel.

**RESPONSE 9c:** This comment is incorrect. The discussion in this Draft EIR is consistent with the EIR discussions of impacts and mitigation for transportation facilities outside the City's jurisdiction in EIRs prepared for Cisco Systems Site 4 (FEIR 11/96, pages 87 *et. seq.*) and 3Com Corporation Site X Project (FEIR 6/97, pages 67 *et. seq.*).

**COMMENT 9d:** The document does commit San Jose to a fairly large project on Montague that we understand to be described as follows: widen Montague to 8 lanes between North First Street and 1-880, including Zanker turn lane improvements, a westbound flyover connection to Trimble, a

square-loop interchange at McCarthy (text in the document is a little unclear about the actual commitment to this mitigation), and reconstruction of the 1-880 interchange to a partial cloverleaf. Determination of this scope is complicated by Figure 19, which in addition to the proposed Montague widening, shows additional intersection improvements at River Oaks and Trimble, but not at the other locations above. Further, the document also identifies proposed improvements at Old Oakland and Trade Zone, although they are outside the limits of the Montague project described on Page 143. We suggest that a more logical and complete Montague scope would be as follows: widen Montague to 8 lanes as needed to conform and provide lane continuity between Lick Mill Boulevard and Great Mall Boulevard, including Zanker turn lane improvements, River Oaks turn lane improvements, a westbound flyover connection to Trimble, a square-loop interchange at McCarthy, reconstruction of the 1-880 interchange to a partial cloverleaf, turn lane improvements at Old Oakland, and turn lane improvements at Trade Zone.

**RESPONSE 9d:** The limits of the Montague Expressway widening that would be implemented by the proposed project are from Lick Mill Boulevard to Great Mall Boulevard, which is the entire stretch of Montague Expressway that is within the San José city limits. The relevance of the interim improvements are addressed in specific comments below. Please see the Master Response in Section III.A. of this First Amendment on the issue of improvements outside the City of San José boundaries.

The purpose for Figure 19 was just to illustrate the approximate locations of the proposed grid streets. The figure is revised in Section IV of this First Amendment to the Draft EIR.

**COMMENT 9e:** Comments to specific locations and document text follow:

Page 143, Montague mitigation limits: see general comment above. At the westerly limits, County is currently administering a project (using City of Santa Clara traffic impact fees) that is constructing 8 lanes on Montague between 101 and Guadalupe River. The 8 lanes will cross the river eastbound but not westbound. San Jose's limits should extend to Lick Mill to ensure westbound continuity and not leave a few hundred feet as an unfinished gap. At the easterly limits, Milpitas has taken initiative [sic] (using traffic impact fees) to widen to 8 lanes between Great Mall and 1-680. San Jose's limits should extend to Great Mall to address Old Oakland and Trade Zone, ensure continuity, and not leave a few hundred feet as an unfinished gap.

**RESPONSE 9e:** Please see Response 9d above. The City will work with County staff to clarify future improvements consistent with improvements undertaken by others. With detailed design of the Montague widening improvements, the need for ancillary improvements can be identified.

**COMMENT 9f:** Page 144, Figure 19: To be consistent with document text, green circles should also be shown at Zanker, McCarthy, Old Oakland, and Trade Zone. Montague widening should be extended as described previously.

**RESPONSE 9f:** Figure 19 in the Draft EIR is intended to illustrate the proposed grid street system and is revised in the proposed text revisions in Section IV of this First Amendment to clarify that intent. All of the improvements referenced in this comment are shown on Figure 21 in Appendix D.

**COMMENT 9g:** Page 147, River Oaks: Despite being shown on Figure 19 and described in text on page 143, this text states "no other feasible mitigations ... were identified [sic]." Attached is a copy of Table 14 of the 1999 Montague Expressway Final Traffic Study and Improvement Alternative Analysis. San Jose was a partner in development of this planning study, which does show potential side street improvements at River Oaks. The DEIR should include these planned improvements as well.

**RESPONSE 9g:** As stated in Response 9e, other ancillary improvement may be identified between and at intersections along Montague Expressway as part of the widening project. The ancillary improvements may include intersection improvements at River Oaks Parkway. However, the improvement shown at River Oaks in the Montague Expressway Study is only the lengthening of left turn pockets. This improvement would not change intersection LOS and, thus, would not constitute mitigation under CEQA.

The discussion on page 143 describes the scope of the improvements that are proposed as part of the project. The discussion on page 147 reflects the fact that even with the widening, level of service at the River Oaks/Montague intersection will deteriorate. The conditions are also summarized in Table 13, which shows mitigation included in Phase 1 of the project for River Oaks/Montague. A revised version of Table 13 is included in Section IV of this First Amendment to the Draft EIR, which provides a clarification of footnote b in the table, which is intended to state: "Calculated level of service based on worst case intersection LOS assuming lane configurations for two new intersections of square-loop interchange."

**COMMENT 9h:** Page 147, McCarthy: It is not clear if the City proposes to implement the square loop interchange. While under the general paragraph stating "the proposed project includes the following intersection improvements", the language with regard to the square loop is vague. Please clarify.

**RESPONSE 9h:** The improvements that include the square loop are part of the mitigation measures included in the proposed project. Detailed plans and the actual layout of the reconstructed interchange have not been identified beyond what is included in the Montague Expressway Study.

**COMMENT 9i:** Page 147, Old Oakland: It is not clear if the City proposes to implement the mitigation work. While under the general paragraph stating "the proposed project includes the following intersection improvements", the language with regard to Old Oakland is vague and the location is outside the Montague project limits. Please clarify.

**RESPONSE 9i:** The identified intersection improvements would be included in the proposed project. It is anticipated that the improvements would be coordinated with the Montague widening project. It is not clear what is meant by this project in stating the this intersection is "outside the Montague project limits".

**COMMENT 9j:** Table 12, page 150: It is somewhat astounding and incredible that at North First Street, a sort of "ground zero" for the development policy change, the only traffic impacts are dramatically positive reductions in delay. This is made more perplexing and enigmatic by the fact that

negative impacts are shown at all approaches to this location, and the proposed mitigations for transit operations (including "bi-directional full priority ... for LRT along North First Street") would obviously have negative repercussions for expressway level of service. We would suggest that this anomaly be reviewed and the modeling verified.

**RESPONSE 9j:** The methodology used to analyze traffic conditions for the proposed North San José project was based on the VTA travel demand model. Due to the large size of the project and inclusion of a large amount of both residential and employment land uses, travel patterns in and around North San José will change substantially with full project implementation. It is, therefore, possible to see decreases in traffic at some intersections in the future. It should also be noted that the project includes the development of a grid system of new streets within the core area (pages 143-145 of the DEIR). This grid system would provide alternatives to the use of North First Street and Montague Expressway. The project also includes widening of Zanker Road, which will provide another alternative to North First Street.

Regarding the effects of LRT changes on signal timing, actual changes in traffic volume, LRT operations, and signal timing cannot be known at this time, so a detailed analysis cannot be completed. At the time that LRT changes actually would be implemented, a study of affected intersections would likely be undertaken to determine the best operating parameters considering traffic flow and LRT headways.

**COMMENT 9k:** Page 166, Trade Zone: The document identifies turn lanes as project mitigation but is silent on whether 8 lanes is also needed or is assumed as a baseline condition. 8 lanes are discussed at Old Oakland but not here. We are inclined to believe that 8 lanes will be needed to show any significant improvement in delay.

**RESPONSE 9k:** The analysis assumed the expressway would be widened to 8 lanes at Trade Zone as part of the project (it is part of the "Montague Widening" project). Going east, the order of the intersections is Oakland Road, Trade Zone, Great Mall. Therefore, if Montague is widened at Oakland and Great Mall, it would also be widened at Trade Zone as well because it is in between those two.

**COMMENT 9l:** Page 169, Light Rail: The text commits the project to "signal modification to enable bi-directional full priority with ability to cascade calls for green signals for LRT along North First Street." This is directly contradictory with the conclusions of the County Expressway Planning Study, which stated on page 58 (see [www.expressways.info](http://www.expressways.info)), "Continue coordination efforts with rail operators to minimize expressway traffic impacts". The DEIR should address the contradiction and quantify potential negative impacts of changed rail operations. Further, we understand there have been discussion about reducing LRT headways on North First Street. Any plans that may exist to reduce LRT headways as a mitigation should be disclosed and impacts identified.

**RESPONSE 9l:** Detailed analysis of the potential effect of changes to the Light Rail system signal preemption on signal operations is beyond the scope of this EIR because the specific details of how both the roadway and the LRT systems will be operating many years in the future cannot be determined at this time.

Equipment changes, technological improvements, pedestrian and bicycle patterns, are all unknown.

Improvements to the transit system, and light rail in particular, were identified in coordination with VTA. Currently, there are no specific plans to reduce headways on North First Street associated with this project.

**COMMENT 9m:** Page 170, "Local City Intersections": We find it a little confusing that the document sometimes identifies the expressways as County facilities and sometimes as "local city intersections", and suggest consistent representation of the expressways as County operated and maintained.

**RESPONSE 9m:** The EIR evaluates conditions on a wide variety of facilities. In order to achieve a level of consistency, all of the intersections are categorized as either CMP intersections that are designated in the County Congestion Management Plan, or as "local" intersections that are not designated in the CMP. This distinction is made because different standards are used for acceptable LOS at CMP versus local intersections. Where one of the roadways in an intersection is a County facility, the relevance of County plans for that roadway are discussed and where mitigation is proposed, the EIR states that permits and coordination with the County will be required. The EIR does not identify County roadways as local roadways and no distinction is made by the references as to operation and maintenance responsibility.

**COMMENT 9n:** Page 171, Bowers and Central: The intersection is mistakenly identified as "San Tomas Expressway" in the text and mitigations reflect San Tomas. Mitigations should state "Tier 2 of the Expressway Planning Study identifies a grade separation at this location."

**RESPONSE 9n:** This error occurs in both the DEIR text and in the TIA in Appendix D. The text is corrected for both locations in Section IV of this First Amendment to the Draft EIR to read as follows:

"The necessary improvements to mitigate the project impact at this intersection would consist of the widening of Central Expressway from four to six lanes, as identified in the County Expressways Study as a Tier 1-A improvement, and the addition of second northbound and southbound left-turn lanes."

The project's impacts do not trigger the need for Tier 2 improvements.

**COMMENT 9o:** Page 173, Great Mall and Montague: The mitigations seem to confuse Great Mall with Mission College. Tier 2 identifies a grade separation only.

**RESPONSE 9o:** As described in more detail on page 113 of Appendix D, the Montague Expressway Study identifies at-grade improvements of the intersection of Great Mall and Montague Expressway as Tier 1A improvements. The at-grade improvements would mitigate the impacts of this proposed project at that intersection. There would be no nexus for proposing Tier 2 improvements to mitigate the project impact.



NOTE: THE FOLLOWING COMMENTS WERE INCLUDED AS AN ATTACHMENT TO THE LETTER FROM COUNTY ROADS AND AIRPORTS.

**COMMENT 9p:** We have reviewed the above DEIR; the following are our comments as it relates to Montague Expressway between Hwy. 101 and Hwy. 680, San Tomas Exp. and Central Exp:

1. Page viii, top of the page; please clarify that the square footage for each phase is cumulative after phase 1, otherwise the summation of the four phases would add-up to more than the proposed 26.7 Million square feet as it is shown.

**RESPONSE 9p:** The clarification is correct.

**COMMENT 9q:** 2. Page viii, fourth paragraph; phase I indicate that Montague Exp. will be widen [sic], however the reference should be for the portion of Montague Exp. Within the city of San Jose Jurisdiction only. See additional comments on this subject below, as we disagree that the City does not have the authority to mitigate project traffic impact in other jurisdiction.

**RESPONSE 9q:** This comment is referring to the Summary section of the EIR. The complete project description, including more detail about the exact extent of improvements proposed by the project, are found in Section I and in Section II.B. Transportation in the text of the Draft EIR, and in Appendix D in the Technical Appendices of the Draft EIR.

Please see the Master Response in Section III.A. of this First Amendment to the Draft EIR for a discussion of "Mitigation for Traffic Impacts Outside the City of San José". See also Responses 9d and 9g above.

**COMMENT 9r:** 3. Page xii of the project summary for significant impacts, and mitigation and avoidance measures. It is stated "the City lacks the authority to implement mitigation in other cities" This assertion is inconsistent with San Jose own practice with regard to large development. (Please see Dan's comments for more on this issue).

**RESPONSE 9r:** Please see both Response 9c above, and the Master Response in Section III.A. of this First Amendment to the Draft EIR for a discussion of "Mitigation for Traffic Impacts Outside the City of San José".

**COMMENT 9s:** 4. Page xi, box 2 and 3; we respectfully disagree with the city analysis of the Mitigation and avoidance measures. Please see comment # 5 below to mitigate Significant Unavoidable Impact.

**RESPONSE 9s:** Please see Response 9t, which responds to your comment #5.

**COMMENT 9t:** 5. Page xii, box 2 of the mitigation and avoidance measures. The City can propose changes to its own policy regarding Temporary Significant Unavoidable Impact by requiring improvement to Montague Exp. be concurrently mitigated with each phase or portion of any phase.

**RESPONSE 9t:** The policy discussed in this mitigation measure is the newly proposed Area Development Policy discussed in this EIR. This summary statement on page

xii is disclosing the impact of adopting the policy as it is presently proposed. The mitigation measures are intended generally to match the impacts anticipated in each Phase. However, it is anticipated that there would be instances where the improvements would lag behind the impacts. Since the funding for improvements is proposed to come from impact fees, a certain level of development would need to occur before improvement funding would be in place.

**COMMENT 9u:** 6. Page 16, table; States Montague expressway will be widened with phase one of the proposed project. Anyone reading this statement will conclude that the entire length Montague Exp. will be widened. But that is not what the DEIR is proposing (i.e. only in the CSJ jurisdiction). See comment # 3 for additional information.

**RESPONSE 9u:** This comment is referring to information in the Summary table. The section is entitled "Summary", and the paragraph at the bottom of page ix says that the table which follows "summarizes" the impacts identified and discussed within the text of the EIR and the mitigation measures for those impacts. There is more information on the mitigation proposed for traffic impacts in Section II.B. Transportation and in Appendix D of the DEIR.

Please also see the Master Response in Section III.A. above and Responses 9d and 9g above.

**COMMENT 9v:** 7. Page 19 "Transportation policies, second paragraph; the proposed modification to the City's policies relating too [sic] intersection and roadways should specifically exclude Montague Exp. as being a County exp. The County adheres to VTA/CMA requirement which are different from the CSJ none CMA requirement.

Additionally, the City should remove intersections along Montague Exp. from the requirement of the average 83 sec. threshold for the several intersections in the original NSJ Deficiency Plan as part of the new update for this area. (Please note this comment is not discussed in this DEIR).

**RESPONSE 9v.** The County may choose to not participate in the implementation of the proposed Area Development Policy. It is, however, the City's intention to provide for improvements to Montague Expressway, and the City is proposing to enact an impact fee to fund the improvements.

The EIR addresses the adoption of two transportation-related regional policies for North San José. The Area Development Policy (which is described on pages 19-24 and included in Appendix C) addresses congestion on local (non-CMP) facilities and consistency with the City's General Plan policies. The Deficiency Plan (described on pages 24-25 and included in Appendix C) is proposed in conformance with the Santa Clara County Congestion Management Plan and addresses consistency of all regional roadways and intersections identified in the CMP, including Montague Expressway.

The 82 second average delay whose maintenance was required in the original Deficiency Plan for North San José is not proposed as part of the new

Deficiency Plan (see the proposed Deficiency Plan in Appendix C). The DEIR does discuss the existing Deficiency Plan standard on pages 24-25.

**COMMENT 9w:** 8. Page 47, second paragraph; under "Consistency", the City need to exclude Montague Exp. and note Montague Exp. is a County maintained and operated Expressway since the County follows CMA requirements.

**RESPONSE 9w:** See Response 9v above. For impacts to intersections with other expressways in parts of the City of San José that are outside the boundaries of Area Development Policies, the City applies its citywide level of service standard of D.

**COMMENT 9x:** 9. Page 49; Transportation policy # 7 relating to "traffic impact on regional transportation facilities to be taken into consideration....." however under Consistency, the response basically indicates that this policy is consistent, we respectfully disagree. Intersections and roadway or roadway sections outside the City jurisdiction is analyzed but not considered for mitigation. See comment # 3 above, as well as Dan's comments.

**RESPONSE 9x:** All regional facilities that are impacted by the proposed project are identified and addressed in this Draft EIR. Those facilities (including freeways and other CMP designated regional transportation facilities) are evaluated and the impacts identified, based on thresholds of significance defined by the CMP. While mitigation is not proposed for all impacted regional facilities, it is disclosed where it can be identified. In adopting findings pursuant to approving the proposed project, the City Council will identify what mitigation will be implemented and will disclose its reasons for not requiring mitigation, where appropriate, in conformance with CEQA and General Plan policies.

Traffic impacts to regional facilities are, therefore, being "taken into consideration" in the review of the proposed General Plan amendments, which is consistent with the referenced City General Plan policy. The policy does not state that all impacts must be mitigated.

Please also see the Master Response in Section III.A.

**COMMENT 9y:** 10. Page 121, Fifth Paragraph; refers to County of Santa Clara Roads and Airports Department Comprehensive County Expressway Study. It should be noted that this was only a study and planning. No funding has been identified or programmed. Additionally this study is dependent in part on adjacent cities in conditioning developers for their share for improvement on Montague Expressway. The provisions in this study should be used to condition developers as stated above. It is a mistake for both the County and the City to use this study for the purpose of mitigation measures for development, as no funding has been identified.

**RESPONSE 9y:** It is not clear from this comment what text in the referenced paragraph on page 121 in the DEIR is the subject of this comment. The paragraph in question identifies the Comprehensive County Expressway study, and discusses its content. The paragraph points out that the various improvements are categorized in the study based on their priority and "ability to be funded". The DEIR text does not anywhere say that the improvements have been funded by

others. The paragraph text also says that several of the improvements in the study are identified in the EIR as “planned improvements or possible mitigation measures”.

The last paragraph on page 121 states that: “Only those capacity enhancing improvements for which there is identified funding are included under background conditions and shown in Table 9.” That statement means that the EIR analysis did not assume that improvements would be built where there is not approved funding in place for those improvements.

The DEIR describes in the Project Description section the infrastructure within the North San José area that is proposed to be included in the project. In particular, on pages 16 and 17 within the EIR section entitled “Description of the Proposed Project”, there are lists of transportation system improvements that will be built by the project and a phasing plan that specifies when each element will be built relative to the amount of development allowed. The DEIR also describes the mechanisms that will be used to fund these improvements, including the following paragraph on page 24:

“Infrastructure improvements will be funded through fees collected at the issuance of Building Permits. Developers may pay the fee directly or utilize a Community Financing District (CFD) or similar mechanism that can fully meet the fee requirements at issuance of Building Permits.”

The subsection on “Infrastructure Implementation” on pages 26-27 summarizes the scope of infrastructure proposed and summarizes how it will be implemented.

**COMMENT 9z:** 11. Page 139; please clarify that the TIR and mitigation are based on the "Screen Line Impact for both Land use and Network change" rather than one and not the other.

**RESPONSE 9z:** The page referenced is part of the discussion of the long term analysis of impacts likely to occur from buildout under the proposed General Plan designations, including the proposed roadway network changes. Since the City does not require near-term development related mitigation based on long term model-based impact analyses, no specific physical mitigation is required based on the impacts identified in this section. Mitigation is identified and required pursuant to a specific, detailed, near-term traffic impact analysis, which is included in this Draft EIR beginning on page 141.

**COMMENT 9aa:** 12. Page 140, LOS E/F Link Impact -Land use and Network"; Please identify which additional four Links that will operate at LOS of E or F.

**RESPONSE 9aa:** As shown in Table 29 of Appendix D, the four links that would operate at LOS E or F in the project condition that would not operate at LOS E or F under the baseline approved General Plan condition are link 7 of Link Sets 4 and 25, links 3 and 5 of Link Set 18, and link 4 of Link Set 19.

**COMMENT 9bb:** 13. Page 142, Fourth Paragraph; please do not include Montague Expressway in the City proposal to implement modification to the N SJ Development Policies Update. Montague Expressway is a County operated and maintained road. The County follows the CMA requirement for impact and mitigation. A note should be added to this paragraph to explicitly exclude Montague Expressway from the new City policy change proposal.

**RESPONSE 9bb:** Please see Response 9v above. Because the City is proposing to adopt a Deficiency Plan in conformance with the CMP, the new policies will apply to Montague Expressway, as described in the Deficiency Plan.

**COMMENT 9cc:** 14. Page 157, Second paragraph; Montague Exp. should be mitigated during phase I of the project as stated on table 13.

**RESPONSE 9cc:** This paragraph is not inconsistent with Table 13, although the reference to the table in the paragraph is incorrect (it should refer to Table 13). The table number reference is corrected in Section IV of this First Amendment to the DEIR.

**COMMENT 9dd:** 15. Pages 158 through 160, Table 13; under the heading of phase 2 Conditions and Mitigation, no mitigation is proposed despite that the LOS and delay (Montague Exp.) getting worse under phase 2, similarly the same comment apply to phase 3 and the final project condition mitigations. Under the heading of the project conditions and mitigations, the LOS and the average delay is not calculated. The delay and Los shown under the final project conditions are worse than phase 3.

**RESPONSE 9dd:** Table 13 erroneously showed improvements to the Trimble/Montague intersection as occurring in Phase 3. As stated in the Project Description, the Trimble/Montague improvements will occur as part of Phase 1.

Each phase is analyzed to include the impacts and mitigations in the previous phase. It is not feasible to achieve LOS D at all intersections along Montague Expressway. The project does propose sufficient improvements to achieve better than background conditions for the segment of Montague Expressway in San José, which qualifies as mitigation under CEQA. (There is no nexus for requiring a project to mitigate impacts under background conditions that are caused by other projects.)

**COMMENT 9ee:** 16. Page 413 last paragraph; please exclude Montague Expressway from the proposed CSJ new Transportation policy.

**RESPONSE 9ee:** Please see Response 9v above. Because the City is proposing to adopt a Deficiency Plan in conformance with the CMP, the new policies will apply to Montague Expressway, as described in the Deficiency Plan.

**COMMENT 9ff:** 17. The County has been and continues to implement an Intelligent Transportation System (ITS) on all County Expressways to the extent possible to provide the minimum delay to the traveling public. If the traffic impact of this project is not implemented, the ITS program for Montague Expressway will suffer severely, and may not be completed or even partially completed, further making the area more congested more pollution, additional cost to the motorist, the

City and County due to lose [sic] of productive hours working hours wasted stuck on roadways due to congestion particularly Montague Expressway as it serves motorist from many regions surrounding the City and County.

**RESPONSE 9ff:** The project proposes to implement a number of mitigation measures that are described in the Project Description and Section II.B. of the Draft EIR. The mitigations will not adversely effect the ITS program, which can be programmed to reflect the mitigated conditions.

**COMMENT 9gg:** 18. Page 92, paragraph 7; Montague Expressway is a 6 to 8 lane Expressway, not 6 lanes as indicated in this paragraph.

**RESPONSE 9gg:** This information is consistent with the basis of analysis reflected in the DEIR. The TIA also assumed that Montague is six lanes wide in some areas and eight lanes wide in others. Please see Appendix D.

**COMMENT 9hh:** 19. Page 147, item 7; It is indicated that River Oaks and Montague Exp. a CMP intersection... "there are no other feasible mitigation that were identified, in response please see comment # 14.

**RESPONSE 9hh:** As stated previously, ancillary improvements will be necessary between and at intersections along Montague Expressway as part of the overall widening project. The ancillary improvements may include intersection improvements at River Oaks Parkway. There does not, however, appear to be any feasible improvements that can be made at River Oaks Parkway that would mitigate the project impact. Please also see Response 9g above. The improvements discussed in Response 9g would not mitigate project impacts.

**COMMENT 9ii:** 20. Page 147, item 10; Old Oakland Road and Montague Exp ... relating to proposed improvements. It is not indicated by whom. Please also see comment #3 for additional response.

**RESPONSE 9ii:** The improvements at Old Oakland Road and Montague Expressway are part of a list within the section of the DEIR entitled "Intersection Improvements Within North San José". The first paragraph of this section reads as follows:

"The proposed project includes the following intersection improvements within North San José. It is anticipated that the improvements will be installed according to the phasing plan described in the North San José Area Development Policy and included as part of the proposed project."

The City of San José is proposing to oversee the implementation of the Area Development Policy and funding for the improvements as described in the section entitled "Infrastructure Implementation", beginning on page 26 of the DEIR.

**COMMENT 9jj** 21. Page 166, item 58; Trade Zone Blvd. and Montague Exp. (CMP). How many lanes the improvements are based on?, since it was assumed in the DEIR that Montague is a 6 lanes Expressway and not 6 to 8 lanes as the case is.

**RESPONSE 9jj:** The proposed improvements for Montague Expressway are assumed to continue an eight-lane roadway through the intersection with Trade Zone.

**COMMENT 9kk:** 22. Page 167, item 98; Capitol Exp and Capitol Ave. Does the proposed improvement fit with the existing geometry?.

**RESPONSE 9kk:** The proposed improvement would fit within the existing roadway width.

**COMMENT 9ll:** 23. Page 169, last paragraph; Per City policy for regional transportation analysis, it is proposed that analysis and mitigation measures be performed on facilities outside the City jurisdictions. In this paragraph it is indicated that intersections that are not within the CSJ jurisdiction are not proposed for improvement because the City lacks the authority as indicated in comment #3. Therefore the City argument of lacking the authority is not consistent with the City policy for regional facilities. Also both the City and the County are aware, this situation occurred in the past. A process was setup to improve roads/intersections that are not in the City jurisdiction. That jurisdiction that will be impacted are the cities of Milpitas, City of Santa Clara and the City of Sunnyvale. Since the County Operates and maintain Montague Expressway, the County would be the lead agency to implement improvements impacted by this project in coordination with these other cities once funding is available as mentioned earlier in these comments. This situation has occurred in the past and was resolved by development fee grants and contribution from the city causing the traffic impact

**RESPONSE 9ll:** The DEIR does not state that analysis of impacts to facilities outside the City boundaries will not be performed. This EIR evaluates and identifies impacts anticipated to occur at all transportation facilities, and states what those impacts would be. Additionally, mitigation for all significant impacts to all facilities are discussed where mitigation could be identified.

See Section IV of this First Amendment for text revisions and clarification of Table 13.

As stated previously, the analysis in this DEIR of impacts to and mitigation for impacts to facilities outside the City's boundaries is consistent with the analysis done in previous EIRs.

With regard to the mitigation not proposed to facilities outside San José, please see the Master Response in Section III.A. of this First Amendment to the Draft EIR. For a discussion of how the funding for mitigation improvements included in this project will be managed, please see Response 9b above.

**10. RESPONSES TO LETTER FROM SANTA CLARA COUNTY COUNSEL'S OFFICE, DATED APRIL 25, 2005:**

**COMMENT 10a:** We submit the following comments on the above-referenced Draft Environmental Impact Report for the Rincon de los Esteros Redevelopment Area General Plan amendments ("DEIR") on behalf of the County of Santa Clara.\* [These comments are intended to supplement the comments provided by the County Roads and Airports Department. (Letter from Raluca Nitescu to Andrew Crabtree dated April 18, 2005.)] While the County generally supports the idea of accommodating planned growth near transit corridors within existing urban areas, the impacts of this growth must still be adequately mitigated. Greatly increasing development densities in such areas does not constitute "smart growth" when it results in numerous significant, unmitigated environmental impacts. Nor does shifting scarce tax dollars away from the County and other public entities that provide critical health and human services to support the City's economic development agenda constitute smart growth.

**RESPONSE 10a:** The opinions expressed in this comment are acknowledged. The comment does not speak to any aspect of the environmental analysis or any component of the EIR and no response is required.

**COMMENT 10b:** Unmitigated Significant Transportation Impacts  
The DEIR states that the project would allow for an additional 20 million square feet of new industrial/office/R&D building space, 24,700 new residential units, and a population increase of 56,640 persons. This is in addition to the significant amount of growth allowed under the existing General Plan (6.7 million sq.ft. of new industrial/office/R&D development and 7,300 dwelling units). It is unclear how the population increase of 56,640 was derived (DEIR, p. vii), but it appears to be a gross underestimate.\*\* [\*\* The DEIR states that the total new office/industrial/R&D development (26.7 million sq.ft.) would result in 83,300 new employees. (DEIR, p. vii.) The net new development allowed by the General Plan amendments would be 20 million sq.ft. Using simple ratios, if 26.7 million sq' ft. of industrial/office uses generates 83,300 new employees, then 20 million sq.ft. (80% of 26.7 million) would generate 66,640 jobs (83,300 x 0.80). However, when analyzing the Coyote Valley alternative, the DEIR assumes that 20 million sq.ft. of industrial/office uses would generate 62,500 jobs. (DEIR, p. xxxvi.) Adding 24,700 net new dwelling units would further increase this population. (DEIR, p. vii.) Using the ABAG occupancy rate of 2.69 persons/dwelling, the population increase from the extra dwelling units would be 66,443. [Note: The 2000 census showed a County-wide average household size of 2.92.] If one aggressively assumes that 25% of the new employees (16,660) within the relatively small Rincon area live in these new dwelling units, then there would be a population increase of at least 49,783 from the extra dwelling units alone (66,443 - 16,660 = 49,783). [Note: The DEIR assumes that 68% of the new employees would live in the new dwelling units within the area. (DEIR, P. 9.) We are not aware of any project that has ever achieved such a high worker-occupancy rate. Hence, we do not believe this assumption is realistic.] This yields a net population increase of 116,423 (66,640 employees + 49,783 non-employee residents), which equals 13% of the total population of the City of San Jose as determined by the 2000 Census in a relatively small area.] Even with these underestimated numbers, the DEIR acknowledges that the project will cause significant, unavoidable impacts on numerous roadways, intersections and other transportation facilities.

**RESPONSE 10b:** While there is, technically, more than enough housing existing and planned within San José to house all of the people that might be employed in North San José, and while it is likely that many of the future new employees will live in



housing that currently exists in San José and Santa Clara County, the analysis in the EIR assumed that these new employees might need to be housed in new residences. The analysis in the EIR therefore identifies the impacts that could occur if all of the new work force were housed in housing that is planned for but not yet built.

As stated in the DEIR (page 33 *et seq.*), the City of San José currently provides a disproportionate share of the region's housing and improving the City's jobs-housing balance (*e.g.*, increasing the City's share of the region's jobs in relation to its share of the region's housing) is a primary goal of the San José General Plan. The primary goal of the proposed project is to provide the opportunity for continued industrial development within North San José as an employment center for the City of San José (page 28 of the DEIR). The proposed project does however include a significant amount of new housing, estimated to provide housing for up to 62 to 68% of the work force associated with the new industrial development (32,000 X 1.6 workers per household = 51,200/83,300 = 62%). ABAG assumes 1.77 workers per household in San José in 2025, which supports the conclusion that 68% of the new work force could be housed in the new residential development. The traffic modeling done for this project used a lower, more conservative ratio of 1.6 workers per household because the VTA model (which was derived from the MTC regional model) assumed 1.6 workers per household in North San José. That ratio supports the conclusion that 62% of the work force could be housed in the new residential development in North San José.

This amount of new housing is proposed primarily to address jobs-housing and commute concerns within the immediate project area. Housing continues to be added throughout the City of San José as a whole and based upon the City's General Plan, new housing capacity was identified for an additional 22,200 residential units capable of supporting over 39,000 workers. The traffic analysis, however, assumed that some of the new work force would want to live outside San José, and the traffic analysis also assumes that 6,800 planned dwelling units would be available to this work force outside San Jose's boundaries.

The analysis did not automatically assume that 68 percent (or 62 percent) of the automobile trips would be internalized, if that is the concern in this comment about "any project that has ever achieved such a high worker-occupancy rate". The meaning of "worker-occupancy rate" is not clear.

**COMMENT 10c:** The DEIR identifies certain infrastructure improvements that it claims will be implemented as part of the project to help mitigate these impacts (DEIR, pp. 142-149) and explains how these improvements will be financed:

"This major infrastructure will be financed through a variety of mechanisms over the life of the project implementation process. Development Impact Fees will be assessed at the time of project approval. Additionally, the City and Redevelopment Agency will seek funding from regional sources to help finance major improvements to the regional transportation system, including upgrading and/or expanding transit systems." (DEIR, p. 143.)

This statement is vague and provides little assurance that sufficient funding will be available for the needed improvements. There is no estimate of how much these improvements will cost, or what percentage of the costs will come from development impact fees or other "funding from regional sources." It is also unclear what "regional sources" of funding the DEIR is referring to. Consequently, there is no way to evaluate the viability of these funding sources.

**RESPONSE 10c:** The EIR is primarily a program-level document that addresses the impacts of changing the General Plan land use designations and revising long term policies. The DEIR acknowledges on page 7 that the level of detail disclosed is limited to what is "presently available". The implementation of the amount of development that could occur under these policy changes could require 20 to 30 years. The project includes a proposal to collect fees to fund approximately \$520 million for roadway improvements and \$60 million for transit, pedestrian and bicycle improvements. It would be highly speculative to identify an estimated amount of money that might become available from regional sources as the project is implemented over the next 25 to 30 years.

**COMMENT 10d:** Transportation funding throughout the County has dwindled, the Valley Transportation Authority has sustained severe budget and service cutbacks, and there is scant money available to fund the numerous roadway improvements that are needed to alleviate existing conditions. The DEIR must provide more information regarding the cost of the mitigation measures and the sources of funding. Without this information, there is no way to determine whether these improvements are feasible and whether they will ever be implemented.\*\*\* [See, e.g., Federation of Hillside and Canyon Association v, City, of Los Angeles (2000) 83 Cal.App 4th 1252, 1260-1262.]

**RESPONSE 10d:** The City of San José is proposing to limit the extent of impacts by phasing development, such that (as stated on page 16) each and all of the infrastructure identified as necessary for a particular phase must be reasonably assured concurrent with the project implementation. Development allowed under the subsequent phase cannot be approved until construction of 85% of the infrastructure improvements for the current phase is reasonably assured and all of the improvements from any proceeding phase are fully constructed. [See also the proposed Text Amendments in Section IV, especially revisions to the Project Description.]

It is not customary in EIRs to analyze the costs of mitigation measures in detail, or even to discuss the costs unless the lead agency and/or the project proponent are arguing that mitigation is infeasible because of its costs. The City of San José is proposing an extensive list of mitigation measures it believes are feasible, and is conditioning its own project to implement that mitigation. costs will not be static for 25 years and sources of funding (in addition to development impact fees) may change over time.

It would generally be considered inappropriate to characterize mitigation primarily in terms of its cost because such a discussion implies that cost may be the only determining factor in whether the mitigation is implemented. This Draft EIR says that the mitigation measures are proposed as part of the project. The phasing program describes which measures will be implemented during

each phase, and Table 13 identifies the traffic impacts that would occur at full implementation of each phase.

**COMMENT 10e:** The DEIR identifies numerous other transportation improvements that are needed to mitigate project impacts (DEIR, pp. 170-173), but "is not proposing to implement [them] because the intersections are not within the jurisdiction of the City of San Jose." (DEIR, P. 169.)

The City is lead agency for this project, will have permitting authority for all of the development occurring within the project area, and has the legal authority and responsibility to adopt mitigation fees for all public facilities impacts caused by this development regardless of whether those impacts extend beyond City limits or impact facilities not controlled by the City. (See Mitigation Fee Act, Gov. Code § 66000 et seq.) The Mitigation Fee Act does not impose geographical limits on impact fees imposed by counties and cities on development projects under their jurisdiction. Fees imposed pursuant to the Act are proper so long as they are required "to defray all or a portion of the cost of public facilities related to the development project." (Gov. Code § 66000(b).)

The fact that some of the transportation facilities impacted by the project may be controlled by other public entities does not relieve the City of its duties to adopt all feasible mitigation measures and use its legal authority to the fullest extent to mitigate this project's impacts. The Mitigation Fee Act acknowledges that development impact fees adopted by a county or city pursuant to that Act may be used to improve facilities managed by another agency. (Gov. Code § 66006.5 (Caltrans facilities).) Thus, the City has the legal authority and responsibility to mitigate these impacts.

Because the City has the legal authority to impose development impact fees for all project-related impacts to public facilities, it shares the responsibility for implementing these mitigation measures with the public agencies that manage those facilities. It cannot simply rely on other agencies to mitigate these impacts, \*\*\*\* [E.g., *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8.] particularly where those other agencies have no ability to impose mitigation fees on the project. The City cannot avoid its responsibilities by finding that these transportation improvements "are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency." (Pub. Res. Code § 2108 1.)

**RESPONSE 10e:** While the City of San José may be able to negotiate an acceptable agreement with other agencies to offset impacts within their jurisdictions, that outcome cannot be guaranteed. The EIR is accurate in stating that the City does not have jurisdiction over those facilities, and cannot ensure that the mitigation identified is accomplished. See the Master Response in Section IV.A. of this First Amendment for additional discussion regarding mitigation for impacts in other jurisdictions.

**COMMENT 10f:** Misuse of Redevelopment Process

The County is also concerned about the City's misuse of the redevelopment process to finance this project at the expense of the County and other public entities. The project area clearly does not meet the statutory definition of "blight," so there is no legal basis to extend the duration of the tax increment financing for the area. Yet the City attempts to perpetuate its longstanding practice of siphoning much-needed property tax revenues away from critical public services such as health care, schools and law enforcement in its relentless quest to out-compete other jurisdictions for a larger piece of the economic development pie.

The County will use every means at its disposal to prevent this continued abuse of the redevelopment process.

**RESPONSE 10f:** The opinions expressed in this comment are acknowledged. The comment does not speak to any aspect of the environmental analysis or any component of the EIR and no response is required. This is not a CEQA issue.

**11. RESPONSES TO LETTER FROM CITY OF MILPITAS, DATED APRIL 21, 2005:**

**COMMENT 11a:** Thank you for this opportunity to comment on the Draft Environmental Impact Report (DEIR) for the proposed update to the North San José Development Policies. The South Bay Area has had been among the hardest hit regions from the down-turn in the economy and we can appreciate San José's efforts to revise the North San José development policies to make the Rincon area more attractive to new businesses. The City of Milpitas is undertaking a similar intensification project for the properties in the vicinity of the Montague BART station.

Though Milpitas is support of your efforts, we do have the following comments on the Draft EIR that are organized into three major areas of concern.

**1. Cumulative Impacts to Wastewater Treatment Facilities**

The conclusion reached in the EIR that the project would not have any cumulative impacts to the capacity at the Water Pollution Control Plan (WPCP) is based on the premise that the existing flow (excluding planned growth) from San José of 73 million gallons per day (mgd) does not increase. San José's sewer flow to the WPCP in 1998 was 94 mgd. The 21 mgd decrease in sewer flow from 1998 to 2004 is attributed in part to the economic conditions that have resulted in high vacancy rates in the industrial areas of Santa Clara County. The EIR concludes that if discharge levels return to those that occurred in 2000, due to the re-occupancy of currently vacant buildings, there would be insufficient capacity at the WPCP to treat the additional volume of wastewater. The EIR attempts to address this fact by citing to San José policies that preclude approval of new development if the City Manager makes a determination that the cumulative sewage treatment demand will cause the total sewage treatment demand to meet or exceed capacity. This analysis neglects to consider that existing vacant buildings may not need any new land use approvals. Therefore, it is unclear how the [sic] San José can control discharges from these properties, and if San José cannot control these discharges, how San José can determine whether a new project will result in the treatment plant's capacity being exceeded. Thus, there is clearly not enough sewer capacity at the WPC P to accommodate the flow rate of San José's existing building stock, the planned growth in other portions of the city, and the expected additional flow resulting from the proposed North San Jose Development Policies. Further, as the EIR discusses, the treatment plant's ability to discharge into the Bay is limited by state agencies. Therefore, any increase in treatment capacity must either be accompanied by an increase in Bay discharge limit, or by a project to divert treat water to other uses. The EIR does not acknowledge that further study is needed to determine how feasible additional diversion will be.

**RESPONSE 11a:** The capacity determination is made at issuance of building permits, not land use entitlement, so the City can account for re-occupancy of currently vacant buildings when tenant improvement permits are needed. Building permits are tracked by the City specifically for the purposes of ensuring plant treatment capacity, and will continue to be. This is not done pursuant to a "policy", but is an ordinance of the City.

In 2000, which was near or at the height of the last economic boom period, the average dry weather effluent flow to the Bay was 116.3 mgd, and the average dry weather influent flow was 126.5 mgd. New businesses re-occupying vacant buildings will be lower water users, due to increases in office versus manufacturing activities. Aggressive implementation of industrial water conservation is also reducing sewage generation rates. Many of the sites that

used to contain canneries and manufacturing companies are being redeveloped with residential, commercial, and office/R&D uses.

The City is proposing to aggressively expand the use of recycled water in North San José (see proposed text revisions in Section IV of this First Amendment), which will also support the Plant's diversion of effluent.

The Treatment Plant closely monitors sewage generation throughout the tributary area on an ongoing basis. If building re-occupancy combined with new growth and foreseeable growth patterns starts to approach levels that could result in an exceedance of existing limits, the City can and will stop approving new connections, consistent with local ordinances and its agreements with the tributary agencies.

The City of San José and WPCP have various methods to control discharge to the Plant. For example in the late 1990s the WPCP implemented the Flow Audit Study (FAS) program. The FAS required companies with over 100,000 gpd of discharge to perform a water audit and evaluate potential projects to reduce wastewater discharge. In Tier 1 of the FAS, implementation of the projects was voluntary. However, if the discharge to the Bay continued to exceed 120 mgd, then the WPCP would require these companies to implement flow reduction projects with paybacks of 5-year or less. The WPCP also had plans to progressively reduce the discharge criteria down to 25,000 gpd if needed. The WPCP also had contingency plans to require mandatory retrofit of water efficient fixtures such as low-flow toilets and mandatory retrofits of SBWR.

**COMMENT 11b:** 2. Odor Impacts

Though the EIR makes reference to potential impacts from odors originating from the WPCP, there is no analysis or conclusion of the significance of these impacts nor is there any mention of the Newby Island Compost facility. As you may be aware, in 1997 the City of San Jose filed a lawsuit against the City of Milpitas challenging the approval of the McCarthy Ranch Mixed Use project that would have allowed residential uses west of 1-880. The primary purpose of the suit was to remove the possibility of additional odor complaints, from the planned residential community, that could have required the WPCP to make physical changes to their operations to reduce odors. The lawsuit ended in a settle agreement whereby the land use designation on Mr. McCarthy's property was changed from Mixed Use to Industrial Park and restricted future uses to non-residential uses only. Given the additional 56,000 people expected in the Rincon area, the lack of a thorough analysis of the impacts of odors from the WPCP and Newby Island is significant and needs further study.

**RESPONSE 11b:** Additional discussion of the odor issue is provided in Section IV of this First Amendment to the DEIR.

The situation with regard to the proposed McCarthy Ranch project in 1997 is not directly comparable to the currently proposed project. The McCarthy Ranch project proposed residences directly across Coyote Creek and within one-quarter to one-half mile of the WPCP's active biosolids lagoons. That proposed residential site was also in the prevailing wind direction, downwind of the Plant.

As discussed in Section IV, the project would not exceed the BAAQMD guidelines for a significant odor impact. The nearest residential development that could occur under the proposed land use designations would be farther from the WPCP (and from Newby Island) than existing residential development in San José, and the future residential properties are not within the prevailing wind direction from the WPCP.

**COMMENT 11c:** 3. Traffic Impacts

Only nine intersections were studied in Milpitas and the EIR concluded that four of the nine intersections would be significantly impacted by the project: 1-880 Northbound Ramps/Great Mall Parkway, SR-237(Calaveras Boulevard)/Milpitas Boulevard, Montague Expressway/Great Mall Parkway, and McCarthy Boulevard/Tasman Drive.

Great Mall Parkway/Abel Street intersection operated at LOS D based on Year 1999 and 2000 traffic counts. Per the intersection selection criteria, this intersection should have been analyzed since it operated at LOS D or worse and the project is expected to add a significant amount of traffic to it.

**RESPONSE 11c:** The selection criteria for study intersections included two parameters: (1) intersections that operated at LOS D or worse under existing or background conditions; and (2) intersections to which the proposed project would add more than 100 peak hour trips. The intersection of Abel/Great Mall Parkway operated at LOS D during both peak hours in 2000. The proposed project would not, however, add more than 100 peak hour trips to the intersection.

An analysis was done of the intersection after receiving this comment letter. The analysis found that the intersection would continue to operate at LOS D during both peak hours with the addition of project traffic. The project impact would, therefore, be less than significant.

**COMMENT 11d:** The technical analysis did not include trips from approved projects at any of the Milpitas study intersections, while approved trips were included for all San Jose and Santa Clara intersections. The City of Milpitas forwarded the approved projected trips to be included under Background Conditions. As a consequence of adding the approved trips, the project will impact seven of the nine study intersections in Milpitas instead of just four locations cited above. The three new impacted intersections are the Calaveras Boulevard/Abel Street, the 1-880 Southbound Ramps/Tasman Drive, and the Montague Expressway/South Milpitas Boulevard.

**RESPONSE 11d:** The consulting traffic engineer contacted Joseph Oliva at the City of Milpitas regarding approved projects and was informed that, at that time (May/June 2004), there were none to be considered. No record of the approved trips was received by either the City of San José or the consulting engineer. The City of San José's TIA methodology does not require that background conditions be continually updated, once background conditions are established and the analysis is begun. Since this comment letter was not accompanied by the approved trip numbers, no quantitative analysis could be done. The traffic analysis done for the DEIR did assume that a certain number of employees working in North San José would live in Milpitas. Based on Milpitas' General Plan, the model assumed that 2,200 new dwelling units would be built in Milpitas during the time frame of project implementation. (That does not mean

that the analysis assumed that all 2,200 units would be occupied by people employed in North San José, only that the housing would be available.) To the extent that these approved project are residential, trips associated with North San José are already reflected in the analysis.

**COMMENT 11e:** The project trips added to roadway corridors in the City of Milpitas are inconsistent and do not always balance between adjacent intersections. For example, from Appendix A - Volume Summary Tables, the project is expected to add 132 vehicles during the AM peak hour to the westbound through movement of the Great Mall Parkway/Main Street intersection; however, only one (1) additional vehicle is projected on the westbound approach at the Great Mall Parkway/1-880 Northbound Ramps intersection. Some discrepancies are expected because of the assignment methodology using existing turning movement counts; however, this inconsistency makes it difficult to accurately determine the impacts to each study corridor.

**RESPONSE 11e:** Due to the scale of the project, it was not realistic to prepare a manual trip assignment in the usual fashion. The scale of the project is such that it will cause a redistribution of existing traffic. Therefore, the analysis was prepared using a travel demand forecasting model. The model was used to prepare a future scenario with the project, which was compared to a model-based year 2000 (no project) scenario. The projected traffic difference at each intersection was added (or subtracted) from the existing count. Thus, the volume at any particular intersection represents the predicted change in future traffic conditions and not solely the project trips. For example, the proposed project might produce 500 trips through a particular intersection, but if those trips displaced 500 other (existing) trips, the difference would be zero. This does not mean that the project would send no traffic through that intersection, it means that the net effect of the project would be zero (no measurable change).

**COMMENT 11f:** The DEIR shows that the project would cause traffic volumes on the westbound approach at the Calaveras Boulevard/Abel Street intersection to decrease by approximately 250 vehicles during the AM peak period. This projection is not logical based on the size of the proposed development and the fact that the trips were assigned manually as opposed to using the model (which would likely show decreases on some roadways due to changes in land use, etc.).

**RESPONSE 11f:** As described in Response 11e, the project will create a redistribution of traffic on the roadway system. In some cases, future volumes are projected to decrease. The assignment of project traffic was completed with the use of a traffic model, which would identify the net change in conditions.

**COMMENT 11g:** The document does not include a description of the fee program designed to fund the relatively long list of mitigation measures. We have heard that the fee program does not include funding for any mitigation measures outside the City of San José.

**RESPONSE 11g:** Please see the Master Response in Section III.A. of this First Amendment to the Draft EIR.

The DEIR discusses the general approach that will be used to fund the infrastructure proposed, and states that the fees will be collected at the building permit stage (page 26 of the DEIR). The DEIR also states that the project does



not include mitigation for impacts outside the City of San José's jurisdiction (page 169).

**COMMENT 11h:** While the DEIR analysis and the corresponding TIA did not provide traffic volumes at the corridor level, the projected intersection turning movement volumes were reviewed to determine the potential impact to each roadway segment. The impact is calculated as the increase in volume over existing conditions since background volumes were not estimated for any City of Milpitas intersections.

<b>PROJECT TRIPS ADDED TO KEY MILPITAS CORRIDORS IN CITY OF MILPITAS</b>						
<b>Corridors</b>	<b>Two-Way Volume</b>					
	<b>AM Peak Hour</b>			<b>PM Peak Hour</b>		
	<b>Existing Volumes</b>	<b>Added Volumes</b>	<b>Percent Inc (%)</b>	<b>Existing Volumes</b>	<b>Added Volumes</b>	<b>Percent Inc (%)</b>
Calaveras (SR 237)	3,325	128	3.8%	4,429	282	6.4%
Great Mall Parkway	2,477	464	18.7%	2,445	1,103	45.1%
Montague Expressway	4,396	1,603	36.5%	4,552	2,124	46.7%
Total East-West Corridor	10,198	2195	21.5%	11,426	3,509	30.7%

**RESPONSE 11h:** The information is acknowledged, and is consistent with the analysis in the DEIR.

**COMMENT 11i:** We would like the opportunity to discuss these issues with you further and would like to meet no later than May 6, 2005. These issues are very significant to the City of Milpitas and could result in a recirculation of the EIR if they are not adequately addressed. The Milpitas City Council reviewed and approved these comments at their meeting of April 19, 2005. Please contact Veronica Rodriguez at 586-3271 to schedule our meeting.

**RESPONSE 11i:** City of San José staff met with City of Milpitas staff to discuss these comments on May 4, 2005.

## 12. RESPONSES TO LETTER FROM CITY OF SANTA CLARA, DATED JUNE 18, 2005:

**COMMENT 12a:** Thank you for the opportunity to respond the Draft Environmental Impact Report (EIR) for the North San Jose Development Policies Update. City of Santa Clara has reviewed the DRAFT North San Jose Area Development Policy, dated June 2005, and the Draft EIR. The comments provided below and in the attachment have been reviewed by the City Council and are updated from our letter dated April 18 and sent to you on April 25, 2005.

The City recognizes the pressure to intensify development throughout the South Bay area over the long term, despite concerns related to the current economic situation. We fully understand that, as favorable economic conditions return to the region, there is a need to prepare ourselves to deal with development in the 21st Century. Having said that, the Program EIR recognizes that the timelines for development ascribed to these policies is unknown, which will make impacts upon surrounding jurisdictions difficult to define. In addition, insofar as this is a Program EIR, many of the mitigation measures are provided only in terms of policy measures, and individual future projects may require further environmental review. We look forward to the opportunity to be involved in review of project level analyses that will address specific impacts and mitigation measures. The City of Santa Clara's concerns include the following:

### LAND USE

The proposed project of 83,300 jobs and 32,000 housing units results in a situation where 68 percent of the new employees are housed by project developments. The EIR identifies this as a "Less Than Significant Impact" because the result is consistent with the City's General Plan policies. However, as ABAG notes in its Blueprint 2001 for Bay Area Housing, Housing Element Ideas and Solutions for a Sustainable Future, the housing crisis is "likely to remain a major regional issue for many years, with long-term economic repercussions and significant impacts on our quality of life." Given the scope of the North San Jose project area and the regional nature of housing, the EIR should provide some analysis of the jobs-housing conditions on a broader geographic scale, as the deficiency in housing may adversely affect other nearby jurisdictions.

**RESPONSE12a:** The thresholds of significance against which the identified land use impacts were evaluated are listed on pages 71-72 of the Draft EIR. As described on pages 82-83, the effects on the existing jobs/housing ratio from the proposed project is not anticipated to result in a significant adverse environmental impact, based on the identified thresholds of significance.

While there is, technically, more than enough housing existing and planned within San José to house all of the people that might be employed in North San José, and while it is likely that many of the future new employees will live in housing that currently exists in San José and Santa Clara County, the analysis in the EIR assumed that these new employees might need to be housed in new residences. The analysis in the EIR therefore identifies the impacts that could occur if all of the new work force were housed in housing that is planned for but not yet built.

As stated in the DEIR (page 33 *et.seq.*), the City of San José currently provides a disproportionate share of the region's housing and improving the City's jobs-housing balance (*e.g.*, increasing the City's share of the region's jobs in relation to its share of the region's housing) is a primary goal of the San José

General Plan. The primary goal of the proposed project is to provide the opportunity for continued industrial development within North San José as an employment center for the City of San José (page 28 of the DEIR). The proposed project does however include a significant amount of new housing, estimated to provide housing for up to 68% of the workforce associated with the new industrial development. This amount of new housing is proposed primarily to address jobs-housing and commute concerns within the project area. Housing continues to be added throughout the City of San José as a whole and based upon the City's General Plan, new housing capacity was identified for an additional 22,200 residential units capable of supporting over 39,000 workers.

Thus San José would be able to provide housing support for all of the proposed increase in employment within the City's boundaries. As part of the project traffic analysis, the current land uses and General Plan designations for surrounding cities were analyzed. Through this analysis, additional capacity was identified for residential growth within the region in excess of the amount required to support the proposed growth in employment within North San José.

**COMMENT 12b:** The document notes that increased "residential development in direct proximity to existing industrial facilities will increase the likelihood of conflicts between industrial vehicles and residents" (p.74) and that the "amount of development proposed ... will result in significantly increased congestion" (p.77). While the nature of development and the policies themselves promote pedestrian friendly conditions, there is no policy identified that creates an incentive for developers to reduce vehicle parking in project developments. Such a policy to discourage multiple vehicles per household or to reduce industrial parking ratio requirements would move away from traditional suburban dependence on the single-occupant vehicle and enhance reliability on mass transit, pedestrian and bicycle modes for new tenants in this higher density area.

**RESPONSE 12b:** In addition to the proposed improvements to the roadway system, the City is proposing \$60 million of transit, pedestrian, and bicycle improvements as part of the proposed project. In addition, the City continues to expand its intelligent transportation system (ITS), which creates better traffic management and more efficient use of available capacity without additional roadway lanes.

The City's existing Zoning Ordinance provides for reductions in minimum parking ratios for sites located within 2,000 feet of a proposed or existing rail station (§20.90.220A). Revisions are also proposed to the text of the Area Development Policy to require that providing more than five percent above the Ordinance-required minimum parking will trigger payment of the impact fees, since it will be viewed as an entitlement.

**COMMENT 12c: TRANSPORTATION**

Please see the attached memo from the City of Santa Clara Traffic Engineer, dated April 12, 2005, addressing transportation section issues in the document. Does the proposed development impact fee include the costs of street improvements outside of the City of San José?

**RESPONSE 12c:** Please see the Master Response which addresses “Mitigation for Traffic Impacts Outside the City of San José”, in Section III.A. of this First Amendment to the Draft EIR.

As stated on page 169 of the DEIR, the mitigation measures identified for facilities outside the City of San José are not proposed for implementation. The decision regarding this issue, however, ultimately rests with the City Council.

The attached list of comments is responded to individually at the end of this letter.

**COMMENT 12d: BIOLOGICAL RESOURCES**

The project area borders two significant regional waterways, Coyote Creek and the Guadalupe River (neither well identified in the exhibits in the document). The EIR notes that the City of San Jose's adopted Riparian Corridor Policy Study will serve to preclude encroachment into the 100-foot riparian setback in these areas, resulting in a "Less Than Significant Impact" (p. 232). Policy stipulations should also call for enhancement, as necessary, of these setback areas with native riparian planting, along with long-term protection and maintenance measures of these areas to meet this less-than-significant standard.

**RESPONSE 12d:** The City’s adopted Riparian Corridor Policy Study states the following:

“Riparian setback areas should be planted with native trees, shrubs and groundcovers and/or plants compatible with the particular adjacent riparian corridor classification. If the area within the riparian corridor has been graded or otherwise disturbed, it should be revegetated with native trees, shrubs, and/or herbaceous plants.”

Additionally, the adopted policy includes design guidelines for landscaping and irrigation systems, and revegetation guidelines that identify acceptable plant materials. Specific design, uses allowed within the setback areas, and acceptable maintenance practices are described in the policy as well.

**COMMENT 12d: UTILITIES AND SERVICE SYSTEMS**

Water: The Thresholds of Significance criteria identified on page 301 indicate that "new or expanded entitlements for water supplies" would be considered a significant impact. The EIR notes that the demand for water service is a "Less Than Significant Impact" but states that the Municipal Water System needs new groundwater resources, plus an additional 4.7 million gallons per day (mgd) from the Hetch-Hetchy system and that it "is hoping to change their (interruptible) contract status to permanent." Such an amendment with the SFPUC could adversely affect the supply of other cities as well.

**RESPONSE 12d:** Please refer to the supplemental information provided in Section IV of this First Amendment to the Draft EIR regarding water supply.

**COMMENT 12e:** Solid Waste: The EIR identifies the generation of solid waste as a "Less Than Significant Impact" but does not provide data as to the quantity of solid waste resources available to the City over any given time frame. It is unclear if the "facilities serving San Jose" are shared by other

jurisdictions or whether they are currently developed or would require preparation of new facilities (p. 304).

**RESPONSE 12f:** The impact will not exceed the threshold of significance identified on page 301 of the Draft EIR. It should be noted that the threshold does not require identified landfill capacity in perpetuity. The “facilities serving San José” are all in the City of San José and do serve other jurisdictions, including Santa Clara and most of the other cities in the County..

**COMMENT 12g:** Wastewater Treatment: The EIR does not confirm that Santa Clara's share of the Treatment Plant capacity and that of the other tributary agencies is not included in the calculations.

**RESPONSE 12g:** The calculations reflect only the City of San José’s allocated capacity.

**COMMENT 12h: PUBLIC FACILITIES AND SERVICES**

Fire: The EIR notes that the cities in the area participate in a mutual aid program for fire protection services. It is unclear if there is some impact from potential increases in mutual aid services on the City of Santa Clara. It should be noted that Fire Station #6 in the City of Santa Clara is less than 1 mile from the project area and the mutual aid program features should be identified to help Santa Clara decision makers identify potential impacts on City resources. As noted, under the CEQA Guidelines the impact has to result in a demand for new physical facilities to be considered significant, but there is insufficient data in the document to determine the need for staffing or facilities for San Jose or the mutual aid cities.

**RESPONSE 12h:** While Santa Clara Fire Station #6 is approximately 4/5 of a mile from the project boundary, it is approximately 1 ½ miles from the project’s geographic center. As shown on page 317 of the DEIR, there are four City of San José fire stations within 1 ½ miles of the project boundary, and one is within one-tenth of a mile from the project’s geographic center. It is reasonable to conclude that the City of San José Fire Department will provide the primary coverage for the project area.

The DEIR also discusses the impossibility of identifying the specific demand for future resources at this time (page 318) due to lack of information about exactly what development will be built where and when. On pages 318-319 the DEIR identifies the processes that would be followed by the City of San José for evaluating its own need to provide ongoing adequate fire protection services for this area.

There is no basis for assuming that implementation of the proposed General Plan land use revisions might generate significant new demands for service from the Fire Department of the City of Santa Clara that could result in adverse environmental impacts. Information that is necessary to evaluate budgetary and staffing needs can and should be provided through channels other than the CEQA process.

As has occurred in the past, including the processes followed when the City of Santa Clara chose to approve and implement the Rivermark project on San José’s boundary, the City of San José will work closely with other mutual aid

cities in the future to ensure that all of the jurisdictions are aware of San José's available resources and planning entitlements over time.

**COMMENT 12i:** Police: Similar to concerns for demand on fire services, as noted above, the substantial increase in development of the project could impact City of Santa Clara police service demands. Particularly noteworthy, the new pedestrian bridge over the Guadalupe River at River Oaks Place will provide an easy connection between new high-density housing to be built east of the river and the existing parks and schools in the River mark development west of the river. Typical police service demands may increase, but are not quantified in any way in the document.

**RESPONSE 12i:** The City of Santa Clara and the City of San José share a number of mutual boundaries, many of which have less physical separation than exists along the Guadalupe River, which is the boundary between the two cities in the project area. There is no basis for assuming that high density housing built in North San José would be a particular source of demands for service from Santa Clara police. The development in San José will include new schools, parks, community services, and service commercial uses as the development occurs. (The proposed text revisions in Section IV of this First Amendment includes placement of two "floating park" designations to reflect the minimum new park assumptions.) It is unlikely that significant numbers of San José residents will travel the greater distance to Santa Clara, when newer facilities are available much closer in San José (see also Response 12k below). All of the new residential development that would be allowed by this project will not occur immediately, and the phasing is proposed to accommodate construction of new infrastructure over time. Most of the properties proposed for housing in North San José are east of Zanker Road and south of US 101 (see Figure 5), or the residential development will be integrated into multi-use industrial sites south of Montague Expressway.

To attempt to quantify what, when, or whether, new demands for police service might be generated in the City of Santa Clara in sufficient quantity as to result in impacts on the physical environment, would be highly speculative.

**COMMENT 12j:** Schools: New housing will increase demand for schools at all levels in the vicinity. The Santa Clara Unified School District (SCUSD) includes substantial land within the project area, including much of the existing and proposed high density housing sites. The school district boundaries map provided on page 321 does not clearly define the project area relative to district boundaries.

As the proposed development takes place within a Redevelopment Area, no property tax revenues are available to fund schools to serve students within the project area. With inadequate financial resources identified for needed facilities and no identified land available for building schools to accommodate 32,000 new housing units, the availability of only standard San José school impact fees as the likely potential funding source seems to make inappropriate a determination that the impacts upon schools are less than significant.

**RESPONSE 12j:** The school district boundaries map on page 321 of the DEIR should be compared to Figure 5 on page 6 of the DEIR. All of the residential sites north of Trimble Road are within the Santa Clara Unified School District boundaries.

Estimated student generation within the SCUSD boundaries is discussed on page 320 of the DEIR.

The impact identified in this comment is a financial one – “the likely potential funding source” is not an indication of an environmental effect. State law is very clear about how an impact on school capacity is to be addressed in a CEQA document, and that discussion is provided on pages 319-322 of the DEIR. It is likely that new schools will need to be built to accommodate the children that will live in the residential development allowed by the proposed General Plan amendment, but the specific locations of those future schools and the impacts on the physical environment that could result from their construction cannot be known at this time. The General Plan designation for most of the residential development is an “overlay”. It cannot be predicted exactly which properties will develop first, or when that development will occur. It is likely that the location of the new schools, like the locations of the future parks and other residential services, will be determined based on the timing and pattern of the new residential development.

**COMMENT 12k:** Parks: As residential development at higher densities provides limited on-site recreational open space, the demand for parks and public open space increases with density. The EIR notes that the Guadalupe River provides creek trail facilities, but does not recognize that both Thamine Park within the Rivermark project and the Ulistac Open Space in Santa Clara are connected directly to the river's trail system and could be impacted by demand from the high density housing that will be across the River Oaks pedestrian bridge. There are only 2 parks in San Jose that fall within the project boundaries (p.323).

**RESPONSE 12k:** The DEIR identifies the presence of two existing parks within North San José (page 323). On page 324 of the DEIR, the text states that the City's existing ordinances (both the Parkland Dedication Ordinance and the Park Impact Ordinance) would require dedication and/or in-lieu fee payments (or both) by developers of the number of dwelling units addressed in this EIR sufficient to provide approximately 170 acres of neighborhood/community parkland. The DEIR also points out that the City's adopted Residential Design Guidelines require that on-site private and common open space be provided at specific ratios, depending on the type of dwelling units proposed, in all new multi-family residential developments.

While the presence of a single pedestrian bridge across the Guadalupe River could facilitate access to parks within Santa Clara, the bridge will also allow access by Santa Clara residents to the newer public facilities that will be built in the future, as new residential development occurs, in North San José. Since the San José parks and other public facilities will generally be closer and more convenient for the future San José residents, it is unlikely that such significant numbers of San José residents will use Santa Clara parks that substantial physical deterioration would be likely to result.

THE FOLLOWING COMMENTS ARE INCLUDED IN AN ATTACHMENT TO THE LETTER FROM THE CITY SANTA CLARA.

**COMMENT 12l:** The North San José Draft EIR studies the impacts of 26.7 million square feet of new industrial/office R&D space, 32,000 new dwelling units, and 1.7 million square feet of commercial space within Rincon de los Esteros Redevelopment Area in north San José. The study included 220 signalized intersections located throughout Santa Clara County. The DEIR studied 32 intersections within the City of Santa Clara and found that six CMP intersections and three non-CMP intersections would be significantly impacted by the project.

The following are City of Santa Clara Traffic Division comments on the Transportation section of the DEIR:

1. Two intersections listed as being within the City of Santa Clara in Table 12 are actually in the City of Sunnyvale:
  - a. Lawrence at Tasman
  - b. Lawrence at Arques

**RESPONSE 12l:** The error is corrected in the proposed text revisions included in Section IV of this First Amendment to the Draft EIR.

**COMMENT 12m:** 2. Page 171, Bowers and Central: The intersection is mistakenly identified as “San Tomas Expressway” in the text and mitigations reflect San Tomas. Mitigations should state “Tier 2 of the Expressway Planning Study identifies a grade separation at this location.”

**RESPONSE 12m:** The reference is corrected in the proposed text revisions in Section IV of this First Amendment to the Draft EIR, and in the TIA in Appendix D. Please note, however, that the impact does not warrant the Tier 2 mitigation. The appropriate mitigations for the project’s impacts would be the addition of second northbound and southbound left-turn lanes, which are identified in the text revisions.

**COMMENT 12n:** 3. Six CMP intersections and three non-CMP intersections within the City of Santa Clara are impacted under project conditions as follows:

Six CMP Intersections:

- a. Bowers and Central
- b. San Tomas and Scott
- c. De la Cruz and Central
- d. San Tomas and Saratoga
- e. Mission College Blvd and Montague
- f. De la Cruz and Montague

Three non-CMP Intersections:

- a. San Tomas and Walsh
- b. San Tomas and Benton
- c. Lafayette and Benton

Eight of the nine impacted intersections are on the County Expressway System under the operational jurisdictional of the County. Lafayette and Benton is the only impacted intersection in Santa Clara not on the Expressway System.



The DEIR states that the City of San José lacks the authority to implement mitigation measures in other cities, so the project will result in significant impacts at (nine) intersections in Santa Clara...The DEIR also states these are Significant Unavoidable Impacts.

However, with the exception of Lafayette and Benton, mitigation measures are suggested by the DEIR for either partial or full mitigation of impacts on the eight impacted intersections on the County Expressway System, in most cases through reference to the County's 2003/04 Expressway Study.

The EIR should include a statement of commitment by the City of San José to establish a program, such as a developer fee program, designed to fund the listed mitigation measures at the intersections on the County Expressway System.

**RESPONSE 12n:** Please see the Master Response provided in Section III.A. of this First Amendment to the Draft EIR, which addresses the subject of "Mitigation for Traffic Impacts Outside the City of San José".

**COMMENT 12o:** 4. The impacted intersection of Lafayette and Benton is the only impacted intersection not on the Expressway System within the City of Santa Clara. The DEIR states that no feasible mitigation was identified for this local intersection. The DEIR should include the reasons for the infeasibility.

**RESPONSE 12o:** The TIA in Appendix D of the DEIR states (on page 107) that improvements to the intersection of Lafayette and Benton are infeasible due to right-of-way restrictions. Improvements would require the widening of Lafayette Street and removal of residential and commercial buildings.

**COMMENT 12p:** 5. The intersection of Great America Parkway and Mission College Boulevard should be analyzed without programmed triple left turn lanes in the north and westbound approaches.

**RESPONSE 12p:** The triple left turns are planned improvements at the subject intersection. The City of Santa Clara includes the triple left turns as part of their background improvement database. Due to the long implementation horizon for the proposed North San José project, future improvements are appropriately included as part of the impact analysis.

**13. RESPONSES TO LETTER FROM CITY OF CAMPBELL, DATED APRIL 22, 2005:**

**COMMENT 13a:** Thank you for the opportunity to provide comments on the Draft EIR for the North San José Development Policies Updated (dated March 2005). The City of Campbell is concerned about traffic impacts to Highway 17, Hamilton Avenue, and San Tomas Expressway. Therefore, we are forwarding the following comments that relate to Section 11.B. Transportation.

1. Pages 112-113 list the freeway segments that were analyzed as part of the study. Please include the segments of SR 17 between Camden Avenue and Hamilton Avenue and between Hamilton Avenue and I-280.

**RESPONSE 13a:** A complete list of freeway segments studied is included in the appendices of the traffic report (Table C-1 and C-2 of DEIR Appendix D). No freeway segments south of I-280 were studied in detail because the volumes of project-generated traffic became too small as a percentage of the background.

**COMMENT 13b:** 2. Page 125 states that nearby cities were contacted for specific project information. Since the Congestion Management Program intersections on Hamilton Avenue are a concern, please be sure to incorporate into the level of service analysis the AM and PM peak hour approved trips inventory (see attached) for the following projects in Campbell:

a. Creekside Center (2000-88/109), a 210-room hotel/170,000 square-foot office development that was approved in October, 2000.

b. Kohl's/Retail (PLN 2004-07), a development featuring 98,554 square feet of Kohl's Clothing Store and 50,000 square feet of Retail space. This project was originally approved in May, 2004.

**RESPONSE 13b:** The consulting traffic engineers attempted to contact City of Campbell staff in May and June 2004 for information on background traffic. No response was received to either telephone or email requests.

All CMP intersections on Hamilton Avenue between Bascom Avenue and San Tomas Expressway were studied in the TIA in Appendix D. Table B-1 in the appendix of the TIA shows that, with the exception of the intersection of San Tomas Expressway and Hamilton Avenue (which is addressed in the DEIR), all study intersections would operate at LOS E or better under project conditions. When traffic from the approved projects identified in this comment is added, the intersections on Hamilton Avenue will continue to operate at LOS E or better during both peak hours under project conditions. The project would not, therefore, have a significant adverse impact on the other intersections.

**COMMENT 13c:** 3. Page 174 states that significant traffic impacts are unavoidable, but Page 169 states that the project is not proposing to implement the mitigation measures for intersections outside the jurisdiction of the City of San José. If the project does not implement mitigation measures for impacted Campbell intersections, the City of San José should consider options such as a traffic mitigation fee to be collected on behalf of the City of Campbell.

**RESPONSE 13c:** This suggestion is acknowledged and will be included in the text of the EIR, as shown in Section IV of this First Amendment to the Draft EIR. Please also see the Master Response in Section III.A. of this First Amendment.

**COMMENT 13d:** 4. Page 330 lists alternatives to the proposed project. We would like to be kept informed regarding the outcome of the alternatives analysis.

**RESPONSE 13d:** This comment is acknowledged.

**14. RESPONSE TO LETTER FROM CITY OF SAN JOSÉ HISTORIC LANDMARKS COMMISSION, DATED APRIL 22, 2005:**

**COMMENT 14a:** At the April 6, 2005 Historic Landmarks Commission meeting, the Commission discussed the Draft Environmental Impact Report for the San José Downtown Strategy 2000. In a 5-1-0 decision, Leong absent, the Commission voted to forward this comment letter, signed by the Chair, to the Director of Planning, Building and Code Enforcement and to the Planning Commission. [Note: It is assumed that this reference should be to the North San José Development Policies Update EIR.]

The Commission recommended that the DEIR be routed to Native American Organizations because of the potential and identified archaeological resources within the area.

**RESPONSE 14a:** The Draft EIR was sent to the Native American Heritage Commission (see Section I of this First Amendment).

**COMMENT 14b:** The Emily J. Home House/Ranch, located at 2343 North First Street, and the Water tower in the Agnews East Complex, located at 3500 Zanker Road have been determined eligible for the National Register. The DEIR states that, consistent with City of San Jose policies, any development proposal for a property within the project area that contains structures more than 45 years old at the time would be required to prepare an evaluation of the historic and/or architectural significance of the structures.

The Commission expressed concern that identification of historic resources at the time of development proposals has not been effective in proactively planning for preservation of significant sites, contrary to the City Council Policy on the Preservation of Historic Landmarks which requires early public notice of projects that could harm a historic resource and strongly encourages the preservation and adaptive reuse of such resources.

The Commission recommended the City proactively fund survey work to identify and evaluate the historic significance of existing buildings, including the Emily J. Home House/Ranch and the Agnews East Complex, in the Rincon Area prior to specific development proposals.

**RESPONSE 14b:** There is at this time no source of funds identified that could be used to do detailed evaluation of existing structures in the project area. Additionally, the resources identified in this comment do not belong to the City of San José, who has no authorization to enter the properties or buildings, or do the analysis described. Since there is also no existing proposal to remove or alter the structures, it would not be possible to evaluate the extent of project impact or the potential for reuse of the structures. The Agnews property continues to be designated *Public/Quasi-Public*, albeit the addition of the proposed overlay could allow the property to be redeveloped with residential uses in the future.

Should any development proposal be made on sites containing these or any other potential historic structures, the impacts to the resources will be evaluated based on the specific proposal and type of land use proposed.

As stated in the EIR itself, this EIR would not provide CEQA clearance for any proposal to demolish an historic resource, or to alter it so that its historic value would be lost.

## C. RESPONSES TO COMMENTS FROM ORGANIZATIONS

### 15. RESPONSES TO LETTER FROM COMMITTEE FOR GREEN FOOTHILLS, DATED APRIL 25, 2005:

**COMMENT 15a:** The Committee for Green Foothills submits this comment letter on the North San Jose Development Policies Update Draft Program EIR (DEIR). The Committee takes no position regarding whether the City should approve this project and its associated environmental documentation. As a general matter, the Committee supports focusing development in already developed areas, rather than needlessly sacrificing agricultural land as may occur in Coyote Valley.

Land use impacts should include discussion of the effects of the jobs-housing imbalance beyond the City of San Jose. Like Coyote Valley, this project provides insufficient housing to accommodate the increased jobs projected to result from the project. The DEIR notes that the City has had a shortage of jobs compared to the number of employed residents in the City, while failing to note that the majority of nearby jurisdictions have the opposite jobs-housing relationship. The DEIR should discuss the impacts from the project in displacing the people who lived in San Jose and worked nearby - those people are not going to disappear.

**RESPONSE 15a:** While there is, technically, more than enough housing existing and planned within San José to house all of the people that might be employed in North San José, and while it is likely that many of the future new employees will live in housing that currently exists in San José and Santa Clara County, the analysis in the EIR assumed that these new employees might need to be housed in new residences.

As discussed in the DEIR, the City of San José has at present and is anticipated to continue to have a jobs/housing imbalance, with substantially more housing than jobs. The proposed project would provide in North San José approximately 68 percent of the housing required for the proposed additional work force in North San José. The Alternatives section of the Draft EIR discusses differing percentages of housing located in North San José, with associated impacts. There is, of course, no assurance that the people who work in North San José will live in this new housing. It will be significantly more convenient than housing at more distant locations, however. Additionally, the analysis done for this project identified 22,205 dwelling units planned within the City of San José (*i.e.*, designated in its current General Plan) that could reasonably be assumed to be built over the same time frame as is assumed for the project's implementation, that would house approximately 43 percent of the projected work force. The analysis also identified 6,800 additional dwelling units planned but not yet constructed within other jurisdictions in the south and east bay areas.

Since the project will be implemented over a long time period (20 to 30 years), it is not possible to predict exactly where future workers in North San José will live. The traffic, air quality, and noise analysis done for this EIR assumed that new housing would be constructed as planned throughout the region. The analysis did not assume that existing residents would have to be displaced to house the proposed workforce, although it is not possible to define exactly

where people will choose to live. By planning for substantial new housing, and by including provisions such as transit and improved pedestrian and bicycle access to make commuting between the proposed jobs and the proposed housing more convenient than commuting longer distances under the congested conditions forecast, it is reasonable to assume that most of the future workforce is most likely to live in San José, whether in the housing proposed in North San José, or in other housing planned elsewhere in San José.

**16. RESPONSES TO LETTER FROM PRESERVATION ACTION COUNCIL, DATED APRIL 24, 2005:**

**COMMENT 16a:** We respectfully request that, for each section of our comments below, City staff specifically state whether they are in agreement with the comment, and, if not, refute it with an explanation.

This DEIR is incomplete, erroneous or contradictory in several important respects:

- In its information about the East Agnews Complex;
- In its failure to include a comprehensive survey of historic resources in the policy update area or a cultural resources report in the appendices for the EIR.
- In its identification of the impact to historic resources as being less than significant.

It is therefore the opinion of the Preservation Action Council of San Jose that the DEIR needs to be revised to address better the effects of the policy update on historic resources.

**RESPONSE 16a:** Each comment in this letter is responded to substantively, in conformance with CEQA requirements.

In stating that the DEIR is “incomplete, erroneous or contradictory”, this comment is inaccurate for the specific reasons given below.

**COMMENT 16b:** The East Agnews Complex  
The information in the DEIR regarding the East Agnews Complex is contradictory and incomplete.

Date of Closure

The DEIR refers to the plans for the East Agnews complex in two places:

"Residential uses are proposed east of North Park, across Zanker Road, utilizing the land currently occupied by the Agnews Developmental Center (which the State of California has announced will be closed by July 2005)" (DEIR, p.12)

"The State of California has announced that the Agnews East facilities will be closed in the near future, but no specific date has been set and there is presently no proposal to remove any buildings" (DEIR, p. 246)

These two parts of the DEIR suggest two different closure scenarios, neither of which appear to be accurate according to the State of California's Agnews Closure Plan described at <http://www.dds.cahwnet.gov/AgnewsClosure/AC Plan.cfm>. In that Plan, the following language may be found:

"The 2003-04 Governor's Budget directed the Department of Developmental Services (Department) to develop a plan to close Agnews Developmental Center (Agnews) by July 2005. Based upon stakeholder input and the Department's own analysis, it was determined that a closure date of July 2005 was not in the best interests of Agnews' residents. On January 10, 2005, the Department submitted "The Plan for the Closure of Agnews Developmental Center" to the Legislature for approval, as required by Welfare and Institutions Code, Section 4474.1. The plan proposes a closure date of June 30, 2007."



In the light of this language, we recommend that City Staff revise the language relating to the timing of closure on both pages 12 and 246 to reflect the current intentions of the Department of Developmental Services, and make any other necessary changes to the policy update and to the DEIR to reflect this altered closure date.

**RESPONSE 16b:** During the preparation of the EIR, the State of California reconsidered its plans for the Agnews East Campus. The date is changed in the proposed text revisions in Section IV of this First Amendment.

**COMMENT16c:** Cisco's First Right to Purchase

We refer City Staff to the language of the Agnews Closure Plan relating to the history of the site on page 29 of the Agnews Closure Plan, excerpted below for your reference, which we recommend to be included in the EIR along with a thorough survey of the site by a qualified historic consultant:

"History

The California State Legislature established Agnews State Hospital in 1885, as a neuropsychiatric institution for the care and treatment of persons with mental illnesses.

In 1876, the State purchased 323.5 acres of farmland from Abraham Agnews. The first patients, 65 persons with mental illness from the Stockton Insane Asylum, were received in November of 1888. The population of the facility continued to increase and by 1906, had reached 1,800 residents.

The earthquake and fire of April 18, 1906, severely damaged all of the ward buildings at Agnews and resulted in the deaths of 113 residents and employees. Some of the residents were temporarily relocated to the Stockton Insane Asylum, but the majority (over 800 individuals) was housed in tents and temporary structures on the grounds of Agnews while the facility was rebuilt. Re-occupancy occurred in 1911.

In 1926, the State acquired an additional 424 acres (known as the East Campus), one and one-half mile from the main facility (which became the West Campus). The newly purchased land was operated by the residents and employees, and initially used as farmland to provide food for the facility. Various structures were added to the properties over time, and by 1955, Agnews' resident population had reached nearly 4,600. The focus of treatment transformed as well, and in 1966, the first consumers with developmental disabilities were admitted. Programs for the mentally ill were discontinued in 1972. It has been utilized exclusively for the care and treatment of persons with developmental disabilities since that time. The facility was renamed Agnews Developmental Center in 1985.

While Agnews originated in rural farming country, the high tech industry now dominates the surrounding area. Approximately 337 acres of the original East Campus has been sold or transferred. Most significant, was the sale of approximately 140 acres to Cisco Systems (Cisco) in the mid-1990's. Cisco has a "First Right to Purchase" the remaining acreage of Agnews once it has been declared surplus and made available for sale. (our emphasis)

Agnews currently resides on the remaining 87 acres on the north edge of the city of San Jose, in the heart of Silicon Valley. There are 51 buildings on the campus, comprising approximately 692,800 gross square feet of space. There are also two offsite buildings being leased within three and one-half miles of the main campus.

We request City Staff to clarify whether, if Cisco has First Right to Purchase the land envisioned for high-density housing, Cisco has been approached to clarify its intentions for the site.

**RESPONSE 16c:** This letter writer is referred to the letter and responses included in this subsection as III.B.19, Responses to the Letter from Cisco Systems. It should be noted that the Agnews property is designated *Public/Quasi-Public* by San José's General Plan, and could not be developed by Cisco Systems for industrial purposes without further actions by the City of San José, including further CEQA review. Please also see Response 14b.

**COMMENT 16d:** Impacts to Historic Properties

Presuming that Cisco does not exercise its First Right of Purchase, and considering both the absence of a comprehensive survey of the site prior to development proposals being advanced and the proposal of a Transit/Employment District Residential Overlay of 55 DU/AC for this site, a rebuttable presumption is created by the language in the DEIR that the historic resources on the site will be demolished. The statement that:

"Redevelopment of the site for high-density housing, consistent with the proposed land-use designation, could result in removal of the water tower and/or any or all of the other buildings" (p. 246)

implicitly endorses the removal of these structures. We recommend that the language be revised to provide the same level of implicit endorsement for preservation, comply better with City policies respecting historic properties, and provide clarity for future potential developers on the site, along the following lines:

"Any redevelopment of the site must preserve or otherwise protect structures identified on this site at any point in the process as historic resources, in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties"

**RESPONSE 16d:** The purpose of this program level EIR is to identify possible environmental impacts that could be likely to occur if a development or land use plan were to be implemented. The DEIR accurately identifies the possibility that development of the Agnews site could result in removal of the existing structures. The discussion does not anywhere state that the City of San José would necessarily approve the removal of the buildings, since that would be misleading. It is not accurate to characterize this as an "endorsement" of any kind.<sup>2</sup> Since there is no law or other mandatory requirement that the structures be preserved, it would also be inaccurate and misleading to state that future redevelopment "must preserve or otherwise protect structures", as suggested by this comment.

Instead, the EIR does what is legally permissible under the existing circumstances – it states that any proposal to demolish or alter an historic structure would require subsequent environmental review. In other words, the present EIR does not provide CEQA clearance for any such proposal. This is

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<sup>2</sup>The word "endorse" is defined as "to express approval of publicly and definitely". [Websters 9<sup>th</sup> New Collegiate Dictionary]

both necessary and appropriate because the City cannot evaluate either the possibilities for mitigation or the necessity for the impact in the absence of a real project. Neither could the City consider at this time whether any overriding considerations might exist that could offset the significant impact of a project that would still be hypothetical at this time.

**COMMENT 16e:** This is a case where the impact to historic properties from residential development in that area at a specific density, described in the DEIR on page 12, is identifiable and real. As such, if a specific commitment is not included not only to make every effort to preserve the historic resources in the area of the policy update, but also to actually preserve the historic resources in question, then City Staff cannot validly make the claim that impacts to historic resources will be "less than significant" (DEIR, p. xxiv.)

**RESPONSE 16e:** This comment appears to be based on the mistaken assumption that the Agnews property must and will redevelop with residential land uses at a specific density. As the proposed *Transit/Employment District Residential Overlay* is described beginning on page 11 of the Draft EIR, the purpose of the overlay is to identify where the 285 acres of future high density residential development could occur. There is a phasing plan identified in the EIR, but it only specifies the minimum and maximum numbers of units that must occur relative to the amount of industrial development and the planned infrastructure. There is no guarantee that any particular property will develop or redevelop for residential purposes, nor is there a timetable for when the residential development might occur at any particular location. Also, while the overlay designation identifies two minimum densities for minimum numbers of acres, it does not identify a maximum density, nor does it specify where the densities should occur within the overlay.

This is further complicated by the existing land use designation of *Public/Quasi-Public* on the Agnews property, consistent with its existing and historic uses. While Cisco Systems, in their letter commenting on this EIR (III.B.19, below), state their possible future interest in redeveloping the property as part of their facilities, that would be inconsistent with the existing land use designation.

It is, therefore, not accurate to state that future development of the Agnews property "...at a specific density...is identifiable and real". Some or all of the Agnews property may, some day, develop under the proposed *Transit/Employment District Residential Overlay*, or it may not.

The EIR accurately states that conformance with the City's goals and policies would preserve the historic resources, rendering the impact to those resources less than significant. In the absence of a complete assessment of the structures at Agnews, the EIR assumes that they are significant historic resources and their loss would be a significant impact. Should a project be proposed that is not fully consistent with the City's adopted goals and policies, the impacts from such a project would be significant. This EIR identifies the possibility that such a project may be proposed, but does not provide project-specific analysis

of its impacts, because such a project is not covered by this EIR. A subsequent EIR would be required for any such proposal.

**COMMENT 16f:** Failure To Include Complete Historic Survey

We disagree strongly with the strategy pursued by City Staff in this DEIR with respect to historic surveys. For the transportation impacts of the policy update, the DEIR contains a detailed, intersection-by-intersection analysis, supported by extensive documentation in the appendix. For historic resources, the information provided is generalized and vague, without any supporting documentation in the appendix. The historic information has therefore not been:

"prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently considers environmental consequences." (DEIR, p. v)

**RESPONSE 16f:** This comment compares the EIR analysis of traffic impacts with the analysis of historic resource impacts. The comparison is not a useful one.

A great deal of quantitative information about traffic can be generated from very general development parameters. Professionally developed methodologies and assumptions form the bases of both near term and long term impact analyses. As demonstrated in this EIR, to prepare an adequate traffic impact analysis, there does not need to be a specific development, site plan, or even a narrowly defined particular land use as long as a defined amount of development can be assumed within a given category or set of assumptions. Additionally, mitigation can (and usually must) be implemented away from the development site. Mitigation is also usually proposed to occur within the public jurisdiction, although the specific authority may vary.

There is, at this time, no known requirement or proposal to demolish or significantly alter any of the buildings on the Agnews site or elsewhere in North San José, because no specific redevelopment is presently proposed. A number of developments in Santa Clara County have preserved and reused historic structures.<sup>3</sup> Any future proposal to demolish or significantly alter these historic structures, if it does occur, is likely to be made many years in the future, when the significance of some of the resource may have changed from current conditions.

Further, the City of San José does not own or control any of the properties in question, and does not have right of entry to any of the structures, therefore completion of a comprehensive historic survey is not possible. As far as is known, the buildings are presently in use. Please also see Response 14b.

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<sup>3</sup>Examples of adaptive reuse of historic structures include the Sun Microsystems headquarters on the Agnews West Campus site in Santa Clara, which includes four historic structures; incorporation of an historic cannery building into a high density residential project, Avalon on The Alameda in San José; inclusion of the historic Del Monte Pickle Factory Cooperage Building in the Esplanade residential development; and conversion of the José Theater in Downtown San José to a comedy club.

**COMMENT 16g:** While some information, taken from "existing documents" that are not supplied, is presented on page 241 of the DEIR, no supporting documentation or analysis is provided that would enable the public agency to assess the accuracy of the information contained in the "existing documents".

**RESPONSE 16g:** It cannot be determined to what this comment is referring, or what information is being questioned. No response is possible.

**COMMENT 16h:** Therefore, we recommend that as part of this EIR process, a "comprehensive review of all existing buildings in the Rincon areas for possible historic significance" (DEIR, p. 24) be completed. Only the inclusion of such a comprehensive review, conducted by a qualified historic consultant, would enable City Staff to make the statement that there will be a less than significant impact on historic resources, based on substantial evidence.

**RESPONSE 16h:** Based on the level of entitlements that would occur as a result of certification of this EIR, no historic structures could be demolished or significantly altered. As is true for all entitlements granted by a public agency, someone may at some time in the future come before the San José City Council and request a different entitlement that has different impacts than are presently anticipated to occur. Should a different entitlement be requested whose impacts include demolition and/or significant alterations to an historic resource, a subsequent EIR will need to be prepared, consistent with state law and local regulations: Please also see Response 14b.

Even in the face of such a proposal, there is no reason to assume that the City of San José would necessarily approve demolition of, or significant alterations to, an historic resource. The City Council has adopted the Council Policy for Preservation of Historic Landmarks, which provides for early public notification and Council review of proposals to demolish or significantly alter significant historic resources. The City of San José has required preservation of historic resources elsewhere in the City, and has spent significant monies for their preservation and adaptive reuse.<sup>4</sup>

In the absence of any specific proposal to do something different than what is presently described in this EIR, there is no substantial evidence that a significant impact on historic resources would occur as a result of the proposed project.

**COMMENT 16i:** As a second-best option, we recommend that the mitigation measures identified under "Architectural Resources" on page 248 and under "Mitigations to be considered at the time of future development" on page 253 be explicitly adopted and completed, not just "prior to approval by the City of any specific development approvals on these parcels", but prior to review by the Planning Department of any development proposals within the policy update area. However, we do not know whether including those measures after this EIR completes the public process would enable the EIR to meet the burden of being "prepared with a sufficient degree of analysis."

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<sup>4</sup>Specific examples for which the City of San José Redevelopment Agency has provided funding include the relocation and rehabilitation of the Montgomery Hotel and the adaptive reuse and rehabilitation of the Fox Theater. The City of San José also purchased and rehabilitated the Hayes Mansion in San José.

**RESPONSE 16i:** This comment demonstrates the difficulty in trying to incorporate project-specific mitigation into a project where no development is actually proposed, or to attempt to make detailed determinations too early in the process, when a Program EIR is being prepared that may be used for many years. (The significance of structures may change as the large project is implemented from 2005 to 2030, such that an evaluation prepared in 2005 may be obsolete at the time a project site is considered for development at some point in the future. Confirming the significance of a structure at the time of a specific project proposal ensures the most accurate, up-to-date information is available to inform the project decision.) There are no specific impacts to historic resources to evaluate at this time, there are no means of evaluating the degree of impact that might occur from proximate development (with no knowledge of how “proximate” future development might be proposed relative to any historic structures), there is no developer upon whom the conditions of approval should be placed, and there is no way of gauging how old the resources might be at the time that they are (or may be) eventually proposed for demolition or alteration.

It is for this reason that the CEQA Guidelines stipulate that mitigation measures must be fully enforceable through permit conditions, agreements, or other measures [§15064.5(b)(4)]. This is a Program EIR and the mitigation measures identified are consistent with existing policies, ordinances and regulations. Because there is no proposal to demolish any building, there can be no “condition of approval” that the building not be demolished.

**COMMENT 16j:** In the KB Home/Del Monte #3 project that was recently approved, KB Home used the fact that the Specific Plan did not categorically say that the historic structures on the site needed to be saved, as evidence that they did not need to be saved. Therefore, as a third-best option, we recommend that the EIR contain language requiring that Specific Plans in the policy update area specify that preservation and/or adaptive reuse will be required for historically significant resources.

**RESPONSE 16j:** There is no proposal to prepare or adopt a specific plan in the North San José project area. Neither can an EIR “require” future mitigation. An EIR is an informational document that identifies what is proposed and evaluates the degree of mitigation that can be identified, based on the information available at the time the EIR is prepared. There is no development proposed by any private property owner or developer that is the subject of this Program level EIR, so the mitigation proposed is restricted to that required by law or ordinance, actions consistent with adopted policies, and physical infrastructure that can be funded through identified mechanisms.

**COMMENT 16k:** At several points in the DEIR, mere adherence to City policies to “make every effort” to save and reuse historic resources is depicted as a measure that will mitigate the impact to historic resources. We recommend that City Staff include specific language to rebut this depiction, as follows:

“Neither adherence to City policies regarding the preservation of historic properties, nor the provision of HABS-level documentation of historic resources, can mitigate the impact to historic resources to a less than significant level. Only actual preservation and/or reuse of historic properties according to the

Secretary of the Interior's Standards for the Treatment of Historic Properties will mitigate the impact to historic resources to a less than significant level."

This language would be best included on page 247 under Mitigation and Avoidance Measures, but revisions elsewhere in the DEIR text may be required for consistency.

**RESPONSE 16k:** It is not clear why this comment assumes that adherence to City policies and the CEQA Guidelines, as discussed on pages 246 and 252 of the DEIR, would not constitute mitigation. The discussion on page 246 states that:

"General Plan and adopted Council policies on historic resources strongly encourage their protection and reuse. Because these policies provide for protection of these resources, and would characterize loss of significant historic structures as a significant impact, the analysis in this EIR assumes that any structures that are found to be historical resources as defined by CEQA Guidelines §15064.5(a) will be preserved or otherwise protected from demolition and any substantial adverse change in their historic significance. Any future development that proposes removal or substantial adverse change in the historic significance of such resources would require preparation of another EIR."

Under Mitigation to Be Considered at the Time of Future Development on page 252, the EIR again states that:

"Protection of historically significant architectural resources in a manner consistent with CEQA Guidelines §15064.5(b) and the City policies described above would reduce impacts to those resources to a less than significant level. Any proposal to remove historically significant architectural resources or any development that would result in a substantial adverse change in the significance of an historical resources as defined by CEQA Guidelines §15064.5(b), would result in a significant impact that is not covered by this EIR."

It should be noted that these statements include not only references to City policies to "make every effort" to preserve resources, but also to the CEQA Guidelines section that defines what is and what is not a significant impact. That means that, if the "effort" is not successful, then the impact is not mitigated. These comments are seeking a promise of substantive protection of resources, while an EIR can only offer the guarantee of another EIR process, should a project come forward with a significant impact to historic resources.

**SECTION 16l:** It is not sufficient merely to present assertions that "most of the few remaining structures" on the Moitozo Ranch "have problems of integrity, fabric and location" according to "reports prepared for development projects in the area" (DEIR p. 246). If they have problems of integrity or fabric that have been assessed by a qualified historic consultant, those reports should be included in the EIR. If no such assessment has taken place, or if the "reports prepared for development projects" do not meet the normal standard for material to be included in the EIR, the DEIR should refrain from explicitly or implicitly endorsing the truth of those reports. The fact that the reports are

not even included in an appendix makes it impossible for a public agency to assess whether demolition of those structures would constitute a significant impact. It is unclear what a "problem of location" could be from the vague references contained in the Historic Resources Review (p. 246).

**RESPONSE 16l:** An earlier reference to the Moitozo property on page 241 of the DEIR states that an EIR was prepared in 1998 that was the basis of the existing PD zoning entitlement that includes demolition of the buildings. The entitlements on the Moitozo property are not the subject of this EIR. Copies of the historic analysis done for those structures can provide background information for the commentor regarding the resources present on the site, however, and may be obtained at the City of San José Planning Division office.

As discussed on page 239 of the DEIR, cultural resource reports have been prepared that address redevelopment of almost all of the property within the project area since 1980. Substantial documentation exists that discusses the reports prepared over the last 25 years. Basin Research Associates prepared a summary of all such documentation in 1997, and an updated report in 2005. As stated on page 239 of the DEIR, those two reports are kept administratively confidential because they include the locations of specific archaeological sites. Copies of the reports are on file with the City of San José Department of Building, Planning, and Code Enforcement. As stated on page vi of the DEIR, "all documents referenced" in the EIR are available for public review.

Problems of location for historic structures usually occur when either the structures have been moved from their historic site, or their historic importance is related to identified conditions on their historic site, which conditions have been eliminated or substantially altered, thereby damaging their historic integrity.

**COMMENT 16m:** Whether There Is A Less Than Significant Impact On Historic Properties  
The DEIR's assumption that there is a less than significant impact on historic properties rests on the following assumptions that have not been examined above:

That the implementation of General Plan and City Council policies on historic preservation will result in the actual preservation and/or reuse of historic resources.

There have been numerous cases where City Landmarks and other historic resources have been negatively impacted in CEQA terms despite the existence of these City policies, such as (to name a few) Eagles Hall, the Muirson Label Factory and the Fox-Markovitz Building. In the light of these precedents, do City staff consider it legitimate to presume as part of this DEIR that only a less than significant impact to historic resources will result from this policy update? Do City staff agree that merely referring to the City's existing policies on the preservation of historic resources does not guarantee that historic resources within the area of the policy update will actually be preserved according to the Secretary of the Interior's Standards?

**RESPONSE 16m:** This comment is the letter writer's interpretation of what the DEIR says. It also draws unsubstantiated conclusions. While historic buildings have been demolished pursuant to legally obtained entitlements, in all of the instances cited in this comment, an EIR was prepared that pointed out that the demolition of the buildings was not consistent with adopted policies that encourage



historic preservation, and their loss was therefore a significant environmental impact. The City is not mandated to conform to its historic preservation policies, but not doing so is a significant impact under CEQA, and that impact must be disclosed.

This EIR does not disclose the significant impacts of demolishing or substantially altering an historic resource, because *no proposal has been made to demolish or alter an historic resource in the project area.*

**COMMENT 16n:** That CEQA Guideline 15064.5(b) provides a sufficient level of mitigation to reduce impacts to a less than significant level.

This Guideline refers only to historic resources that are included in or eligible for the California Register of Historic Places. Do City Staff agree that, even if a property is not eligible for the California Register, it may still class as a historic resource for the purposes of CEQA? As stated in CEQA Guideline 15064(a)(2),

"A resource included in a local register of historical resources ... or identified as significant in a historical resource survey ... shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant".

**RESPONSE 16n:** This comment also reaches an unsubstantiated conclusion that is not consistent with either the text in the EIR or the CEQA Guidelines. The EIR *does not* address, and the specific section of the Guidelines quoted [§15064.5(b)] *does not* refer "only to historic resources that are included in or eligible for the California Register of Historic Places". That is an incorrect statement.

The DEIR states, on page 246, that:

"...the analysis in this EIR assumes that any structures that are found to be historical resources as defined by CEQA Guidelines §15064.5(a) will be preserved or otherwise protected from demolition and any substantial adverse change in their historic significance."

The referenced section of the Guidelines [§15064.5(a)] states that the term "historical resources" includes structures eligible for listing on the California Register, resources included in a local register, any resource which a lead agency otherwise determines to be significant based on a variety of identified criteria, or any other resources which the lead agency determines may be an historical resource. The letter writer is referred to Section 15064.5(a) for a clearer definition of the resources addressed in the DEIR.

The next section of the Guidelines addresses the definition of a significant effect. While subsection 15064.5(b)(2)(A) refers to adverse impacts on a resource's eligibility for the California Register, subsection 15064.5(b)(2)(B) refers to impairment of features that qualify a resource for inclusion on a local register or conformance with the requirements of §5024.1(k) or §5024.1(b) of the Public Resources Code.

Referencing the significance of a resource, or the significance of impacts to a resource based on §15064.5 of the CEQA Guidelines does not in any way limit the resources discussed to those that qualify for the California Register.

**COMMENT 16o:** Though the historic resources review mentions some properties that have been identified as Structures of Merit, it does not make clear that demolition of such structures, however "marginal", would classify as a significant impact under CEQA unless "the preponderance of evidence" demonstrates that it is not historically or culturally significant. The EIR should be revised to reflect this more accurate understanding of CEQA requirements.

**RESPONSE 16o:** Please see Responses 16m and 16n above. Section 15064.5(a) defines historic resources which the EIR assumes will not be significantly impacted. Section 15064.5(b) defines what constitutes a significant impact. The discussion in the DEIR accurately reflects CEQA requirements. A Structure of Merit, a term used by San José for a class of structures on the City's Historic Resources Inventory, is not considered a significant resource by the City under Section 15064.5 and, therefore, demolition of a Structure of Merit is not considered a significant impact under CEQA.

**COMMENT 16p:** We also recommend that the EIR include stronger mitigation measures for potential impacts to historic resources, such as requiring that a comprehensive analysis of the economic and structural feasibility of preservation and/or adaptive reuse of the structure and a full historic report should be completed prior to the circulation of a DEIR for any development project affecting historic properties. It is clear from our extensive experience of the public process that neither public agencies or the general public have sufficient time to review historic or feasibility information that is circulated in the short window between the end of the EIR circulation period and the beginning of the formal public process.

**RESPONSE 16p:** Since a Draft EIR for a development project would need to include a full historic report prepared before the EIR is circulated, it is assumed that this comment is referring to the feasibility analyses that may be required to determine whether adaptive reuse is economically or structurally feasible. There is no formal process for requiring submittal of supplemental documentation from a project proponent that may be considered by project decision makers in determining whether or not adaptive reuse is feasible, nor is this information required to be included in the EIR for a project. Rather the information must be in the administrative record available to the decision makers (*Sierra Club v. County of Napa*, 2004, Cal.App. 1st)..

Since the "formal public process" begins with circulation of the Notice of Preparation prior to circulation of the Draft EIR, there may be documentation in preparation at any time before, during, or after the EIR circulates, up until the time of a project decision.

The suggestion in this comment will be considered by the City decision makers in future project review processes.

**COMMENT 16q:** Corrections

Please note that Historic, Archeological and Cultural Resources Policy 8 is misidentified as Policy 9 in the DEIR (p. 51).

**RESPONSE 16q:** The error is corrected in the proposed text revisions in Section IV of this First Amendment to the Draft EIR.

**COMMENT 16r:** Conclusion

The DEIR is in parts incomplete and incorrect, and will require substantial revision in order to make possible a finding of a less than significant impact to historic resources. We request that City Staff take the steps outlined above to avoid or mitigate the significant impacts to historic impacts that can reasonably be foreseen to result from a DEIR constructed in this manner.

**RESPONSE 16r:** As reflected in the responses above, only minor revisions are required to the Draft EIR, none of which result in the need to recirculate the Draft EIR under CEQA Guidelines Section 15088.5..

**17. RESPONSES TO LETTER FROM SAN JOSÉ DOWNTOWN ASSOCIATION, DATED APRIL 25, 2005:**

**COMMENT 17a:** Thank you for the opportunity to comment on the Draft Program Environmental Impact Report on North San Jose Development. In the DEIR, the assumption used for analysis of impacts on downtown San Jose is that growth in North San Jose would be distinct from, but complimentary to, the Downtown area. Specifically, the project would "in general preserve the predominantly industrial park character of North San Jose and would not allow for the civic uses or the mix of uses found within the Downtown. The development intensities and land uses thus proposed by the project would not have the same characteristics as those promoted within the Downtown area through the Downtown Revitalization Strategy and the two areas would remain clearly distinct in character," (Page 34)

The assumption used for analysis of retail uses in the DEIR is that "new retail uses will be limited to supporting retail development integrated into mixed-use projects and intended to support the industrial and residential development within the Policy area boundaries." (Page 22) It is the position of the Downtown Association that any larger scale or stand-alone retail development will require separate environmental review.

**RESPONSE 17a:** This comment is consistent with the discussion in the DEIR.

The San Jose Downtown Association believes that continued emphasis on Downtown as the civic, entertainment and cultural center of San Jose is important to fulfill the vision of our City's future. The analysis in the DEIR appears to uphold that vision.

**COMMENT 17b:** This comment does not raise any issue associated with an environmental impact nor does it address any inadequacy in the DEIR. No further response is required.

**18. RESPONSE TO LETTER FROM WESTERN WATERS CANOE CLUB, DATED APRIL 25, 2005:**

**COMMENT 18a:** Thank you for the opportunity to comment on the subject project. In reviewing the documents there are several issues that caught our attention and cause us a lot of concern. We have identified these issues below:

**Biological Resources Impacts**

The report states that "the proposed development will result in the significant and unavoidable loss of approximately 600 acres of vacant land that is presently Burrowing Owl foraging and breeding habitat." It also indicates that this area is habitat for a number of other species, including raptors, birds and bats. It states that surveys will be conducted prior to construction and the efforts will be made not to harm or disturb birds or their nests. However, it lists the loss of the habitat as a Significant Unavoidable Impact and also states it would be a violation of the Migratory Bird Treaty Act and the Fish & Game Code, ref p. 231. How will these issues be resolved? Under the mitigation section, the document states a number of things that may or should be done to reduce the harming of individual birds. This is wishful postulation. Once construction gets underway, field workers rarely pay any heed to mandatory environmental requirements, much less some desirable goals, predicated by may or should. What will be done to provide some real mitigation for the loss of 600 acres of habitat? We don't agree that the proposed development needs to result in the loss of all viable habitat in the area. Development must be required to set aside some suitable habitat for the birds being displaced. This can be accomplished using innovative planning and design techniques and the Report needs to address specific positive measures that will be taken to mitigate habitat loss.

**RESPONSE 18a:** The opinion expressed in this comment about the mitigation for loss of habitat is acknowledged. The DEIR does not say that the project will result in violations of the Migratory Bird Treaty Act and the state Fish and Game code; it says that future development *could* result in such violations. Conformance with existing laws are assumed to be part of the Program Mitigation that will avoid or reduce possible impacts (see pages 234-236 of the DEIR). The DEIR states on page 235 that the City will include measures to reflect and encourage conformance with laws for avoiding take of protected species when reviewing and approving specific development in the project area.

It is not clear what "innovative planning and design techniques" are meant in this comment, or how it could mitigate the loss of 600 acres of habitat. Preservation of small enclaves of habitat within individual developments would not reduce the impact to less than significant. On page 237, under "Mitigation Measures to be Considered at the Time of Future Development", the DEIR identifies what would constitute appropriate mitigation for loss of Burrowing Owl habitat. As stated, mitigation habitat should be a minimum increment of 30 contiguous acres, based on the biological opinion in Appendix G of the DEIR.

While the project does not propose to mitigate impacts to Burrowing Owls, the DEIR does discuss mitigation and identifies what would be required to reduce the impacts to less than significant (see also Appendix G). This information will be considered by the City Council when it makes a decision regarding the project.

**COMMENT 18b:** Hydrology and Water Quality

The report states that the project is located in an area of San Jose subject to periodic flooding from two creeks and possible tidal flooding from the San Francisco Bay. It states this is a significant impact. It also states that the project area is subject to flooding when stormwater flows exceed the capacity of the drainage system. It states that this flooding could pose a significant risk to people and/or structures in the project area and this is also a significant impact. It continues to state that with the identified mitigation measures the impacts will be reduced to less than significant.

The Report states that the estimated 100-year flow rate for a Guadalupe River spill would be approx. 2,300 cfs at SR 237. What is a Guadalupe River spill? If it does spill how is the projected spill rate determined? it seems like the spill rate would be determined on exactly where and why it spilled. If it just exceeded its corridor capacity, one would have to know how much it exceeded it to tell how much it would spill. However, if it spilled due to levee or floodwall failure it would spill significantly more and significantly faster.

It is believed that the spill rate is actually referring to the projected river flow rate for a 100-year flood event. The flood flow capacity the Lower Guadalupe FCP is being designed for is 23,000 cfs, not 2,300. This is in concert with projected flow based on gage station records. However, this figure is in question, as the proposed Upper Guadalupe River FCP is projecting much higher flows, which would be about 28,000 cfs at Gold Street. If the Upper Guadalupe River FCP figures are accurate, the levees in the project area will be overtopped and likely breach and there will be catastrophic flooding at a much more frequent event than a 100-year event. The Report states that the Downtown Guadalupe River FCP was completed in December 2004. This is incorrect! All one needs to do is walk downtown and look at it. The bypass culverts at Santa Clara St. and St. John's Street are still not operational and other sections of the project are failing. Sediment keeps filling in areas above the Woz Way bypass, this is causing the bypassed area to down and laterally cut. Gabions are falling into the river and banks are collapsing. Sediment is filing in the channel between Park Ave and Santa Clara Streets. Sediment is filling in the channel upstream of Coleman Ave. The upper section of the bypass downstream of Coleman Ave. is filling with sediment while the main channel down and laterally cuts causing bank failure. Both up and downstream of Taylor and Hedding Street the bypass and main channel are down and laterally cutting and mitigation sites are failing. Downstream of 1-880 the river is downcutting. None of the reaches are performing as promised or in accordance with their permits.

The Report states the Lower Guadalupe FCP is scheduled to be completed in December 2004. It is still not near completion and it is already failing. All one has to do is go down to Trimble Ave. and look at the channel. It is seriously downcutting. About a hundred yards downstream of Trimble Ave the main channel had clogged and filled in and the river is now flowing down the bypass area. This area is overly wide and sediment will continue to drop out decreasing the capacity of the corridor to handle the designed flood flows, thus increasing catastrophic flood potential.

**RESPONSE 18b:** The City of San José has no authority over improvements to the Guadalupe River. The proposed project does not include any changes to the river, to the river levee system, or to the flood conditions within the river. The project does propose to continue to conform to the City's Flood Hazard Ordinance until such time as FEMA has certified that flooding is no longer a hazard in the project area. This comment has been referred to the Santa Clara Valley Water District for their consideration as the agency responsible for maintaining the river.

**COMMENT 18c:** The report states that the floodplain maps are being revised as a result of the recent flood control projects. It states that: "it is anticipated that the revised floodplain maps will reduce the area of 100-year floodplain. in the project area." These projects have done nothing to change the elevation of the floodplain! The only thing they are doing is trying to confine more water in a limited area. When you try to stuff 10 pounds of stuff in a 5 pound bag you significantly raise the risk that the bag will spill or break. Likewise confining flood flows actually significantly increases the chance of catastrophic flooding. It is not a question of will such an event occur it is only a matter of when it will occur. When a levee is overtopped or breached it will most likely result in a total failure of a major segment. Depending on the flood stage of the river, houses and business that were allowed to be constructed right next to the levees will be hit by a wall of water and debris and the potential for injury, fatalities and structural damage will be exceedingly high. This has been well documented, Ref. "On Borrowed Land, Public Policies for Floodplains," S. Faber, 1996 and the many other references cited in this document. Actually confining the river in higher levees will not reduce the floodplain area, it will increase it and the chances for a catastrophic flood event. The EIR must address this.

**RESPONSE 18c:** As stated previously, the City of San José has no authority for the river, the levees, the flood conditions, or the designation of a flood plain. This project does not propose to change any conditions relative to the Guadalupe River. The project does propose to continue to conform to the City's Flood Hazard Ordinance until FEMA certifies that the area is no longer in a flood plain.

**COMMENT 18d:** The Report does not state what happens when there is a combination high tide and high flow flood event. The yearly high tides usually occur in December and January, during the middle of the rainy season, so there is a high potential that there will be a large storm even in conjunction with a high tide event. High tides are felt as far upstream as midway between Trimble and Montegue [sic] Expressway. This is known because we have actually paddled the river upstream on an incoming high tide to this area. The risks for flooding from a combination high tide and large storm event need to be discussed in detail in the Report.

**RESPONSE 18d:** The proposed project will not change any circumstances relative to the river conditions during a combined high tide/high flow event. Recent improvements to the river have decreased flooding, but the City has no knowledge of any increased risk of levee failure.

**COMMENT 18e:** The Report states that soils in the project area are subject to liquefaction. How will levees stand up to a seismic event in combination with a high flow event? In all likelihood, they will fail. The Report needs to address this issue.

**RESPONSE 18d:** The project is proposed in a developed urban area. The existing levees along the Guadalupe River that protect this area from floods were built by the Army Corps of Engineers and the Santa Clara Valley Water District based on geotechnical studies that reflected existing soil conditions in the area.

The proposed project does not create the need for, nor does it include improvements to the river, the creek, or the levee system. The thresholds of significance for hydrological impacts are identified on pages 265-266 of the Draft EIR; thresholds of significance for geological and soils impacts are listed on page 257. No conditions are known to exist in this area that cannot be

mitigated through the use of standard engineering design and seismic safety techniques.

**COMMENT 18f:** The Report addresses a number of larger pump stations that need to pump water into the Guadalupe River in the event of a storm event and just from those listed, the amount of water being added to the system could exceed 1,800 cfs. This can only exacerbate the problem.

**RESPONSE 18f:** The discussion in the DEIR addresses existing pump stations (pages 263-264). The project will not discharge stormwater to the Guadalupe River during peak flows. Stormwater will be retained in the project area until flows in the river subside to a point that stormwater can be accommodated within the channel without flooding downstream.

**COMMENT 18g:** Also, the Report addresses the fact that water pumped into the river will contain a lot of pollution from surface runoff and this is a significant impact. The river and its adjacent land areas support numerous threatened and endangered species, including steelhead trout, Chinook salmon, clapper rail, salt marsh harvest mouse, southwestern pond turtle, etc. The Report must address what will be done to control the pollution entering the river from pumping operations or other outfalls.

**RESPONSE 18g:** The DEIR identifies measures to reduce both construction and post-construction water quality impacts on pages 270-271.

**COMMENT 18h:** The Western Waters Canoe Club strongly recommends that instead of trying to pump more stormwater into river that does not have the ability to even handle moderate flood flows that a storm sewer be constructed to the bay to dispose of this water. We made this proposal as part of our recommendations for a far better Lower Guadalupe FCP but our recommendations were ignored. Routing excessive storm water to and [sic] area that has the capability to handle such flows is the only way to assure that citizens will be provided a high degree of protection from future flood events. It is the only way to reduce the potential of catastrophic flood events as a result of levee overtopping and/or breaching.

**RESPONSE 18h:** There is no proposal to add stormwaters to the Guadalupe River during high flow events. Water will be detained in the project area. until flows in the river subside to a point that stormwater can be accommodated within the channel without flooding downstream.



## **D. RESPONSES TO COMMENTS FROM COMPANIES AND INDIVIDUALS**

### **19. RESPONSES TO LETTER FROM CISCO SYSTEMS, DATED APRIL 25, 2005:**

**COMMENT 19a:** Cisco Systems, Inc. appreciates the opportunity to comment on the City of San José's proposed Draft North San José Area Development Policy and North San José Development Policies Update Draft EIR. As the largest employer and one of the largest property owners in the City, Cisco supports the City's efforts to solidify the position of North San José as a leading center for technology innovation and to encourage greater development intensities, both industrial and residential, in proximity to transportation infrastructure in North San José.

As you know, Cisco's worldwide headquarters is located in North San José. Cisco owns/leases over nine million square feet of existing and approved industrial space in San José, of which over seven million square feet is located in North San José. Cisco houses approximately 43,000 workers in owned/leased real estate worldwide, including approximately 13,800 in San José. Cisco's combined property holdings are located in and around the apex of North San José's rail transportation system along Tasman Drive at North First Street. One of the main reasons that the company originally selected the headquarters location was because of the significant rail and bus transportation infrastructure in the vicinity. The VTA Light Rail line, five Light Rail Stations, and numerous bus lines are located throughout the campus and nearby. Cisco also has funded millions of dollars of public transportation and other infrastructure including public roads, bridges, utilities and a VTA light rail station to provide development capacity for its use and for the benefit of other properties in the area.

Cisco is currently undertaking a strategic plan for its facilities in the San José area and hopes to continue to grow its business here. Research and development of new and emerging products lines will require us to either make major financial investments to redevelop existing facilities and upgrade internal systems and infrastructure, or develop new facilities. We are evaluating our alternatives regarding intensification of our Tasman Drive campus to meet our business objectives. The company's near-, mid- and long-term San José facilities planning strategy and investment decisions will be a function of the City of San José's land use policies and decisions related to North San José, which will either enable or hinder our intensification and our future growth in North San José. Although the proposed Policy is an important first step in creating a framework to support that growth, Cisco is concerned that certain aspects of the Policy may actually inhibit industrial growth and economic development in North San José, as described below. Cisco looks forward to working collaboratively with the City to resolve these concerns so that the City's vision can be implemented, enabling companies like Cisco to continue to thrive in San José.

**RESPONSE 19b:** This comment expresses the letter writer's opinions about the project. No response is required.

**COMMENT 19c:** 1. Draft North San José Area Development Policy

1.1 Land Use Designations

a. Core Area: The Policy proposes to establish an "Industrial Core Area" designed to encourage more intense development for driving industry businesses along the North First Street Corridor adjacent to transit. Despite the acknowledgement in the Draft EIR that "[t]he backbone of the transit service in North San José is the light rail system that operates along North First Street and Tasman Drive," Cisco's Tasman Drive campus (which is located adjacent or proximate to the Champion Station, Baypointe Station, 1-880/Milpitas Station, Cisco Way Station and Tasman Station) is excluded from the proposed

Industrial Core Area. Cisco wants to ensure that, while its properties are excluded from the Industrial Core, FAR limits will not impede potential future growth.

**RESPONSE 19b:** The proposed Policies would allow more growth on the properties owned by Cisco Systems than could be permitted under existing policies. The Cisco facilities on Tasman Drive east of Zanker Road were built with allocations from the FAR pool, so that the project exceeds the 0.40 FAR that would otherwise have been the maximum allowed. All of the pool allocation for the project was used to build out the approved project. Under existing conditions, there is no surplus FAR available in the pool, and substantial commitments have been made to other property owners in North San José (primarily eBay and BEA) regarding future FAR, should any become available.

Under the proposed Area Development Policy, four million square feet of new development potential will be made available for use on any site in North San José, including the Cisco property, subject to the phasing requirements.

**COMMENT 19c:** b. Transit/Employment District Residential Area: The Policy proposes to include the State's Agnews Development Center facility within the Transit/Employment District Residential designation. Cisco has a right of first refusal on this property and it is likely that it will acquire the property for industrial use. Cisco therefore requests that the City remove the proposed Transit/Employment District Residential designation from the property. We recommend that the proposed residential unit allocation for the Agnews Development Center site be reassigned to other sites in North San José, in order to achieve both the City's industrial and residential development goals and objectives.

**RESPONSE 19c:** There is no residential unit allocation assigned to the Agnews property or any other individual property within the proposed overlay. The location of the proposed *Transit/Employment Residential District Overlay* defines the geographic locations where high density residential development may occur, subject to specific future development approvals.

It should be noted in this context that the Agnews property is designated *Public/Quasi-Public* and Cisco Systems could not expand industrial uses onto this site without discretionary action being taken by the City of San José, including documentation of consistency with CEQA. This EIR does not specifically address the development of the Agnews property with industrial land uses.

**COMMENT 19d:** c. Policy Area: The Policy area excludes the industrial sites in Alviso, notwithstanding the City's identification of these sites as priority sites to preserve for driving industry uses in its recently adopted "Framework to Evaluate Proposed Conversions of Employment Lands to Other Uses." Cisco is concerned that the proposed development within the Policy area will utilize all of the available traffic capacity, thereby undermining the feasibility of future industrial development in Alviso. The Policy, however, also states that it does not support conversions from industrial to residential outside the Policy area, including north of 237. Cisco is concerned about the adverse impact of these Policy provisions on its Alviso property.

**RESPONSE 19d:** The proposed Policies do not limit the development potential of any properties in the Alviso area beyond existing conditions. The utilization of industrially designated properties for industrial purposes, consistent with the “Framework” can occur without their inclusion in the Policy area. These properties are also not subject to the impact fees proposed for North San José.

The property in Alviso for which Cisco Systems previously obtained PD zoning did not have allocations to build all of the development proposed and could not mitigate its impacts for all of that development, consistent with either the citywide LOS Policy or the North San José Area Development Policy. The proposed policies do not limit the amount of development that could be built on any Alviso property any more than under current conditions.

**COMMENT 19e:** 1.2 Intensification Assumptions: As part of its strategic plan, in addition to constructing new buildings, Cisco proposes to maximize the efficiency of its facilities, improve employee satisfaction and enhance worker productivity through increased employee densities in its existing buildings. This intensification is likely to be an increasing trend as corporate users seek innovative ways to maximize the use of their facilities. Cisco encourages the City to clarify the Policy to make clear that the City can allocate FAR to authorize increased employee densities within existing buildings in order to encourage businesses to stay and grow in North San José.

**RESPONSE 19e:** Language has been added to the proposed North San José Area Development Policy to clarify that an FAR allocation could be based on new building square footage or increased parking spaces (whether surface parking spaces or structured spaces) or any similar entitlement for increased intensity. In any case, the property owner would be required to pay the appropriate fees to finance the infrastructure necessary to serve the intensification of use.

**COMMENT 19f:** 1.3. Allocation of FAR: The Policy proposes to allocate FAR at the permit stage (Site Development Permit, Planned Development Permit or Tentative Map) and indicates that permits will have only a one year duration. While Cisco appreciates the City's need to ensure that FAR is allocated to developments that will actually use it and not hold it for speculation, the inability to secure FAR allocations for long-term development needs would severely impair the long-term planning that is critical to corporate facilities and company growth decisions. Cisco encourages the City to include in the Policy a mechanism for corporate users to secure FAR allocations consistent with their strategic plans in order to encourage businesses to plan for long-term growth in North San José.

**RESPONSE 19f:** This comment is acknowledged and will be considered by the City Council in its deliberations regarding the project. It does not speak to an environmental impact nor does it raise any issue related to the adequacy of the EIR. No further response is required.

**COMMENT 19g:** 1.4. Development Impact Fee: The Policy proposes a Development Impact Fee to fund the traffic mitigation measures identified in the Policy. The proposed fee would initially be set at \$10.44/s.f. for industrial development, with the potential for escalation over time. Cisco is concerned that a fee of this magnitude will be a significant impediment to new industrial development. This approach could make North San José less attractive and less competitive for industrial development compared to other areas within the City and region. Cisco encourages the City to seek alternate funding sources for the improvements.

**RESPONSE 19g:** This comment is acknowledged and will be considered by the City Council in its deliberations regarding the project. It does not speak to an environmental impact nor does it raise any issue related to the adequacy of the EIR. No further response is required. Please also see Response 19i below.

**COMMENT 19h:** 2. North San José Development Policies Update Draft EIR

2.1 Traffic Analysis

a. Intensification Assumptions:

The Draft EIR traffic analysis (and the related noise and air quality analysis) analyzes the impact of buildout of the FAR identified in the Policy, assuming that the FAR occurs in the form of new development. If the policy is clarified as indicated above to allow FAR to be allocated for intensification within existing buildings, then the Draft EIR also would be used to support such intensification. Cisco encourages the City to clarify that the Draft EIR takes into account the trend toward denser building usage to ensure that the Policy, the Draft EIR and the recommended physical improvements support it.

**RESPONSE 19h:** Please see Response 19e above. The analysis of impacts in the EIR, including the traffic analysis, reflected a maximum amount of development that could occur under the proposed Policies and General Plan land use designations. The Policy language has been revised to clarify the assumptions.

**COMMENT 19i:** b. Intersection Impacts:

The Draft EIR indicates that implementation of the Policy will result in significant traffic congestion at local intersections, as a result of both the phasing of improvements where mitigation is feasible and the fact that mitigation is not feasible at some locations. This congestion will impact site accessibility and may act as a deterrent to future industrial development in North San José. The congested intersections include locations adjacent to Cisco's facilities in North San José and Milpitas, including some intersections that Cisco spent significant funds to improve in connection with the development of its facilities. Cisco is concerned about the impact these conditions will have on the accessibility of Cisco's existing facilities and Cisco's ability to further intensify use of those facilities.

The Draft EIR also states that development that would impact intersections that cannot be mitigated and that is not within the Policy "will either be unable to proceed, or will have to be downsized to achieve consistency with the General Plan LOS Policy and the Council's adopted Transportation Impact Policy." Cisco is concerned that policy may act as an impediment to future industrial growth in North San José, including Cisco's plans to intensify use of existing buildings or build new buildings in the Policy area and its Alviso property.

Cisco encourages to the City to explore measures to manage congestion so that North San José remains an attractive location for industry and to incorporate into the Policy a mechanism to allow sensible industrial projects to proceed even if not within the Policy.

**RESPONSE 19i:** This comment reflects the intrinsic difficulties in planning for a vibrant, viable, urban form while preserving the functionality of the traditional industrial area. The traffic analysis identifies the level of congestion anticipated and identifies the mechanisms, including substantially increased transit use and the creation of a new grid street system, for maintaining access and circulation. In addition to the proposed improvements to the roadway system, the City is proposing \$60 million of transit, pedestrian, and bicycle improvements as part of the proposed

project. In addition, the City continues to expand its intelligent transportation system (ITS), which creates better traffic management and more efficient use of available capacity without additional roadway lanes.

Cisco's desire to increase the intensification of use on their existing campus is consistent with the City's proposed vision for North San José.

As stated previously, the Alviso area is outside the boundaries of the proposed policies. The proposed North San José Area Development Policy will not impede or facilitate additional development in Alviso.

**COMMENT 19j:** 2.2 Agnews Development Center

As noted above, Cisco believes it is likely that it will exercise its right to purchase the Agnews Development Center site and will develop it for industrial use. As such, the Draft EIR should assume that the site is developed for industrial, rather than residential, purposes. We recommend that the proposed residential unit allocation for the Agnews Development Center site be assigned to other sites in North San José in order to achieve both the City's industrial and residential development goals and objectives. Among other things, this analysis should include an assessment of the historic status of the buildings located on the site. While Cisco certainly would be willing to explore options for preservation of the buildings if in fact they are determined to be of historic significance, such preservation may not be compatible with the type of high-density industrial development contemplated by the Policy.

**RESPONSE 19j:** As stated previously, no residential units are assigned to the Agnews site by the analysis included in the EIR. The analysis assumes that the 18,650 dwelling units that are planned for within the overlay could develop on any 285 acres of the total amount of land included in the overlay (200 acres at 55 DU/AC or higher and 85 acres at 90 DU/AC or higher). The boundary of the proposed Overlay has been slightly expanded; please see Section IV of this First Amendment to the Draft EIR. The Agnews property is presently designated *Public/Quasi-Public*, and it would be inappropriate for the EIR to assume that it would redevelop as an industrial property at this time.

Demolition of the historic structures on the Agnews property would be inconsistent with City policies, including both General Plan policies and adopted Council policy. Any proposal to demolish historic structures, or to alter them so as to substantially diminish their historic value, would require preparation of an EIR.

**COMMENT 19j:** Again, Cisco appreciates the opportunity to review and comment on the City of San José's proposed Draft North San José Area Development Policy and North San José Development Policies Update Draft EIR. We support the City's efforts to intensify employment and residential uses in the North San José area and look forward to working collaboratively with the City to ensure that City's vision can be implemented in a way that enables companies like Cisco to continue to grow and thrive in San José.

**RESPONSE 19j:** No response is required.

**20. RESPONSE TO LETTER FROM FERRARI OTTOBONI LLP, DATED APRIL 25, 2005:**

**COMMENT 20a:** We represent McCarthy Ranch Limited Partnership ("McCarthy"), the owner of certain acreage in Milpitas which would be impacted by the proposed changes discussed in the above draft Environmental Impact Report (the "DEIR").

We have reviewed the comment letter of the City of Milpitas on the DEIR and we agree with and adopt those comments. They, however, do not go far enough.

EIR's Purpose. The purpose of an environmental impact report is to allow decision makers to be fully apprised of the environmental consequences of an action before it is taken. In this matter, however, the decision makers have for some time been committed to a fore ordained decision.

For example, at page 20 of the DEIR, in commenting on San Jose's use of transferable FAR credit for North San Jose, it states:

"At this point, the pool of transferable FAR credits has been fully depleted, and the City has approved development projects for both eBay and BEA that are dependent on eBay receiving approximately 1.4 million square feet of pool credits and BEA receiving approximately 1.4 million square feet of pool credits at some point in the future in order to fully develop."

Apparently, the City simply wants to take what should be regional growth and force it into North San Jose

"as a desirable location for high-tech companies in Silicon Valley and the Bay. The proposed policy revisions are intended ... as part of an effort by the City to guide anticipated job and population growth to areas of the City where the impacts of that growth will be reduced in contrast to the typical impacts of unplanned growth." (DEIR 20-21)

The result of this hunger for growth is to seek approval of very many impacts which are said to have "Significant unavoidable Impacts," which will require findings of overruling considerations.

**RESPONSE 20a:** This section of the letter does not ask any question about the environmental analysis or comment on an environmental impact, other than to quote from the EIR and characterize the analysis as part of a "fore ordained decision". There has not, in fact, been any decision made to approve the project prior to certification of this EIR.

The meaning of the final paragraph in this comment, regarding "approval of very many impacts" is not clear.

This section of the letter does not appear to require a response. For responses to comments received from the City of Milpitas, please see section II.B.11. of this First Amendment to the Draft EIR.

**COMMENT 20b:** Schools. The massive impacts on schools which would result from a build out under the proposals are brushed aside with the comment:

"The school impact fees and the school districts' methods of implementing measures specified by Government Code 68996 would partially offset the costs of serving project-related increases in student enrollment." (DEIR, p. 320)

The ultimate solution to the impending school crisis which would be caused by the City's Proposals is to be left to the future since "future development of one or more schools. ... would require supplemental environmental review..." Further discussion at this time of the impacts that might result from building one or more schools in North San Jose would be speculative."

Equally speculative apparently, is how such schools would be paid for and what the impact would be to the extent they are not funded. This type of analysis does not allow the decision makers to be fully informed of the environmental consequences of the adoption of the proposal.

**RESPONSE 20b:** This comment has apparently overlooked the beginning of the paragraph on page 320 of the DEIR, which paragraph is quoted in part in this comment. The entire paragraph reads as follows:

"State law (Government Code 65996) specifies that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to issuance of the building permit. In San José, residential development project applicants can either negotiate directly with the affected school districts, or they can make a 'presumptive payment' of \$1.93 per square foot for multi-family units. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would partially offset the costs of serving project-related increases in student enrollment."

This comment suggests that environmental clearance should be provided in this EIR for future schools. It is not possible to provide environmental review for future schools because there are no specific school sites identified and it is not possible to determine at this time where the schools should be located because there is as yet no actual residential development proposed and no way to foretell which residential sites will develop at what time, and in what order.

**COMMENT 20c:** Species of Concern. "The project does not include provisions to provide for additional Burrowing Owl habitat and therefore is not consistent with [the City's] Species of Concern Policy #4." (DEIR, pg. 53 and see page 217)

The effect on the habitat of Burrowing Owls and other raptors is said to be "a significant impact." (DEIR, p. 230) Proposed mitigation is said to be inadequate resulting in a "Significant Unavoidable Impact." (DEIR, p. 236) The discussion of possible mitigations is unnecessarily limited. For example, there is no adequate discussion of an in-lieu fee to purchase replacement habitat. The report merely notes the "absence of a City-wide Burrowing Owl Mitigation Plan" and that "mitigation habitat areas should be preserved and managed by a legal mechanism approved by the City of San Jose;" with the operative word being "should" not will. (DEIR, p. 237)

**RESPONSE 20c:** Language is included in Section IV of this First Amendment to the DEIR that reflects the possibility that an in-lieu fee could be used to purchase replacement habitat.



**21. RESPONSE TO LETTER FROM LIBBY LUCAS DATED APRIL 25, 2005:**

**COMMENT 21a:** As I do not have the Draft Environmental Impact Report for the North San Jose Development Policies in hand to accurately cite page reference, following comments are of a general nature based on past knowledge of this North San Jose region.

In regards the increased water supply demand of 9,000 acre feet for this more dense proposed development, it is essential that underground water tanks and a foothills reservoir be included in this build-out plan.

If the present municipal wells north of Montague, near Coyote Creek, are over drawn it will result in saltwater intrusion and contamination of the water supply. Reliance on existing more inland wells will gradually cause depletion of the groundwater aquifer and lead to subsidence. Further subsidence will make flood protection impossible.

**RESPONSE 21a:** There is no proposal or plan to create a foothill reservoir, nor have the water retailers who would supply the project area identified a specific need for a foothill reservoir. As stated on page 302 of the DEIR, up to two additional reservoirs are proposed in the project area. Please see additional information on water supply provided in Section IV of this First Amendment to the DEIR.

**COMMENT 21b:** To compensate for increased impervious surface stormwater runoff to both Guadalupe River and Coyote Creek (or overbanking from these creeks) it would be prudent to put frontage roads adjacent to the flood control levees in a depressed design to carry off possible peak flows and protect First Street and the light rail corridor.

**RESPONSE 21b:** It is not necessary to have roadways adjacent to the levees in order to have streets and storm drains detain peak event runoff. Levees along both creeks are elevated well above the surrounding properties, which do not drain overland to the creeks. Existing development in North San José was designed to hold storm water in parking lots and public streets and storm drains during times when water in the creek is too high. This is consistent with City policies citywide, and will continue to be utilized in North San José as necessary.

**COMMENT 21c:** Native trees of the watershed should be planted on either side of these frontage roads to provide a filter for urban pollutants and shade for anadromous fishery of both rivers.

**RESPONSE 21c:** See previous response and comment. The levees along both creeks are elevated. Runoff from adjacent properties does not drain overland into the creeks, but is captured by underground storm drains which carry the runoff to pump stations positioned near the creeks. Trees planted adjacent to the levees will not shade the river because of the great distances from the channel, and will provide minimal filtering benefit.

**COMMENT 21d:** I am unclear as to where the remnant sycamore riparian woodland will be removed but advise strongly that this loss be avoided at all cost. The water temperatures of these streams has been rendered marginal for a cold water fishery, especially by the removal of over a thousand riparian trees in downtown Guadalupe River flood project.

**RESPONSE 21d:** As stated on page 214 of the Draft EIR, the remnant sycamore woodland is on a site that is bounded by streets (Brokaw Road, Ridder Park Drive, and I-880) and is completely surrounded by plowed fields. The trees are an island of remnant riparian woodland cut off from the creek.

**COMMENT 21e:** Do recommend that plantings for this North San Jose be chosen for low water usage, such as California natives instead of grass, or even orchard trees might be preferable.

**RESPONSE 21f:** The recommendation is acknowledged and will be considered by the City Council during the project approval process.

**COMMENT 21g:** Please note the Santa Clara Fault in a review of earthquake faults of the urban region and ensure that high rise development be kept to a minimum. Putting tall buildings adjacent to stream corridors will also shade and degrade the healthy riparian canopy.

**RESPONSE 21g:** The reference to the Santa Clara Fault is not clear. There is no fault of that name near this area. All development will be consistent with the requirements of the Uniform Building Code standards for Seismic Zone 4, as stated on page 259 of the Draft EIR.

**COMMENT 21h:** Conservative planning should include a complete range of infrastructure to this denser development, such as libraries, schools, health facilities, fire stations, recreational fields, trails, and support services of grocery stores, dry cleaners and restaurants.

**RESPONSE 21h:** Please see the description of Design Criteria under the proposed North San José Area Development Policy on page 22, which includes a description of commercial uses allowed under the proposed land use designations. Section III of the Draft EIR describes the public facilities that would be anticipated to serve the proposed project.

**COMMENT 21i:** If this new policy puts the entire region under a redevelopment umbrella that exempts it from taxation for any of the aforementioned urban infrastructure needs, such as schools, then I think that should be so stated and suitable mitigation mandated.

**RESPONSE 21i:** This comment addresses financing, which is not an environmental impact. The opinion is acknowledged, but no further response is required, since the comment does not speak to an environmental effect or to the adequacy of the EIR as a CEQA document.

**COMMENT 21j:** I submit these comments as a private citizen. To represent conservation for the Santa Clara Valley Chapter of the California Native Plant Society I really need to have the Draft EIR in hand. I will try to do so, but it will not make the response deadline.

**RESPONSE 21j:** No response is required.

#### **IV. REVISIONS TO THE TEXT OF THE DRAFT EIR**

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Following are proposed revisions to the text of the Draft Environmental Impact Report prepared for the North San José Development Policies Update in March 2005. The page numbers referenced are the page number in that document. Deletions from the text are indicated with ~~strikeouts through the text to be deleted~~. Additions to the text are underlined.

Page #

vii Summary. Description of the Proposed Project; first paragraph:

**REVISE** the first, second and third sentences of the first paragraph as shown:

The City of San José is proposing to intensify development allowed within the Rincon de los Esteros Redevelopment Area in the northern portion part of the City, bounded by Route 237, Highway 101 and Interstate 880. The project area consists of 4,669 total acres. Rincon de los Esteros is an established industrial park ~~area~~, with scattered enclaves of high and medium-high density residential,....

vii **REVISE** the second paragraph as shown:

This EIR addresses the impacts of developing approximately 26.7 million square feet of new industrial/office/R&D building space in ~~the Rincon-area~~ beyond existing entitlements. Of this 26.7 million square feet, 6.7 million represents full buildout of the project area under the existing FAR cap policy and 20 million square feet would be the net amount of additional development potential created through the proposed changes to current City policies. This amount of total new development would allow for approximately 83,300 new employees. In addition, up to 32,000 new dwelling units would be allowed in Rincon at minimum densities of 20, 55 or 90 dwelling units per acre (DU/AC) depending on their location. Of these 32,000 new units, 7,300 residential units could be built on properties with existing residential General Plan designations allowing 20+ DU/AC, and the remaining 24,700 new residential units could be built on properties within the housing overlay areas proposed by this project (at 55 or 90 DU/AC) or in a mixed use configuration within the Industrial Core Area itself. This would allow a population increase of approximately 56,640 persons. This EIR also addresses the development of 1.7 million square feet of new supporting commercial uses (e.g. retail and similar uses intended to support the industrial and residential uses within the project area and potentially reduce vehicle trips).

vii **INSERT** the following table immediately after the second paragraph:

Table A Summary of Project Development Amounts				
	Industrial (Square Footage)	Industrial Jobs	Residential (Units)	Residential Population
Projected Capacity of Existing Policies and General Plan	6.7 million	20,900	7,300	12,920
Proposed New Policy and General Plan Capacity	20 million	62,400	24,700	43,720
Totals (Included in this EIR)	26.7 million	83,300	32,000	56,640

vii **ADD** text immediately following the three listed elements of the project:

A key strategy of the proposed project is to allow and encourage more intense industrial office/R&D development along the North First Street Corridor. The City envisions a very active corridor of mid-rise (4 - 12 story) industrial office buildings, utilizing headquarters or comparable quality architecture, fronting along North First Street between Brokaw Road and Montague Expressway in a 592-acre Core Area. Intensification of this Core Area will foster a concentration of high-tech businesses located so as to make best use of existing infrastructure resources, including the light rail system, and in proximity to the Airport and the City's downtown area. The project provides for the addition of 16 million square feet of new industrial development within this Core Area, resulting in an overall average 1.2 FAR, approximately four times the existing average FAR of 0.35.

A second key strategy of the proposed project is to establish new residential areas within the project area in order to support continued job growth. The project includes a proposal to allow the conversion of up to 285 acres of existing industrial lands within a proposed Transit/Employment Residential District Overlay area. New residential units would also be allowed through mixed-use development within the Core Area and on land with existing residential designations. This residential development is intended to provide housing in close proximity to jobs to allow employees the opportunity to reduce their commute travel times, make increased use of transit facilities and to reduce overall traffic congestion. The project includes criteria that in conjunction with other City policies are intended to promote the establishment of successful new residential living environments as a result of land use conversions within the project area.

vii **REVISE** the fourth paragraph on the page as shown:

The *Industrial Core Area* General Plan land use designation would be applied to approximately the 592 acres *Core Area* of land located on both sides of North First Street from Montague Expressway to US 101. The City also proposes to apply the *Transit/Employment Residential District Overlay* designation to ~~400~~ up to 415 acres of land. Within the proposed policy area, the City also identifies an additional 20 acres which are considered appropriate or conversion, but are not included within the *Overlay area* at this time. These ~~400~~ 415 acres would maintain their current General

Plan designations but the Policy would support the future conversion of a maximum of 285 acres to residential use.

**REVISE** the last paragraph on the page as shown:

The development anticipated under this project is planned to occur over the next ten to 25 or more years. In order to ensure that the jobs ~~and housing~~ and supporting commercial uses develop in parallel, the following phasing will be required:

Phase 1            7 million square feet of industrial space  
4,000-8,000 dwelling units  
at least 100,000 square feet of commercial space

Phase 2            14 million square feet of industrial space  
8,000-16,000 dwelling units  
at least 200,000 square feet of commercial space

Phase 3            21 million square feet of industrial space  
16,000-24,000 dwelling units  
at least 300,000 square feet of commercial space

Phase 4            26.7 million square feet of industrial space  
24,000-32,000 dwelling units  
up to 1.7 million square feet of commercial space

viii    **REVISE** the first complete paragraph on the page as shown:

There is no timeline or specific location for these phases. Development included in phases 2 through 4 will not be allowed to proceed until the minimum amounts of development and substantial amount of the transportation improvements in the preceding phase are reasonably assured. The amount of development and its timing will be determined by the economy, markets, and the decisions made by private sector property owners and developers.

viii    **REVISE** the third complete paragraph on the page as shown:

The following major improvements will be built in conjunction with the phase indicated. This means that construction of 85% of the infrastructure improvements for each phase must be reasonably assured and all of the improvements from any preceding phase must be constructed before the industrial or residential development of the next phase may be issued Building Permits. ~~the improvement must be built, under construction, or funded and within less than one year of beginning construction before the next phase of development can begin.~~

viii    North San José Area Development Policy:

**REVISE** the first paragraph in this subsection as shown:

The most recent version of the North San José Area Development Policy (ADP) was adopted in 1988 and establishes the standards under which traffic congestion in the

area is evaluated and mitigated. The City is proposing to adopt a new Area Development Policy for North San José that reflects an identified need to increase development along North First Street, in order to take better advantage of both its established character as an employment center and as a desirable location for high-tech companies in Silicon Valley and the Bay Area to respond to the needs of the existing business community and to ensure true competitiveness. The proposed Policy revisions are intended to manage regional traffic patterns and to establish a framework for “smart growth.”

xxxvi Summary of Alternatives; C. Work Force Housing Alternatives:

**REVISE** the third paragraph on the page as shown:

To keep the basis of the analysis consistent and ensure that the analysis compared equivalent project scenarios, “~~apples-to-apples~~,” the same major transportation improvements were included in all of the alternatives.

xxxviii Known Views of Local Groups and Areas of Controversy:

**ADD** the following to the end of the paragraph:

Issues raised by residents of San José and staff of nearby cities have included concerns related to increased traffic and spillover impacts from traffic on residential neighborhoods and the adequacy of planning for parks, schools and other community facilities to serve the proposed amount of residential development.

1 Section I.B. Description of the Proposed Project; Project Location:

**REVISE** the first paragraph as shown:

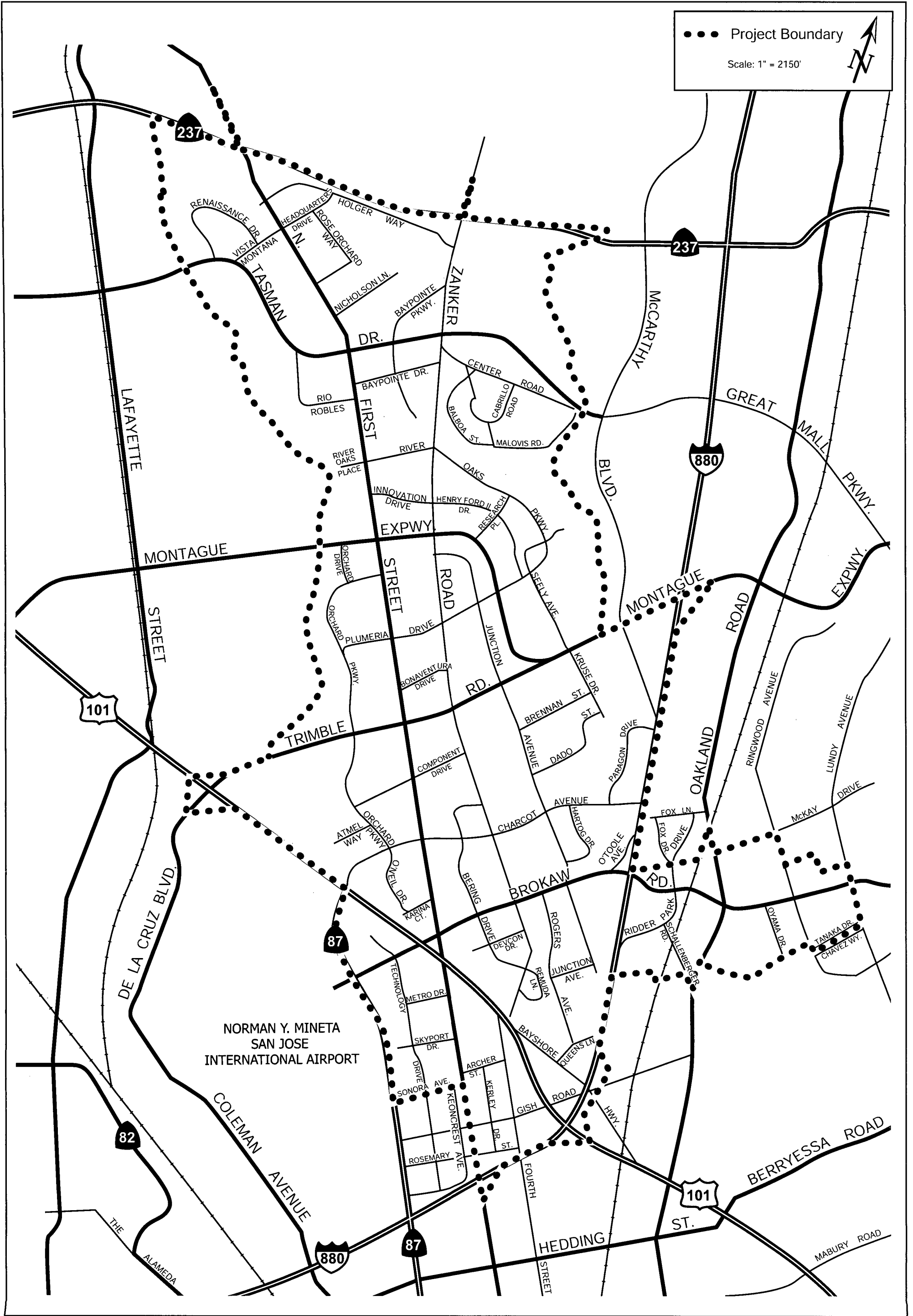
The location of the proposed project ~~is within~~ generally matches the boundaries of the Rincon de los Esteros Redevelopment Area, which is located generally south of State Route 237 (SR 237), east of the Guadalupe River, north and northwest of Interstate 880 (I-880), and west of Coyote Creek and consists of 4,987 acres located south of State Rute 237 (SR 237), east of the Guadalupe River and generally north and west of Interstate 880 (i-880), but also including land along both sides of Murphy Avenue as far east as Lundy Avenue. ~~The project area is estimated to be 4,987 gross acres in size.~~ The regional project location is shown in Figure 1; the project location within Santa Clara County is shown in Figure 2; the specific boundaries of the project area are shown in greater detail in Figure 3.

3 Figure 2: Vicinity Map:

**REPLACE** Figure 2 with Figure 2 (Revised) as shown on the following page.

4 Figure 3: Aerial Photograph:

**REPLACE** Figure 3 with Figure 3 (Revised) as shown on the second page following this.



VICINITY MAP

FIGURE 2 (REVISED)





1" = 2100'

AERIAL PHOTOGRAPH

FIGURE 3 (REVISED)



6 Figure 5: Proposed General Plan Land Use Changes:

REPLACE Figure 5 with Figure 5 (Revised) as shown on the following page.

7 Proposed New Development:

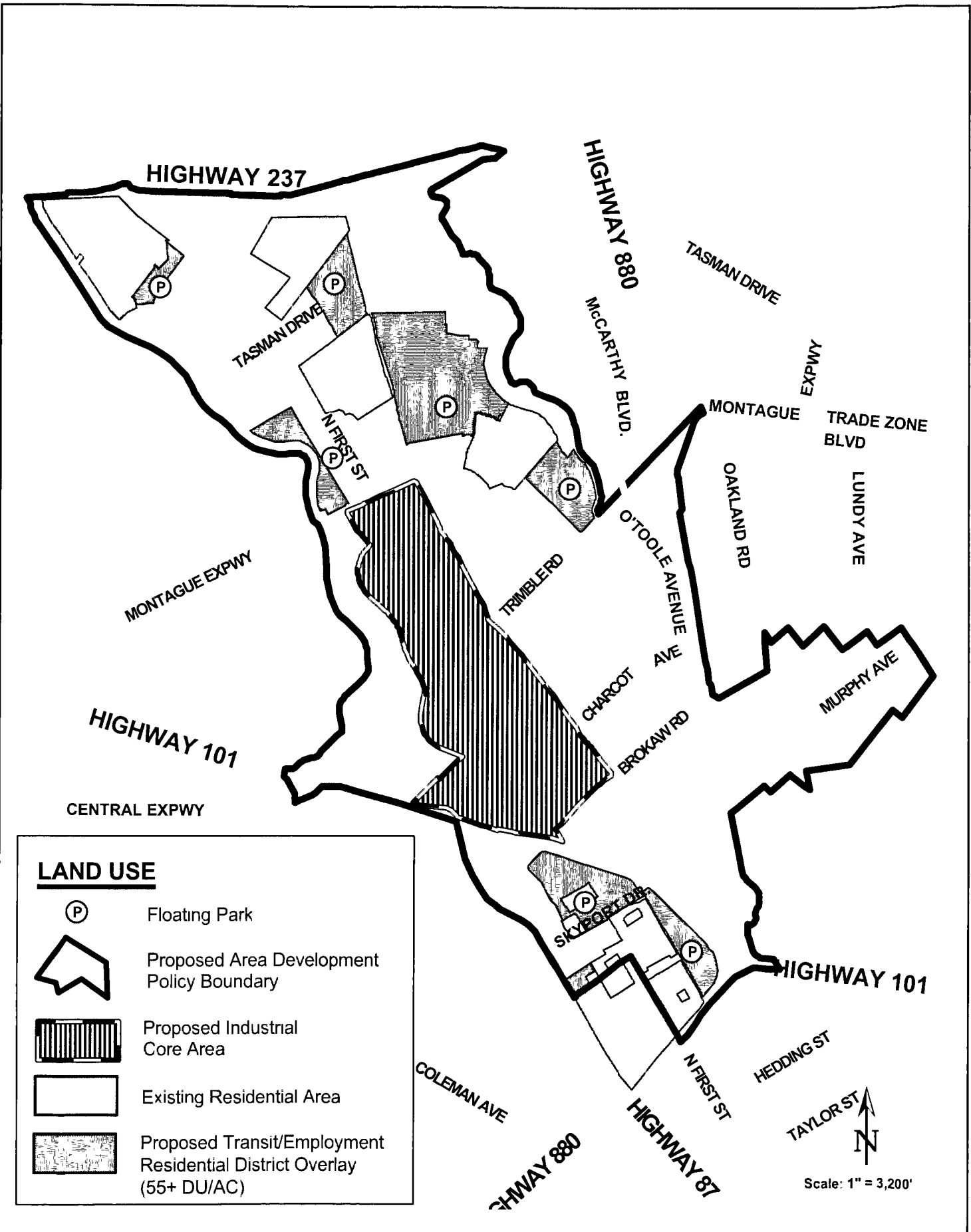
REVISE the third paragraph in the section as shown:

In addition, the project allows for the development of up to 32,000 new dwelling units within the project area. This amount of development is assumed to be distributed between new residential sites converted from non-residential use, incorporation of mixed-used residential development into a central Industrial Core Area, and new residential development on land currently designated for residential use. A General Plan Overlan designation, *Transit/Employment District (55+DU/AC)* is proposed to be applied to up to 415 acres of land, allowing their conversion from non-residential to residential use. The proposed policy changes allow for the conversion of up to 285 acres of existing industrial and public/quasi-public lands within this overlay area to residential use at minimum densities of either 55 DU/AC (utilizing up to 200 acres) or 90 DU/AC (utilizing up to 85 acres). Complete implementation of this conversion would result in a minimum of 18,650 new residential units and could result in additional units. The project also includes a proposal to allow mixed use (residential and industrial) development within a central Industrial Core Area (~~Core Area~~) industrial area. Additional residential development could also occur through the development of properties with an existing residential General Plan designation allowing development at 20+ DU/AC. The development of 32,000 new dwelling units is the projected build-out of these residential areas and the total number of units addressed through this EIR. This Development of 32,000 new dwelling units would allow a population increase of approximately 56,640 persons.





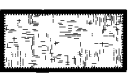
INSERT the following table after the third paragraph:

<b>Table B Summary of New Residential Development</b>		
	<b>Acres</b>	<b>Projected Number of Units</b>
Projected build-out of existing General Plan residential sites within Policy Area	165	7,350
Residential Development within the proposed overlay at minimum 55 DU/AC	200	11,000
Residential Development within the proposed overlay at minimum 90 DU/AC	85	7,650
Industrial Core Area Units	592	6,000
<b>Total (Included within this EIR)</b>	<b>1,042</b>	<b>32,000</b>

Figure 5 Revised



**LAND USE**

-  Floating Park
-  Proposed Area Development Policy Boundary
-  Proposed Industrial Core Area
-  Existing Residential Area
-  Proposed Transit/Employment Residential District Overlay (55+ DU/AC)



Scale: 1" = 3,200'

**ADD** the following paragraph after the new table:

It should be noted that all of the new housing would be located within the Rincon de los Esteros Redevelopment Project Area and thus be subject to State and City requirements for the inclusion of affordable units.

9 **REVISE** the eighth line on the page as shown:

the new residential development could house up to 68 percent of the additional work force that would be located in the additional new industrial/office/R&D development, using the ABAG derived workers per household assumption for San José in 2025. The traffic analysis used a more conservative, lower and older ratio of 1.6 workers per household. Under that assumption, approximately 62 percent of the work force could be housed in North San José

10 Specific Project Elements; General Plan Elements; Land Use Designation Changes; Industrial Core Area:

**INSERT** the following after the fourth sentence in the paragraph:

total developed site land area. The development of large hotels of at least 200 rooms and four or more stories in height is also supported within the Core Area. Typical building density....

11 Transit/Employment District Residential (55+DU/AC) Overlay designation:

**INSERT** the following after the first sentence in this paragraph:

...light rail stations. The proposed policy also indicates support for the future application of this designation to an additional portion of two properties located in the vicinity of the River Oaks station. The proposed overlay would not....

**REVISE** the last paragraph on the page as shown:

The City also proposes to apply the Transit/Employment District Residential Overlay to ~~400~~ 415 acres of land, as shown in Table 1. These lands would maintain their current General Plan designations but the Policy would support the future conversion of a maximum of 285 acres to residential use. As noted above, the proposed policy supports the future application of this designation to an additional 20 acres in the vicinity of the River Oaks station, but the City does to propose to perform this action as part of the project evaluated in this EIR.

12 Specific Project Elements; General Plan Amendments; Table 1: Proposed General Plan Residential Land Use Changes.

**REVISE** the Industrial Park acreage: ~~283~~ 298

**REVISE** the Total Acres: ~~400~~ 415

Transit/Employment District Residential Overlay:

**REVISE** the second sentence in the second paragraph as shown:

...Rincon Area. Residential uses are proposed east of North Park, across Zanker Road, utilizing the land current occupied by the Agnews Developmental Center (which the State of California has announced will be closed by ~~July 12005~~ June 30, 2007<sup>o</sup>), and on land north of North Park,....

**REVISE** the first sentence in the third paragraph as shown:

Under the new development policies, up to 200 of the ~~400~~ 415 acres within the entire *Transit/Employment District Overlay* could develop at a minimum density of 55 Du/AC, and up to 85 of the entire ~~400~~ 415 acres within the *Overlay* could develop at a minimum density of 90 DU/AC. .

13 **REVISE** the eleventh and thirteenth lines of the first paragraph on the page as shown:

...determinations, throughout the entire North San Jose/Rincon de los Esteros Redevelopment Area. g heights of up to 150 feet would be allowed for parcels within the North San José Transit Areas which includes all sites within 2,000 feet of a light rail station and outside the Core Are (refer to Figure 7).

15 Phasing of Development and Improvements;:

**REVISE** the first three paragraphs of this section as shown.

The development anticipated under this project is planned to occur over the next ten to 25 or more years. It is not necessary that the improvements occur substantially in advance of the development, but it would be imprudent to allow substantial deterioration in roadway operations before constructing planned improvements. Providing commercial support services is also important to reduce the need for travel to such services. The total amount of development proposed for the project area was divided into four phases, with 25 percent of the total amount of development in each category of land use assumed for each phase. A minimum amount of commercial development was also determined for each phase. This equates to the following amount of development being assumed for each of the indicated phases:

Phase 1	7 million square feet of industrial space 4,000-8,000 dwelling units <u>at least 1000,000 square feet of commercial space</u>
Phase 2	14 million square feet of industrial space 8,000-16,000 dwelling units <u>at last 200,000 square fet of commercial space</u>
Phase 3	21 million square feet of industrial space 16,000-24,000 dwelling units <u>at least 300,000 square feet of commercial space</u>

Phase 4            26.7 million square feet of industrial space  
                         24,000-32,000 dwelling units  
                         up to 1.7 million square feet of commercial space

There is no timeline or specific location for these phases. Development included in Phases 2 through 4 will not be allowed to proceed until the minimum amounts of development and a substantial amount of the transportation improvements in the preceding phase are reasonably assured. The amount of development and its timing will be determined by the economy, markets, and the decisions made by private sector property owners and developers.

North San José is primarily an industrial area, a center of employment whose ongoing vitality is critical to the City's economic health, and from which income revenue is essential to maintaining the City's service levels. While residential development is proposed to support the new job growth, it would be contrary to the City's planning goals and objectives to encourage or facilitate a substantial conversion of industrial land to residential uses too far in advance of the new job growth. It is the City's intent to continue to maintain and promote the North San José area as primarily a location for high tech industries and other industrial uses. New housing areas are being provided only to support continued industrial development in the area. Land is considered a precious commodity for industrial use within the North San José area, so it is important that a large number of residential units result from any conversion of industrial lands to justify that conversion. The proposed Area Development Policy therefore limits the number of dwelling units that can be developed too far in advance of new industrial development and establishes minimum densities for new residential development.

Beginning with the sixth paragraph on this page, revise that paragraph and the following text as shown:

The result of these ~~two sets of~~ parameters is a range of residential units and a minimum amount of commercial development that must be developed in parallel with the phased industrial development. The impacts analysis in this EIR evaluates the impacts that would occur as a "worst case," as a result of the proposed phasing described above. The range of assumed dwelling units for each phase, as summarized below, would limit the extent of the impacts, and assure the City that the planned-for balance is maintained in North San José.

Phase 1            Up to a maximum of 8,000 dwelling units can be built during Phase 1. At least 4,000 dwelling units and 100,000 square feet of commercial space must be built or under construction before construction of industrial floor area in excess of 7 million square feet, or the beginning of Phase 2, can begin.

Phase 2            Up to a maximum of 16,000 dwelling units can be built through the end of Phase 2. At least 8,000 dwelling units and 200,000 square feet of commercial space must be built or under construction before construction of industrial floor area in excess of 14 million square feet, or the beginning of Phase 3, can begin.

Phase 3            Up to a maximum of 24,000 dwelling units can be built through the end of Phase 3. At least 12,000 dwelling units and 300,000 square feet of

commercial space must be built or under construction before construction of industrial floor area in excess of 21 million square feet, or the beginning of Phase 4, can begin.

Phase 4 Up to a maximum of 32,000 dwelling units can be built through the end of Phase 4. Construction of industrial floor area will not exceed 26.7 million square feet at the end of Phase 4.

The phasing of the improvements was determined based on both the need for the improvements and the patterns identified in area level of service calculations. The phase at which the major improvements would be needed was determined based on the extent to which each would serve the North San José area as a whole. Generally, the major improvements serve as gateways and/or major arterials to and within North San José, and can be evaluated as more or less useful for each of the development phases. The following major improvements will be built in conjunction with the phase indicated. This means that ~~the improvement must be built, under construction, or funded within less than one year of beginning~~ construction of 85 percent of the infrastructure improvements for each phase must be reasonably assured and all of the improvements from any preceding phase must be constructed, before the next phase of development can begin. More detailed descriptions of these Major Improvements are included in Section II.B. Transportation, and in Appendix D.

16 **REVISE** the last paragraph on the page as shown:

The need for specific intersection improvements during each phase of development was determined based on level of service calculations (see Section II.B. Transportation). Each impacted intersection was evaluated to determine during which phase the project traffic would cause the intersection to be significantly impacted. Minor exceptions were made for intersections for which proposed improvements are minor, and which can readily be completed with the first phase. The timing for intersection improvements must be concurrent with the development of the phase, but the phasing of improvements will also need to correlate to the ranges of development allowed within each phase. As with the City's current citywide LOS Policy, construction of the improvements must be completed within one year of reasonably assured concurrent with the project implementation. Development allowed under the subsequent phase cannot, therefore, be approved until ~~all intersection improvements are within one year of completion~~ construction of 85 percent of the infrastructure improvements for the current phase is reasonably assured and all of the improvements from any preceding phase(s) are fully constructed.

19 Transportation Policies:

**MOVE** the Level of Service Policy subsection to follow the North San José Area Development Policy subsection.

21 North San José Area Development Policy; Floor Area Ratios:

**REVISE** this subsection as shown:

The FAR cap and allocation policy ~~would only apply to~~ is proposed to be replaced with policy clearance for a specific amount (26.7 million square feet) of new industrial development that generates peak hour employment. Restrictions on floor area and use of the transferable FAR would not apply to retail, residential, civic, and The proposed policy also provides for the development of up to 1.7 million square feet of supporting commercial uses, residential development as discussed elsewhere, and an alternative tri-based methodology for analyzing certain specific low-intensity industrial uses (such as warehouses, utility, and equipment facilities) as well as high intensity uses based upon the amount of parking provided on-site. As a result of the amount of industrial development allowed through the proposed policies, the resulting FAR ~~The maximum base FAR for peak-hour employment-based industrial development would be as follows:~~

- Standard throughout Rincon - 0.35.
- On properties within 2,000 feet of an LRT station, but outside the Core Area - 0.40 FAR.
- The allocation of proposed transferable pool credits to properties within the Core Area would result in an average within the Core Area of 1.2 FAR.

22 Transportation Demand Management:

**REVISE** the subsection as shown:

All new development within Rincon would be required to incorporate transportation demand management (TDM) elements into facility design, to the extent possible. This would continue what has long been the City's standard practice for the North San José area, as reflected in the existing Deficiency Plan discussed below. Specific requirements for some TDM Measures are also set forth in the City's Zoning Ordinance and would be applied to the new development within the project area. ~~Improvements must include but would not be limited to:~~ Generally new development within the project area will include some or all of the following site design measures, taking project land use, scale, and location into consideration:

For employment generating uses:

- Physical improvements, such as sidewalk improvements, landscaping and bicycle parking that act as incentives for pedestrian and bicycle modes of travel.
- Secure and conveniently located bicycle parking and storage for employees and visitors;
- Bicycle and pedestrian connections from the site to the regional bikeway/pedestrian trail system.
- Assigned car pool and van pool parking spaces at the most desirable on-site locations;
- Showers and lockers for employees walking or bicycling to work
- Commercial services onsite or in close proximity (e.g. day-care, dry-cleaners, fitness centers, financial services, grocery stores and/or restaurants).

For residential uses:

- Transit amenities such as bus turnouts/bus bulbs, benches, shelters, etc.
- Direct, safe, attractive pedestrian access from project land uses to transit stops
- Bicycle lanes, sidewalks and/or paths, connecting project residences to adjacent schools, parks, the nearest transit stop and nearby commercial areas.
- Secure and conveniently placed bicycle parking and storage facilities at parks and other facilities.
- Provide neighborhood-serving shops and services within or adjacent to residential project.
- Provide a satellite telecommute center within or near the development
- Incorporate commercial services onsite or in close proximity (e.g. day-care, dry-cleaners, fitness centers, financial services, grocery stores and/or restaurant).

- " — On-site bicycle racks and secure lockers;
- " — Assigned car pool and van pool parking at the most desirable on-site locations;
- " — On-site support services (food service, ATM, dry cleaner, gymnasium, etc.);
- " — On-site showers and lockers.

Projects that are covered by this EIR, and which will contribute to the significant increase in traffic congestion, will also be required by the City to include certain ongoing operational features that encourage use of alternate transportation modes. Depending on the size and location of the project, these additional measures required of new development may include some or all of the following:

- Provide an on-site TDM coordinator;
- Provide transit information kiosks;
- Make transportation available during the day and guaranteed ride home programs for emergency use by employees who commute on alternate transportation (This service may be provided by access to company vehicles for private errands during the workday and/or combined with contractual or pre-paid use of taxicabs, shuttles, or other privately provided transportation;
- Provide vans for van pools;
- Implementation of a carpool/vanpool program (e.g., carpool ridematching for employees, assistance with vanpool formation, provision of vanpool vehicles, and carsharing)
- Provide shuttle access to regional rail stations (Caltrain, ACE, BART);
- Provide or contract for on-site or nearby child care services;
- Provide Eco-passes (or equivalent broad spectrum transit passes) to all on-site employees;
- Offer transit use incentive programs to employees, such as on site distribution of passes and/or subsidized transit passes for a local transit system (e.g., providing VTA EcoPass system or equivalent broad spectrum transit passes to all on-site employees;
- Implementation of parking cash out program for employees (non-driving employees receive transportation allowances equivalent to the value of subsidized parking);
- Encourage use of telecommuting and flexible work schedules;
- Require that deliveries on-site take place during non-peak travel periods



23 Transferable FAR Credits:

**REVISE** the second paragraph in this section as shown:

A new system of accruing FAR credits is proposed for implementation with adoption of the new ADP. The new Policy establishes 20 million square feet of new industrial development capacity that may be allocated to projects to allow them to exceed the base FAR caps. The new ADP ~~establishes reserves~~ 16 million square feet of the total industrial development capacity for allocation that may be allocated to sites within the Core Area. The ADP also establishes four million square feet of new industrial development capacity that, along with the remaining 6.7 million square feet of industrial development capacity included in this policy, may be allocated to any site within the project area. The timing for these allocations are limited according to the phasing plan discussed above and summarized in Table 2, below.

24 **REVISE** the second complete paragraph on this page as shown:

Under this phasing plan, seven million square feet of industrial square footage and 8,000 residential units are available with each phase of the Policy's implementation. The Phase I industrial and residential development capacity becomes available upon adoption of this Policy. The industrial development of successive phases is not available until infrastructure improvements have been funded and entitlements issued for the minimum number of residential units and commercial square footage as noted. Similarly, the residential development of successive phases is not available until infrastructure improvements have been funded and entitlements issued for the minimum amount of industrial development in the current phase. ~~The infrastructure improvements for each phase must be fully funded before the industrial or residential development of the next phase may be entitled.~~ Construction of 85 percent of the infrastructure improvements for each phase must be reasonably assured to the satisfaction of the Director of Public Works, and all of the improvements from any preceding phase must be constructed, before the industrial or residential development of the next phase may be issued building permits. Fees to pay for the infrastructure improvements are collected as part of the Building Permit entitlement. Because the infrastructure improvements are mostly funded through a development impact fee collected at issuance of building permits, some flexibility in the construction of infrastructure is necessary in order to address the range of development allowed within each phase.

26 Infrastructure Implementation:

**REVISE** the first paragraph in this section as shown:

North San José is an established urban area that has long been planned for industrial park uses. The proposed changes in land use and land use intensity will, however, also require some modifications in the planned and built infrastructure, especially in the transportation system. The City proposes to provide new local streets that will establish a more fine grained grid system than presently exists within the Core Area. This will include extensions of existing streets, completion of missing segments, and construction of completely new streets. These improvements will be funded through the Development Impact Fee and implemented as development progresses or by the

City in advance of development on the subject properties. Figure 6 shows the conceptual layout of the new street plan for the Core Area.

26 Policy Revisions; North San José Floodplain Management Study:

**REVISE** the last paragraph in the section as shown:

The improvements necessary to provide protection from the 100-year flood for North San José were completed in December 2004. The Santa Clara Valley Water District (SCVWD) and the U.S. Army Corps of Engineers (Corps) have completed improvements along the Guadalupe River through Downtown San José and north of Montague Expressway to the Alviso Marina that will allow revision of FEMA maps to remove ~~virtually all~~ most of North San José from the 100-year floodplain. It is presently anticipated that any remaining susceptibility to flooding will be the result of localized deficiencies in the capacity of the storm drain system. This EIR addresses the consistency of the proposed level of development with anticipated flooding conditions in the project area.

47 Section I.F. Consistency With Relevant Plans and Policies; 2. Local Plans and Policies; San José General Plan; Level of Service Policy #5:

**REVISE** as shown:

The minimum overall performance of City streets during peak travel periods should be level of service "D". This policy applies to all geographic areas of the City with certain exceptions which include the Downtown Core Area and any area subject an Area Development Policy adopted pursuant to the City General Plan. Each Area Development Policy includes its own guidelines for implementation of the Level of Service Policy. The City Council has adopted three Area Development Policies for Evergreen, North San José, and Edenvale.

51 Section I.F. Consistency With Relevant Plans and Policies; 2. Local Plans and Policies, City of San José General Plan, Transportation Policy #47:

**REVISE** the Consistency statement as shown:

**Consistency:** The project would amend the General Plan to allow building heights within the Core Area up to 250 feet above ground subject to building-specific airspace safety determinations made by the Federal Aviation Administration. All specific development projects in North San José, including those within the proposed Core Area that propose buildings that would exceed current General Plan height limits FAA imaginary surface restrictions for Mineta San José International Airport or which would stand 200 feet or more in height above ground would be referred to the Federal Aviation Administration for review for conformance with their guidelines. The project therefore is consistent with Transportation Policy #47.

**REVISE** the reference to the third policy listed on the page as shown.

Historic, Archaeological and Cultural Resources Policy #~~9~~ 8

- 70 Section II.A. Land Use; 1. Existing Setting; Constraints to Development, Norman Y. Mineta-San José International Airport:

**REVISE** this paragraph as shown:

The Norman Y. Mineta San José International Airport is located west and southwest of the project area. The Rincon area is subject to building height restrictions under Federal Aviation Regulations, Part 77, which is administered by the Federal Aviation Administration (FAA) and incorporated into Santa Clara County Airport Land Use Commission policy. Under these regulations, any proposed structure that would exceed an FAA imaginary surface restriction, or which would stand at least 200 feet above ground level, is required to be reviewed by the FAA for an airspace safety evaluation. Most of the project area is currently subject to an imaginary surface restriction of 208 feet above mean sea level (AMSL). The ground elevation within the project area ranges in height from 15 to 50 feet ~~above~~ AMSL.

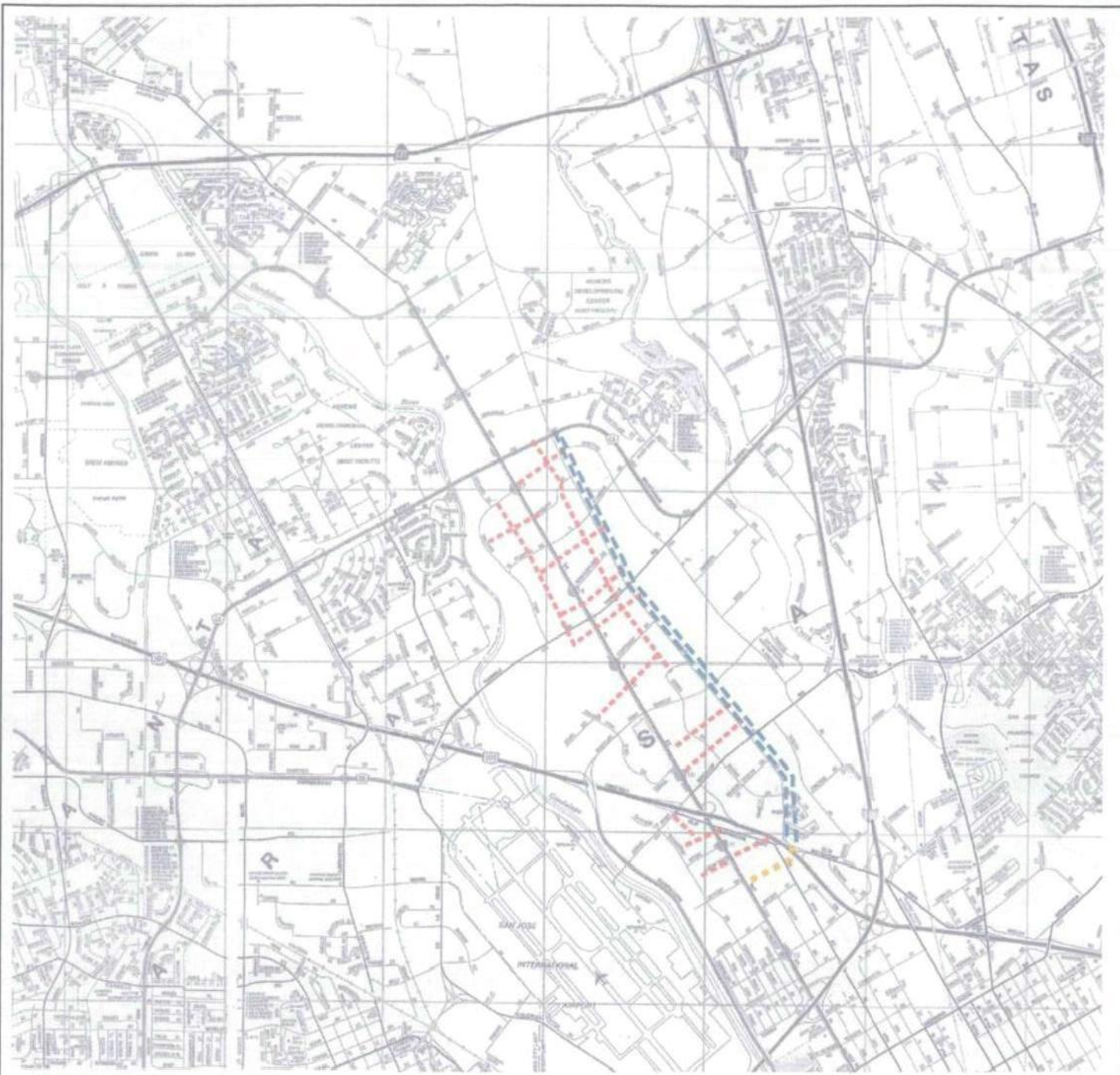
- 143 Section II.B. Transportation; 2. Transportation Impacts, Proposed Roadway Improvements, Major Roadway Projects:

**REVISE** the discussion under the third bullet point in the last paragraph on this page as follows:

- North San José Grid Streets – To facilitate the efficient circulation of traffic within North San José, several new local streets would be constructed to form a “grid system” of streets. Figure 19 (Revised) illustrates the tentative location of the proposed grid streets and shows the substantial proposed improvements to Zanker Road that would also facilitate circulation on the grid streets. The streets shown in Figure 19 (Revised) would serve future development and provide connections to all major arterials in North San José. The new grid streets would generally be two-lane roadways connecting to...

- 144 **REVISE** Figure 19 as shown on the following graphic and insert:

Figure 19 Revised



**Legend**

- = North San Jose Grid Streets
- = Zanker Widening
- = Zanker Skyport Connection

PROPOSED GRID STREETS

FIGURE 19 (REVISED)

157 Intersection Impacts; Table 12: Congested Intersections Under Project Conditions:

**REVISE** the table starting with the sixth row, as shown:

<u>Santa Clara CMP Intersections</u>		<u>Sunnyvale CMP Intersections</u>						
157	Lawrence Expressway and Tasman Drive	AM	49.4	D	47.1	D	4.0	0.039
		PM	286.0	F	288.3	F	11.4	0.007
158	Lawrence Expressway and Arques Avenue/Scott Boulevard	AM	43.8	D	40.4	D	3.9	-0.023
		PM	90.5	F	106.9	F	23.1	0.062
<u>Santa Clara CMP Intersections</u>								
159	Lawrence Expressway and Reed Street/Monroe Street	AM	191.4	F	194.2	F	-3.8	-0.018
		PM	41.3	D	40.2	D	-4.0	-0.067

Project Phasing:

**REVISE** the last sentence as shown:

...As Table ~~12~~ 13 Revised demonstrates, some intersections will experience high levels of congestion...

158 Table 13: Phased Development and Mitigation Measures Intersection Levels of Service:

**REPLACE** Table 13 with Table 13 Revised as shown on the following pages.

**Table 13 Revised**  
**Phased Development and Mitigation Measures**  
**Intersection Levels of Service**

#	Intersection	Peak Hour		Year 2000 Existing		Background		Phase 1 Conditions		Phase 2 Conditions		Phase 3 Conditions		Phase 3 Conditions Mitigated <sup>b</sup>		Project Conditions		Project Conditions Mitigated <sup>b</sup>			
		Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS
<i>North San José Intersections</i>																					
2	N. First St/SR 237 (S)*	AM	23.4	C	81.3	F	24.7	C		26.3	C		29.2	C	25.6	C	27.9	C			
		PM	25.0	C	59.0	E	29.4	C		46.8	D		87.8	F	32.5	C	49.8	D			
5	N. First St/Montague Exp*	AM	63.3	E	136.9	F	114.9	F	52.7	D	E		80.1	F			100.6	F			
		PM	119.7	F	221.7	F	193.9	F	69.0	E	F		107.2	F			133.1	F			
6	Zanker Rd/Montague Exp*	AM	42.5	D	54.0	D	82.1	F	48.3	D	E	46.6	D	92.9	F	53.0	D	66.8	E		
		PM	54.9	D	90.2	F	115.3	F	67.9	E	F	72.3	E	208.0	F	113.5	F	163.9	F		
7	River Oaks Pky/Montague Exp*	AM	44.8	D	45.3	D	72.9	E	56.2	E	E		78.3	E			107.4	F			
		PM	52.9	D	54.9	D	68.9	E	62.7	E	E		102.3	F			143.5	F			
8	Trimble Rd/Montague Exp*	AM	23.5	C	25.1	C	46.0	D	27.6	C	C		46.4	D	22.5	C	21.5	C			
		PM	50.4	D	140.6	F	347.3	F	43.0	D	F	42.7	D	487.0	F	47.4	D	52.5	D		
9	McCarthy Blvd/Montague Exp*	AM	48.2	D	86.7	F	82.1	F	62.2	F	F		153.8	F	27.0	C	190.5	F			
		PM	119.3	F	470.2	F	175.3	F	49.1	F	F		251.2	F	36.7	D	304.1	F			
10	Old Oakland Rd/Montague Exp*	AM	78.0	E	85.0	F	103.0	F	101.1	F	F		160.4	F			221.2	F			
		PM	88.8	F	101.7	F	128.2	F	123.6	F	F		205.9	F			251.9	F			
12	N. First St/Trimble Road*	AM	44.7	D	76.7	E	51.6	D	47.1	D	D		63.0	E			86.2	F			
		PM	50.0	D	80.0	E	55.8	E	51.6	D	E		189	E			101.0	F			
13	Zanker Rd/Trimble Road*	AM	35.0	D	44.7	D	41.0	D			D	38.7	D	73.7	E	44.6	D	63.7	E		
		PM	53.8	D	122.6	F	114.4	F			F	105.2	E	235.8	F	157.7	F	210.4	F		

**Table 13 Revised**  
**Phased Development and Mitigation Measures**  
**Intersection Levels of Service**

#	Intersection	Peak Hour	Year 2000 Existing		Background		Phase 1 Conditions		Phase 1 Conditions Mitigated <sup>b</sup>		Phase 2 Conditions		Phase 2 Conditions Mitigated <sup>b</sup>		Phase 3 Conditions		Phase 3 Conditions Mitigated <sup>b</sup>		Project Conditions		Project Conditions Mitigated <sup>b</sup>			
			Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS
16	Zanker Rd/Brokaw Road*	AM	49.0	D	54.3	D	68.4	E	113.6	F	54.0	D	168.4	F	67.7	E	96.1	F						
		PM	59.7	E	58.4	E	68.2	E	101.8	F	59.4	E	147.9	F	74.4	E	105.2	F						
24	Brokaw Rd/Tasman Drive	AM	40.5	D	38.0	D	38.0	D	40.1	D			42.8	D	40.3	D	43.4	D						
		PM	44.7	D	54.7	D	44.5	D	50.4	D			63.0	E	52.9	D	60.3	E						
27	N. First St/Charcot Avenue	AM	36.0	D	103.8	F	71.9	E	50.8	D			64.1	E			80.5	F						
		PM	33.7	C	48.4	D	40.4	D	41.9	D			51.6	D			65.1	E						
37	N. First St/Metro Drive	AM	12.6	B	12.9	B	13.7	B	14.6	B			15.9	B			17.6	B						
		PM	21.5	C	23.4	C	25.3	C	22.8	C			25.4	C			28.7	C						
38	N. First St/Skyport Drive	AM	14.7	B	20.9	C	35.8	D	28.4	C			41.6	D			105.1	F						
		PM	21.7	C	26.9	C	22.8	C	25.0	C			29.4	C			51.2	D						
43	Zanker Rd/Charcot Avenue	AM	28.6	C	34.7	C	33.0	C	44.8	D			79.2	E	44.9	D	56.6	E						
		PM	27.6	C	31.9	C	37.6	D	72.4	E			128.7	F	42.1	D	61.0	E						
45	Junction Ave/Charcot Avenue	AM	21.1	C	21.5	C	22.7	C	26.9	C			41.2	D	32.6	C	34.9	C						
		PM	23.7	C	25.1	C	34.7	C	69.9	E			120.7	F	36.9	D	39.6	D						
47	Bering Dr/Brokaw Road	AM	18.3	B	18.7	B	30.2	C	32.2	C			36.7	D			41.6	D						
		PM	24.7	C	24.3	C	28.9	C	34.5	C			37.6	D			43.8	D						
<i>Other San José CMP Intersections</i>																								
58	Trade Zone Blvd/Montague Exp*	AM	45.8	D	52.3	D	81.8	F	46.1	D			49.7	D			52.7	D						
		PM	75.8	E	79.9	E	109.0	F	53.0	D			63.8	E			70.0	E						
59	Lundy Ave/Berryessa Road*	AM	53.3	D	53.3	D	48.5	D	50.6	D			52.7	D			55.2	E					49.9	D
		PM	44.3	D	44.3	D	47.2	D	50.3	D			54.3	D			60.6	E					50.9	D
60	Old Oakland Rd/US 101 (N)*	AM	48.0	D	35.5	D	41.0	D	54.5	D			71.4	E	37.9	D	49.0	D						
		PM	23.0	C	18.8	B	19.6	B	24.3	C			38.3	D	27.3	C	47.8	E						
61	Old Oakland Rd/US 101 (S)*	AM	25.6	C	25.9	C	24.6	C	23.6	C			22.6	C			22.9	C						
		PM	35.0	C	38.0	D	45.9	D	60.5	E			77.1	E			95.1	F						

**Table 13 Revised**  
**Phased Development and Mitigation Measures**  
**Intersection Levels of Service**

#	Intersection	Peak Hour	Year 2000 Existing		Background		Phase 1 Conditions		Phase 1 Conditions Mitigated <sup>b</sup>		Phase 2 Conditions		Phase 2 Conditions Mitigated <sup>b</sup>		Phase 3 Conditions		Phase 3 Conditions Mitigated <sup>b</sup>		Project Conditions		Project Conditions Mitigated <sup>b</sup>			
			Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS	Avg Delay <sup>a</sup>	LOS
97	Capitol Exp/Capitol Avenue*	AM	29.2	C	31.3	C	34.4	C			40.6	D			49.3	D			59.3	E	39.7	D		
		PM	87.3	F	101.4	F	86.3	F			83.2	F			82.1	F			84.7	F	84.4	F		
98	San Tomas Exp/Stevens Creek BI*	AM	55.1	E	56.6	E	55.3	E			64.0	E	49.6	D	49.9	D			50.1	D				
		PM	80.3	F	82.7	F	83.9	F			121.4	F	67.0	E	70.8	E			74.9	E				
99	San Tomas Exp/Moorpark Ave *	AM	67.8	E	67.8	E	67.2	E			66.8	E			66.3	E			66.1	E	60.5	E		
		PM	125.5	F	125.4	F	125.2	F			125.5	F			125.4	F			125.4	F	123.1	F		
<b>Other San José Intersections</b>																								
116	N 13 <sup>th</sup> St/Hedding Street	AM	53.8	D	57.9	E	62.6	E	48.9	D	49.5	D			51.5	D			55.7	E				
		PM	42.1	D	42.7	D	42.8	D	38.6	D	38.9	D			39.3	D			39.7	D				
117	King Rd/McKee Road	AM	51.8	D	51.8	D	56.6	E	41.9	D	43.2	D			44.7	D			46.6	D				
		PM	46.5	D	47.1	D	51.9	D	38.9	D	41.2	D			44.2	D			48.4	D				
123	Lundy Ave/Trade Zone Blvd	AM	38.8	D	40.9	D	43.8	D			48.7	D			54.2	D			59.8	E	35.7	D		
		PM	39.3	D	39.8	D	40.7	D			43.0	D			46.9	D			53.2	D	51.5	D		
124	Capitol Ave/Cropley Avenue	AM	33.6	C	33.6	C	33.8	C			34.1	C			34.3	C			34.1	C				
		PM	78.8	E	57.1	E	58.2	E			59.6	E			61.1	E			51.8	D				
126	Capitol Ave/Berryessa	AM	47.1	D	46.4	D	46.9	D			47.4	D			48.0	D			48.6	D	47.7	D		
		PM	51.5	D	46.1	D	48.0	D			50.2	D			52.8	D			55.9	E	49.2	D		

\*CMP Intersections

<sup>a</sup> Reported delay based on average control delay as calculated by TRAFFIX using HCM 2000 methodology.

<sup>b</sup> ~~Proposed reconstruction of the US-101/Oakland Rd interchange would improve LOS at both interchange intersections, but improvements cannot be reflected until designs are available.~~ Calculated level of service based on worst case intersection LOS assuming lane configurations for two new intersections of square-loop interchange

<sup>c</sup> ~~Planned square-loop interchange would improve LOS to acceptable levels at the newly constructed interchange intersections.~~

<sup>d</sup> Planned improvements associated with the Zanker/Skyport Connection project would not be adequate to fully mitigate project impacts. There are no further feasible improvements.



**INSERT** after the first paragraph in the section a new Table 38: Significantly Impacted Intersections Outside San José Boundaries

<b>Table 38</b> <b>Significantly Impacted Intersections</b> <b>Outside San José Boundaries</b>			
<b><u>Intersection</u></b>	<b><u>City/CMP*</u></b>	<b><u>Improvement</u></b>	<b><u>Phase of Impact</u></b>
<u>San Tomas Exp/Walsh</u>	<u>SC</u>	<u>2<sup>nd</sup> EB and WB left-turn lanes</u>	<u>2</u>
<u>San Tomas Exp/Benton</u>	<u>SC</u>	<u>Widen STE to 8 lanes</u>	<u>4</u>
<u>Lafayette/Benton</u>	<u>SC</u>	<u>None identified</u>	<u>--</u>
<u>Bowers/Central Exp</u>	<u>SC/CMP</u>	<u>Widen STE to 8 lanes; add 2<sup>nd</sup> NB and SB left-turn lanes</u>	<u>3</u>
<u>San Tomas Exp/Scott</u>	<u>SC/CMP</u>	<u>Add 2<sup>nd</sup> WB left-turn lane</u>	<u>4</u>
<u>De La Cruz/Central Exp</u>	<u>SC/CMP</u>	<u>Add 3<sup>rd</sup> WB left-turn lane</u>	<u>3</u>
<u>San Tomas Exp/Saratoga</u>	<u>SC/CMP</u>	<u>Widen STE to 8 lanes; add 2<sup>nd</sup> NB and SB left-turn lanes</u>	<u>4</u>
<u>Mission College/Montague Exp</u>	<u>SC/CMP</u>	<u>Interchange</u>	<u>3</u>
<u>De La Cruz/Montague Exp</u>	<u>SC/CMP</u>	<u>Add 2<sup>nd</sup> NB left-turn lane</u>	<u>2</u>
<u>Lawrence Exp/Arques/Scott</u>	<u>SV/CMP</u>	<u>Interchange</u>	<u>3</u>
<u>San Tomas Exp/Hamilton</u>	<u>CM/CMP</u>	<u>Add 2<sup>nd</sup> NB, SB, EB left-turn lanes</u>	<u>1</u>
<u>McCarthy/Tasman</u>	<u>MP</u>	<u>Add 2<sup>nd</sup> EB left-turn lane; add separate NB and SB left-turn lanes</u>	<u>2</u>
<u>I-880/Great Mall</u>	<u>MP</u>	<u>None identified</u>	<u>--</u>
<u>Milpitas/Calaveras</u>	<u>MP/CMP</u>	<u>Add 3<sup>rd</sup> WB lane</u>	<u>4</u>
<u>Great Mall/Montague Exp</u>	<u>MP/CMP</u>	<u>Two thru lanes or interchange</u>	<u>1</u>
<p><b>*Note:</b> <u>SC = City of Santa Clara</u>  <u>SV = City of Sunnyvale</u>  <u>CM = City of Campbell</u>  <u>MP = City of Milpitas</u>  <u>CMP = Congestion Management Plan designed regional intersection</u></p>			

- 171 3. Transportation Mitigation and Avoidance Measures; Mitigation Measures Not Included in the Project; City of Santa Clara Intersections; CMP Intersections in Santa Clara:

**REVISE** the first paragraph on the page as shown:

165. Bowers Avenue and Central Expressway

Mitigation Measure: The necessary improvements to mitigate the project impact at this intersection would consist of the widening of ~~San Tomas~~ Central Expressway from ~~six~~ four to ~~eight~~ six lanes, as identified in the County Expressways Study as a Tier 1-A improvement, and the addition of second northbound and southbound left-turn lanes. The implementation of these improvements would improve intersection level of service to LOS E during the AM peak hour.

- 173 End of the section (after the second paragraph on the page):

**ADD** the following subsection:

**Programmatic Mitigation Not Proposed**

**Traffic Impact Fee**

The City of Campbell has suggested that a Traffic Impact Fee could be assessed by the City of San José for the purpose of funding mitigation for traffic impacts in the City of Campbell. Significant impacts were identified at a single intersection in Campbell: San Tomas Expressway/Hamilton Avenue. This same approach could be considered for all traffic impacts anticipated to occur outside the City of San José's boundaries. The mitigation would require that the cost of the improvements to be identified and a fee based on those costs be assessed to all new development. This would allow the impacts to these intersections to be mitigated at some point in the future, after sufficient funding has been collected.

The City of Campbell has suggested that the monies collected be given to the City of Campbell so that Campbell can mitigate the impact to the intersection. The intersection impacted in the City of Campbell is a County intersection and mitigation would have to be implemented by Santa Clara County, possibly with funding provided by the City of San José and/or the City of Campbell.

The project is identified in the DEIR as resulting in significant impacts to 15 intersections outside the City of San José boundary: 10 in Santa Clara; one in Campbell; and four in Milpitas. No feasible mitigation could be identified for one of the Milpitas intersections and three of the intersections in Santa Clara. This mitigation could, therefore, mitigate the significant impacts to 11 intersections. Impacts to four of these intersections would remain significant and unavoidable.

This mitigation method is not proposed by the project and is considered infeasible because the City of San José cannot implement the mitigation and has no authority to oversee or accomplish the mitigation in a timely manner. Additionally, the intersections that are impacted outside the City of San José are already very congested. While traffic from the proposed North San José development would significantly

increase the congestion at these intersections, much of the problem already exists (see discussion of “fair share” contributions below).

### Fair Share Contribution

Should the Council choose to pursue agreements with other jurisdictions, the North San José project’s proportional trip contribution to the impact at a given intersection in another jurisdiction could be identified. The City of San José could then agree to pay a fair share contribution toward the improvement cost for upgrading or improving the intersection. The funding for fair share contributions could then be factored into the traffic development impact fee assessed on future development.

A fair share contribution to intersection improvements in another jurisdiction is not mitigation as defined under CEQA, however, in that there is no guarantee as to the timing and ultimate completion of the improvements in relation to the implementation of the development that creates the impact. As an example, San José could collect fees to cover a fair share contribution to an intersection improvement in another jurisdiction, but for a number of reasons (*i e*, inability to raise the remainder of the funding, or a decision to not construct the improvement), the other jurisdiction may not implement the improvement. Therefore, it would not be practical for San José to approve development in the project area based on the assumed completion of improvements in another jurisdiction when the improvements may or may not ever be constructed by that jurisdiction.

180 Section II.C. Air Quality; 1. Existing Setting; Ambient Air Quality:

**ADD** the following section to the middle of the page, immediately following Table 16:

### **Odors**

As discussed briefly in Section II.A. Land Use, the regional San José/Santa Clara Wastewater Pollution Control Plant (WPCP) is located north of SR 237. The WPCP includes treatment facilities and sludge drying beds that sometimes generate odors that are perceptible off-site. To minimize impacts to sensitive receptors, the WPCP also includes a substantial buffer of lands that are farmed or used for other purposes that are compatible with the WPCP operations. The WPCP-owned buffer lands occupy all of the land between SR 237 and the southerly edge of the WPCP site except for the land occupied by the Calpine power plant and privately owned farmland adjacent to Coyote Creek.

The windrose in Figure 20 shows the prevailing wind directions in the area. Prevailing wind directions are generally from the northwest. If the windrose is centered over the WPCP facilities, prevailing winds can be shown to blow across the WPCP site toward the properties proposed for possible future residential development approximately 21 percent of the time.

As shown in Figures 3 and 5, there are lands already designated for residential use and developed with occupied residences immediately south of SR 237.

Other sources of odors in the vicinity include the three existing sanitary landfills located west and north of the WPCP, composting facilities located at two of the landfills, and the Baylands located even farther to the north.

182 2. Air Quality Impacts; Thresholds of Significance:

**ADD** the following paragraph to the end of this subsection:

BAAQMD CEQA Guidelines advise that determining the significance of odor impacts should include screening for circumstances where sensitive receptors and odor sources could be located within specified distances of each other. The screening distance between either sanitary landfills or a wastewater treatment plant and sensitive receptors is one mile. For projects locating near a source of odors where there are already existing receptors, the determination of significance should be based on the distance and frequency at which odor complaints from the public have occurred in the vicinity of a similar facility.

185 General Plan Impacts:

**ADD** a new subsection after the first paragraph on this page:

**Odors**

As discussed in the BAAQMD CEQA Guidelines, “While odors rarely cause any physical harm, they still can be unpleasant, leading to considerable distress among the public and often generating citizen complaints to local governments and the District.” A project that could expose members of the public to frequent objectionable odors would therefore be considered a significant impact. Additionally, frequent complaints about WPCP odors could result in operational restrictions being placed on the Plant. BAAQMD advises that the most effective method of avoiding odor impacts is distance – separation between the source of odor and possible sensitive receptors.

The distance between the WPCP treatment facilities and the nearest point of the nearest parcel that would be included in the proposed *Transit/Employment Residential District Overlay* is approximately nine-tenths (0.9) of a mile. The distance between the open sludge drying beds and the nearest point of the proposed overlay is about the same – nine-tenths of a mile. Additionally, all of the proposed *Transit/Employment Residential District Overlay* area is south of existing residential development – farther from the entire WPCP site than existing residences.

Substantial odors are not generated on the property boundary of either the WPCP facility or the sludge beds. Likewise, few if any dwelling units will be built on the northernmost point of the northernmost property proposed for the new residential overlay. All of the future dwelling units that would be allowed by the proposed General Plan land use modifications would be more than one mile from the sources of odors associated with the WPCP. The nearby sanitary landfills are located even farther from the residential sites. The project would not, therefore, locate sensitive receptors within the screening level distances identified by BAAQMD.

With regard to odor complaints, the proposed residential overlay would allow new residences and a new residential population to be located immediately south of existing residential developments in North San José (see Figures 3 and 5). The records of odor complaints filed with BAAQMD indicate that no odor complaints about WPCP odors have been placed by residents at the existing residential development in North San José within the last three years [conversation with Rochelle Henderson, BAAQMD, 4/27/05].

BAAQMD advises that a project should be identified as having a significant odor impact if it is proposed for a site that is closer to an existing odor source than any location where there has been either.

- more than one confirmed complaint per year averaged over a three year period,  
or
- three unconfirmed complaints per year averaged over a three year period.

Virtually all of the sites proposed for inclusion in the residential overlay are more than a mile from the nearest boundary of the WPCP. A very small corner of one site is nine-tenths of a mile from the WPCP boundary. The two northernmost sites proposed for inclusion in the residential overlay are both adjacent to and south of existing residential developments that are closer to the WPCP than any of the proposed residential overlay. There have been no confirmed or unconfirmed complaints about WPCP odors received by BAAQMD from the existing residents in the adjacent developments.

Based on the thresholds of significance recommended by BAAQMD, it is highly unlikely that significant odor impacts would occur if the proposed Transit/Employment Residential District Overlay is approved and implemented as proposed. This impact would, therefore, be less than significant.

- 190 3 Mitigation and Avoidance Measures; Proposed Mitigation and Avoidance Measures; Mitigation Measures for Construction Impacts:

**ADD** the following measures to the end of the list in this subsection:

The following control measures will be required at construction sites that are large in area, are located near sensitive receptors, or which for other reasons may warrant additional emissions reductions:

- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site;
- Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas, especially applicable to very large sites or sites on which construction and/or grading will be taking place over two or more years;
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph;
- Limit the area subject to excavation, grading and other construction activity at any one time.

- 193 Section II.D. Noise; Existing Setting; Regulatory Background; Santa Clara County Airport Land Use Plan:

**REVISE** the first sentence in this section as shown:

The Land Use Plan for Areas Surrounding Santa Clara County Airports ~~Land Use Plan~~ adopted by the County's Airport Land Use Commission (ALUC) establishes airport noise and land use compatibility standards for development within the vicinity of the airport ...

- 232 Section II.E. Biological Resources; 2. Biological Resources Impacts; Impacts to Riparian Corridors; Degradation of Aquatic Habitat:

**REVISE** the subsection as shown:

Development of the vacant parcels and substantial redevelopment of previously developed property will increase the potential for stormwater runoff to carry a variety of pollutants into the Guadalupe River and Coyote Creek. Street runoff often carries grease, oil, and trace amounts of heavy metals into natural drainages. Runoff from landscaping can carry pesticides, herbicides, and fertilizers. Particulates generated by project traffic and construction that are deposited on paved surfaces and carried by runoff into natural waterways will increase sedimentation impacts to the Guadalupe River, Coyote Creek, and San Francisco Bay. Although the amounts of these pollutants ultimately discharged into the river are unknown, over time they could be substantial. Please also refer to the discussion in Section II.H. Hydrology and Water Quality.

Significant degradation of the Guadalupe River, Coyote Creek, and the aquatic habitat ~~it they provides~~ would reduce the number and diversity of aquatic invertebrate species. In turn, the number and diversity of terrestrial vertebrates which prey on aquatic organisms can be expected to decline. The degradation of the aquatic habitat found in the Guadalupe River and Coyote Creek would be a significant impact.

- Contaminated runoff from the future development could contribute to the degradation of aquatic habitat in the Guadalupe River and Coyote Creek. (Significant Impact)

- 237 5. Mitigation to be Considered at the Time of Future Development; Burrowing Owls:

**REVISE** the last paragraph in this section as shown and add a final paragraph:

Mitigation habitat should be a minimum of 30 contiguous acres, and must meet standards for Burrowing Owl habitat established by the Burrowing Owl Consortium and the California Department of Fish and Game. Areas set aside as owl habitat should be mowed rather than disked for weed control. Areas that are circular in shape are preferable to linear areas of habitat, to reduce potential predation pressures. Mitigation habitat areas should be preserved and managed as owl habitat in perpetuity, through a legal mechanism approved by the City of San José. Purchase of the mitigation habitat

could be financed by an in-lieu placed upon all development in North San José, since the pressure of all of the development will reduce the viability of remaining habitat as well as eliminating the habitat itself. Mitigation habitat must be within Santa Clara County, or near the Rincon de los Esteros Redevelopment Area to mitigate the habitat lost to the current population of Burrowing Owls.

The City of San José prepared a Burrowing Owl Mitigation Plan in 1999 that identified possible sites for mitigation habitat. Locations included city-owned property. The Plan was not considered economically viable and was not adopted.

246 Section II.F. Cultural Resources; 2. Cultural Resources Impacts; Figure 23 Known Project Area Cultural Resources:

**DELETE** Sites F and G from the graphic.

Architectural Resources:

**REVISE** the first sentence of the second paragraph in this section as shown:

The State of California has announced that the Agnews East facilities will be closed in the near future, ~~but no specific date has been set and~~ but there is presently no proposal to remove any buildings. Possible closure dates have been suggested, with the most recent estimate being June 30, 2007. Redevelopment of the site for high density housing, ....

255 Section II.G. Geology and Soils; 1. Existing Setting; Geology and Topography; Groundwater Conditions:

**REVISE** the last sentence in the second paragraph of this subsection as shown:

~~...Control Management~~ of groundwater sub basins through programs that include managed withdrawal and regional programs of groundwater recharge ~~managed~~ by the Santa Clara Valley Water District has halted subsidence in the area at the present time

269 Section II.H. Hydrology and Water Quality; 3. Mitigation and Avoidance Measures; General Plan Policies:

**ADD** the following measures to the list:

- Water Resources Policy #2 Water resources should be utilized in a manner which does not deplete the supply of surface or ground water, and efforts to conserve and reclaim water supplies, both local and imported, should be encouraged.
- Water Resources Policy #7 The City shall require the proper construction and monitoring of facilities storing hazardous materials in order to prevent contamination of the surface water, groundwater and underlying aquifers. In furtherance of this policy, design standards for such facilities should consider high groundwater tables and/or the potential for freshwater or saltwater flooding.

- Water Resources Policy #10 The City should encourage more efficient use of water by promoting water conservation and the use of water-saving devices.
- Water Resources Policy #11 The City should promote the use of reclaimed water when feasible, particularly for industrial users, for irrigation and in groundwater recharge areas.

271 5. Mitigation Measure to be Considered at the Time of Future Development, Drainage.

**ADD** the following text to the first paragraph in this section:

In order to improve stormwater drainage in the project area and prevent localized flooding due to lack of system capacity, all proposed development in North San José will be evaluated for the adequacy of on-site and off-site stormwater collection systems prior to issuance of Site Development or Planned Development Permits. Some areas will require new or supplemental stormwater lines, catch basins, or other infrastructure. As redevelopment proceeds in the area, priorities may be set for upgrading the storm drainage system All drainage improvements will be evaluated for consistency with the study prepared by SCVWD entitled "Technical Memorandum - Evaluation of Effects of Interior Drainage Flows on LGR Hydraulic Conditions" (June 2002) which is Appendix G of the Lower Guadalupe River Project Engineer's Report. Consistent with ongoing City policies, Capitol Improvement Projects will be identified and incorporated into the City's Five Year CIP process, as appropriate.

302 Section II.J. Utilities and Service Systems; 2. Public Services and Utilities Impacts; Water Service:

**REVISE** the last sentence in the section as shown and **ADD** the subsequent paragraphs:

The previously mentioned improvements would be required to provide **primary service emergency and back-up** service for the additional development allowed under the proposed project.

Because SFPUC will not accept a request for water supply except for development allowed by an adopted General Plan, the Municipal Water Utility cannot submit such a request at this time. The water supply assessment that is included with this EIR reflects the assumption that the SFPUC will provide the amount of water so far requested, but that the remainder of the supply necessary to serve the proposed development may need to be provided through other means, consistent with the preliminary planning included in the Water District's Integrated Water Resources Plan 2003 document. The Water District's draft document addresses their intention of meeting the water supply needs of the cities of Santa Clara County and identifies the planning and capital improvement processes necessary to meet that goal. The proposed development in North San José cannot be specifically included in the District's Urban Water Management Plan until and unless the City revises its General Plan to include the proposed project.

As reflected in the Water Supply Assessments prepared by the two retail water providers which are attached to this EIR as Appendix K, full implementation of the development allowed by this project will need to include expansion of the existing recycled water system and continued implementation of the City's water conservation



programs. The City proposes to include such programs, including but not limited to the following measures, where appropriate:

- Dual plumbing for both interior and exterior recycled water use;
- Construction standards that require high-efficiency fixtures (for example, high-efficiency 1.2-gallons-per-flush toilets);
- Construction standards that require high-efficiency devices for outdoor water uses (such as self-adjusting weather-based irrigation controllers);
- The use of fully advanced treated recycled water for irrigation of large landscaped areas;
- Enforcement of the City's Model Water Efficient Landscape Ordinance (as per AB325 1990);
- Promotion and use of drought tolerant and native plantings in landscaping.

320 Section III. Public Facilities and Services; 3. Schools:

**REVISE** the last sentence of the third paragraph on this page as shown:

Student generation rates obtained from the SCUSD estimate that buildout of the amount of residential development proposed within the SCUSD boundary could generate approximately 1,112 elementary students, 349 middle school students, and 368 high school students. [footnote: Adams, Rod. Santa Clara Unified School District. Email Communication. 12 July 2004.] This number of students would require the construction of approximately three elementary schools to accommodate the growth in student population. The SCUSD may be able to accommodate the middle ~~and high school~~ students without requiring construction of new facilities. [footnote: Adams, Rod. Santa Clara Unified School District. Personal Communication. 13 September 2004.] District high schools are nearing capacity at this time, and an additional high school may be required to service students generated by the amount of development that could occur in North San José.

423 Section VIII. References:

**ADD** the following to the list of references:

*1996 San José Water Policy Framework*

Appendix D

95 Project Impacts and Mitigation Measures; (19) Old Oakland Road and Brokaw Road\*:

**REVISE** last sentence in the Impact statement as shown:

.. This constitutes a significant impact ~~by both~~ under City of San José ~~and CMP~~ standards.

109 City of Santa Clara Intersection Analysis: CMP Intersections; (165) Bowers Avenue and Central Expressway:

**REVISE** the Mitigation Measures as shown:

Mitigation Measure: The necessary improvements to mitigate the project impact at this intersection would consist of the widening of ~~San Tomas~~ Central Expressway from ~~six~~ four to ~~eight~~ six lanes, as identified in the County Expressways Study as a Tier 1-A improvement, and the addition of second northbound and southbound left-turn lanes. The implementation of these improvements would improve intersection level of service to LOS E during the AM peak hour.

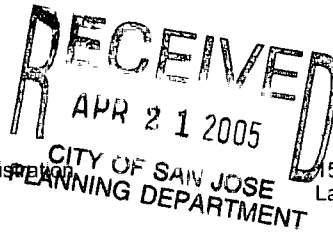
Attach Appendix K: Water Supply Assessments

**V. COPIES OF ALL COMMENT LETTERS**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Federal Aviation Administration  
Western-Pacific Region



15000 Aviation Boulevard  
Lawndale, CA 90261

APR 15 2005

Mr. Andrew Crabtree  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Review of Draft Environmental Impact Report for the Proposed North San Jose  
Development

Dear Mr. Crabtree:

The Environmental Engineering Section, AWP-472, of Engineering Services, Western Service Area, reviewed the Draft Environmental Impact Report (EIR) for the North San Jose Development Project. The following comments/requirements are provided:

1. Identify the location of the San Jose International – Norman Y Mineta Airport on all site maps.
2. Pursuant to Title 14, Code of Federal Regulations, Part 77, Objects Affecting Navigable Airspace, the proponent must file a Notice of Proposed Construction or Alteration, FAA Form 7460-1, with the Federal Aviation Administration (FAA). (A blank form is attached.) This form must clearly identify the proximity of any ground structures around the airport. The form must also include information on construction equipment such as cranes and similar equipment. For further information, please visit the following web site:

<http://www.faa.gov/ats/ata/ATA400/oeaaa.html>

Please submit the completed Notice of Proposed Construction or Alteration to:

FAA Western Terminal Operations  
Air Traffic Division, AWP-520  
Attn: Karen McDonald  
P.O. Box 92007  
Los Angeles, CA 90009-2007

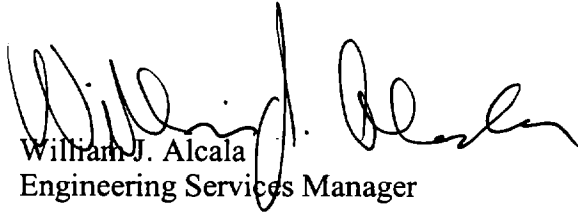
Once the form is received, an Obstruction Evaluation will be completed to ensure that the proposed project will not interfere with the safety of airport operations near San Jose International Airport.

3. Any and all future construction near or adjacent to the airport will need to be coordinated with the FAA. Not less than 30 days prior to construction, the proponent must notify the manager of the FAA Airport Traffic Control Tower of any construction equipment or activities in the approach to San Jose International Airport.

4. The draft EIR has been referred to the San Francisco Airport District Office of the FAA for independent comments specifically in the area of airport noise. The point of contact at that Airport District Office is Ray Chiang (650) 876-2778, ext. 620.

For further information, please contact David Albinus, AWP-472/NISC, at (310) 725-7735.

Sincerely,



William J. Alcala  
Engineering Services Manager

Enclosure

## INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

### PLEASE TYPE or PRINT

**ITEM #1.** Please include the name, address, and phone number of a personal contact point as well as the company name.

**ITEM #2.** Please include the name, address, and phone number of a personal contact point as well as the company name.

**ITEM #3.** New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alternation shall be included in **ITEM #21** "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in **ITEM #21** "Complete Description of Proposal".

**ITEM #4.** If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enter the estimated length of time the temporary structure will be up.

**ITEM #5.** Enter the date that construction is expected to start and the date that construction should be completed.

**ITEM #6.** Please indicate the type of structure. **DO NOT LEAVE BLANK.**

**ITEM #7.** In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference". **DO NOT LEAVE BLANK.** *NOTE: High intensity lighting shall be used only for structures over 500' AGL.* In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

**ITEM #8.** If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

**ITEM #9.** and **#10.** Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a **hand-held GPS instrument is NOT acceptable.** A hand-held GPS is only accurate to within 100 meters (328 feet) 95 per cent of the time. This data, when plotted, should match the site depiction submitted under **ITEM #20.**

**ITEM #11.** NAD 83 is preferred, however, latitude/longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datums may be used. It is important to know which datum is used. **DO NOT LEAVE BLANK.**

**ITEM #12.** Enter the name of the nearest city/state to the site. If the structure is or will be in a city, enter the name of that city/state.

**ITEM #13.** Enter the full name of the nearest public-use (not private-use) airport (or heliport) or military airport (or heliport) to the site.

**ITEM #14.** Enter the distance **from** the airport or heliport listed in **#13 to the structure.**

**ITEM #15.** Enter the direction **from** the airport or heliport listed in **#13 to the structure.**

**ITEM #16.** Enter the site elevation above mean sea level and expressed in **whole feet** rounded to the nearest foot (e.g. 17' 3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under **ITEM #20.**

**ITEM #17.** Enter the total structure height **above ground level** in **whole feet** rounded to the **next highest foot** (e.g. 17'3" rounds to 18'). **The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.**

**ITEM #18.** Enter the overall height above mean sea level and expressed in **whole feet.** This will be the total of **ITEM #16 + ITEM #17.**

**ITEM #19.** If an FAA aeronautical study was previously conducted, enter the previous study number.

**ITEM #20.** Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" X 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-800-435-7627 or via Internet at "http://mapping.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

**ITEM #21.**

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies
- For antennas, include the type of antenna and center of radiation (*Attach the antenna pattern, if available*).
- For microwave, include azimuth relative to true north
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (*Attach depiction*)
- For **each** pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of **each** corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (*e.g. corrections, no record of previous study, etc.*).

---

**Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation and zoning authorities.**

---

**Paperwork Reduction Work Act Statement:** This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Providing this information is mandatory for anyone proposing construction or alteration that meets or exceeds the criteria contained in 14 CFR, part 77. We estimate that the burden of this collection is an average 19 minutes per response. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 2120-0001.



**DEPARTMENT OF TRANSPORTATION**

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CITY OF SAN JOSE  
PLANNING DEPARTMENT

April 25, 2005

SCL-GEN-VAR  
SCL000174  
SCH2004102067

Mr. Andrew Crabtree  
City of San José  
801 N. First Street  
San José, CA 95110-1795

Dear Mr. Crabtree:

**North San José Development Policies Project, Draft Environmental Impact Report (DEIR)**

Thank you for continuing to include the California Department of Transportation in the environmental review process for the proposed project. We have reviewed the DEIR for the modification of relevant plans and policies to encourage a greater intensity of development within the Rincon de los Esteros Redevelopment Area and have the following comments to offer.

**Archaeological / Cultural**

A Cultural resource study of the project area, prepared by Basin Research Associates in September 2004, identified numerous archaeological sites, some of which are adjacent to and may extend into the Department's right-of-way (ROW). In compliance with CEQA, PRC 5024.5, and the Caltrans Environmental Handbook, Vol. 1, should ground disturbing activities within the Department's ROW take place as part of this project and there is an inadvertent archaeological or burial discovery, all construction within 35 feet of the find shall cease and the Department shall be immediately contacted. A staff archaeologist will evaluate the finds within one business day of being contacted. The CRSO contact person is Brian Ramos at (510) 286-5613.

**Traffic**

Should the installation of a signal be cited as a possible mitigation measure for traffic impacts to adjacent State facilities, at least one signal warrant will have to be satisfied at the intersection where the signal is proposed before it will be considered. A copy of the signal warrant analysis must be included for our review.



## Forecasting

### Level of Service Threshold for Basic Freeway Segments

Our office is aware that the project adopts the Highway Capacity Manual (HCM) 2000 methodology to analyze traffic impacts. However, we found some inconsistent density (vehicles per mile per lane) thresholds to determine level of service (LOS) for basic freeway segment, when comparing Table 7, Freeway Level of Service Based on Density, with that contained in HCM 2000.

<u>Level of Service</u>	<u>Density in Table 7</u>	<u>Density in HCM 2000</u>
D	26.0-46.0	26.0-35.0
E	46.0-58.0	35.0-45.0
F	> 58.0	> 45.0

Please revise the Basic Freeway Segment traffic analysis and its LOS accordingly, including Table 7, Appendix C, Tables C-1, C-2 and the DEIR.

### Cumulative Traffic Impact

We believe cumulative (and/or 2025) traffic impact will differ from the traffic impact in Project Condition. Table C-2 only demonstrates traffic analysis on Freeway Segment Level of Service under "Project Condition", since future trips as future growth are assumed to be generated from this "Project." The Cumulative (and/or 2025) traffic impact should include a traffic impact analysis and LOS determination for basic freeway segments and intersections contained in the DEIR, as well as Draft North San Jose Deficiency Plan.

Additional comments, if any, from our Highway Operations Branch will be forwarded as soon as they are received.

Should you require further information or have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-5535.

Sincerely,



TIMOTHY C. SABLE  
District Branch Chief  
IGR/CEQA

c: Scott Morgan, State Clearinghouse

State of California—Health and Human Services Agency  
Department of Health Services



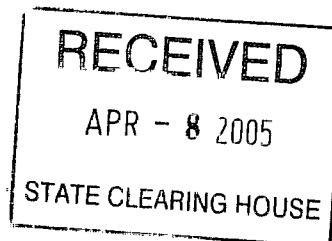
California  
Department of  
Health Services

SANDRA SHEWRY  
Director

ARNOLD SCHWARZENEGGER  
Governor

April 6, 2005

State Clearinghouse  
P.O. Box 3044  
Sacramento, CA 95812-3044



Sir/Madam:

**DRAFT ENVIRONMENTAL IMPACT REPORT  
NORTH SAN JOSE DEVELOPMENT POLICIES UPDATE PROJECT  
(SCH #2004102067)**

The State Department of Health Services (Department), Drinking Water Field Operations Branch, has received a copy of the above-mentioned report for comments. As a responsible agency having regulatory jurisdiction over the water utilities that provide domestic water service to the area of the proposed project in the report, the Department appreciates this opportunity and offers the following comments below.

Section J, Subsection 2 – Public Services and Utilities Impacts, Water Service, pages 301-302, discusses the impact the proposed project would have to the domestic water service in the North San Jose area. The area is served by two independent utilities, namely, San Jose Municipal Water System (SJMWS) and San Jose Water Company (SJWC). The report indicates that these two utilities anticipate they will be able to provide water service to future developments allowed under the proposed project. The report indicates that SJMWS has identified the need for additional facilities including two three-million-gallon reservoirs, four wells, and four 1,500-gallon per minute (booster) pumps per well to provide the necessary capacity in its system. However, the report is not clear on how SJWC will anticipate meeting its share of the project's water demands. It will be helpful information in the final report to discuss if SJWC has also identified any need for additional facilities and capacities, or if its existing system is adequate to meet that project's water demand.

As mentioned above, this Department has jurisdiction over both SJMWS and SJWC. Since the report indicates the need for additional water facilities and capacities in order to meet the water demands of the proposed project, we wish to inform about the need by the water utilities involved to apply for and obtain the necessary (amended) permit from the Department regarding any additions or changes to their systems, in accordance with Section 116550 (a), Article 7, Chapter 4 of the California Health and Safety Code. This section specifies that no person operating a public water system shall modify, add to or change his or her source of supply or method of treatment

State Clearinghouse

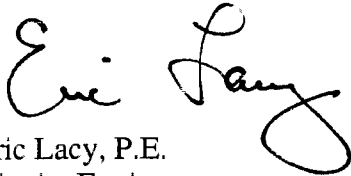
Page 2

April 6, 2005

of, or change his or her distribution system as authorized by a valid existing permit issued to him or her by the Department unless the person first submits an application to the Department and receives an amended permit as provided in this chapter authorizing the modification, addition, or change in his or her source of supply or method of treatment.

If you have any questions or need further information in regard to these comments, please contact Adelio B. Quiogue at (510) 540-3100.

Sincerely,



Eric Lacy, P.E.  
District Engineer  
Santa Clara District  
Drinking Water Field Operations Branch

cc: Mr. Andrew Crabtree  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Ms. Mary Hoang  
San Jose Municipal Water System  
3025 Tuers Road  
San Jose, CA 95121

Mr. Andrew Gere  
San Jose Water Company  
1221 S. Bascom Avenue  
San Jose, CA 95128

Santa Clara County Health Department  
Environmental Health Division

Department of Health Services  
SDWSRF-Environmental Coordinator  
Technical Branch  
1616 Capitol Avenue, MS 7416  
P O. Box 997413  
Sacramento, CA 95899-7413



SANTA CLARA UNIFIED SCHOOL DISTRICT

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March 31, 2005

Andrew Crabtree  
Department of Planning, Building and Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Re: North San Jose Development Policies Update/Draft EIR

Dear Mr. Crabtree:

Santa Clara Unified School District (SCUSD) has reviewed the Draft Environmental Impact Report for the North San Jose Development Policies Update and we wish to comment on elements of the Plan that are detrimental to the school district.

We have two primary concerns: The projected yield of students coming from the proposed residential units would require SCUSD to procure land and build four new schools; and, there is no revenue source to cover the ongoing cost of providing an education to these students.

We are near capacity at our existing high schools, and, as a result of the planned residential development, we will have to build another high school in this area. Based on your projection of the number of students this development will produce for SCUSD, we would also need to build at least three more elementary schools. All four of these schools would require land (eight to fifteen acres for the elementary schools and forty to fifty acres for the high schools).

It currently costs approximately \$15,000,000 to build an elementary school and \$100,000,000 to \$150,000,000 to build a high school. This does not include the cost of the land. At our current "Developer Fee" rate, this project would produce \$35,000,000 with which to build new schools. We would ask that the City of San Jose provide the land and supplement the cost of building new schools.

Unlike most school districts in the State of California, Santa Clara Unified School District is funded by local property taxes. Most other districts are funded on the basis of their student count, or Average Daily Attendance (ADA). They get paid a set rate by the State independent of the local economy. SCUSD's historic property tax revenue has exceeded this minimum guarantee by the State and therefore the majority of our funding comes from local property taxes. This means as we take in more students, we do not generate any more funding to help pay for the education of these students. The proposed North San Jose Development project is located within the Rincon de los Esteros Redevelopment Area, and as such, by law, SCUSD does not receive any tax revenue from the property or improvements in this area resulting in a substandard level of funding for students in the district.

BOARD OF EDUCATION  
DON BOHLENAVE  
JIM CANOVA  
ERNIE DOSSA  
PAT FLOT  
GLORIA MOSS  
TERESA O'NEILL  
ANDREW KAUFMANN

*"To prepare every student to succeed in an ever changing world."*

Even if the project eventually yielded enough students to qualify SCUSD for ADA compensation from the State, this would happen gradually over a number of years as the project is phased in. In those intervening years, our schools and students would be seriously under funded.

To mitigate these undesirable conditions created by the development of North San Jose, we would ask for:

- A dedication of land on which to build schools
- Adequate funding to complete the needed new schools
- A release of tax revenue to SCUSD comparable to the amount received from developments outside of the Redevelopment Area.

We are ready to provide more input or comments regarding our concerns if the need arises.

Thank you for your consideration.

If you have any questions or need additional information, please call me at 408-423-2005.

Sincerely,



Rod Adams  
Superintendent

RA:cvp

cc: SCUSD Board of Education



April 25, 2005

City of San Jose  
Department of Planning and Building  
801 North First Street  
San Jose, CA 95110

Attention: Andrew Crabtree

Subject: City File No. GP04-T-03 / North San Jose Development Policies Draft EIR

Dear Mr. Crabtree:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR to allow greater intensity of development in North San Jose. We have the following comments.

VTA strongly supports the City of San Jose's proposed plans to modify land use policies which will allow for the intensification and diversification of developments in the Rincon de los Esteros Redevelopment Area. VTA appreciates the efforts of City of San Jose staff to work collaboratively and seek out feedback from VTA regarding the Draft North San Jose Area Development Policy. VTA further commends the City of San Jose for including many policies and design/development strategies in the proposed policy which are consistent with the VTA *Community Design & Transportation (CDT) Guidelines*, which the City of San Jose endorsed in early 2004.

VTA is encouraged by the collaborative efforts to date with the City of San Jose on this significant and large-scale project, and looks forward to further collaboration. The North San Jose Development Policy is a critical first step in making this mass transit corridor a vibrant center of high density, pedestrian-oriented, mixed-use development, and proof that smart growth efforts and economic development can be mutually reinforcing efforts. Given the fact that there are no specific development plans included in the DEIR, VTA strongly encourages that the City of San Jose continue to afford VTA the opportunity to review future specific development plans in order to provide feedback and comment. The review process would typically include site layout, bicycle and pedestrian facilities and accessibility, transit connectivity, and parking.

#### **General Comments**

The Draft North San Jose Area Development Policy clearly identifies significant impacts to transportation facilities in the area, including VTA light rail and bus services, and VTA strongly supports the mitigation strategies proposed. However, while it is agreed that the mitigation strategies will substantially address impacts to the transit system, the information in the DEIR does not fully support the conclusion that all transit impacts are mitigated. Please provide documentation supporting this conclusion.

City of San Jose  
April 25, 2005  
Page 2

VTA also notes that, while a substantial list of mitigation strategies are identified in the DEIR, full build-out of the project is projected to result in "*substantial additional traffic to 72 freeway segments already operating at LOS F*", as well as "*significant unavoidable impacts from increased traffic congestion at 38 intersections*" within and outside of the project area including the cities of San Jose, Santa Clara, Milpitas and Campbell.

Impacts of this scale will undoubtedly cause measurable disruptions to the transportation network. However, we recognize that this DEIR differs from most DEIR's given there are no specific projects to review. This presents a new and special challenge to both the City of San Jose and VTA staff who are committed to providing helpful feedback on traffic mitigation strategies, as well as guidelines on site layout and design, which will address potential impacts to the transportation network. This fact underscores the need for a methodology (or process) for continued monitoring and evaluation of the development impacts, as the project area is built out, that goes beyond the strict interpretation of CEQA law. VTA suggests that a formal process be established that includes VTA staff to review future proposed individual building and site designs and corresponding traffic impacts. Small-scale local traffic studies should also be considered for specific developments, and most importantly, some sort of mechanism for adding or altering mitigations and for ensuring that the potential for transit use is maximized while traffic impacts are minimized.

The Draft North San Jose Area Development Policy identifies Development Impact Fees as the primary source of revenue for both traffic and transit improvements. VTA suggests that the DEIR clearly state what the fees cover, as well as the connection between the Draft North San Jose Area Development Policy and the Draft North San Jose Deficiency Plan. It is not clear if the fees described in the two documents are the same, and this should be clearly stated, including identification of the total amount and percentage for roadway, transit and other improvements.

In addition, please note that VTA will formally review the Draft North San Jose Deficiency Plan once it has been approved by the City of San Jose. VTA staff met with City of San Jose staff on April 11, 2005 to further discuss the Draft North San Jose Area Development Policy, which also included a discussion of the draft deficiency plan. For your convenience, most of our initial comments are repeated at the end of this letter.

VTA has made several recommendations to City of San Jose staff during previous opportunities to comment on this project. While many of the suggestions have been incorporated and comments addressed, staff were unable to find adequate discussion in the DEIR, as previously recommended, pertaining to proposed parking policies designed to encourage transit use and other alternate modes of travel. Subsequent conversations with City of San Jose staff clarified the City's goal of not allowing "over parking" for each new development. VTA recommends placing more emphasis on parking management strategies and supporting policies be reflected in the DEIR as a specific mitigation strategy. While we understand the desire that individual

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developers may have regarding a robust supply of free parking; however, as long as parking remains over-supplied and free, transit, pedestrian and bicycle modes will be far less successful in mitigating traffic impacts. Therefore, we strongly suggest that the North San Jose Area Development Policy include a set of parking strategies that could be implemented during all phases of development. Such strategies could be implemented as part of a TDM program and may include parking charges, buy-out programs, shared use facilities, and processes for converting surface lots over time to active land uses as demand for parking decreases.

### **Specific Comments**

#### **Land Use and On-Site Planning & Design**

##### **Land Use Around Station Areas:**

VTA recommends that the North San Jose Area Development Policy include a more detailed land use policy statement for developments around light rail station areas within the policy boundary (including the River Oaks, Tasman, Champion, Baypointe, and Cisco Way stations). The land use policy statement should include specific design guidelines to ensure these are vibrant, well-designed, pedestrian and bicycle friendly areas.

Also, VTA is concerned with the proposed change in land use designations near the River Oaks Station. Under previous iterations, the City of San Jose policy allowed for residential development along North First Street from Montague Expressway to River Oaks. Future residential development in this area would complement the currently approved, and under construction, North Park Development. However, the latest iteration of the proposed policy segregates residential development to a small edge of the Guadalupe River embankment.

##### **Development Layout and Design:**

The VTA *Community Design & Transportation (CDT) Guidelines* and the VTA *Pedestrian Technical Guidelines* should be used when designing these developments. These documents provide guidance on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements. Both *documents* are available upon request to agency staff. For more information, please call Chris Augenstein, Development & Congestion Management Division, at 408-321-5725.

##### **Bicycle Parking:**

VTA recommends that the projects developed within the North San Jose Deficiency area include provisions for bike parking spaces based on VTA's *Bicycle Technical Guidelines*. This document provides additional guidance on estimating supply, siting and design for bicycle storage facilities. The *Guidelines* may be downloaded from [www.vta.org/news/vtacmp/Bikes](http://www.vta.org/news/vtacmp/Bikes).



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For more information on bicycle systems and parking, please contact George Tacké, Development & Congestion Management Division, at 408-321-5865.

### **Transportation System Planning and Design**

#### **Transportation Demand Management (TDM):**

The TDM proposal should be expanded to include standards and programs including an implementation structure administered by a consortium of private interests to ensure that the TDM program achieves a transit ridership goal. An example of such a TDM program is the Pleasant Hill BART Station TDM program which is projected to achieve a 30% employee ridership on BART. Effective TDM programs may include:

- Parking Cash-Out
- Direct or Indirect Payments for Taking Alternate Modes
- Transit Fare Incentives such as Eco Pass and Commuter Checks
- Employee Carpool Matching
- Vanpool Program
- Preferentially Located Carpool Parking
- Bicycle Lockers and Bicycle Racks
- Showers and Clothes Lockers for Bicycle Commuters
- On-site or Walk-Accessible Employee Services (day-care, dry-cleaning, fitness, banking, convenience store)
- On-site or Walk-Accessible Restaurants
- Guaranteed Ride Home Program
- Carsharing

#### **Projected Peak Hour Vehicle Trips:**

Page 71 of the Transportation Impact Analysis (TIA) indicates that the travel demand model projects full build-out in the project area will result in an additional 41,300 PM peak hour vehicle trips. However, page 31 of the Draft North San Jose Deficiency Plan reports the estimate to be 49,325 PM peak hour vehicle trips, and the "per trip" development impact fees listed on page 12 of the Draft North San Jose Area Development Policy is based on this latter number.

While it is clear that the proposed development impact fees will be based on a per-square-foot methodology for industrial developments and a per-unit methodology for residential developments, VTA recommends that the DEIR reconcile the discrepancy in peak hour trip generation projections, or simply identify the correct projection to use for the Draft North San Jose Area Development Policy.

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**Freeway Segment Impacts:**

Page v of the DEIR Executive Summary and Page 115 of TIA states that the mitigation of freeway facility impacts has been deemed infeasible due to constraints in acquisition and cost of right-of-way and is therefore considered significant and unavoidable. Please provide information that an analysis was undertaken to review the constraints. In addition, the proposed project would impact 88 of the 124 directional freeway segments and 23 of the 55 segments with HOV lanes which will operate at Level of Service (LOS) F.

While the proposed mitigation strategies include the Immediate Implementation Action List delineated in the Congestion Management Program Deficiency Plan Guidelines as actions that can reduce the impact on deficient freeway segments, we recommend consideration of items on the "Deferred Actions" list, as well.

**Project Impacts and Mitigation Measures:**

The mitigation measures identified for several study intersections between Pages 76 through 115 state that there are no feasible improvements at certain intersections. Please explain why the mitigations at these intersections are infeasible.

Page 95 of the TIA states that the intersection at Old Oakland Road and Brokaw Road will degrade to LOS E and constitute a significant impact by both City of San Jose and CMP standards. However, the projected LOS E operation for the intersection meets the CMP LOS standard.

Staff also recommends that specific mitigation strategies be identified for improvements to additional major transit/transfer centers that will directly feed into other transit connections and work to mitigate traffic in the project area, for example, Caltrain and ACE stations, downtown San Jose facilities and the Montague BART station.

**Draft North San Jose Deficiency Plan:**

As mentioned above, for your convenience, a list of initial comments and recommendations regarding the Draft North San Jose Deficiency Plan conveyed during our April 11, 2005 meeting with City of San Jose staff is repeated as follows:

- Explain how the plan is linked with the North San Jose Area Development Policy, especially with regard to proposed roadway and transit improvements, funding and development fees
- Delete most of the discussion regarding the previous plan so as to reduce the potential for any confusion.
- Add a column to Table 2, pages 8 and 9, to clearly indicate whether the mitigation is feasible.
- State both the number of single-family and the number of multi-family residential units proposed as part of the policy.

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- Table 3 should delineate for which intersections there are “no feasible improvements” as suggested in the footnote.
- Language should be added that clearly identifies the role of North First Street as a “transit” street, giving priority to transit over automobile traffic.
- Page 21, Table 6, should list “B-7, Transit Traffic Signal Preemptions” as an action item.
- The description on page 23 for the action item F-3 should be completed.
- The fees discussed on pages 31 and 32 should be given a more prominent position nearer the beginning of the document.
- Table 9, page 33, should include a TDM element.
- The plan should include a methodology or process to afford affected agencies an opportunity to comment on improvements as they are being further developed. Smaller-scale local traffic studies should be used to better understand the current/existing circulation issues.

*For more information*, general questions, technical support, or to arrange a meeting with VTA staff to discuss additional mitigation strategies or On-Site Planning and Design of any future proposed developments in the project area, please contact George Tacké, Development & Congestion Management Division, at 408-321-5865 or via email at [george.tacke@vta.org](mailto:george.tacke@vta.org).

VTA staff look forward to assisting you.

Thank you for the opportunity to review this project. If you have any questions, please call Roy Molseed at (408) 321-5784.

Sincerely,



Ann Jamison  
Depty Director, Congestion Management and Planning

RM:rm

cc: Ebrahim Sohrabi, San Jose Public Works

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File: 25054  
Guadalupe River

April 25, 2005

X-Fac: Coyote Creek

Mr. Andrew Crabtree  
Planning, Building and Code Enforcement  
City of San Jose  
City Hall Annex, Room 400  
801 North First Street  
San Jose, CA 95110-1795

Subject: Draft Environmental Impact Report for the North San Jose  
Development Policies Project

Dear Mr. Crabtree:

The Santa Clara Valley Water District (District) has reviewed the Draft Environmental Impact Report (DEIR) for the North San Jose Development Policies Update Project dated March 2005 and received by the District on March 16, 2005. The District understands that the North San Jose Development Policies Update project (Project) calls for a General Plan Text Amendment, (GPT04-04-06a and GPT04-04-06b), General Plan Land Use/Transportation Diagram Amendment (GP04-04-06a and GP04-04-06b), and revision of the North San Jose Area Development Policy and revision to the North San Jose Deficiency Plan to allow intensification of development within the Rincon de los Esteros Redevelopment Area in the north part of the City. The potential development includes up to 26.7 million square feet of new industrial/office/R&D building space, 32,000 new dwelling units and 1.7 million square feet of commercial space.

The District's water supply planning efforts are based upon projected growth and development included in the City's General Plan together with consideration of regional growth projections. Changes in General Plan projections as proposed and major new development can have a significant impact on water supply availability and reliability if the projected increase in water demand has not been considered. Based upon review of the DEIR, our primary concern related to the project is water supply to meet the projected increase in water use. The following comments regarding water supply together with hydrology, water quality, biological resources, and transportation document our concerns:

## **WATER SUPPLY**

The DEIR does not sufficiently address overall water supply impacts. The conclusion that development allowed under the proposed project would not result in significant impacts to

Mr. Andrew Crabtree  
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existing water supply systems is not supported by the evidence. Water Code Section 10910 (SB 610) requires that a water supply assessment be completed prior to the issuance of a DEIR. This means that projected water supplies must be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the City determines that water supplies will not be sufficient, the City shall include that determination in its finding for the project. The DEIR for this project concludes, based upon apparently incomplete information, that groundwater supply will meet the additional demand created by the proposed project.

In the future, both the San Francisco Public Utility Commission (SFPUC) and the District have identified challenges related to dry year supply availability, at least within the near term period when significant investments in water supply improvements need to be made. Currently SFPUC cannot meet all of the existing dry year demands without implementation of its planned Water System Improvements Program to improve level of service. Additionally, the needs to evaluate a potential scenario where SFPUC provides less than the City's water purchase request is necessary because of uncertainties related to the pending SFPUC contract renewal process. Under such a scenario, the demand on District water supplies would increase.

Through the District's Integrated Water Resources Planning 2003 (IWRP) and additional analysis, we have identified the need for additional water supply investments to protect and improve supply reliability. The projected increase in annual water demand (~9,000 acre-feet) related to the proposed project currently exceeds the ability of the groundwater basin to reliably meet water demand within the region into the future. Reliance on groundwater for water supply requires appropriate replenishment of the supply that is extracted. The DEIR does not address this concern nor does it address the impacts of adding additional recharge capacity to maintain groundwater as a reliable source of water across the region. Recharge ponds require a large land area and the siting of the facilities is a complex process dependent on hydrogeologic characteristics of the recharge area, land use, and land availability.

The District Water Utility Enterprise staff is currently analyzing how the increased demand associated with this project will affect reliability and what alternatives are available for additional water resources development. Our groundwater modeling work shows that this projected demand, which was not included in our IWRP 2003 or our Urban Water Management Plan (UWMP) 2001, would impact the regional water supply reliability as the proposed groundwater basin pumping would exceed recharge capacity. Previous modeling performed as part of the District's IWRP 2003 indicates that any significant increase in demand above our projections (ABAG 1998 projections) decreases the reliability of water supply to meet regional demand and significant shortages occur during multi-year droughts. Additional facilities and supply beyond that considered in IWRP 2003 would be required to meet both the current project and the proposed cumulative demands (*i.e.*, those not included in General Plan).

The District and local water retailers are also currently preparing their 2005 Urban Water Management Plans (UWMP 2005) to be submitted to the Department of Water Resources by December 31, 2005. For the District's UWMP 2005, projected water demands will be based upon the City's General Plan which will serve as the critical source document for demand associated with additional development. The demand associated with this project will not be included in UWMP 2005 until the General Plan amendment is approved.

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The District sees this project as an opportunity for the City to increase water conservation both indoor and outdoor to the maximum extent practicable and increase recycled water usage. The area is already served with the recycled water pipeline (i.e. the purple pipes) and recycled water and dual plumbing should be required for all new construction including landscape irrigation, ornamental features (fountains, ponds), toilet flushing as well as for industrial uses.

We have provided additional detailed comments related to Water Supply in Attachment A. It is crucial that City staff work with the District and water retailers when developing and updating planning documents. We, therefore, look forward to a close working relationship on this and other projects.

## **HYDROLOGY**

A significant portion of the project area is subject to inundation from tidal flooding and riverine flooding from the Guadalupe River and Coyote Creek as evidenced by the current Federal Insurance Rate Maps (FIRM). In 1995 as stated in the document, improvements were made to Coyote Creek to reduce flooding, and the FIRM maps were revised in 1997 to reflect the impacts on flooding due to these improvements. The District has recently completed flood control improvements along the Guadalupe River from Highway 280 to Alviso (replacement of the Highway 237 bridge is to be complete in October 2006) that, as of December 2004, reduce riverine flooding from the Guadalupe River as well.

As part of the Guadalupe River flood control improvement projects, in Fall of 2005 the District will be submitting an application to FEMA to re-designate areas affected by the constructed flood control improvements. This process will remove some properties from the flood zone and others, where the existing storm drain system is inadequate to convey the storm water to the river, will be re-designated to AO or AH (special flood hazard zones). Once the application is submitted, the redesignation by FEMA is anticipated to take about six months, with longer review time necessary if changes must be made to address FEMA concerns. In the meantime, the District is preparing to file an interim application with FEMA later this month to allow for a reduction in insurance premium costs until the final application for the map amendment is submitted later this year. The District is planning to request that FEMA provide interim re-designation, called A-99, in time for a planned celebration of the project in September 10, 2005. Upon achieving the A-99 designation, a significant reduction in premiums will occur and new development can be planned and designed to rely on the anticipated new FIRM maps. We suggest you consult FEMA directly for verification of this through the City's FEMA coordinator.

Though the flood control projects will protect the area from significant flooding from the river, note that localized flooding of the streets and low lying areas (not mapped in flood zone) may still occur due to the existing topography, storm drain capacity, and operational constraints of the storm water pump stations. Since flooding can still occur even with the completion of the flood control improvements and removal of properties from the FEMA special flood hazard zones, the District recommends that property owners carry flood insurance because traditional insurance policies do not cover damages due to flooding. Also, as noted in the DEIR, the District's flood control improvements do not provide protection from tidal flooding and areas subject to tidal flooding will not be affected by the map revisions.

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Page 261 states that the District's flood control improvements on the Lower Guadalupe River are designed to contain the 100 year design flow and the "potential increases from storm-water pump stations in the lower reach." In June 2002, the District conducted a study (Technical Memorandum - Evaluation of Effects of Interior Drainage Flows on LGR Hydraulic Conditions), which is now in Appendix G of the Lower Guadalupe River Project Engineer's Report. This study evaluated the volume of water that would be reaching the various pump stations (operated by the City of San Jose, City of Santa Clara, Caltrans, etc.) along the river during a 100 year event. Based on the results of the study, the design flow was increased by 1,350 cfs to a total of 18,325 cfs, and the flood control improvements were constructed based on the higher design flow. The study modeled interior drainage based on *existing* storm drain conditions.

**Upgrades to the existing storm drain system as discussed in the DEIR should be designed so as to not increase the flows entering the Guadalupe River from those included in the above referenced study and an analysis of the proposed storm drain improvements should be completed to verify there will be no increase.**

Development of the project should not alter the Guadalupe River and Coyote Creek watershed boundaries within the site, *i.e.*, drainage from one watershed should not be directed to another. Development of the area should not require either increasing pumping capacity of the existing pump stations, require additional pump stations, or alter the agreed upon operation of the existing pump stations.

Page 25 states that the flood plain map amendments will "remove virtually all of North San Jose from the 100-year floodplain." This statement should be revised to indicate that many areas will be removed from the flood zone as a result of the map amendments; however, the exact extent of the areas to be removed from the flood zone will depend on the interior drainage analysis that has yet to be finalized. District staff is currently meeting with City of San Jose public works department staff to discuss this analysis. Also, the discussion of flooding and drainage on page 261 should be revised as necessary for accuracy and completeness based on the above information.

## **WATER QUALITY**

To protect groundwater quality and in accordance with District Ordinance 90-1, all existing wells affected by new or redevelopment need to be identified and properly registered with the District and either be maintained or destroyed in accordance with the District's standards. Destruction of any well and the construction of any new wells proposed, including monitoring wells, requires a permit from the District prior to construction. Property owners or their representative should contact the District Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information.

## **BIOLOGICAL RESOURCES**

On page 232 under "Degradation of Aquatic Habitat," the document states that the increased development will increase the potential for degradation of runoff entering the Guadalupe River which is considered a significant impact. Though the majority of the project area is located within the Guadalupe River watershed, a portion of the site drains to Coyote Creek which also may be negatively impacted by due to pollutants in runoff. The document should discuss the potential impacts to surface water quality of both the Guadalupe River and Coyote Creek and the mitigation measures to address the impacts.

Page 236 states that removal of the remnant sycamore riparian woodland would result in a significant impact and would not be covered by the EIR "unless the project provides replacement of the habitat removed at a 1:1 ratio." Typically regulatory agencies require replacement ratios of 3:1 to mitigate for loss of habitat and the stated mitigation ratio may not be adequate.

On page 79 there is a discussion of shade and shadow impacts that indicates that some shading can be anticipated to occur due to development and that the shading impact is less than significant. This discussion does not include a discussion of the impacts of this shading on the riparian corridor. Specific projects located along the riparian corridors should include an evaluation of the impact, if any, of shading of the riparian corridor and any critical habitat on the Guadalupe River.

The document identifies a number of policies (Urban Forest Policy No. 8 and Urban Design Policy No. 17) that refer to the use of native plants adjacent to riparian areas. To protect the genetic integrity of the native riparian species native plants should be grown from watershed specific stock.

The District supports the use of a 100 foot setback from the riparian corridor to minimize impacts to the riparian corridors of the Guadalupe River and Coyote Creek.

## **TRANSPORTATION**

The document identifies a number of road improvements that would be implemented as mitigation for traffic impacts as the area continues to develop. Some of the identified road improvements may require permits as defined in Ordinance 83-2, since they may impact District facilities. Identified road improvements that may require District permits include:

1. Widening of Montague Expressway between North First Street and Highway 880 — Montague Expressway crosses Coyote Creek and any work to widen the bridge and within 50 feet of the creek top of bank will require a District permit.
2. Lundy Avenue and Berryessa Road — The District's 66-inch diameter Central Pipeline is located under Berryessa Road and the proposed road improvements may require a District permit.



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3. San Tomas Expressway and Stevens Creek Boulevard — San Tomas Aquino Creek is located within a box culvert under San Tomas Expressway and work within 50 feet of the box culvert will require a District permit.
4. San Tomas Expressway and Moorpark Avenue — San Tomas Aquino Creek is located within a box culvert under San Tomas Expressway and work within 50 feet of the box culvert will require a District permit.
5. King Road and McKee Road — Silver Creek crosses the roadway at this intersection and any work within 50 feet of the creek top of bank or within the District's right of way will require a District permit.
6. Capitol Avenue and Cropley Avenue — The District's 42-inch diameter Milpitas Pipeline is located under Capitol Avenue and the proposed road improvements may require a District permit.
7. Capital Avenue and Berryessa Road — The District's 66-inch diameter Central Pipeline is located under Berryessa Road and the proposed road improvements may require a District permit.

Please submit a copy of the Final EIR when available for our review and comment. Reference District File No. 25054 on further correspondence regarding this project.

If you have any questions or need further information, you can reach me at (408) 265-2607, extension 2322. For questions regarding water supply issues, please contact Mr. Jim Crowley at (408) 265-2607, extension 3751.

Sincerely,



Colleen Haggerty, P.E.  
Assistant Civil Engineer  
Community Projects Review Unit

cc: S. Tippetts, V. Stephens, D. Chesterman, J. Crowley, J. Fiedler, M. Richardson,  
M. Klemencic, K. Whitman, C. Haggerty, File (2)

nd:mf/jl

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**ATTACHMENT A**  
 Santa Clara Valley Water District  
 DETAILED COMMENTS — WATER SUPPLY

Page in DEIR	Observation from the DEIR	District Staff Comment
--	The discussion of water in the DEIR is almost completely limited to drainage/flood hydrology issues with some mention of the impacts of high groundwater levels. It mentions that the development of the project would result in a significant increase in energy use, and deems this a significant unavoidable impact. However there is only brief discussion of the increase in water use and need for additional groundwater extraction facilities that will be required of the two impacted water retail agencies.	The conclusion that the increase in water demand resulting from this development (and the resulting impacts on water supply) is a <b>less than significant impact</b> is not supported by the evidence presented. There are serious omissions in the DEIR related to the discussion on water supply. The opinion of the two retailers provided in the report is unsubstantiated. No evidence is presented related to the source of additional water supply. Water taken from the groundwater basin needs to be replenished with additional supply.
--	The EIR assumes that the demand will be met through groundwater extraction. This is based upon a statement from the water retailers.	The DEIR does not include a Water Supply Assessment as required by Water Code Section 10910 (SB610). It should adequately discuss other alternatives for meeting the water supply needs: for example, the need could be partially met through increased water use efficiency measures and through recycled water use, in keeping with both District and City of San Jose policy
-- Timeline/Triggers for Development	There is no timeline for the four phases of the plan-triggers for phased development will be determined by growth and jobs within the project area.	Triggers need to be developed related to the timeline for adding development of additional water supply, water supply facilities, and other water management options. This will allow reliable supply of quality water to be available when needed.
Page 27	The DEIR identifies additional infrastructure needed to serve the new water demand, specifically two new tanks, four additional wells, and four new pumps. This focuses on the additional extraction infrastructure needed. There is no mention of whether additional infrastructure or additional water supply is needed to ensure that the groundwater basin is replenished. There is little to no discussion on whether alternate supply sources may be available to the retailers.	The DEIR should also assess the water supply needed to replenish groundwater, discuss the availability of supply options, and describe the impacts that will result from procuring that additional supply (if it is not already available). Infrastructure needs for groundwater replenishment – additional recharge facilities, pipelines, etc should also be discussed.

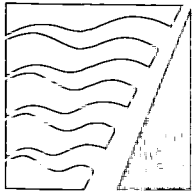
Page in DEIR	Observation from the DEIR	District Staff Comment
Page 35	<p><b>Sustainable City Strategy</b> - ensures that development is designed and built in a manner consistent with the efficient use of resources and environmental protection.</p> <p>The proposed project includes infill sites adjacent to existing recycled water</p>	<p>Consistency The DEIR should state that the City intends to pursue higher level of water use efficiency and conservation above and beyond the minimum requirements of current building and plumbing codes Dual plumbing for recycled water should be required for most if not all new construction and redevelopment</p>
Page 49	<p><i>Level of Service Policy #9 – Water Conservation</i></p>	<p>Water conservation measures that should be promoted by the City for North San Jose include:</p> <ul style="list-style-type: none"> <li>• Dual plumbing for both interior and exterior recycled water use;</li> <li>• Construction standards that require high-efficiency fixtures (for example, high-efficiency 1 2-gallons-per-flush toilets);</li> <li>• Construction standards that require high-efficiency devices for outdoor water uses (such as self-adjusting weather-based irrigation controllers);</li> <li>• The use of fully advanced treated recycled water for irrigation of large landscaped areas;</li> <li>• Enforcement of the City's Model Water Efficient Landscape Ordinance (as per AB 325 1990);</li> <li>• Promotion and use of drought tolerant and native plantings in landscaping.</li> </ul>
Page 54	<p><b>GP Water Resources Policies –</b> Water is a finite resource. The DEIR should give appropriate consideration to effective management and protection of this resource. The General Plan's Water Resource Policies identify water supply concerns and this DEIR should discuss consistency with several of these policies in addition to WR 9. In particular, the City states that its intent to, limit the dependence on external sources of supply, avoid the overdrafting of the underground water basin, avoid to prevent additional land subsidence, and increase water recycling</p>	<p><b>Add the reference to the following Water Resources Policies in DEIR</b></p> <p>2. Water resources should be utilized in a manner which does not deplete the supply of surface or groundwater, and efforts to conserve and reclaim water supplies, both local and imported, should be encouraged.</p> <p>7. The City shall require the proper construction and monitoring of facilities storing hazardous materials in order to prevent contamination of the surface water, groundwater and underlying aquifers. In furtherance of this policy, design standards for such facilities should consider high groundwater tables and/or the potential for freshwater or saltwater flooding</p>

Page in DEIR	Observation from the DEIR	District Staff Comment
		10. The City should encourage more efficient use of water by promoting water conservation and the use of water saving devices.
Page 255 Groundwater conditions Page 264 groundwater levels, and elsewhere in the report	The DEIR does not correctly categorize the complex nature of the groundwater aquifers in the project area. The DEIR describes the high groundwater conditions that are often experienced in the shallow aquifer in the area, but does not acknowledge that the drinking water for the project depends on the supplies and pressures found in the deeper aquifers. The DEIR does not discuss the variability in water supply that can be experienced in the drinking water aquifers under different hydrologic conditions.	The DEIR descriptions of the groundwater conditions should be clarified to better capture the differences between local high groundwater conditions in the upper aquifer and the water supply conditions in the lower aquifer upon which this project's water supply depends. The variability of the water supply conditions that historically occurred due to changes in hydrology should be discussed together with water supply reliability.
Page 255	<i>"Extensive historic withdrawal of groundwater in the area resulted in regional land subsidence of as much as eight feet from 1938 to 1967. Control of groundwater withdrawal and regional programs of groundwater recharge managed by the SCVWD has halted subsidence in this area"</i>	The District does not control groundwater withdrawal, but rather manages the groundwater sub basins through conjunctive use and other programs. Although the risk of subsidence is being held in check by the District's water management activities, that does not mean that subsidence is no longer a threat. The DEIR should evaluate the potential for land subsidence resulting from the increased groundwater extraction in this DEIR
Page 265	The DEIR lists the thresholds of significance for hydrologic impacts as follows: <i>"For the purposes of this EIR, a hydrologic impact is considered significant if the project will:</i> <ul style="list-style-type: none"> <li>○ ...</li> <li>○ <i>substantially degrade or deplete groundwater resources or interfere with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level;</i></li> <li>○ ...</li> <li>○ <i>provide substantial additional sources of polluted runoff or otherwise substantially</i></li> </ul>	The depletion of groundwater is not adequately discussed in the DEIR. Groundwater extraction to meet this additional demand during a multi year drought results in increased rates of withdrawal and significant lowering of groundwater levels to below the point where ground subsidence would re-initiate. Appropriate evaluation of impacts on groundwater resources and on groundwater quality and additional discussion should be included in the EIR. No mitigation or avoidance measures for potential impacts are described.

Page in DEIR	Observation from the DEIR	District Staff Comment
	<p><i>degrade surface or groundwater quality;</i></p> <ul style="list-style-type: none"> <li>o ..."</li> </ul>	
page 302	<p><i>"Development allowed under the proposed project would not result in significant impacts to existing water supply systems. (Less Than Significant Impact)"</i> follows a discussion focused on groundwater extraction facilities and does not include any discussion on the need to replenish the groundwater resource itself.</p>	<p>The impacts on water supply, the need for additional water supplies to replenish groundwater, and additional groundwater recharge facilities should be described in the EIR.</p>
Page 401	<p><i>".. the projected cumulative increase in demand is approximately 39 MGD. The water retailers draw upon various sources for their water supply, including local groundwater and surface water supplies and importation of water from outside of San Jose's jurisdiction. While some growth in impacted water supply is expected (and currently under negotiation), the predominant source of additional water supply is local groundwater. The SCVWD is in the process of modeling their long term ability to provide groundwater to the three retailers, but their preliminary analysis suggests that they have adequate capacity to address the cumulative demand of the projects under consideration here".</i></p>	<p>This statement is inconsistent with the IWRP Study 2003. IWRP Study 2003 shows that additional water supply management activities will need to be developed to meet the long term needs of the businesses and residents in Santa Clara County. IWRP showed that alternatives do exist for providing for the future (although the existing supplies and infrastructure system alone won't get us there). The District does not currently have adequate capacity for meeting this cumulative demand and additional facilities and supply beyond that considered in IWRP study 2003 would be needed.</p>
Page 401	<p>The DEIR states that approval of the cumulative projects would not result in significant impacts as a result of exceeding the identified water supply.</p>	<p>The DEIR has not appropriately quantified water supply impacts. The DEIR should describe the water supply source(s) and determine what cumulative impacts on water supply result from serving the water demand resulting from these projects.</p>
References	<p>Add. 1996 San Jose Water Policy Framework</p>	

To: Andrew

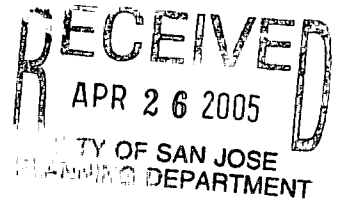
April 22, 2005



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

Stephen Haase  
Director of Planning, Building and Code Enforcement  
City of San Jose  
801 North First Street  
San Jose, CA 95110

Subject: North San Jose Development Policies Update



Dear Mr. Haase:

Bay Area Air Quality Management District (District) staff have received and reviewed your agency's Draft Environmental Impact Report (DEIR) for the North San Jose Development Policies Update Project (project). The project proposes to intensify development allowed within the Rincon de los Esteros Redevelopment Area in the northern part of San Jose. Rincon de los Esteros is an established industrial park area approximately 4,987 gross acres in size, with scattered enclaves of high and medium-high density residential uses. The proposed intensification would add approximately 26.7 million square feet of new industrial/office/R&D building space (approximately 83,300 new employees) and up to 32,000 new housing units (approximately 56,640 persons) to the area. The project would encourage increased development density along the established light rail transit (LRT) line on North First Street.

The District strongly supports the City of San Jose's effort to locate housing and jobs closer to transit, particularly in urbanized areas. Shifting housing and jobs away from greenfield development towards in-fill and redevelopment can decrease dependence on automobiles for work trips, thereby reducing overall motor vehicle emissions. If a comparable number of new residents and employees were located in outlying areas like Coyote Valley (which was analyzed in project alternative D in the DEIR), air quality impacts would likely be greater because of more vehicle trips generated by the location.

While we support the City's efforts to promote transit oriented development, District staff urge the City to carefully consider the suitability of each new residential development's location given nearby land uses. The DEIR states on page 73 that "land use conflicts between proposed new residential development and existing industrial uses can be minimized by conformance with the City's adopted Residential Design Guidelines in design of new residential projects," thereby reducing the impacts to a less than significant level. The minimum setback outlined in the design guidelines for incompatible land uses is only 15 feet. We have concerns that this recommended mitigation measure for siting residential land uses near existing industrial uses may be inadequate. Studies show that the appropriate buffer zones for some land uses can be anywhere from 300 feet to one mile. We recommend that the Final Environmental Impact Report (FEIR) include a more detailed analysis of appropriate site-specific buffer zones and setback

ALAMEDA COUNTY  
Roberta Cooper  
Scott Haggerty  
Nate Miley  
Shelia Young

CONTRA COSTA COUNTY  
Mark DeSaulnier  
Mark Ross  
(Secretary)  
Michael Shimansky  
Gayle B. Uilkema  
(Vice-Chairperson)

MARIN COUNTY  
Harold C. Brown, Jr.

NAPA COUNTY  
Brad Wagenknecht

SAN FRANCISCO COUNTY  
Chris Daly  
Jake McGoldrick  
Gavin Newsom

SAN MATEO COUNTY  
Jerry Hill  
Marland Townsend  
(Chairperson)

SANTA CLARA COUNTY  
Erin Garner  
Liz Kniss  
Patrick Kwok  
Julia Miller

SOLANO COUNTY  
John F. Silva

SONOMA COUNTY  
Tim Smith  
Pamela Torliatt

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

distances for potentially incompatible land uses, particularly for specific facilities or locations of concern.

Various upgrades to the transportation network in the project area are being proposed, as well as changes to transportation policies that affect development, to address increased travel demand resulting from the proposed project. Air quality impacts from land use development stem from increasing demand for travel by automobiles. The DEIR proposes transportation projects that will help mitigate vehicle congestion through capacity improvements, such as roadway widening. The District believes that adding new traffic lanes for single-occupancy vehicle (SOV) use in the Bay Area is often only a short-term solution to congestion. New lanes increase overall system capacity, and then can be filled up by latent travel demand until the area again becomes congested. This can happen because driving temporarily becomes more convenient and there is less incentive to use transportation alternatives, carpool, work and shop closer to home, avoid discretionary trips and travel during non-peak periods. In the long-term, capacity expansions can result in greater dependence on automobiles, increased air pollution, and other significant environmental impacts. We commend the City for including arterial traffic management strategies that are beneficial to air quality under the proposed mitigation and avoidance measures (DEIR page 187). We recommend emphasizing arterial traffic management strategies that benefit air quality over expansions to roadway capacity. Such beneficial strategies could include improved signal timing (i.e. signal prioritization for transit), bicycle lanes, and pedestrian facilities that enhance the pedestrian experience. We recommend that the City address increased travel demand through the expansion of transit or other alternative modes of transportation. New lanes on Montague Expressway, for example, could provide dedicated right-of-way for bus rapid transit (BRT) and carpools. This could increase mobility and reduce air quality impacts from this project.

Locating more development along existing transit corridors increases the likelihood that residents and employees of those developments will use transit instead of drive. Given the potential for development to outstrip transit's potential to carry passengers, we recommend that the City consider phasing development based on the capacity of public transit to serve this area. The ability of transit service to meet the needs of this area should be confirmed before new development is approved, and if more transit service is necessary, the City should work with the Santa Clara Valley Transportation Authority and developers to provide transit improvements.

We recommend incorporating more neighborhood-serving commercial uses in the project area to create true mixed-use neighborhoods and reduce vehicle trips to shops and services. Commercial uses such as supermarkets, drycleaners, daycare, etc. serve local neighborhoods and have the potential to reduce the number of trips made by automobile – particularly if they are accessible by walking, biking or transit. In addition, we recommend that parking requirements for local commercial facilities be lowered to reflect the benefit of easier access for pedestrians and cyclists.

An over-supply of parking is one of the reasons why people do not consider alternatives to the SOV. We recommend that the City reduce the number of required parking spaces for housing and commercial uses to help support a transit- and pedestrian-friendly environment. Reducing parking requirements, particularly near transit, can help reduce development costs. It

can also increase the amount of land serving pedestrians rather than parking, thereby improving urban design by making the area more walkable. Developers should be encouraged to unbundle their parking (i.e. charge for off-street parking separately from rents). Carsharing programs and parking cash-out programs are other ways to reduce the amount of required off-street parking spaces. District staff commend the City for recommending innovative parking policies such as parking cash out (DEIR page 188), which can provide incentives for employees to take alternative transportation modes and allow for a reduction in parking requirements. We also support the City's recommendation that transit passes be provided to new residents and employees in the project area (DEIR page 188). Therefore, we recommend that all new housing and commercial developments within one half mile of a transit route be required to provide EcoPasses to their residents / employees and that their parking requirements be reduced accordingly. To mitigate potential overflow parking issues, we recommend the City implement parking benefit districts where drivers pay for curbside parking and the resulting revenue is used to improve the pedestrian environment on the blocks where the revenue was generated (fixing/widening sidewalks, planting street trees, etc.). Residential parking permit programs could also be considered to help mitigate overflow parking resulting from reduced parking requirements. These measures can help decrease development costs, reduce the demand for parking, increase funding for public services and increase the use of alternative transportation modes.

We also recommend implementing all feasible control measures for fugitive dust emissions from grading, construction and demolition projects – including consideration of the optional control measures. The District does not typically require quantification of construction emissions associated with construction activities but instead bases its threshold of significance for fugitive dust on implementation of all feasible control measures listed in Table 2 of the *BAAQMD CEQA Guidelines: Assessing the Air Quality Impacts of Projects and Plans (1999)*. District staff acknowledge that the City of San Jose has included most of the mitigation measures listed in this table (on pages 189-190 of the DEIR). However, depending on the size of a development project, the optional control measures may need to be implemented to further reduce the impacts of fugitive dust emissions from large construction projects. Further, the kinds of construction equipment commonly used in development projects are primarily diesel-powered, and with continuous use, can lead to significant diesel particulate matter emissions. The California Air Resources Board (ARB) has identified diesel engine particulate matter as a toxic air contaminant and known carcinogen. We recommend, whenever feasible, implementation of additional measures to reduce combustion emissions from off-road construction equipment – particularly diesel emissions. Such measures could include maintaining properly tuned engines, minimizing the idling time of diesel powered construction equipment, and using alternative fueled construction equipment or add-on control devices such as particulate traps


District staff commend the City of San Jose for including a thorough analysis of energy use and the identification of mitigation measures that can reduce energy consumption in the project area. The DEIR states that the project will increase the demand for electricity, natural gas, and gasoline. Increasing the demand for these resources will result in increased emissions of criteria pollutants, as well as an increase in greenhouse gas emissions, that can impact air quality in the Bay Area. District staff support the mitigation measures in the Energy section and we



encourage the City of San Jose to include all measures as conditions of approval for all future projects.

If you have any questions regarding these comments, please contact Douglas Kolozsvari, Environmental Planner, at (415) 749-4602.

Sincerely,



Jack P. Broadbent  
Executive Officer/APCO

JPB:DK

cc: BAAQMD Director Erin Garner  
BAAQMD Director Liz Kniss  
BAAQMD Director Patrick Kwok  
BAAQMD Director Julia Miller

**Guadalupe-Coyote Resource Conservation District**  
**888 North First Street**  
**San Jose, Ca 95112-6314**  
**email <gcrd@pacbell.net>**

April 25, 2005

Andrew Crabtree  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Subject: NORTH SAN JOSE DEVELOPMENT POLICIES UPDATE PROJECT  
DRAFT ENVIRONMENTAL IMPACT REPORT  
FILE NO. GPT04-04-06b, GP04-04-06A and GP04-04-06b.

Dear Mr. Crabtree:

Thank you for the opportunity to comment on the North San Jose Development Policies Update Project.

The project is located south of SR 237, north of I-880, east of the Guadalupe River and west of the Coyote Creek. Alviso and the inter-tidal area of the SF Bay are downstream of the project area.

Page 267 of the report states "'The project is located in an area of San Jose' subject to periodic flooding that could expose people or structures to significant risks.(Significant Impact))" The mitigation measures proposed to reduce this to "less than significant impact" are listed on page xxviii and include many desirable conservation features. Some of the listed mitigation measures are beneficial while others are costly projects that transfer the flood problem downstream while retaining future potential significant impact from flooding.

The undesirable policies being considered include: over topping the levees, pumping into the river while at flood stage, site requirements that allow faster sheet flow of water to uplift stations, and expensive storm drain system enlargements so water can be discharged faster into swollen rivers.

What if these policies narrowly avert a flood disaster in the project area but increase flood damage in Alviso?

A 100 year flood is defined as 2300 CFS on page 4 of the flooding and drainage evaluation. The Oakmead Pumping station can pump 758 CFS into the river(drawing SD-1) . This is approximately 25% of the total river flow! One or more of these reported numbers may be wrong

The "Engineering Report of the Adequacy of Existing Utility Infrastructure" dated 7/97 makes reference to detention ponds at the lift stations into the river but conclude that this is not practical due to the "high cost of the available land" (page 5). This report recommends pumping storm water into the river at peak water levels instead.

GCRCD recommends:

- Augmenting the proposed floodwater mitigation measures with water harvesting and /or detention basins in this project area and other upstream areas (i.e., SJ Airport) in order to slow and reduce the peak runoff through out the watershed.
- Add long term value to the project area by constructing large size detention basins at the storm water lift stations that will allow storm water to be safely retained until it can be filtered, and used productively or slowly released into the river. These detention basins may need to temporarily hold millions of gallons of storm water. A possible solution is to build multi-level concrete parking structures for light rail users with the lower level serving as dry season parking and flood period detention basins. The upper parking deck should be at the 100 year flood elevation level.
- Planning for reduced dependence upon importing of water into our watershed by better storm water control, containment, and re-use.

GCRCD rejects

- Dumping the flood problems of this project area onto downstream neighbors.
- Expensive capital "improvements" to the storm water drain system that intensify the flood crest.

Thank you for considering these comments.

Sincerely,

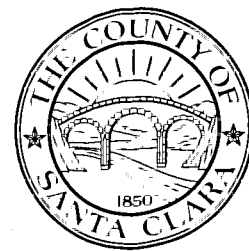
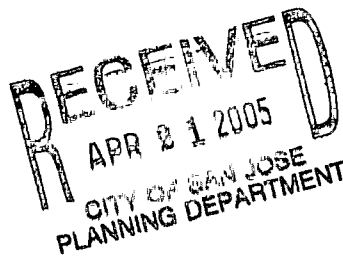
*Edward Muryak, P.E.*

Edward Muryak P.E.  
Director

# County of Santa Clara

Roads and Airports Department  
Land Development and Permits

101 Skyport Drive  
San Jose, California 95110-1302  
(408) 573-2460 FAX (408) 441-0275



April 18, 2005

Mr. Andrew Crabtree  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San Jose, CA 95110-1795

Subject: North San Jose Development Policies Update Project  
Draft Environmental Impact Report  
File No. GPT04-04-06a, GP04-04-06a and GP04-04-06b

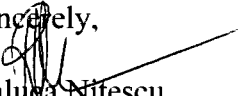
Dear Mr. Crabtree,

Your March 7, 2005 letter along with the attachment for the subject above have been reviewed. Our comments are as follows:

1. See attachment "A" (comments from Highway Design).
2. See attachment "B" (comments from Traffic Engineering).
3. The mitigation funds collected for Montague Expressway should be provided directly to the County, or placed in an account accessible by the County on demand, to allow County as lead agency to access and use the funds as needed to implement the mitigation projects.

Thank you for the opportunity to comment on this project. If you have any questions, please call me at 408-573-2464.

Sincerely,


  
Raluca Nitescu  
Project Engineer

Attachments: Attachment "A"  
Attachment "B"

CC: DEC, SK, MA, WRL, File

**County of Santa Clara Roads & Airports Department  
Design & Construction Branch  
Highway Design Group**

**MEMORANDUM**

**Date:** March 18, 2005  
**To:** Raluca Nitescu, Land Development  
**From:**  Dan Collen, Highway Design  
**Subject:** Environmental Referral  
North San Jose Development Policies Update

**Increasing Development Density**

The environmental analysis includes discussion of potential impacts to expressway levels of service due to increased traffic as a result of the proposed policies, and discusses potential mitigations. See attached summary sheet. Our comments are as follows:

- The City of San Jose is to be recognized for using an appropriately large study area. 35 expressway intersections were studied. On the negative side, 22 peak period intersection operations on the expressways were found to be negatively impacted, and mitigation was clearly proposed for only 6 impacted intersections.
- The intersections not proposed for mitigations are generally not addressed under the logic that "the intersections are not within the jurisdiction of San Jose." The logic is inconsistent with San Jose's own past practice with regard to large developments such as the cases of Cisco and 3Com. We question the basis of this logic and whether it is legally defensible. We suggest review of this issue with County Counsel.
- The document does commit San Jose to a fairly large project on Montague that we understand to be described as follows: widen Montague to 8 lanes between North First Street and I-880, including Zanker turn lane improvements, a westbound flyover connection to Trimble, a square-loop interchange at McCarthy (text in the document is a little unclear about the actual commitment to this mitigation), and reconstruction of the I-880 interchange to a partial cloverleaf. Determination of this scope is complicated by Figure 19, which in addition to the proposed Montague widening, shows additional intersection improvements at River Oaks and Trimble, but not at the other locations above. Further, the document also identifies proposed improvements at Old Oakland and Trade Zone, although they are outside the limits of the Montague project described on Page 143. We suggest that a more logical and complete Montague scope would be as follows: widen Montague to 8 lanes as needed to conform and provide lane continuity between Lick Mill Boulevard and Great Mall Boulevard, including Zanker turn lane improvements, River Oaks turn lane improvements, a westbound flyover connection to Trimble, a square-loop interchange at McCarthy, reconstruction of the I-880 interchange to a partial cloverleaf, turn lane improvements at Old Oakland, and turn lane improvements at Trade Zone.

Comments to specific locations and document text follow:

Page 143, Montague mitigation limits: see general comment above. At the westerly limits, County is currently administering a project (using City of Santa Clara traffic impact fees) that is constructing 8 lanes on Montague between 101 and Guadalupe River. The 8 lanes will cross the river eastbound but not westbound. San Jose's limits should extend to Lick Mill to ensure westbound continuity and not leave a few hundred feet as an unfinished gap. At the easterly limits, Milpitas has taken initiative (using traffic impact fees) to widen to 8 lanes between Great Mall and I-680. San Jose's limits should extend to Great Mall to address Old Oakland and Trade Zone, ensure continuity, and not leave a few hundred feet as an unfinished gap.

Page 144, Figure 19: To be consistent with document text, green circles should also be shown at Zanker, McCarthy, Old Oakland, and Trade Zone. Montague widening should be extended as described previously.

ATTACHMENT "A"

Page 147, River Oaks: Despite being shown on Figure 19 and described in text on page 143, this text states "no other feasible mitigations ... were identified." Attached is a copy of Table 14 of the 1999 Montague Expressway Final Traffic Study and Improvement Alternative Analysis. San Jose was a partner in development of this planning study, which does show potential side street improvements at River Oaks. The DEIR should include these planned improvements as well.

Page 147, McCarthy: It is not clear if the City proposes to implement the square loop interchange. While under the general paragraph stating "the proposed project includes the following intersection improvements", the language with regard to the square loop is vague. Please clarify.

Page 147, Old Oakland: It is not clear if the City proposes to implement the mitigation work. While under the general paragraph stating "the proposed project includes the following intersection improvements", the language with regard to Old Oakland is vague and the location is outside the Montague project limits. Please clarify.

Table 12, page 150: It is somewhat astounding and incredible that at North First Street, a sort of "ground zero" for the development policy change, the only traffic impacts are dramatically positive reductions in delay. This is made more perplexing and enigmatic by the fact that negative impacts are shown at all approaches to this location, and the proposed mitigations for transit operations (including "bi-directional full priority ... for LRT along North First Street") would obviously have negative repercussions for expressway level of service. We would suggest that this anomaly be reviewed and the modeling verified.

Page 166, Trade Zone: The document identifies turn lanes as project mitigation but is silent on whether 8 lanes is also needed or is assumed as a baseline condition. 8 lanes are discussed at Old Oakland but not here. We are inclined to believe that 8 lanes will be needed to show any significant improvement in delay.

Page 169, Light Rail: The text commits the project to "signal modification to enable bi-directional full priority with ability to cascade calls for green signals for LRT along North First Street." This is directly contradictory with the conclusions of the County Expressway Planning Study, which stated on page 58 (see [www.expressways.info](http://www.expressways.info)), "Continue coordination efforts with rail operators to minimize expressway traffic impacts". The DEIR should address the contradiction and quantify potential negative impacts of changed rail operations. Further, we understand there have been discussion about reducing LRT headways on North First Street. Any plans that may exist to reduce LRT headways as a mitigation should be disclosed and impacts identified.

Page 170, "Local City Intersections": We find it a little confusing that the document sometimes identifies the expressways as County facilities and sometimes as "local city intersections", and suggest consistent representation of the expressways as County operated and maintained.

Page 171, Bowers and Central: The intersection is mistakenly identified as "San Tomas Expressway" in the text and mitigations reflect San Tomas. Mitigations should state "Tier 2 of the Expressway Planning Study identifies a grade separation at this location."

Page 173, Great Mall and Montague: The mitigations seem to confuse Great Mall with Mission College. Tier 2 identifies a grade separation only.

cc: M. Murdter, M. Griffis

ATTACHMENT "A"

NORTH SAN JOSE DEVELOPMENT POLICIES UPDATE  
 DEIR REVIEW  
 SUMMARY OF IMPACTED EXPRESSWAY INTERSECTIONS  
Ranked By Total (AM+PM) Critical Movement Delay

Rank No.	Study No.	Expressway	Cross Street	Impact	Project Increase	Mitigation?
1	7	Montague	River Oaks	AM/PM	235.6	8 lanes; plus something? see Tab 14 (Mont study), study text
2	178	Montague	Mission College	AM/PM	225.2	discussed but "not within the jurisdiction of ... San Jose"
3	58	Montague	Trade Zone	PM	169.5	turn lanes only
4	10	Montague	Old Oakland	AM/PM	168.4	8 lanes plus turn lanes; by whom? Limits conflict
5	6	Montague	Zanker	AM/PM	151.1	8 lanes plus turn lanes
6	179	Central	De La Cruz	AM	75.1	discussed but "not within the jurisdiction of San Jose"
7	175	Central	De La Cruz	AM	74.7	intersection repeated with differing data
8	205	Montague	Great Mall	PM	44.5	discussed but "not within the jurisdiction of ... San Jose"
9	97	Capitol	Capitol	AM	36.4	turn lane
10	189	San Tomas	Walsh	AM	27	discussed but "not within the jurisdiction of ... San Jose"
11	158	Lawrence	Arques	PM	23.1	discussed but "not within the jurisdiction of ... San Jose"
12	98	San Tomas	Stevens Creek	PM	21.1	8 lanes
13	192	San Tomas	Hamilton	PM	20.1	discussed but "not within the jurisdiction of ... San Jose"
14	165	Central	Bowers	AM	18	discussed but "not within the jurisdiction of ... San Jose"
15	167	San Tomas	Scott	PM	15.1	discussed but "not within the jurisdiction of ... San Jose"
16	177	San Tomas	Saratoga	AM	14.5	discussed (8 lns) but "not within the jurisdiction of ... San Jose"
17	190	San Tomas	Benton	PM	13.5	discussed (8 lns) but "not within the jurisdiction of ... San Jose"
18	99	San Tomas	Moorpark	PM	5.2	turn lane only
?	9	Montague	McCarthy	NA?	NA?	square loop interchange?
?	NA	Montague	Trimble	?	?	flyover
?	NA	Montague	I-880	?	?	partial cloverleaf interchange reconstruction

Table 14  
At Grade Improvements Along Montague Expressway

INTERSECTION	CONSTRUCTION	RW	ROUNDED COST (\$million)	2025 Level of Service (AM/P/M)	
				Project Condition (Without the Listed Improvements)	With the Listed Improvements
1 SCOTT BLVD AND SAN THOMAS EXPWY. - Additional EB left turn lane - Lengthening SB and WB left-turn lane	\$ 230,000	\$ 450,000	\$ 0.7	D/E	D/D
3 DE LA CRUZ BLVD - Lengthening NB left-turn lane and right-turn lane	\$ 470,000	\$ 120,000	\$ 0.6	C/D	C/D
4 LICK MILL BLVD - Additional SB right-turn lane - Lengthen SB left and right-turn lanes	\$ 600,000	\$ 360,000	\$ 1.0	E/C	D/C
7 PLUMERIA DR /RIVER OAKS PKWY - Lengthen SB left and NB right-turn lanes	\$ 400,000	\$ 5,000	\$ 0.4	F/F	D/E
10 MAIN ST & OLD OAKLAND RD - Additional EB through (4 thru+HOV, the additional thru will lead into a free right-turn lane at Trade Zone	\$ 730,000	\$ 150,000	\$ 0.9	E/F	E/D
11. MCCANDLESS DR /TRADE ZONE BLVD - EB free right turn lane to Trade Zone	\$ 750,000	\$ 130,000	\$ 0.9	E/D	E/D
15. DEMPSEY RD. - Additional NB through	\$ 410,000	\$ 110,000	\$ 0.5	F/F	D/D
16 SO PARK VICTORIA DR /MORRILL AVE - Additional SB right (dual right) - Additional EB left	\$ 200,000	\$ 80,000	\$ 0.3	F/F	D/E
<b>TOTAL</b>			\$ 5.3		

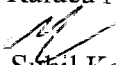
NOTE

- 1 Construction cost shown does not include any structural widening for plan line widening
2. RW cost does not include RW required for plan line widening.



**Date:** April 14, 2005

**To:** Raluca Nitescu -Land Development

**From:**  Sunil Kandah - Traffic Engineering

**Subject:** North San Jose Development Policies Update (DEIR)

We have reviewed the above DEIR, the following are our comments as it relates to Montague Expressway between Hwy. 101 and Hwy. 680, San Tomas Exp. and Central Exp:

1. Page viii, top of the page; please clarify that the square footage for each phase is cumulative after phase 1, otherwise the summation of the four phases would add-up to more than the proposed 26.7 Million square feet as it is shown.
2. Page viii, fourth paragraph; phase 1 indicate that Montague Exp. will be widen, however the reference should be for the portion of Montague Exp. Within the city of San Jose Jurisdiction only. See additional comments on this subject below, as we disagree that the City does not have the authority to mitigate project traffic impact in other jurisdiction.
3. Page xii of the project summary for significant impacts, and mitigation and avoidance measures It is stated "the City lacks the authority to implement mitigation in other cities" This assertion is inconsistent with San Jose own practice with regard to large development. (Please see Dan's comments for more on this issue).
4. Page xi, box 2 and 3, we respectfully disagree with the city analysis of the Mitigation and avoidance measures. Please see comment # 5 below to mitigate Significant Unavoidable Impact.
5. Page xii, box 2 of the mitigation and avoidance measures. The City can propose changes to its own policy regarding Temporary Significant Unavoidable Impact by requiring improvement to Montague Exp. be concurrently mitigated with each phase or portion of any phase.
6. Page 16, table; States Montague expressway will be widen with phase one of the proposed project. Anyone reading this statement will conclude that the entire length Montague Exp will be widened. But that is not what the DEIR is proposing (i.e. only in the CSJ jurisdiction). See comment # 3 for additional information.

ATTACHMENT "B"

7. Page 19 "Transportation policies, second paragraph; the proposed modification to the City's policies relating too intersection and roadways should specifically exclude Montague Exp as being a County exp. The County adheres to VTA/CMA requirement which are different from the CSJ none CMA requirement.

Additionally, the City should remove intersections along Montague Exp. from the requirement of the average 83 sec. threshold for the several intersections in the original N. SJ Deficiency Plan as part of the new update for this area (Please note this comment is not discussed in this DEIR).

8. Page 47, second paragraph; under "Consistency", the City need to exclude Montague Exp and note Montague Exp. is a County maintained and operated Expressway since the County follows CMA requirements.
9. Page 49; Transportation policy # 7 relating to "traffic impact on regional transportation facilities to be taken into consideration...", however under Consistency, the response basically indicates that this policy is consistent, we respectfully disagree. Intersections and roadway or roadway sections outside the City jurisdiction is analyzed but not considered for mitigation. See comment # 3 above, as well as Dan's comments.
10. Page 121, Fifth Paragraph; refers to County of Santa Clara Roads and Airports Department Comprehensive County Expressway Study. It should be noted that this was only a study and planning. No funding has been identified or programmed. Additionally this study is dependent in part on adjacent cities in conditioning developers for their share for improvement on Montague Expressway. The provisions in this study should be used to condition developers as stated above. It is a mistake for both the County and the City to use this study for the purpose of mitigation measures for development, as no funding has been identified.
11. Page 139; please clarify that the TIR and mitigation are based on the "Screen Line Impact for both Land use and Network change" rather than one and not the other.
12. Page 140, LOS E/F Link Impact -Land use and Network"; Please identify which additional four Links that will operate at LOS of E or F.
13. Page 142, Fourth Paragraph; please do not include Montague Expressway in the City proposal to implement modification to the N SJ Development Policies Update. Montague Expressway is a County operated and maintained road. The County follows the CMA requirement for impact and

mitigation. A note should be added to this paragraph to explicitly exclude Montague Expressway from the new City policy change proposal.

14. Page 157, Second paragraph; Montague Exp should be mitigated during phase 1 of the project as stated on table 13.
15. Pages 158 through 160, Table 13; under the heading of phase 2 Conditions and Mitigation, no mitigation is proposed despite that the LOS and delay (Montague Exp.) getting worse under phase 2, similarly the same comment apply to phase 3 and the final project condition mitigations. Under the heading of the project conditions and mitigations, the LOS and the average delay is not calculated. The delay and Los shown under the final project conditions are worse than phase 3.
16. Page 413 last paragraph; please exclude Montague Expressway from the proposed CSJ new Transportation policy.
17. The County has been and continues to implement an Intelligent Transportation System (ITS) on all County Expressways to the extent possible to provide the minimum delay to the traveling public. If the traffic impact of this project is not implemented, the ITS program for Montague Expressway will suffer severely, and may not be completed or even partially completed, further making the area more congested. more pollution, additional cost to the motorist. the City and County due to lose of productive hours working hours wasted stuck on roadways due to congestion particularly Montague Expressway as it serves motorist from many regions surrounding the City and County.
18. Page 92, paragraph 7; Montague Expressway is a 6 to 8 lane Expressway, not 6 lanes as indicated in this paragraph.
19. Page 147, item 7, It is indicated that River Oaks and Montague Exp. a CMP intersection... "there are no other feasible mitigation that were identified, in response please see comment # 14.
20. Page 147, item 10; Old Oakland Road and Montague Exp...relating to proposed improvements. It is not indicated by whom. Please also see comment #3 for additional response.
21. Page 166, item 58; Trade Zone Blvd. and Montague Exp. (CMP). How many lanes the improvements are based on?, since it was assumed in the DEIR that Montague is a 6 lanes Expressway and not 6 to 8 lanes as the case is
22. Page 167, item 98; Capitol Exp and Capitol Ave. Does the proposed improvement fit with the existing geometry?.

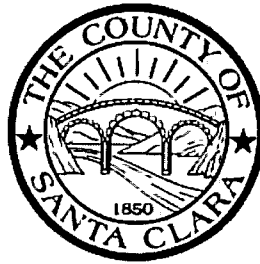
ATTACHMENT B

23. Page 169, last paragraph; Per City policy for regional transportation analysis, it is proposed that analysis and mitigation measures be performed on facilities outside the City jurisdictions. In this paragraph it is indicated that intersections that are not within the CSJ jurisdiction are not proposed for improvement because the City lacks the authority as indicated in comment # 3. Therefore the City argument of lacking the authority is not consistent with the City policy for regional facilities. Also both the City and the County are aware, this situation occurred in the past. A process was setup to improve roads/intersections that are not in the City jurisdiction. That jurisdiction that will be impacted are the cities of Milpitas, City of Santa Clara and the City of Sunnyvale. Since the County Operates and maintain Montague Expressway, the County would be the lead agency to implement improvements impacted by this project in coordination with these other cities once funding is available as mentioned earlier in these comments. This situation has occurred in the past and was resolved by development fee grants and contribution from the city causing the traffic impact

cc: Masoud, Dan, Ananth

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA

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Ann Miller Ravel  
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Nancy J. Clark  
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ASSISTANT COUNTY COUNSEL

April 25, 2005

**VIA FACSIMILE & E-MAIL**

Andrew Crabtree  
Department of Planning, Building and Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110

**RE: Comments on Draft EIR for North San Jose Development Policies Update project for a General Plan Text Amendment (GPT04-04-06a and GP04-04-06b), General Plan Land Use/Transportation Diagram Amendment (GP04-04-06a and GP04-04-06b), revision of the North San Jose Area Development Policy and revision to the North San Jose Deficiency Plan to allow intensification of development within the Rincon de los Esteros Redevelopment Area**

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Dear Mr. Crabtree:

We submit the following comments on the above-referenced Draft Environmental Impact Report for the Rincon de los Esteros Redevelopment Area General Plan amendments ("DEIR") on behalf of the County of Santa Clara.<sup>1</sup> While the County generally supports the idea of accommodating planned growth near transit corridors within existing urban areas, the impacts of this growth must still be adequately mitigated. Greatly increasing development densities in such areas does not constitute "smart growth" when it results in numerous significant, unmitigated environmental impacts. Nor does shifting scarce tax dollars away from the County and other public entities that provide critical health and human services to support the City's economic development agenda constitute smart growth.

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<sup>1</sup> These comments are intended to supplement the comments provided by the County Roads and Airports Department. (Letter from Raluca Nitescu to Andrew Crabtree dated April 18, 2005.)

### Unmitigated Significant Transportation Impacts

The DEIR states that the project would allow for an additional 20 million square feet of new industrial/office/R&D building space, 24,700 new residential units, and a population increase of 56,640 persons. This is in addition to the significant amount of growth allowed under the existing General Plan (6.7 million sq.ft. of new industrial/office/R&D development and 7,300 dwelling units). It is unclear how the population increase of 56,640 was derived (DEIR, p. vii), but it appears to be a gross underestimate.<sup>2</sup> Even with these underestimated numbers, the DEIR acknowledges that the project will cause significant, unavoidable impacts on numerous roadways, intersections and other transportation facilities.

The DEIR identifies certain infrastructure improvements that it claims will be implemented as part of the project to help mitigate these impacts (DEIR, pp. 142-149) and explains how these improvements will be financed:

“This major infrastructure will be financed through a variety of mechanisms over the life of the project implementation process. Development Impact Fees will be assessed at the time of project approval. Additionally, the City and Redevelopment Agency will seek funding from regional sources to help finance major improvements to the regional transportation system, including upgrading and/or expanding transit systems.” (DEIR, p. 143.)

This statement is vague and provides little assurance that sufficient funding will be available for the needed improvements. There is no estimate of how much these improvements

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<sup>2</sup> The DEIR states that the total new office/industrial/R&D development (26.7 million sq ft.) would result in 83,300 new employees. (DEIR, p. vii.) The net new development allowed by the General Plan amendments would be 20 million sq.ft. Using simple ratios, if 26.7 million sq.ft. of industrial/office uses generates 83,300 new employees, then 20 million sq.ft. (80% of 26.7 million) would generate 66,640 jobs (83,300 x 0.80). However, when analyzing the Coyote Valley alternative, the DEIR assumes that 20 million sq.ft. of industrial/office uses would generate 62,500 jobs. (DEIR, p. xxxvi.)

Adding 24,700 net new dwelling units would further increase this population. (DEIR, p. vii.) Using the ABAG occupancy rate of 2.69 persons/dwelling, the population increase from the extra dwelling units would be 66,443 [Note: The 2000 census showed a County-wide average household size of 2.92.] If one aggressively assumes that 25% of the new employees (16,660) within the relatively small Rincon area live in these new dwelling units, then there would be a population increase of at least 49,783 from the extra dwelling units alone (66,443 - 16,660 = 49,783) [Note: The DEIR assumes that 68% of the new employees would live in the new dwelling units within the area. (DEIR, p. 9.) We are not aware of any project that has ever achieved such a high worker-occupancy rate. Hence, we do not believe this assumption is realistic.]

This yields a net population increase of 116,423 (66,640 employees + 49,783 non-employee residents), which equals 13% of the total population of the City of San Jose as determined by the 2000 Census in a relatively small area.

will cost, or what percentage of the costs will come from development impact fees or other “funding from regional sources.” It is also unclear what “regional sources” of funding the DEIR is referring to. Consequently, there is no way to evaluate the viability of these funding sources.

Transportation funding throughout the County has dwindled, the Valley Transportation Authority has sustained severe budget and service cutbacks, and there is scant money available to fund the numerous roadway improvements that are needed to alleviate existing conditions. The DEIR must provide more information regarding the cost of the mitigation measures and the sources of funding. Without this information, there is no way to determine whether these improvements are feasible and whether they will ever be implemented.<sup>3</sup>

The DEIR identifies numerous other transportation improvements that are needed to mitigate project impacts (DEIR, pp. 170-173), but “is not proposing to implement [them] because the intersections are not within the jurisdiction of the City of San Jose.” (DEIR, p. 169.)

The City is lead agency for this project, will have permitting authority for all of the development occurring within the project area, and has the legal authority and responsibility to adopt mitigation fees for all public facilities impacts caused by this development regardless of whether those impacts extend beyond City limits or impact facilities not controlled by the City. (See Mitigation Fee Act, Gov. Code § 66000 *et seq.*) The Mitigation Fee Act does not impose geographical limits on impact fees imposed by counties and cities on development projects under their jurisdiction. Fees imposed pursuant to the Act are proper so long as they are required “to defray all or a portion of the cost of public facilities related to the development project.” (Gov. Code § 66000(b).)

The fact that some of the transportation facilities impacted by the project may be controlled by other public entities does not relieve the City of its duties to adopt all feasible mitigation measures and use its legal authority to the fullest extent to mitigate this project’s impacts. The Mitigation Fee Act acknowledges that development impact fees adopted by a county or city pursuant to that Act may be used to improve facilities managed by another agency. (Gov. Code § 66006.5 (Caltrans facilities).) Thus, the City has the legal authority and responsibility to mitigate these impacts.

Because the City has the legal authority to impose development impact fees for all project-related impacts to public facilities, it shares the responsibility for implementing these mitigation measures with the public agencies that manage those facilities. It cannot simply rely

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<sup>3</sup> See, e.g., *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1262

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Andrew Crabtree  
April 25, 2005  
Page 4

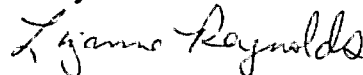
on other agencies to mitigate these impacts,<sup>4</sup> particularly where those other agencies have no ability to impose mitigation fees on the project. The City cannot avoid its responsibilities by finding that these transportation improvements "are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency." (Pub. Res. Code § 21081.)

**Misuse of Redevelopment Process**

The County is also concerned about the City's misuse of the redevelopment process to finance this project at the expense of the County and other public entities. The project area clearly does not meet the statutory definition of "blight," so there is no legal basis to extend the duration of the tax increment financing for the area. Yet the City attempts to perpetuate its longstanding practice of siphoning much-needed property tax revenues away from critical public services such as health care, schools and law enforcement in its relentless quest to out-compete other jurisdictions for a larger piece of the economic development pie.

The County will use every means at its disposal to prevent this continued abuse of the redevelopment process.

Very truly yours,  
ANN MILLER RAVEL  
County Counsel



Lizanne Reynolds  
Deputy County Counsel

c: Board of Supervisors  
Pete Kutras, Jr.

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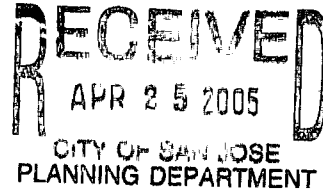
<sup>4</sup> E.g., *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal App 3d 433, 442, fn. 8.





# CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov



April 21, 2005

Andrew Crabtree  
Department of Planning, Building, & Code Enforcement  
City of San Jose  
801 North First Street, Room 400  
San Jose, CA 110

Re: Draft Environmental Impact Report - North San Jose Development Policies Update

Dear Mr. Crabtree,

Thank you for this opportunity to comment on the Draft Environmental Impact Report (DEIR) for the proposed update to the North San Jose Development Policies. The South Bay Area has had been among the hardest hit regions from the down-turn in the economy and we can appreciate San Jose's efforts to revise the North San Jose development policies to make the Rincon area more attractive to new businesses. The City of Milpitas is undertaking a similar intensification project for the properties in the vicinity of the Montague BART station.

Though Milpitas is supportive of your efforts, we do have the following comments on the Draft EIR that are organized into three major areas of concern.

## 1. Cumulative Impacts to Wastewater Treatment Facilities

The conclusion reached in the EIR that the project would not have any cumulative impacts to the capacity at the Water Pollution Control Plan (WPCP) is based on the premise that the existing flow (excluding planned growth) from San Jose of 73 million gallons per day (mgd) does not increase. San Jose's sewer flow to the WPCP in 1998 was 94 mgd. The 21 mgd decrease in sewer flow from 1998 to 2004 is attributed in part to the economic conditions that have resulted in high vacancy rates in the industrial areas of Santa Clara County. The EIR concludes that if discharge levels return to those that occurred in 2000, due to the re-occupancy of currently vacant buildings, there would be insufficient capacity at the WPCP to treat the additional volume of wastewater. The EIR attempts to address this fact by citing to San Jose policies that preclude approval of new development if the City Manager makes a determination that the cumulative sewage treatment demand will cause the total sewage treatment demand to meet or exceed capacity. This analysis neglects to consider that existing vacant buildings may not need any new land use approvals. Therefore, it is unclear how the San Jose can control discharges from these properties, and if San Jose cannot control these discharges, how San Jose can determine whether a new project will result in the treatment plant's capacity being exceeded. Thus, there is clearly not enough sewer capacity at the WPCP to accommodate the flow rate of San Jose's existing building stock, the planned growth in other portions of the city, and the expected additional flow resulting from the

proposed North San Jose Development Policies. Further, as the EIR discusses, the treatment plant's ability to discharge into the Bay is limited by state agencies. Therefore, any increase in treatment capacity must either be accompanied by an increase in Bay discharge limit, or by a project to divert treat water to other uses. The EIR does not acknowledge that further study is needed to determine how feasible additional diversion will be.

## **2. Odor Impacts**

Though the EIR makes reference to potential impacts from odors originating from the WPCP, there is no analysis or conclusion of the significance of these impacts nor is there any mention of the Newby Island Compost facility. As you may be aware, in 1997 the City of San Jose filed a lawsuit against the City of Milpitas challenging the approval of the McCarthy Ranch Mixed Use project that would have allowed residential uses west of I-880. The primary purpose of the suit was to remove the possibility of additional odor complaints, from the planned residential community, that could have required the WPCP to make physical changes to their operations to reduce odors. The lawsuit ended in a settle agreement whereby the land use designation on Mr. McCarthy's property was changed from Mixed Use to Industrial Park and restricted future uses to non-residential uses only. Given the additional 56,000 people expected in the Rincon area, the lack of a thorough analysis of the impacts of odors from the WPCP and Newby Island is significant and needs further study.

## **3. Traffic Impacts**

Only nine intersections were studied in Milpitas and the EIR concluded that four of the nine intersections would be significantly impacted by the project: I-880 Northbound Ramps/Great Mall Parkway, SR-237(Calaveras Boulevard)/Milpitas Boulevard, Montague Expressway/Great Mall Parkway, and McCarthy Boulevard/Tasman Drive.

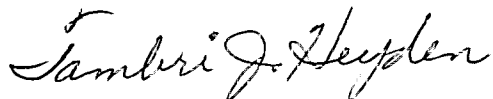
- Great Mall Parkway/Abel Street intersection operated at LOS D based on Year 1999 and 2000 traffic counts. Per the intersection selection criteria, this intersection should have been analyzed since it operated at LOS D or worse and the project is expected to add a significant amount of traffic to it.
- The technical analysis did not include trips from approved projects at any of the Milpitas study intersections, while approved trips were included for all San Jose and Santa Clara intersections. The City of Milpitas forwarded the approved projected trips to be included under Background Conditions. As a consequence of adding the approved trips, the project will impact seven of the nine study intersections in Milpitas instead of just four locations cited above. The three new impacted intersections are the Calaveras Boulevard/Abel Street, the I-880 Southbound Ramps/Tasman Drive, and the Montague Expressway/South Milpitas Boulevard.
- The project trips added to roadway corridors in the City of Milpitas are inconsistent and do not always balance between adjacent intersections. For example, from Appendix A – Volume Summary Tables, the project is expected to add 132 vehicles during the AM peak hour to the westbound through movement of the Great Mall Parkway/Main Street intersection; however, only one (1) additional vehicle is projected on the westbound approach at the Great Mall Parkway/I-880 Northbound Ramps intersection. Some discrepancies are expected because of the assignment methodology using existing turning movement counts; however, this inconsistency makes it difficult to accurately determine the impacts to each study corridor.

- The DEIR shows that the project would cause traffic volumes on the westbound approach at the Calaveras Boulevard/Abel Street intersection to *decrease* by approximately 250 vehicles during the AM peak period. This projection is not logical based on the size of the proposed development and the fact that the trips were assigned manually as opposed to using the model (which would likely show decreases on some roadways due to changes in land use, etc.).
- The document does not include a description of the fee program designed to fund the relatively long list of mitigation measures. We have heard that the fee program does not include funding for any mitigation measures outside the City of San Jose.
- While the DEIR analysis and the corresponding TIA did not provide traffic volumes at the corridor level, the projected intersection turning movement volumes were reviewed to determine the potential impact to each roadway segment. The impact is calculated as the increase in volume over existing conditions since background volumes were not estimated for any City of Milpitas intersections.

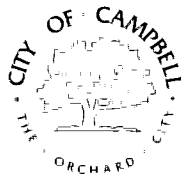
PROJECT TRIPS ADDED TO KEY MILPITAS CORRIDORS IN CITY OF MILPITAS						
Corridors	Two-way Volumes					
	AM Peak Hour			PM Peak Hour		
	Existing Volumes	Added Volumes	Percent Inc (%)	Existing Volumes	Added Volumes	Percent Inc (%)
Calaveras (SR 237)	3,325	128	3.8%	4,429	282	6.4%
Great Mall Parkway	2,477	464	18.7%	2,445	1,103	45.1%
Montague Expressway	4,396	1,603	36.5%	4,552	2,124	46.7%
<b>Total East-West Corridor</b>	<b>10,198</b>	<b>2195</b>	<b>21.5%</b>	<b>11,426</b>	<b>3,509</b>	<b>30.7%</b>

We would like the opportunity to discuss these issues with you further and would like to meet no later than May 6, 2005. These issues are very significant to the City of Milpitas and could result in a recirculation of the EIR if they are not adequately addressed. The Milpitas City Council reviewed and approved these comments at their meeting of April 19, 2005. Please contact Veronica Rodriguez at 586-3271 to schedule our meeting.

Sincerely,



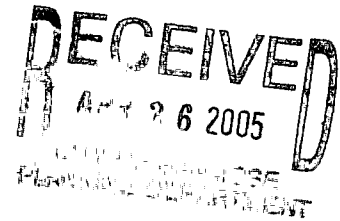
Tambri Heyden  
Acting Planning & Neighborhood Services Director



**CITY OF CAMPBELL**

Public Works Department

April 22, 2005



Mr. Andrew Crabtree, Environmental Project Manager  
Department of Planning, Building and Code Enforcement  
San Jose City Hall Annex, Room 400  
801 N. First Street  
San Jose, CA 95110-1795

RE: Comments on Draft EIR for North San Jose Development Policies Update (March 2005)

Dear Andrew:

Thank you for the opportunity to provide comments on the Draft EIR for the North San Jose Development Policies Updated (dated March 2005). The City of Campbell is concerned about traffic impacts to Highway 17, Hamilton Avenue, and San Tomas Expressway. Therefore, we are forwarding the following comments that relate to Section II. B. Transportation.

1. Pages 112-113 list the freeway segments that were analyzed as part of the study. Please include the segments of SR 17 between Camden Avenue and Hamilton Avenue and between Hamilton Avenue and I-280.
2. Page 125 states that nearby cities were contacted for specific project information. Since the Congestion Management Program intersections on Hamilton Avenue are a concern, please be sure to incorporate into the level of service analysis the AM and PM peak hour approved trips inventory (see attached) for the following projects in Campbell:
  - a. Creekside Center (2000-88/109), a 210-room hotel/170,000 square-foot office development that was approved in October, 2000
  - b. Kohl's/Retail (PLN 2004-07), a development featuring 98,554 square feet of Kohl's Clothing Store and 50,000 square feet of Retail space. This project was originally approved in May, 2004.
3. Page 174 states that significant traffic impacts are unavoidable, but Page 169 states that the project is not proposing to implement the mitigation measures for intersections outside the jurisdiction of the City of San Jose. If the project does not implement mitigation measures for impacted Campbell intersections, the City of San Jose should consider options such as a traffic mitigation fee to be collected on behalf of the City of Campbell.
4. Page 330 lists alternatives to the proposed project. We would like to be kept informed regarding the outcome of the alternatives analysis

Please feel free to contact me at (408) 866-2150 if you have any questions.

Sincerely,

*Matthew Jue*

Matthew Jue, P.E., T.E.  
Traffic Engineer

Attachment: Approved Trip Inventory

# Intersection Volumes Report

Int. No.	Project Name	nbL	nbT	nbR	sbL	sbT	sbR	ebL	ebT	ebR	wbL	wbT	wbR
20	<i>Hamilton / Bascom</i> 2000-88/109 Creekside Center-AM	0	0	0	0	0	23	0	3	0	0	24	0
	Subtotal	0	0	0	0	0	23	0	3	0	0	24	0
30	<i>Hamilton / Creekside</i> 2000-88/109 Creekside Center-AM	14	0	5	0	0	0	0	0	113	47	0	0
	Subtotal	14	0	5	0	0	0	0	0	113	47	0	0
40	<i>Hamilton / Salmar</i> 2000-88/109 Creekside Center-AM	0	0	0	82	0	0	0	31	0	0	3	0
	Subtotal	0	0	0	82	0	0	0	31	0	0	3	0

# Intersection Volumes Report

Int. No.	Project Name	nbL	nbT	nbR	sbL	sbT	sbR	ebL	ebT	ebR	wbL	wbT	wbR
20	<i>Hamilton/Bascom</i>												
	2000-88/109 Creekside Center-PM	0	0	0	0	0	3	0	21	0	0	3	0
	PLN2004-07 Kohl's/Retail-PM	23	-4	0	-4	10	10	11	19	23		18	
	Subtotal	23	-4	0	-4	13	13	11	40	23	0	21	0
30	<i>Hamilton/Creekside</i>												
	2000-88/109 Creekside Center-PM	124	0	41	0	0	0	0	0	15	6	0	0
	PLN2004-07 Kohl's/Retail-PM	24							53		51		
	Subtotal	148	0	41	0	0	0	0	53	15	6	51	0
40	<i>Hamilton/Salmar</i>												
	2000-88/109 Creekside Center-PM	0	0	0	11	0	0	0	4	0	0	27	0
	PLN2004-07 Kohl's/Retail-PM						24		103		75		
	Subtotal	0	0	0	11	0	24	0	107	0	0	102	0
70	<i>Hamilton/Winchester</i>												
	PLN2004-07 Kohl's/Retail-PM	0	-4	23	7	16	0	0	18	0	23	19	11
	Subtotal	0	-4	23	7	16	0	0	18	0	23	19	11



April 22, 2005

Michael Rhoades  
Department of Planning, Building and Code Enforcement  
801 N First Street, Room 400  
San Jose, CA 95110-1795

RE: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) for the North San Jose Development Policies Update Project (File No. GPT04-04-06a, GPT04-04-06b, GP04-04-06a and GP04-04-06b)

Dear Mr. Rhoades:

At the April 6, 2005 Historic Landmarks Commission meeting, the Commission discussed the Draft Environmental Impact Report for the San Jose Downtown Strategy 2000. In a 5-1-0 decision, Leong absent, the Commission voted to forward this comment letter, signed by the Chair, to the Director of Planning, Building and Code Enforcement and to the Planning Commission.

The Commission recommended that the DEIR be routed to Native American Organizations because of the potential and identified archaeological resources within the area.

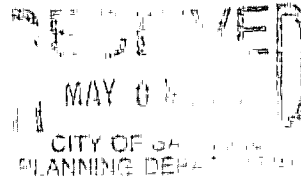
The Emily J. Horne House/Ranch, located at 2343 North First Street, and the Water tower in the Agnews East Complex, located at 3500 Zanker Road have been determined eligible for the National Register. The DEIR states that, consistent with City of San Jose policies, any development proposal for a property within the project area that contains structures more than 45 years old at the time would be required to prepare an evaluation of the historic and/or architectural significance of the structures.

The Commission expressed concern that identification of historic resources at the time of development proposals has not been effective in proactively planning for preservation of significant sites, contrary to the City Council Policy on the Preservation of Historic Landmarks which requires early public notice of projects that could harm a historic resource and strongly encourages the preservation and adaptive reuse of such resources.

The Commission recommended the City proactively fund survey work to identify and evaluate the historic significance of existing buildings, including the Emily J. Horne House/Ranch and the Agnews East Complex, in the Rincon Area prior to specific development proposals.

Sincerely,

Stephen Polcyn  
San Jose Historic Landmarks Commission



Jennifer Spahr  
City Manager

April 28, 2005

Andrew Crabtree  
Senior Planner, Project Manager  
Department of Planning, Building and Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Re: North San Jose Development Policies Update/Draft EIR

Dear Mr. Crabtree,

Thank you for the opportunity to respond to the Draft Environmental Impact Report (EIR) for the North San Jose Development Policies Update. City of Santa Clara has reviewed the DRAFT North San Jose Area Development Policy, dated June 2005, and the Draft EIR. The comments provided below and in the attachment have been reviewed by the City Council and are updated from our letter dated April 18 and sent to you on April 25, 2005.

The City recognizes the pressure to intensify development throughout the South Bay area over the long term, despite concerns related to the current economic situation. We fully understand that, as favorable economic conditions return to the region, there is a need to prepare ourselves to deal with development in the 21<sup>st</sup> Century. Having said that, the Program EIR recognizes that the timelines for development ascribed to these policies is unknown, which will make impacts upon surrounding jurisdictions difficult to define. In addition, insofar as this is a Program EIR, many of the mitigation measures are provided only in terms of policy measures, and individual future projects may require further environmental review. We look forward to the opportunity to be involved in review of project level analyses that will address specific impacts and mitigation measures. The City of Santa Clara's concerns include the following:

#### **LAND USE**

The proposed project of 83,300 jobs and 32,000 housing units results in a situation where 68 percent of the new employees could be housed by project developments. The EIR identifies this as a "Less Than Significant Impact" because the result is consistent with the City's General Plan policies. However, as ABAG notes in its *Blueprint 2001 for Bay Area Housing, Housing Element Ideas and Solutions for a Sustainable Future*, the housing crisis is "likely to remain a major regional issue for many years, with long-term economic repercussions and significant impacts on our quality of life." Given the scope of the North San Jose project area and the regional nature of housing, the EIR should provide some analysis of the jobs-housing conditions on a broader geographic scale, as the deficiency in housing may adversely affect other nearby jurisdictions.

The document notes that increased residential development in direct proximity to existing industrial facilities will increase the likelihood of conflicts between industrial vehicles and

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residents” (p.74) and that the “amount of development proposed...will result in significantly increased congestion” (p.77). While the nature of development and the policies themselves promote pedestrian friendly conditions, there is no policy identified that creates an incentive for developers to reduce vehicle parking in project developments. Such a policy to discourage multiple vehicles per household or to reduce industrial parking ratio requirements would move away from traditional suburban dependence on the single-occupant vehicle and enhance reliability on mass transit, pedestrian and bicycle modes for new tenants in this higher density area.

### **TRANSPORTATION**

Please see the attached memo from the City of Santa Clara Traffic Engineer, dated April 12, 2005, addressing transportation section issues in the document. Does the proposed development impact fee include the costs of street improvements outside of the City of San Jose?

### **BIOLOGICAL RESOURCES**

The project area borders two significant regional waterways, Coyote Creek and the Guadalupe River (neither well identified in the exhibits in the document). The EIR notes that the City of San Jose’s adopted Riparian Corridor Policy Study will serve to preclude encroachment into the 100-foot riparian setback in these areas, resulting in a “Less Than Significant Impact” (p. 232). Policy stipulations should also call for enhancement, as necessary, of these setback areas with native riparian planting, along with long-term protection and maintenance measures of these areas to meet this less-than-significant standard.

### **UTILITIES AND SERVICE SYSTEMS**

Water: The Thresholds of Significance criteria identified on page 301 indicate that “new or expanded entitlements for water supplies” would be considered a significant impact. The EIR notes that the demand for water service is a “Less Than Significant Impact” but states that the Municipal Water System needs new groundwater resources, plus an additional 4.7 million gallons per day (mgd) from the Hetch-Hetchy system and that it “is hoping to change their (interruptible) contract status to permanent.” Such an amendment with the SFPUC could adversely affect the supply of other cities as well.

Solid Waste: The EIR identifies the generation of solid waste as a “Less Than Significant Impact” but does not provide data as to the quantity of solid waste resources available to the City over any given time frame. It is unclear if the “facilities serving San Jose” are shared by other jurisdictions or whether they are currently developed or would require preparation of new facilities (p. 304).

Wastewater Treatment: The EIR does not confirm that Santa Clara’s share of the Treatment Plant capacity and that of the other tributary agencies is not included in the calculations.

### **PUBLIC FACILITIES AND SERVICES**

Fire: The EIR notes that the cities in the area participate in a mutual aid program for fire protection services. It is unclear if there is some impact from potential increases in mutual aid services on the City of Santa Clara. It should be noted that Fire Station #6 in the City of Santa Clara is less than 1 mile from the project area and the mutual aid program features

should be identified to help Santa Clara decision makers identify potential impacts on City resources. As noted, under the CEQA Guidelines the impact has to result in a demand for new physical facilities to be considered significant, but there is insufficient data in the document to determine the need for staffing or facilities for San Jose or the mutual aid cities.

Police: Similar to concerns for demand on fire services, as noted above, the substantial increase in development of the project could impact City of Santa Clara police service demands. Particularly noteworthy, the new pedestrian bridge over the Guadalupe River at River Oaks Place will provide an easy connection between new high-density housing to be built east of the river and the existing parks and schools in the Rivermark development west of the river. Typical police service demands may increase, but are not quantified in any way in the document.

Schools: New housing will increase demand for schools at all levels in the vicinity. The Santa Clara Unified School District (SCUSD) includes substantial land within the project area, including much of the existing and proposed higher density housing sites. The school district boundaries map provided on page 321 does not clearly define the project area relative to district boundaries.

As the proposed development takes place within a Redevelopment Area, no property tax revenues are available to fund schools to serve students within the project area. With inadequate financial resources identified for needed facilities and no identified land available for building schools to accommodate 32,000 new housing units, the availability of only standard San Jose school impact fees as the likely potential funding source seems to make inappropriate a determination that the impacts upon schools are less than significant.


Parks: As residential development at higher densities provides limited on-site recreational open space, the demand for parks and public open space increases with density. The EIR notes that the Guadalupe River provides creek trail facilities, but does not recognize that both Thamien Park within the Rivermark project and the Ulistac Open Space in Santa Clara are connected directly to the river's trail system and could be impacted by demand from the high density housing that will be across the River Oaks pedestrian bridge. There are only 2 parks in San Jose that fall within the project boundaries (p.323).


### **CUMULATIVE IMPACTS**

The Cumulative Impacts section of the document identifies a number of significant projects that could contribute to cumulative effects. All of the identified projects are located within the jurisdiction of San Jose and there is no consideration of long-range development that will occur outside of San Jose's borders and contribute to the regional impact scenario during the same time frame. It seems appropriate for this analysis to consider specific projects, or at least a cumulative growth factor in nearby jurisdictions in order to present a credible perspective on long-term impacts. That the cumulative analysis of projects of such significant proportions could find that there are not significant impacts in Land Use Compatibility, Population and Housing, and Open Space resources, or that traffic impacts are not greater than presented, needs better explanation in light of impacts that will presumably effect nearby jurisdictions.

Thank you again for the opportunity to provide comments. We look forward to responses to our concerns presented in the Final EIR. Please do not hesitate to contact City staff to address any of these comments. Kevin Riley, the Principal Planner, can be reached at (408) 615-2450 or at [kriley@ci.santa-clara.ca.us](mailto:kriley@ci.santa-clara.ca.us).

Sincerely,

  
Jennifer Sparacino  
City Manager

  
Geoffrey Goodfellow  
Director of Planning and Inspection

cc: City Council  
Department Heads  
Planning Commission

*Attachment: Memo from CSC Traffic Engineer, dated April 12, 2005*

I:\PLANNING\2005\Subject 2005\North SJ Dev Policies Update 2005\CM letter to SJ w DEIR comments rev042705.doc

**INTEROFFICE MEMORANDUM**  
**City of Santa Clara**

Date: April 12, 2005  
To: Kevin Riley, Principal Planner  
From: David Pitton, Traffic Engineer  
Subject: North San Jose Draft EIR – Traffic Division comments

The North San Jose Draft EIR studies the impacts of 26.7 million square feet of new industrial/office/R&D space, 32,000 new dwelling units, and 1.7 million square feet of commercial space within Rincon de los Esteros Redevelopment Area in north San Jose. The study included 220 signalized intersections located throughout Santa Clara County. The DEIR studied 32 intersections within the City Of Santa Clara and found that six CMP intersections and three non-CMP intersections would be significantly impacted by the project.

The following are City Of Santa Clara Traffic Division comments on the Transportation section of the DEIR:

1. Two intersections listed as being within the City Of Santa Clara in Table 12 are actually in the City Of Sunnyvale:
  - a. Lawrence at Tasman
  - b. Lawrence at Arques
2. Page 171, Bowers and Central: The intersection is mistakenly identified as "San Tomas Expressway" in the text and mitigations reflect San Tomas. Mitigations should state "Tier 2 of the Expressway Planning Study identifies a grade separation at this location."
3. Six CMP intersections and three non-CMP intersections within the City Of Santa Clara are impacted under project conditions as follows:

Six CMP Intersections:

- a. Bowers and Central
- b. San Tomas and Scott
- c. De la Cruz and Central
- d. San Tomas and Saratoga
- e. Mission College Blvd and Montague
- f. De la Cruz and Montague

Three non-CMP Intersections:

- a. San Tomas and Walsh
- b. San Tomas and Benton
- c. Lafayette and Benton

Eight of the nine impacted intersections are on the County Expressway System under the operational jurisdictional of the County. Lafayette and Benton is the only impacted intersection in Santa Clara not on the Expressway System.

The DEIR states that the City of San Jose lacks the authority to implement mitigation measures in other cities, so the project will result in significant impacts at (nine) intersections in Santa Clara...The DEIR also states that these are Significant Unavoidable Impacts.

However, with the exception of Lafayette and Benton, mitigation measures are suggested by the DEIR for either partial or full mitigation of impacts on the eight impacted intersections on the County Expressway System, in most cases through reference to the County's 2003/04 Expressway Study.

**The EIR should include a statement of commitment by the City of San Jose to establish a program, such as a developer fee program, designed to fund the listed mitigation measures at the intersections on the County Expressway System.**

4. The impacted intersection of Lafayette and Benton is the only impacted intersection not on the Expressway System within the City Of Santa Clara. The DEIR states that no feasible mitigation was identified for this local intersection. The DEIR should include the reasons for the infeasibility.
5. The intersection of Great America Parkway and Mission College Boulevard should be analyzed without programmed triple left turn lanes in the north and westbound approaches.



COMMITTEE FOR  
GREEN FOOTHILLS

April 25, 2005

Andrew Crabtree  
Department of Planning, Building, and Code Enforcement

RE: Comments on the North San Jose Development Policies Update Draft Program EIR

Dear Andrew:

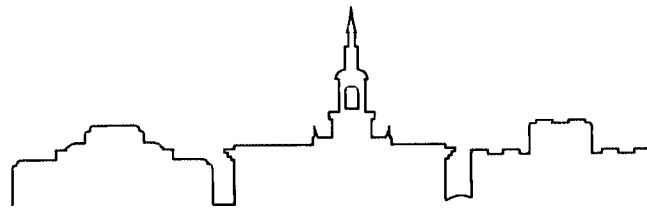
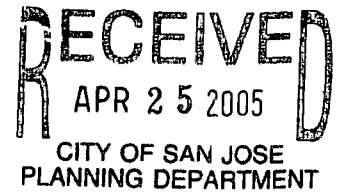
The Committee for Green Foothills submits this comment letter on the North San Jose Development Policies Update Draft Program EIR (DEIR). The Committee takes no position regarding whether the City should approve this project and its associated environmental documentation. As a general matter, the Committee supports focusing development in already developed areas, rather than needlessly sacrificing agricultural land as may occur in Coyote Valley.

**Land use impacts should include discussion of the effects of the jobs-housing imbalance beyond the City of San Jose.** Like Coyote Valley, this project provides insufficient housing to accommodate the increased jobs projected to result from the project. The DEIR notes that the City has had a shortage of jobs compared to the number of employed residents in the City, while failing to note that the majority of nearby jurisdictions have the opposite jobs-housing relationship. The DEIR should discuss the impacts from the project in displacing the people who lived in San Jose and worked nearby – those people are not going to disappear.

Thank you for the opportunity to present these comments, and please contact us if you have any questions.

Sincerely,

Brian A. Schmidt  
Legislative Advocate, Santa Clara County



## PRESERVATION ACTION COUNCIL OF SAN JOSE

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*Dedicated to Preserving San Jose's Architectural Heritage*

April 24, 2005.

Alex Marthews, Executive Director  
Preservation Action Council of San Jose  
PO Box 2287  
San Jose, CA 95109-2287.

Andrew Crabtree  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San Jose, CA 95110.

### **COMMENTS OF THE PRESERVATION ACTION COUNCIL OF SAN JOSE ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE NORTH SAN JOSE DEVELOPMENT POLICIES UPDATE, SCR #2004102067**

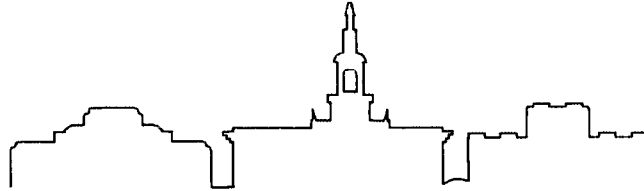
Dear Mr. Crabtree,

We respectfully request that, for each section of our comments below, City staff specifically state whether they are in agreement with the comment, and, if not, refute it with an explanation.

This DEIR is incomplete, erroneous or contradictory in several important respects:

- In its **information about the East Agnews Complex;**
- In its **failure to include a comprehensive survey of historic resources in the policy update area or a cultural resources report** in the appendices for the EIR
- In its **identification of the impact to historic resources as being less than significant.**

It is therefore the opinion of the Preservation Action Council of San Jose that the DEIR needs to be revised to address better the effects of the policy update on historic resources.



## PRESERVATION ACTION COUNCIL OF SAN JOSE

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### **The East Agnews Complex**

The information in the DEIR regarding the East Agnews Complex is contradictory and incomplete.

#### *Date of Closure*

The DEIR refers to the plans for the East Agnews complex in two places:

“Residential uses are proposed east of North Park, across Zanker Road, utilizing the land currently occupied by the Agnews Developmental Center (which the State of California has announced will be closed by July 2005)” (DEIR, p. 12)

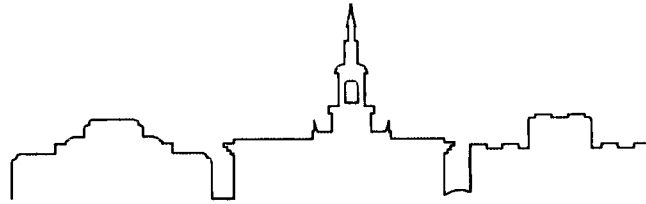
“The State of California has announced that the Agnews East facilities will be closed in the near future, but no specific date has been set and there is presently no proposal to remove any buildings” (DEIR, p. 246)

These two parts of the DEIR suggest two different closure scenarios, neither of which appear to be accurate according to the State of California's Agnews Closure Plan described at [http://www.dds.cahwnet.gov/AgnewsClosure/AC\\_Plan.cfm](http://www.dds.cahwnet.gov/AgnewsClosure/AC_Plan.cfm). In that Plan, the following language may be found:

“The 2003-04 Governor's Budget directed the Department of Developmental Services (Department) to develop a plan to close Agnews Developmental Center (Agnews) by July 2005. Based upon stakeholder input and the Department's own analysis, it was determined that a closure date of July 2005 was not in the best interests of Agnews' residents. On January 10, 2005, the Department submitted "The Plan for the Closure of Agnews Developmental Center" to the Legislature for approval, as required by Welfare and Institutions Code, Section 4474.1. The plan proposes a closure date of June 30, 2007.”

In the light of this language, we recommend that City Staff revise the language relating to the timing of closure on both pages 12 and 246 to reflect the current intentions of the Department of Developmental Services, and make any other necessary changes to the policy update and to the DEIR to reflect this altered closure date.





## PRESERVATION ACTION COUNCIL OF SAN JOSE

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### *Cisco's First Right to Purchase*

We refer City Staff to the language of the Agnews Closure Plan relating to the history of the site on page 29 of the Agnews Closure Plan, excerpted below for your reference, which we recommend to be included in the EIR along with a thorough survey of the site by a qualified historic consultant:

#### **"History**

The California State Legislature established Agnews State Hospital in 1885, as a neuropsychiatric institution for the care and treatment of persons with mental illnesses

In 1876, the State purchased 323.5 acres of farmland from Abraham Agnews. The first patients, 65 persons with mental illness from the Stockton Insane Asylum, were received in November of 1888. The population of the facility continued to increase and by 1906, had reached 1,800 residents.

The earthquake and fire of April 18, 1906, severely damaged all of the ward buildings at Agnews and resulted in the deaths of 113 residents and employees. Some of the residents were temporarily relocated to the Stockton Insane Asylum, but the majority (over 800 individuals) was housed in tents and temporary structures on the grounds of Agnews while the facility was rebuilt. Re-occupancy occurred in 1911.

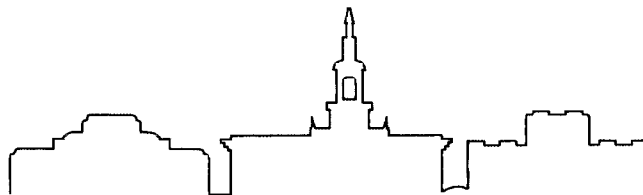
In 1926, the State acquired an additional 424 acres (known as the East Campus), one and one-half mile from the main facility (which became the West Campus). The newly purchased land was operated by the residents and employees, and initially used as farmland to provide food for the facility. Various structures were added to the properties over time, and by 1955, Agnews' resident population had reached nearly 4,600. The focus of treatment transformed as well, and in 1966, the first consumers with developmental disabilities were admitted. Programs for the mentally ill were discontinued in 1972. It has been utilized exclusively for the care and treatment of persons with developmental disabilities since that time. The facility was renamed Agnews Developmental Center in 1985.

While Agnews originated in rural farming country, the high tech industry now dominates the surrounding area. Approximately 337 acres of the original East Campus has been sold or transferred. Most significant, was the sale of approximately 140 acres to Cisco Systems (Cisco) in the mid-1990's **Cisco has a "First Right to Purchase" the remaining acreage of Agnews once it has been declared surplus and made available for sale.** *(our emphasis)*

Le Petit Trianon, 72 N 5<sup>th</sup> St., Suite 9, San Jose, CA. Mail: P.O. Box 2287, San Jose, CA, 95109-2287

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## PRESERVATION ACTION COUNCIL OF SAN JOSE

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Agnews currently resides on the remaining 87 acres on the north edge of the city of San Jose, in the heart of Silicon Valley. There are 51 buildings on the campus, comprising approximately 692,800 gross square feet of space. There are also two offsite buildings being leased within three and one-half miles of the main campus.

We request City Staff to clarify whether, if Cisco has First Right to Purchase the land envisioned for high-density housing, Cisco has been approached to clarify its intentions for the site.

### *Impacts to Historic Properties*

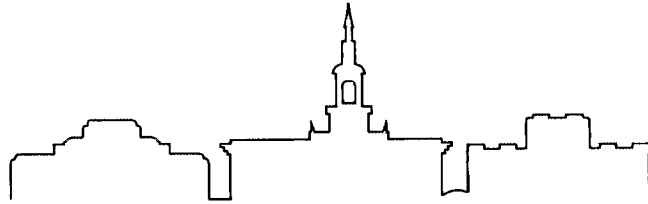
Presuming that Cisco does not exercise its First Right of Purchase, and considering both the absence of a comprehensive survey of the site prior to development proposals being advanced and the proposal of a Transit/Employment District Residential Overlay of 55 DU/AC for this site, **a rebuttable presumption is created by the language in the DEIR that the historic resources on the site will be demolished.** The statement that:

“Redevelopment of the site for high-density housing, consistent with the proposed land-use designation, could result in removal of the water tower and/or any or all of the other buildings” (p. 246)

implicitly endorses the removal of these structures. We recommend that the language be revised to provide the same level of implicit endorsement for preservation, comply better with City policies respecting historic properties, and provide clarity for future potential developers on the site, along the following lines:

“Any redevelopment of the site must preserve or otherwise protect structures identified on this site at any point in the process as historic resources, in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties”

This is a case where the impact to historic properties from residential development in that area at a specific density, described in the DEIR on page 12, is identifiable and real. As such, **if a specific commitment is not included** not only to make every effort to preserve the historic resources in the area of the policy update, but also **to actually**



## PRESERVATION ACTION COUNCIL OF SAN JOSE

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**preserve the historic resources in question, then City Staff cannot validly make the claim that impacts to historic resources will be “less than significant” (DEIR, p xxiv.)**

### **Failure To Include Complete Historic Survey**

We disagree strongly with the strategy pursued by City Staff in this DEIR with respect to historic surveys. For the transportation impacts of the policy update, the DEIR contains a detailed, intersection-by-intersection analysis, supported by extensive documentation in the appendix. For historic resources, the information provided is generalized and vague, without any supporting documentation in the appendix. The historic information has therefore not been:

“prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently considers environmental consequences.” (DEIR, p. v)

While some information, taken from “existing documents” that are not supplied, is presented on page 241 of the DEIR, no supporting documentation or analysis is provided that would enable the public agency to assess the accuracy of the information contained in the “existing documents”.

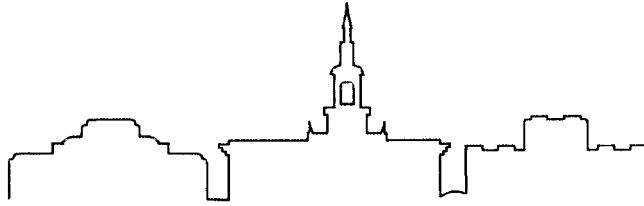
Therefore, we recommend that as part of this EIR process, a “comprehensive review of all existing buildings in the Rincon areas for possible historic significance” (DEIR, p. 24) be completed. Only the inclusion of such a comprehensive review, conducted by a qualified historic consultant, would enable City Staff to make the statement that there will be a less than significant impact on historic resources, based on substantial evidence.

As a second-best option, we recommend that the mitigation measures identified under “Architectural Resources” on page 248 and under “Mitigations to be considered at the time of future development” on page 253 be explicitly adopted and completed, not just “prior to approval by the City of any specific development approvals on these parcels”, but prior to review by the Planning Department of any development proposals within the policy update area. However, we do not know whether including those measures after this EIR completes the public process would enable the EIR to meet the burden of being “prepared with a sufficient degree of analysis.”

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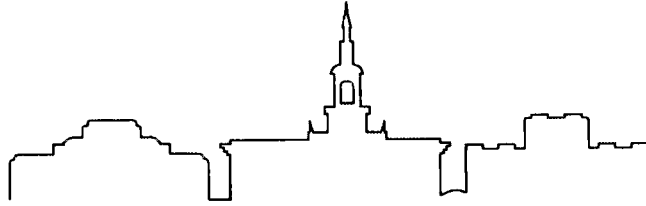
In the KB Home/Del Monte #3 project that was recently approved, KB Home used the fact that the Specific Plan did not categorically say that the historic structures on the site needed to be saved, as evidence that they did not need to be saved. Therefore, as a third-best option, we recommend that the EIR contain language requiring that Specific Plans in the policy update area specify that preservation and/or adaptive reuse will be required for historically significant resources.

At several points in the DEIR, mere adherence to City policies to “make every effort” to save and reuse historic resources is depicted as a measure that will mitigate the impact to historic resources. We recommend that City Staff include specific language to rebut this depiction, as follows:

“Neither adherence to City policies regarding the preservation of historic properties, nor the provision of HABS-level documentation of historic resources, can mitigate the impact to historic resources to a less than significant level. Only actual preservation and/or reuse of historic properties according to the Secretary of the Interior’s Standards for the Treatment of Historic Properties will mitigate the impact to historic resources to a less than significant level.”

This language would be best included on page 247 under *Mitigation and Avoidance Measures*, but revisions elsewhere in the DEIR text may be required for consistency.

It is not sufficient merely to present assertions that “most of the few remaining structures” on the Moitozo Ranch “have problems of integrity, fabric and location” according to “reports prepared for development projects in the area” (DEIR p. 246). If they have problems of integrity or fabric that have been assessed by a qualified historic consultant, those reports should be included in the EIR. If no such assessment has taken place, or if the “reports prepared for development projects” do not meet the normal standard for material to be included in the EIR, the DEIR should refrain from explicitly or implicitly endorsing the truth of those reports. The fact that the reports are not even included in an appendix makes it impossible for a public agency to assess whether demolition of those structures would constitute a significant impact. It is unclear what a “problem of location” could be from the vague references contained in the Historic Resources Review (p. 246).



## PRESERVATION ACTION COUNCIL OF SAN JOSE

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### **Whether There Is A Less Than Significant Impact On Historic Properties**

The DEIR's assumption that there is a less than significant impact on historic properties rests on the following assumptions that have not been examined above:

- **That the implementation of General Plan and City Council policies on historic preservation will result in the actual preservation and/or reuse of historic resources.**

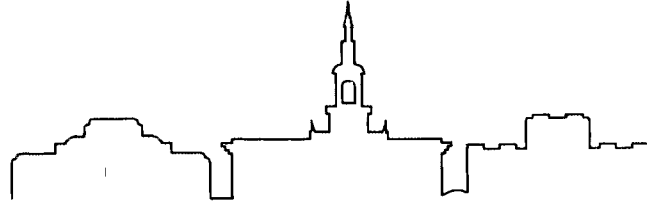
There have been numerous cases where City Landmarks and other historic resources have been negatively impacted in CEQA terms despite the existence of these City policies, such as (to name a few) Eagles Hall, the Muirson Label Factory and the Fox-Markovitz Building. In the light of these precedents, do City staff consider it legitimate to presume as part of this DEIR that only a less than significant impact to historic resources will result from this policy update? Do City staff agree that merely referring to the City's existing policies on the preservation of historic resources does not guarantee that historic resources within the area of the policy update will actually be preserved according to the Secretary of the Interior's Standards?

- **That CEQA Guideline 15064.5(b) provides a sufficient level of mitigation to reduce impacts to a less than significant level.**

This Guideline refers only to historic resources that are included in or eligible for the California Register of Historic Places. Do City Staff agree that, even if a property is not eligible for the California Register, it may still class as a historic resource for the purposes of CEQA? As stated in CEQA Guideline 15064(a)(2),

"A resource included in a local register of historical resources...or identified as significant in a historical resource survey shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant".

Though the historic resources review mentions some properties that have been identified as Structures of Merit, it does not make clear that demolition of such structures, however "marginal", would classify as a significant impact under CEQA unless "the preponderance of evidence" demonstrates that it is not historically or culturally significant. The EIR should be revised to reflect this more accurate understanding of CEQA requirements.



## PRESERVATION ACTION COUNCIL OF SAN JOSE

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*Dedicated to Preserving San Jose's Architectural Heritage*

We also recommend that the EIR include stronger mitigation measures for potential impacts to historic resources, such as requiring that a comprehensive analysis of the economic and structural feasibility of preservation and/or adaptive reuse of the structure and a full historic report should be completed **prior to the circulation of a DEIR** for any development project affecting historic properties. It is clear from our extensive experience of the public process that neither public agencies or the general public have sufficient time to review historic or feasibility information that is circulated in the short window between the end of the EIR circulation period and the beginning of the formal public process.

### **Corrections**

Please note that *Historic, Archeological and Cultural Resources Policy 8* is misidentified as *Policy 9* in the DEIR (p. 51).

### **Conclusion**

The DEIR is in parts incomplete and incorrect, and will require substantial revision in order to make possible a finding of a less than significant impact to historic resources. We request that City Staff take the steps outlined above to avoid or mitigate the significant impacts to historic impacts that can reasonably be foreseen to result from a DEIR constructed in this manner.

If you have questions or concerns about any of our comments, please contact me at (408) 998-8105 or [alex@preservation.org](mailto:alex@preservation.org).

Yours truly,

Alex Marthews.



**SAN JOSE DOWNTOWN  
ASSOCIATION**

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FAX: 408-279-1904  
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April 25, 2005

Mr. Andrew Crabtree  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Dear Mr. Crabtree

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report on North San Jose Development. In the DEIR, the assumption used for analysis of impacts on downtown San Jose is that growth in North San Jose would be distinct from, but complimentary to, the Downtown area. Specifically, the project would "in general preserve the predominantly industrial park character of North San Jose and would not allow for the civic uses or the mix of uses found within the Downtown. The development intensities and land uses thus proposed by the project would not have the same characteristics as those promoted within the Downtown area through the Downtown Revitalization Strategy and the two areas would remain clearly distinct in character." (Page 34)

The assumption used for analysis of retail uses in the DEIR is that "new retail uses will be limited to supporting retail development integrated into mixed-use projects and intended to support the industrial and residential development within the Policy area boundaries." (Page 22) It is the position of the Downtown Association that any larger scale or stand-alone retail development will require separate environmental review.

The San Jose Downtown Association believes that continued emphasis on Downtown as the civic, entertainment and cultural center of San Jose is important to fulfill the vision of our City's future. The analysis in the DEIR appears to uphold that vision.

Sincerely,

 E.N.P.  
Henry Cord

President, Board of Directors

Cc: Scott Kries  
Harry Mavrogenes

# WESTERN WATERS CANOE CLUB

40 Redding Road  
Campbell, CA 95008  
4/25/05

Mr. Andrew Crabtree  
Department of Planning, Building & Code Enforcement  
801 N. First Street, Room 400  
San Jose, CA 95110-1795

Subject: North San Jose Development Policies Update Project Draft Environmental Impact Report, File No. GPT04-04-06a, GPT04-04-06b, GP04-04-06a, GP04-04-06b

Dear Mr. Crabtree:

Thank you for the opportunity to comment on the subject project. In reviewing the documents there are several issues that caught our attention and cause us a lot of concern. We have identified these issues below:

## **Biological Resources Impacts**

The report states that "the proposed development will result in the significant and unavoidable loss of approximately 600 acres of vacant land that is presently Burrowing Owl foraging and breeding habitat." It also indicates that this area is habitat for a number of other species, including raptors, birds and bats. It states that surveys will be conducted prior to construction and the efforts will be made not to harm or disturb birds or their nests. However, it lists the loss of the habitat as a Significant Unavoidable Impact and also states it would be a violation of the Migratory Bird Treaty Act and the Fish & Game Code, ref. p. 231. How will these issues be resolved? Under the mitigation section, the document states a number of things that may or should be done to reduce the harming of individual birds. This is wishful postulation. Once construction gets underway, field workers rarely pay any heed to mandatory environmental requirements, much less some desirable goals, predicated by may or should. What will be done to provide some real mitigation for the loss of 600 acres of habitat? We don't agree that the proposed development needs to result in the loss of all viable habitat in the area. Development must be required to set aside some suitable habitat for the birds being displaced. This can be accomplished using innovative planning and design techniques and the Report needs to address specific positive measures that will be taken to mitigate habitat loss.



## Hydrology and Water Quality

The report states that the project is located in an area of San Jose subject to periodic flooding from two creeks and possible tidal flooding from the San Francisco Bay. It states this is a significant impact. It also states that the project area is subject to flooding when stormwater flows exceed the capacity of the drainage system. It states that this flooding could pose a significant risk to people and/or structures in the project area and this is also a significant impact. It continues to state that with the identified mitigation measures the impacts will be reduced to less than significant.

The Report states that the estimated 100-year flow rate for a Guadalupe River spill would be approx. 2,300 cfs at SR 237. What is a Guadalupe River spill? If it does spill how is the projected spill rate determined? It seems like the spill rate would be determined on exactly where and why it spilled. If it just exceeded its corridor capacity, one would have to know how much it exceeded it to tell how much it would spill. However, if it spilled due to levee or floodwall failure it would spill significantly more and significantly faster.

It is believed that the spill rate is actually referring to the projected river flow rate for a 100-year flood event. The flood flow capacity the Lower Guadalupe FCP is being designed for is 23,000 cfs, not 2,300. This is in concert with projected flow based on gage station records. However, this figure is in question, as the proposed Upper Guadalupe River FCP is projecting much higher flows, which would be about 28,000 cfs at Gold Street. If the Upper Guadalupe River FCP figures are accurate, the levees in the project area will be overtopped and likely breach and there will be catastrophic flooding at a much more frequent event than a 100-year event. The Report states that the Downtown Guadalupe River FCP was completed in December 2004. This is incorrect! All one needs to do is walk downtown and look at it. The bypass culverts at Santa Clara St. and St. John's Street are still not operational and other sections of the project are failing. Sediment keeps filling in areas above the Woz Way bypass, this is causing the bypassed area to down and laterally cut. Gabions are falling into the river and banks are collapsing. Sediment is filling in the channel between Park Ave and Santa Clara Streets. Sediment is filling in the channel upstream of Coleman Ave. The upper section of the bypass downstream of Coleman Ave. is filling with sediment while the main channel down and laterally cuts causing bank failure. Both up and downstream of Taylor and Hedding Street the bypass and main channel are down and laterally cutting and mitigation sites are failing. Downstream of I-880 the river is downcutting. None of the reaches are performing as promised or in accordance with their permits.

The Report states the Lower Guadalupe FCP is scheduled to be completed in December 2004. It is still not near completion and it is already failing. All one has to do is go down to Trimble Ave. and look at the channel. It is seriously downcutting. About a hundred yards downstream of Trimble Ave the main channel had clogged and filled in and the river is now flowing down the bypass area. This area is overly wide and sediment will continue to drop out decreasing the capacity of the corridor to handle the designed flood flows, thus increasing catastrophic flood potential.

The Report states that the floodplain maps are being revised as a result of the recent flood control projects. It states that: "it is anticipated that the revised floodplain maps will reduce the area of 100-year floodplain in the project area." These projects have done nothing to change the elevation of the floodplain! The only thing they are doing is trying to confine more water in a limited area. When you try to stuff 10 pounds of stuff in a 5 pound bag you significantly raise the risk that the bag will spill or break. Likewise confining flood flows actually significantly increases the chance of catastrophic flooding. It is not a question of will such an event occur it is only a matter of when it will occur. When a levee is overtopped or breached it will most likely result in a total failure of a major segment. Depending on the flood stage of the river, houses and business that were allowed to be constructed right next to the levees will be hit by a wall of water and debris and the potential for injury, fatalities and structural damage will be exceedingly high. This has been well documented, Ref. "On Borrowed Land, Public Policies for Floodplains," S. Faber, 1996 and the many other references cited in this document. Actually confining the river in higher levees will not reduce the floodplain area, it will increase it and the chances for a catastrophic flood event. The EIR must address this.

The Report does not state what happens when there is a combination high tide and high flow flood event. The yearly high tides usually occur in December and January, during the middle of the rainy season, so there is a high potential that there will be a large storm even in conjunction with a high tide event. High tides are felt as far upstream as midway between Trimble and Montegue Expressway. This is known because we have actually paddled the river upstream on an incoming high tide to this area. The risks for flooding from a combination high tide and large storm event need to be discussed in detail in the Report.

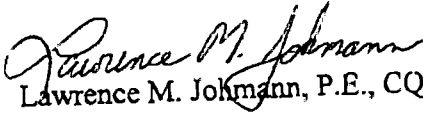
The Report states that soils in the project area are subject to liquefaction. How will levees stand up to a seismic event in combination with a high flow event? In all likelihood, they will fail. The Report needs to address this issue.

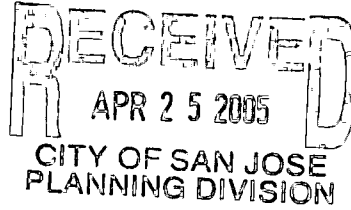
The Report addresses a number of larger pump stations that need to pump water into the Guadalupe River in the event of a storm event and just from those listed, the amount of water being added to the system could exceed 1,800 cfs. This can only exacerbate the problem.

Also, the Report addresses the fact that water pumped into the river will contain a lot of pollution from surface runoff and this is a significant impact. The river and its adjacent land areas support numerous threatened and endangered species, including steelhead trout, Chinook salmon, clapper rail, salt marsh harvest mouse, southwestern pond turtle, etc. The Report must address what will be done to control the pollution entering the river from pumping operations or other outfalls.

The Western Waters Canoe Club strongly recommends that instead of trying to pump more stormwater into river that does not have the ability to even handle moderate flood flows that a storm sewer be constructed to the bay to dispose of this water. We made this proposal as part of our recommendations for a far better Lower Guadalupe FCP but our

recommendations were ignored. Routing excessive storm water to an area that has the capability to handle such flows is the only way to assure that citizens will be provided a high degree of protection from future flood events. It is the only way to reduce the potential of catastrophic flood events as a result of levee overtopping and/or breaching.

  
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April 25, 2005

**VIA HAND DELIVERY AND E-MAIL**

Mr. Andrew Crabtree  
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801 N. First Street, Room 400  
San Jose, CA 95110-1795

Re: North San Jose Development Policies Update Project

Dear Mr. Crabtree:

Cisco Systems, Inc. appreciates the opportunity to comment on the City of San Jose's proposed Draft North San Jose Area Development Policy and North San Jose Development Policies Update Draft EIR. As the largest employer and one of the largest property owners in the City, Cisco supports the City's efforts to solidify the position of North San Jose as a leading center for technology innovation and to encourage greater development intensities, both industrial and residential, in proximity to transportation infrastructure in North San Jose.

As you know, Cisco's worldwide headquarters is located in North San Jose. Cisco owns/leases over nine million square feet of existing and approved industrial space in San Jose, of which over seven million square feet is located in North San Jose. Cisco houses approximately 43,000 workers in owned/leased real estate worldwide, including approximately 13,800 in San Jose. Cisco's combined property holdings are located in and around the apex of North San Jose's rail transportation system along Tasman Drive at North First Street. One of the main reasons that the company originally selected the headquarters location was because of the significant rail and bus transportation infrastructure in the vicinity. The VTA Light Rail line, five Light Rail Stations, and numerous bus lines are located throughout the campus and nearby. Cisco also has funded millions of dollars of public transportation and other infrastructure including public roads, bridges, utilities and a VTA light rail station to provide development capacity for its use and for the benefit of other properties in the area.

Cisco is currently undertaking a strategic plan for its facilities in the San Jose area and hopes to continue to grow its business here. Research and development of new and emerging products lines will require us to either make major financial investments to redevelop existing facilities and upgrade internal systems and infrastructure, or develop new facilities. We are evaluating our alternatives regarding

intensification of our Tasman Drive campus to meet our business objectives. The company's near-, mid- and long-term San Jose facilities planning strategy and investment decisions will be a function of the City of San Jose's land use policies and decisions related to North San Jose, which will either enable or hinder our intensification and our future growth in North San Jose. Although the proposed Policy is an important first step in creating a framework to support that growth, Cisco is concerned that certain aspects of the Policy may actually inhibit industrial growth and economic development in North San Jose, as described below. Cisco looks forward to working collaboratively with the City to resolve these concerns so that the City's vision can be implemented, enabling companies like Cisco to continue to thrive in San Jose.

## **1. Draft North San Jose Area Development Policy**

### **1.1 Land Use Designations**

*a. Core Area:* The Policy proposes to establish an "Industrial Core Area" designed to encourage more intense development for driving industry businesses along the North First Street Corridor adjacent to transit. Despite the acknowledgement in the Draft EIR that "[t]he backbone of the transit service in North San Jose is the light rail system that operates along North First Street *and Tasman Drive*," Cisco's Tasman Drive campus (which is located adjacent or proximate to the Champion Station, Baypointe Station, I-880/Milpitas Station, Cisco Way Station and Tasman Station) is excluded from the proposed Industrial Core Area. Cisco wants to ensure that, while its properties are excluded from the Industrial Core, FAR limits will not impede potential future growth.

*b. Transit/Employment District Residential Area:* The Policy proposes to include the State's Agnews Development Center facility within the Transit/Employment District Residential designation. Cisco has a right of first refusal on this property and it is likely that it will acquire the property for industrial use. Cisco therefore requests that the City remove the proposed Transit/Employment District Residential designation from the property. We recommend that the proposed residential unit allocation for the Agnews Development Center site be reassigned to other sites in North San Jose, in order to achieve both the City's industrial and residential development goals and objectives.

*c. Policy Area:* The Policy area excludes the industrial sites in Alviso, notwithstanding the City's identification of these sites as priority sites to preserve for driving industry uses in its recently adopted "Framework to Evaluate Proposed Conversions of Employment Lands to Other Uses." Cisco is concerned that the proposed development within the Policy area will utilize all of the available traffic capacity, thereby undermining the feasibility of future industrial development in Alviso. The Policy, however, also states that it does not support conversions from industrial to

residential outside the Policy area, including north of 237. Cisco is concerned about the adverse impact of these Policy provisions on its Alviso property.

1.2 Intensification Assumptions: As part of its strategic plan, in addition to constructing new buildings, Cisco proposes to maximize the efficiency of its facilities, improve employee satisfaction and enhance worker productivity through increased employee densities in its existing buildings. This intensification is likely to be an increasing trend as corporate users seek innovative ways to maximize the use of their facilities. Cisco encourages the City to clarify the Policy to make clear that the City can allocate FAR to authorize increased employee densities within existing buildings in order to encourage businesses to stay and grow in North San Jose.

1.3. Allocation of FAR: The Policy proposes to allocate FAR at the permit stage (Site Development Permit, Planned Development Permit or Tentative Map) and indicates that permits will have only a one year duration. While Cisco appreciates the City's need to ensure that FAR is allocated to developments that will actually use it and not hold it for speculation, the inability to secure FAR allocations for long-term development needs would severely impair the long-term planning that is critical to corporate facilities and company growth decisions. Cisco encourages the City to include in the Policy a mechanism for corporate users to secure FAR allocations consistent with their strategic plans in order to encourage businesses to plan for long-term growth in North San Jose.

1.4. Development Impact Fee: The Policy proposes a Development Impact Fee to fund the traffic mitigation measures identified in the Policy. The proposed fee would initially be set at \$10.44/s.f. for industrial development, with the potential for escalation over time. Cisco is concerned that a fee of this magnitude will be a significant impediment to new industrial development. This approach could make North San Jose less attractive and less competitive for industrial development compared to other areas within the City and region. Cisco encourages the City to seek alternate funding sources for the improvements.

## **2. North San Jose Development Policies Update Draft EIR**

### **2.1 Traffic Analysis**

#### **a. *Intensification Assumptions:***

The Draft EIR traffic analysis (and the related noise and air quality analysis) analyzes the impact of buildout of the FAR identified in the Policy, assuming that the FAR occurs in the form of new development. If the policy is clarified as indicated above to allow FAR to be allocated for intensification within existing buildings, then the Draft EIR also would be used to support such intensification. Cisco encourages

the City to clarify that the Draft EIR takes into account the trend toward denser building usage to ensure that the Policy, the Draft EIR and the recommended physical improvements support it.

b. *Intersection Impacts:*

The Draft EIR indicates that implementation of the Policy will result in significant traffic congestion at local intersections, as a result of both the phasing of improvements where mitigation is feasible and the fact that mitigation is not feasible at some locations. This congestion will impact site accessibility and may act as a deterrent to future industrial development in North San Jose. The congested intersections include locations adjacent to Cisco's facilities in North San Jose and Milpitas, including some intersections that Cisco spent significant funds to improve in connection with the development of its facilities. Cisco is concerned about the impact these conditions will have on the accessibility of Cisco's existing facilities and Cisco's ability to further intensify use of those facilities.

The Draft EIR also states that development that would impact intersections that cannot be mitigated and that is not within the Policy "will either be unable to proceed, or will have to be downsized to achieve consistency with the General Plan LOS Policy and the Council's adopted Transportation Impact Policy." Cisco is concerned that policy may act as an impediment to future industrial growth in North San Jose, including Cisco's plans to intensify use of existing buildings or build new buildings in the Policy area and its Alviso property.

Cisco encourages to the City to explore measures to manage congestion so that North San Jose remains an attractive location for industry and to incorporate into the Policy a mechanism to allow sensible industrial projects to proceed even if not within the Policy.

2.2 Agnews Development Center

As noted above, Cisco believes it is likely that it will exercise its right to purchase the Agnews Development Center site and will develop it for industrial use. As such, the Draft EIR should assume that the site is developed for industrial, rather than residential, purposes. We recommend that the proposed residential unit allocation for the Agnews Development Center site be assigned to other sites in North San Jose in order to achieve both the City's industrial and residential development goals and objectives. Among other things, this analysis should include an assessment of the historic status of the buildings located on the site. While Cisco certainly would be willing to explore options for preservation of the buildings if in fact they are determined to be of historic significance, such preservation may not be compatible with the type of high-density industrial development contemplated by the Policy.

Again, Cisco appreciates the opportunity to review and comment on the City of San Jose's proposed Draft North San Jose Area Development Policy and North San Jose Development Policies Update Draft EIR. We support the City's efforts to intensify employment and residential uses in the North San Jose area and look forward to working collaboratively with the City to ensure that City's vision can be implemented in a way that enables companies like Cisco to continue to grow and thrive in San Jose.

Sincerely,



Mark Golan, Vice President  
Global Workplace Resources

cc: Mayor Ron Gonzales  
City Council  
Planning Commission  
Mr. Stephen Haase, Director, Department of Planning, Building & Code  
Enforcement  
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**VIA EMAIL AND U.S. MAIL**

Andrew Crabtree  
Department of Planning, Building & Code  
Enforcement  
City of San Jose  
801 North First Street, Room 400  
San Jose, CA 95110

**Re: Draft Environmental Impact Report – North San Jose Development Policies Update**

Dear Mr. Crabtree:

We represent McCarthy Ranch Limited Partnership (“McCarthy”), the owner of certain acreage in Milpitas which would be impacted by the proposed changes discussed in the above draft Environmental Impact Report (the “DEIR”).

We have reviewed the comment letter of the City of Milpitas on the DEIR and we agree with and adopt those comments. They, however, do not go far enough.

EIR’s Purpose. The purpose of an environmental impact report is to allow decision makers to be fully apprised of the environmental consequences of an action before it is taken. In this matter, however, the decision makers have for some time been committed to a fore ordained decision.

For example, at page 20 of the DEIR, in commenting on San Jose’s use of transferable FAR credit for North San Jose, it states:

“At this point, the pool of transferable FAR credits has been fully depleted, and the City has approved development projects for both eBay and BEA that are dependent on eBay receiving approximately 1.4 million square feet of pool credits and BEA receiving approximately 1.4 million square feet of pool credits at some point in the future in order to fully develop.”

Apparently, the City simply wants to take what should be regional growth and force it into North San Jose

“as a desirable location for high-tech companies in Silicon Valley and the Bay. The proposed policy revisions are intended . . . as part of an effort by the City to guide anticipated job and population growth to areas of the City where the impacts of that growth will be reduced in contrast to the typical impacts of unplanned growth.” (DEIR 20-21)

The result of this hunger for growth is to seek approval of very many impacts which are said to have “Significant unavoidable Impacts,” which will require findings of overruling considerations.

Schools. The massive impacts on schools which would result from a build out under the proposals are brushed aside with the comment:

“The school impact fees and the school districts’ methods of implementing measures specified by Government Code 68996 would partially offset the costs of serving project-related increases in student enrollment.” (DEIR, p. 320)

The ultimate solution to the impending school crisis which would be caused by the City’s Proposals is to be left to the future since “future development of one or more schools . . . would require supplemental environmental review. . . .” “Further discussion at this time of the impacts that might result from building one or more schools in North San Jose would be speculative.”

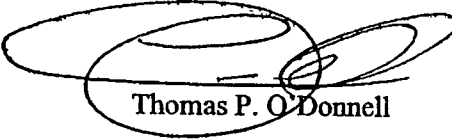
Equally speculative apparently, is how such schools would be paid for and what the impact would be to the extent they are not funded. This type of analysis does not allow the decision makers to be fully informed of the environmental consequences of the adoption of the proposal.

Species of Concern. “The project does not include provisions to provide for additional Burrowing Owl habitat and therefore is not consistent with [the City’s] Species of Concern Policy #4.” (DEIR, pg. 53 and see page 217)

The effect on the habitat of Burrowing Owls and other raptors is said to be “a significant impact.” (DEIR, p. 230) Proposed mitigation is said to be inadequate resulting in a “Significant Unavoidable Impact.” (DEIR, p. 236) The discussion of possible mitigations is unnecessarily limited. For example, there is no adequate discussion of an in-lieu fee to purchase replacement habitat. The report merely notes the “absence of a City-wide Burrowing Owl Mitigation Plan” and that “mitigation habitat areas should be preserved and managed by a legal mechanism approved by the City of San Jose;” with the operative word being “should” not will. (DEIR, p. 237)

Thank you for giving consideration to the above comments.

Very sincerely yours,



Thomas P. O'Donnell

cc: Joe McCarthy – via email

**Crabtree, Andrew**

---

**From:** JLucas1099@aol.com

**Sent:** Monday, April 25, 2005 11:00 PM

**To:** andrew.crabtree@sanjoseca.gov

**Subject:** Draft Environmental Impact Report - North San Jose Development Policies

Dear Andrew Crabtree,

As I do not have the Draft Environmental Impact Report for the North San Jose Development Policies in hand to accurately cite page reference, following comments are of a general nature based on past knowledge of this North San Jose region

In regards the increased water supply demand of 9,000 acre feet for this more dense proposed development, it is essential that underground water tanks and a foothills reservoir be included in this build-out plan.

If the present municipal wells north of Montague, near Coyote Creek, are over drawn it will result in saltwater intrusion and contamination of the water supply. Reliance on existing more inland wells will gradually cause depletion of the groundwater aquifer and lead to subsidence. Further subsidence will make flood protection impossible.

To compensate for increased impervious surface stormwater runoff to both Guadalupe River and Coyote Creek (or overbanking from these creeks) it would be prudent to put frontage roads adjacent to the flood control levees in a depressed design to carry off possible peak flows and protect First Street and the light rail corridor.

Native trees of the watershed should be planted on either side of these frontage roads to provide a filter for urban pollutants and shade for anadromous fishery of both rivers.

I am unclear as to where the remnant sycamore riparian woodland will be removed but advise strongly that this loss be avoided at all cost. The water temperatures of these streams has been rendered marginal for a cold water fishery, especially by the removal of over a thousand riparian trees in downtown Guadalupe River flood project.

Do recommend that plantings for this North San Jose be chosen for low water usage, such as California natives instead of grass, or even orchard trees might be preferable.

Please note the Santa Clara Fault in a review of earthquake faults of the urban region and ensure that high rise development be kept to a minimum. Putting tall buildings adjacent to stream corridors will also shade and degrade the healthy riparian canopy.

Conservative planning should include a complete range of infrastructure to this denser development, such as libraries, schools, health facilities, fire stations, recreational fields, trails, and support services of grocery stores, dry cleaners and restaurants.

If this new policy puts the entire region under a redevelopment umbrella that exempts it from taxation for any of the aforementioned urban infrastructure needs, such as schools, then I think that should be so stated and suitable mitigation mandated.

I submit these comments as a private citizen. To represent conservation for the Santa Clara Valley Chapter of the California Native Plant Society I really need to have the Draft EIR in hand. I will try to do so, but it will not make the response deadline.

Sincerely,

Libby Lucas, 174 Yerba Santa Ave., Los Altos, CA 94022

4/26/2005

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## **APPENDIX K**

### **WATER SUPPLY ASSESSMENTS**

DRAFT

Water Supply Assessment  
for  
**North San José**  
**Development Policies Update**

**May 2005**

Prepared for

City of San José  
San José, California

Prepared by

Todd Engineers  
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# INTRODUCTION

## Background

The City of San José proposes to intensify development in its northern portion, referred to as North San José. Currently, the area is characterized by industrial parks with scattered enclaves of high and medium-high density residential land uses. The proposed intensification would increase industrial, office, and research and development (R&D) building space, encourage taller office buildings along the existing light rail system, and substantially increase residential development. The North San José project entails modification of relevant plans and policies, including the City's General Plan, and implementation of infrastructure improvements to support the proposed development. The project is described in detail in the *Draft Program Environmental Impact Report. North San José Development Policies Update* (City of San José, March 2005; hereafter referred to as *North San José DEIR*)

The project entails increased water demands; existing water supply providers in the area are the San José Water Company and City of San José. This report addresses the portion of North San José served by the City of San José. Proposed sources of water supply include additional imported water from the City of San Francisco Public Utilities Commission (SF PUC) Hetch Hetchy water system, groundwater from the Santa Clara Valley groundwater basin, which is managed by Santa Clara Valley Water District, and recycled water.

The *North San José DEIR* also acknowledges the availability of recycled water in the area. Recycled water for landscape irrigation use is produced by the San José-Santa Clara Water Pollution Control Plant (WPCP) located in Alviso. A recycled water pipeline conveys water from the WPCP along the eastern boundary of the North San José area and has three extensions into the area. Use of recycled water in the area would require installation of additional recycled water pipelines.

The California Water Code section 10910 (also termed Senate Bill 610 or SB610) requires that a water supply assessment be provided to cities and counties for a project that is subject to the California Environmental Quality Act (CEQA). The cities and counties are mandated to identify the public water system that might provide water supply to the project and then to request a water supply assessment. The water supply assessment documents sources of water supply, quantifies water demands, evaluates drought impacts, and provides a comparison of water supply and demand that is the basis for an assessment of water supply sufficiency. If the assessment concludes that water supplies are or will be insufficient, then the public water system must provide plans for acquiring the additional water. If the lead agency decides that the water supply is insufficient, the lead agency may still approve the project, but must include that determination in its findings for the project and must include substantial evidence in the record to support its approval of the project.

## **Purpose**

The purpose of this Water Supply Assessment is to document the City of San José's existing and future water supplies for its North San José/Alviso service area and compare them to the area's build-out water demands, including the portions of the North San José project within the City's service area. This comparison, conducted for both normal and drought conditions, is the basis for an assessment of water supply sufficiency in accordance with the requirements of California Water Code section 10910 (Senate Bill 610 or SB610).

**Figure 1** shows the location of the North San José/Alviso service area with reference to the Santa Clara Valley groundwater subbasin boundaries.

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# WATER DEMAND

This section summarizes water demands for the study area. The first part describe the factors affecting total water demand, including climate, population, and the mix of customer types, such as residential, industrial, commercial, and landscaping. The second part documents water demands not only under normal climatic conditions, but also during drought.

## Climate

Climate has a significant influence on water demand on a seasonal and annual basis. This influence increases with the portion of water demand for outside uses, primarily landscaping or agricultural irrigation. North San José/Alviso is characterized by industrial parks and high-density residential areas that include irrigated landscaping areas. With regard to seasonal influences, rainfall in the winter months fulfills much of the water demand for irrigation, while lack of rainfall during the warm, high-evapotranspiration summer season results in peak monthly water demands that are nearly twice that of winter. With regard to annual influences, the local climate is subject to recurring droughts during which water demands would tend to increase, barring water conservation measures.

**Table 1** summarizes representative climate data for the study area, including average monthly precipitation, temperature, and evapotranspiration (ETO). The City of San José has a semi-arid, Mediterranean climate, characterized by warm dry summers and cool winters. The North San José project's location near San Francisco Bay results in some moderation of summer temperatures and evapotranspiration. As indicated in the table, precipitation occurs primarily in the winter months (November through April) and averages 14.3 inches per year.

**Figure 2** is a chart of annual rainfall from calendar year 1949 through 2001 for the NOAA San José station. As illustrated in **Figure 2**, San José is subject to wide variations in annual precipitation; an extreme single-year drought occurred in 1976, when annual rainfall amounted to only 7.2 inches, or about one-half of the average rainfall. A severe, prolonged drought occurred in the late 1980s and early 1990s; over a four-year period, annual rainfall averaged only two-thirds of the annual average.

## Population

In general as population increases, so does water demand. The North San José project entails increases in residential housing and population beyond that included in the current General Plan. These increases will result in increased water demand. **Table 2** summarizes population projections for Alviso and North San José, including both the City's service area and that of San José Water Company. As shown, the population of the City's portion of North San José is expected to increase five-fold from 9,613 to 50,222 people.

The population values for the Year 2000 are derived from US Census data. North San José

population for 2005 was estimated from 2000 values plus known new construction. The future projections for North San José are based upon new residential development and 1.77 people per housing unit. The population in North San José is estimated to increase by 56,640 people (75,206 – 18,566) from 2005 to 2025.

The Alviso population is provided to allow computation of a total North San José/Alviso service area population. According to the 2000 Census, Alviso (defined by zip code 95002) has a 2000 population of 2,128 people. City of San José Municipal Water System staff assumed a typical growth rate of about 1.5 percent per year to determine future population (Robert Wilson, personal communication); this rate results in a population in 2025 of 3,088, as shown in **Table 2**. It is noteworthy that Alviso population decreased slightly between 1990 (2,179) and 2000 (2,128). Accordingly, the projected population growth rate for Alviso, while possible, is likely overestimated.

### **Water Use Sectors and Water Demand**

**Table 3** documents the water demand for the City's North San José/Alviso service area by water use sectors for the years 1990, 1995, 2000, and current conditions. Water use data are not available for the entire year 2005, so data for 2004 are provided. **Table 3** also provides the projected water use in five-year increments out to 2025. The water use sectors (customer types) are listed on the left; public customers include institutional and government sectors. Irrigation is equivalent to landscape irrigation, because no significant agriculture exists in the area. There are no sales to other agencies, saltwater barriers, groundwater recharge, or conjunctive use projects in North San José/Alviso. Temporary uses are primarily related to construction.

The uppermost portion of **Table 3** summarizes water demands for the North San José portion of the City's service area. As shown, industrial uses have been the source of much of the historic and current water demand, accounting for about 35 to 60 percent. Irrigation water demand has accounted for about 30 to 35 percent of total water demand (or about 1,200 to 1,900 AFY); this is significant because it represents an opportunity for recycled water use. Residential water demand, primarily for multi-family residential complexes, has been about 20 percent of the total. While the City maintains separate irrigation meters for many parcels, some landscape irrigation use is included in the residential water demand values. Again, this represents an opportunity for recycled water use.

Future water demands for North San José reflect the changes in land use plans and policies described in the *North San José DEIR* (City of San José, March 2005). No potential change in water demand is expected for single-family residential, industrial, and public land uses or for temporary (i.e., construction) water use. A small increase of 312 AFY is expected for the commercial sector from 157.5 AF in 2004 to 469.4 AF in 2025. Similarly, irrigation water demand is expected to increase by 381 AF by 2025. The major change is the estimated increase in water demand for multi-family residential land uses, which is estimated to change from the current 854 AFY to 6,291 AFY in 2025, an increase of 5,437 AF.

The middle portion of **Table 3** summarizes water demands for the Alviso portion of the City's

service area, while the bottom portion provides the total for North San José/Alviso. As indicated, the preponderance of the water demand is and will continue to be in North San José.

The estimated increases in water demand shown in **Table 3** are based on rates provided in the *North San José DEIR*, as follows:

Industrial usage: 0.18 gallons per day per square foot (gpd/sf)

Office usage: 0.0751 gpd/sf

Multi-family residential: 225 gallons per day per dwelling unit (gpd/du)

City of San Jose staff members researched water demand for multi-family residences (Andrew Crabtree and Mansour Nasser, personal communications). This research included two selected multi-family complexes. One is a relatively new apartment complex with an average water demand of 131 gpd/du, including estimated landscape use. The second apartment complex consists of 8 buildings and 941 units. Water use is monitored by a water meter for each building; in addition there are two meters that monitor irrigation and one meter that monitors other areas of the complex (i.e., the pool). In 2004, the average potable water demand was 182 gpd/du and the total demand (including irrigation) was 225 gpd/du. Nineteen percent of the total water demand for this complex was used for irrigation.

In addition, it is noteworthy that total residential water use in 2004 in North San José was 988 acre-feet. According to City records, this water serves 4,637 residential units and provides irrigation for some of the multi-family complexes. The average use per unit, including some irrigation, was 190 gpd/du.

In brief, the above analysis indicates that the water demand rate of 225 gpd/du for multi-family residential land use probably is on the high end of the range, particularly when considering future developments that will be constructed in accordance with current water-saving technologies and building codes.

**Figure 3** illustrates the total annual water demand for North San José/Alviso, including the annual data for 1990 – 2004 and the five-year projections to 2025. **Figure 3** clearly shows the projected increase for multi-family residential demands. Note that landscape irrigation was first distinguished in 1995; previously, irrigation was subsumed in the other water use sectors.

### **Water Demand in Normal and Drought Periods**

The City of San José *2000 Urban Water Management Plan Update* (City of San José, February 2001) addresses water demands for the City's water service areas, including North San José/Alviso. The Update describes the response to the severe, prolonged drought of 1987 through 1991, which involved an overall decline in water demand in response to water conservation and rationing.

**Figure 4** shows water use in North San José/Alviso from 1970 through 2004, including the recent drought. As shown, water use declined significantly in the drought years of 1989, 1990,

and 1991. Water use prior to the drought in 1987 amounted to 3,697 AF and then declined to an average of 2,830 AFY over the three drought years; this represents a decline of 23 percent. After the drought, water use rebounded and then increased steadily, resuming the growth pattern prior to the drought.

**Table 4** and **Table 5** presents an analysis of how water demand can change in response to drought. **Table 4** represents existing land uses and customer types and **Table 5** represents future land uses and customer types with the proposed project.

The left columns in the table show the customer types (water use sectors) in North San José/Alviso and the water demand in a “normal” rainfall year. For this analysis, the year 2000 was selected because it is representative of recent water demand conditions. In addition, the rainfall in calendar year 2000 approximated the long-term average rainfall of 14.3 inches.

North San José/Alviso responded to the drought years of 1989, 1990, and 1991 with a reduction in water demand of 23 percent. For the purposes of this analysis, a generalized response is assumed involving a 25 percent reduction in total demand for a single-year and three-year drought. This is consistent with Stage 2 of the 2000 City of San José Water Shortage Contingency Plan (City of San José, February 2001), which responds to a water shortage with mandatory water use reductions. As shown on the bottom row of **Table 4**, the water demand of 5,599 AFY in 2000 would be reduced to about 4,164 AFY in drought years.

Data on water demand by customer type are available for 1990 to the present, and thus are not available prior to the drought. Accordingly, the drought-induced water demand reduction by customer type is not known. However, water demand data by customer type are available for the drought year of 1991 and for 1992, when water demand rebounded. This “rebound” information was used to estimate the preceding drought response by customer type. **Table 4** shows the rebound in water demand that occurred in North San José/Alviso from 1991 to 1992 and the corresponding rounded-off value for estimated drought reduction.

As shown, the most significant rebound/drought reduction is for public water use, reflecting reduction in irrigation of public parks. Data are not available for landscape irrigation, so a reduction of 40 percent is assumed in **Table 4**, based primarily on the public water use response. Residential response is about 25 percent, while the industrial and commercial response is 10 and 15 percent respectively. The remaining four columns on the right side of **Table 4** present the reduction in water demand that can occur in response to drought. It was assumed that the water reduction totals would be the same in response to single and multi-year droughts.

It is important to note that the **Table 4** response is based on existing customer types, a historical response to a recent drought, and a water supply that did not include recycled water for irrigation at the time. In the future, the drought response may differ, depending on the future mix of customer types, water conservation practices, and amount of water recycling.

A different mix of customer types would result in different opportunities and capacities for water conservation. However, as shown in **Table 5**, the proposed North San José development involves



mostly multi-family residential, which has an estimated conservation potential of about 25 percent. This is the same as the overall response to drought. Accordingly, the land use change in the area is not expected to change the overall drought response. Installation of water-conserving plumbing (as mandated by the current building code) will conserve water overall, but will reduce the ability to save water in the short term, a phenomenon termed “demand hardening.” This is not accounted for in **Table 5**. Lastly, given the reliability of recycled water in normal years and in drought, its future use would obviate the need for significant landscape irrigation conservation. This is approximated in **Table 5** by assuming that the demand for irrigation and public use is not reduced during drought. As in **Table 4**, it was assumed that the water demand response would be the same for single and multi-year droughts.

## WATER SUPPLY

The water supply for the North San José/Alviso area currently is provided primarily by the City of San Francisco Public Utilities Commission (SF PUC) Hetch Hetchy water system, with local groundwater serving as a backup water supply. Recycled water has been used in the area since 1998. Proposed sources of water supply include additional imported water from the Hetch Hetchy water system, groundwater from the Santa Clara Valley groundwater basin (which is managed by Santa Clara Valley Water District in collaboration with local water agencies), and additional recycled water. In addition, water conservation is anticipated to reduce water demand from current projected amounts.

**Table 6** lists the existing and proposed water supply sources in terms of water rights, entitlements, and contracts. **Table 7** summarizes past, current, and projected water supply sources under normal conditions. Data are reported in five-year increments in order to provide a long-term overview. For the historical data, a near-normal rainfall year was selected to represent each five-year increment, as summarized in the footnote to **Table 7**.

### Wholesale Water Supply

North San José/Alviso is provided water from the SF PUC Hetch Hetchy aqueduct by means of two turnouts. As indicated in **Table 6**, the City of San José currently has a contract for up to 3,000 AFY (2.68 million gallons per day or mgd); this contract is temporary and interruptible with a two-year notice by SF PUC. Pertinent portions of the Settlement Agreement and Master Water Sales Contract between SF PUC and suburban retailers are reproduced in **Appendix A**, while the Water Supply Contract between the City and County of San Francisco and City of San José is reproduced in **Appendix B**.

The Master Contract, in effect until 2009, currently is being renegotiated. The City of San José is negotiating to change its contract status to permanent and has requested up to 6.35 mgd (7,100 AFY), based on its existing General Plan. The SF PUC response to the City's request is expected in late May 2005.

The North San José project is not included in the existing General Plan, and therefore was not included in the request to SF PUC. However, additional growth in the North San José area is included in the existing General Plan and request to SF PUC. If the North San José project, including modification of the General Plan, is approved, this would provide the appropriate basis for a revised request to SF PUC. Assuming preferred use of Hetch Hetchy water for potable supply and continued use of groundwater as a supplemental source, a revised request would be about 8,000 AFY (Mansour Nasser, personal communication).

Table 7 shows that the City of San José has been able to obtain more water than its contracted amount under normal water supply conditions. For example, in 1985 the City received 3,255 AF. Delivered amounts in 1992 were reduced to 2,428 AF in response to the drought that had just ended; however, deliveries increased in subsequent years to exceed 5,300 AFY.

## Groundwater Supply (SCVWD)

As indicated in **Table 6**, groundwater has been a source of backup supply for North San José/Alviso. Groundwater is available from the Santa Clara Valley groundwater basin, which is managed by Santa Clara Valley Water District (SCVWD) in collaboration with other agencies. The City of San José currently has four wells in North San José; the locations of Wells 1, 2, 3, and 4 are shown on **Figure 1**. The wells, installed in 1981 and 1983, are 600 to 615 feet in depth with screens generally between 200 and 615 feet in depth.

The combined capacity of the four wells is reported at 5,600 gpm (City of San José, February 2001). Assuming these wells were pumped on a year-round basis for 12 hours per day, they would produce 4,500 AFY. However, the wells are maintained as a backup supply and have been operated primarily during drought. As shown in **Figure 4**, groundwater was used primarily between 1984 and 1998. Maximum annual pumping occurred in 1991, with pumping of 924 AF. On **Table 6**, no entitlement or water right is indicated because the Santa Clara Valley groundwater basin has not been adjudicated and groundwater entitlements or rights have not otherwise been defined.

In the North San José DEIR, groundwater is identified as a source of water supply for the project. Assuming that groundwater would serve as a supplemental source of supply (with Hetch Hetchy as the primary potable source and recycled water as the irrigation source), the amount of groundwater to be pumped can be estimated as the residual of the equation:

$$\text{Water demand} - \text{Hetch Hetchy supply} - \text{Recycled water supply} = \text{Groundwater supply.}$$

This estimate, summarized below for normal years, indicates maximum groundwater pumping of about 754 AFY in 2025.

Year	Water Demand (AFY)	Hetch Hetchy (AFY)	Recycled Water (AFY)	Difference (AFY)
2004	5,969	5,300	608	0
2010	7,510	7,100	2,830	0
2015	9,050	7,100	3,312	0
2020	10,590	7,100	3,794	0
2025	12,130	7,100	4,277	754

In the DEIR, the City of San José Municipal Water System indicated the need to install three additional production wells; these would be located in North San José in the area south of Highway 237. New wells likely would be constructed similarly to the existing wells with screens in the deep aquifer. Assuming similar well capacities and reasonable operation (as noted above on a year-round basis for 12 hours per day), three additional wells could pump about 3,000 AFY.

The long-term reliability of groundwater supply for the project is not likely to be predicated on well capacity, but is likely to be defined by the overall state of the groundwater basin. This is recognized by the SB610 sections of the California Water Code, which require a detailed description and analysis of the location, amount, and sufficiency of groundwater to be pumped. The following sections describe the Santa Clara Valley groundwater basin, its management, and existing condition in terms of groundwater quantity and quality.

## **Santa Clara Valley Groundwater Basin**

North San José/Alviso overlies the Santa Clara subbasin of the Santa Clara Valley Groundwater Basin, designated by the Department of Water Resources (DWR) with groundwater basin number 2-9.02 (California DWR, October 2003). The Santa Clara subbasin occupies a structural trough between the Diablo Range on the east and the Santa Cruz Mountains on the west. It extends from the northern border of Santa Clara County to Coyote Narrows. The Santa Clara valley is drained to the north by tributaries to San Francisco Bay including Coyote Creek and the Guadalupe River, which bound the North San José/Alviso area on the east and west **Figure 1** shows boundaries of the Santa Clara Valley subbasin as defined by SCVWD; these differ slightly from those defined by DWR.

The principal water bearing formations of the Santa Clara subbasin are alluvial deposits of unconsolidated to semi-consolidated gravel, sand, silt and clay (DWR, October 2003). The permeability of the valley alluvium is generally high and most large production wells derive their water from it (DWR 1975). The southern portion and margins of the subbasin are unconfined areas, characterized by permeable alluvial fan deposits. A confined zone is created by an extensive clay aquitard in the northern portion of the subbasin, including North San José/Alviso (SCVWD, July 2001). This aquitard divides the water-bearing units into an upper zone and a lower zone; the latter is tapped by most of the local wells.

Groundwater in the Santa Clara subbasin is recharged through natural infiltration along stream channels and by direct percolation of precipitation. In addition, SCVWD maintains an active artificial recharge program. Groundwater flow generally is from the margins of the basin toward San Francisco Bay.

## **Water Resources Management**

SCVWD is the groundwater management agency in Santa Clara County (as authorized by the California legislature under the Santa Clara Valley Water District Act) and has the primary responsibility for managing the Santa Clara Valley groundwater basin. SCVWD has worked to minimize subsidence and protect groundwater resources through artificial recharge of the groundwater basin, water conservation, acquisition of surface water and imported water supplies, and prevention of water waste.

The District's principal water supply planning document is the Integrated Water Resources Plan (IWRP); the draft IWRP has identified the operation of the groundwater basin as a critical component to help SCVWD respond to changing water supply and demand conditions

(SCVWD, June 2004). In addition, SCVWD has prepared a *Santa Clara Valley Water District Groundwater Management Plan* (SCVWD, July 2001), which summarizes its groundwater supply management, groundwater monitoring, and groundwater quality management programs.

The groundwater supply management program is intended to replenish the groundwater basin, sustain the basin's water supplies, help to mitigate groundwater overdraft, and sustain storage reserves for use during dry periods. SCVWD operates artificial recharge systems to augment groundwater supply, including the groundwater underlying North San José/Alviso. SCVWD also conserves local surface water, provides imported water, operates water treatment plants, maintains water conveyance systems, supports water recycling, and encourages water conservation.

## **Groundwater Quantity**

Groundwater conditions throughout the County, including the northern Santa Clara Valley, are generally very good, reflecting SCVWD's water management efforts (SCVWD, July 2001). Historically, groundwater pumping caused groundwater level declines that induced subsidence in the Santa Clara subbasin and saltwater intrusion into aquifers adjacent to San Francisco Bay. These declines were halted in the mid-1960s and then reversed through the artificial recharge program and the importation of surface water via the Hetch Hetchy Aqueduct and South Bay Aqueduct. Groundwater levels in the Santa Clara Valley have generally risen since 1965 as demonstrated by hydrographs of index wells monitored by SCVWD, these hydrographs can be viewed online:

[http://www.valleywater.org/Water/Where\\_Your\\_Water\\_Comes\\_From/Local\\_Water/Wells/Depth-to-Water\\_Index\\_Well\\_Hydrographs.shtm](http://www.valleywater.org/Water/Where_Your_Water_Comes_From/Local_Water/Wells/Depth-to-Water_Index_Well_Hydrographs.shtm)

SCVWD recognizes the benefits of using the vast subsurface storage provided by the groundwater basin, particularly during drought. SCVWD has defined an operational groundwater storage capacity that amounts to 350,000 acre-feet in the Santa Clara Valley subbasin (SCVWD, 2001). This storage is defined in part by the groundwater levels that need to be maintained to prevent subsidence and saltwater intrusion problems. These problems are significant to North San José/Alviso; the historical center for subsidence (with land surface declines up to 13 feet) is just south of North San José (Poland, 1971). In addition, the area affected by saltwater intrusion includes much of Alviso, with the greatest inland intrusion of mixed water occurring between the Guadalupe River and Coyote Creek (SCVWD, July 2001).

In its *Integrated Water Resources Plan*, SCVWD has analyzed the reliability of its water supplies in very wet years, average years, and dry years, including successive dry years (SCVWD, June 2004). The IWRP concludes that SCVWD water supplies are sufficient for very wet years and normal years. In addition, the IWRP states that SCVWD will be able to meet the water needs of Santa Clara County during single dry years, even with increasing demand. However, SCVWD is challenged to meet demands in multiple dry years, when water supplies become increasingly reliant upon storage reserves, including groundwater storage with its risk of inducing land subsidence. The IWRP indicates that additional water supply management

activities must be developed to meet the water demands of Santa Clara County businesses and residents.

## **Groundwater Quality**

Overall, groundwater quality in the Santa Clara Valley is good. The groundwater in the major producing aquifers is generally of a bicarbonate type, with sodium and calcium the principal cations (DWR, 1975). Although hard, it is of good to excellent mineral composition and suitable for most uses. Treatment has not been needed to meet drinking water standards in public supply wells (SCVWD, July 2001).

As required by the California Department of Health Services (DHS) for the Drinking Water Source Assessment and Protection (DWSAP) Program, drinking water source assessments have been conducted for the four groundwater wells. The assessment was conducted by the San José Municipal Water System (SJMWS) staff and included information gathered from City records, data bases, and staff; Water Resources Control Board; and visual field surveys. The assessments concluded that contaminants have not been detected in the four wells although the wells are vulnerable to potential contamination from local sources and activities. These include electronic manufacturing, gas stations, confirmed leaking underground storage tanks, and sewer collection systems. However, well location and construction in combination with the local hydrogeology have provided a high level of protection against contamination of the local groundwater (California DHS, 2003).

A review of available 1999 through 2002 water quality data for the four wells indicates that contaminants have not been detected above water quality standards in any of the four wells. Analyses have included regulated organic chemicals, purgeable organic compounds, and general mineral, physical and inorganic chemicals. Nitrate as nitrogen has been detected in all four wells in 1999 ranging between 1.7 and 3.6 parts per million (ppm). These detections are within the water quality standard (primary maximum contaminant level) of 10 ppm.

SCVWD has ongoing groundwater protection programs that include well permitting, well destruction, wellhead protection, leaking underground storage tank, toxic cleanup, land use and development review, nitrate management (targeted to areas of elevated nitrate in the South County), and saltwater intrusion programs (SCVWD, July 2001) SCVWD collects water quality data from 60 wells throughout the groundwater basin; five of these wells are in the North San José project area.

Saltwater intrusion has occurred in the shallow aquifer beneath North San José/Alviso. Saltwater from the Bay moves upstream during high tides and leaks through the clay cap into the upper aquifer zone when this zone is pumped (SCVWD, July 2001). Land subsidence has also aggravated this condition. Elevated salinity is also present in the lower aquifer zone but on a much smaller scale, and is attributed to improperly constructed, maintained, or abandoned wells that penetrate the clay aquitard and provide a conduit from the upper to the lower aquifer zone (SCVWD, July 2001). In response, SCVWD has established an extensive program to locate and properly destroy such conduit wells. SCVWD also monitors saltwater intrusion, collecting water

quality samples quarterly from 16 wells in the upper aquifer and 5 wells in the lower aquifer in the vicinity of the intruded area.

## Recycled Water

The City of San José operates the San José-Santa Clara Water Pollution Control Plant (WPCP) located in Alviso. This plant produces recycled water that is appropriate for landscape irrigation among other uses. As described in the North San José DEIR (City of San José, March 2005), the WPCP currently treats an average of 116.8 mgd and discharges 100 mgd (dry weather peak) into San Francisco Bay. There are concerns over the environmental impacts of wastewater discharge to San Francisco Bay. In response, the City has developed a Clean Bay Strategy and a South Bay Action Plan that are intended to maintain wastewater discharge below a level of 120 mgd. Expansion of water recycling is an important part of this effort, including provision of recycled water to North San José.

Water recycling is an element of SCVWD planning for future water supplies, as summarized in the draft document, *Integrated Water Resources Planning Study 2003-Draft* (SCVWD, June 2004). Water recycling is part of SCVWD's baseline projection, which envisions recycled water use throughout Santa Clara County of 16,000 AFY by 2010, including recycled water from the WPCP. SCVWD also considers water recycling as a building block with an estimated potential future use of 33,000 AFY.

As shown in **Table 7**, water recycling has been identified as a significant water supply source for the North San José project. Recycled water can provide for landscape irrigation, ornamental features (fountains), toilet flushing, and specific industrial uses. In 2004, recycled water use amounted to 608 AF including irrigation (294 AF) and industrial uses (314 AF). It is assumed these uses will continue in the future.

The amount of water recycling was estimated for landscape irrigation purposes. For commercial/industrial buildings and some multi-family residential complexes, water used for landscape irrigation is measured by dedicated landscape irrigation meters. As shown in **Table 3**, landscape irrigation meters used 1991.8 AFY in 2004; an additional 381 AFY is projected to be used at buildout in 2025 for a total of 2,372.8 AFY.

Some multi-family residential complexes do not differentiate between indoor/domestic and outdoor/irrigation uses, so the water use in the "Residence-Multi" category in **Table 3** includes both indoor and outdoor landscape uses. Based on the actual usage of one apartment complex in North San José, the total water use per dwelling unit is approximately 225 gpd/du, with 182 gpd/du being used indoors and the remainder used for irrigation. For projected dwelling units, 43 gpd/du was used to approximate the landscape irrigation water use (225-182). Because some residential complexes have dedicated irrigation meters and some do not, only 35 gpd/du for irrigation was used to calculate the current landscape irrigation that is subsumed in the residential category. This is the difference between the projected 225 gpd/du and the actual average reported multi-family usage of 190 gpd/du. As documented in **Table 7**, the amount of landscape irrigation in the project area increases as the number of dwelling units increase. Using

the above methodology, the total amount of landscape irrigation that can be supplied by recycled water in 2025 is estimated at 3,454.7 AFY.

In addition to landscape irrigation, recycled water can be used to provide water to flush toilets and urinals in buildings with dual plumbing. In commercial and industrial buildings, approximately 21.9 percent of the water used indoors is used to flush toilets and urinals (Gleick et al 2003). Assuming that all new commercial and industrial buildings include dual plumbing, then an estimated 508 AFY could be provided by recycled water.

In sum, recycled water can supply a total of 4,276.7 AFY of the water demand in North San Jose by 2025, including 3,454.7 AFY for landscape irrigation, 508 AFY for toilets and urinals, and 314 AFY currently used for other industrial uses. Additional water recycling opportunities can be defined; for example, ornamental fountains and dual plumbing in residential complexes. It is noteworthy that some residential complexes in North San José already have dual plumbing for landscape irrigation.

As shown in **Table 7**, recycled water has been applied previously for limited irrigation and industrial uses. Recycled water is an available source that is produced and used in the local area and is expected to increase in the future as the population increases. The City's South Bay Water Recycling program currently delivers recycled water to numerous customers in San José, Santa Clara, and Milpitas for industrial and irrigation uses. The City actively promotes water recycling through a variety of means including subsidized costs, support for regulatory compliance, public information, and ordinances requiring recycled water use, among others (City of San José, February 2001). An existing recycled water pipeline conveys water from the WPCP along the eastern boundary of the North San José area and has three extensions into the area. Increased use of recycled water in the area would require installation of additional recycled water pipelines into North San José.

## **Water Supply in Normal and Drought Periods**

While **Table 7** documents past, current and future water supply under normal conditions, **Tables 8 and 9** quantify the amount of water supply during normal and drought conditions, for current conditions and for projected conditions with the North San José project, respectively

As shown in **Table 8**, North San José/Alviso currently relies on imported water from SF PUC's Hetch Hetchy system for all of its water supply during years with normal precipitation. The amount of water supplied in normal years has been greater than the amount contracted. During drought conditions, the amount of water supplied to North San José/Alviso is assumed to decrease by about 45 percent from normal deliveries (i.e., 5.303 AFY in 2000) to the contracted amount, 2.68 MGD or approximately 3,000 AFY. SF PUC does not distinguish between a single dry year and multiple dry years, so the amount of supply is the same regardless of the length of the drought. During the drought that occurred in 1988-1992, the amount of supply from Hetch Hetchy decreased from previous deliveries by about 45 percent to a low of 1,913 AFY (1991)

To compensate for the reduction, the City used its existing four wells; 924 AFY was pumped in



1991. For drought conditions in **Table 8**, it is assumed that groundwater would be used to a similar extent. The amount of recycled water received would remain the same in normal and dry years.

**Table 9** presents a similar summary for the projected water supply in 2025 with the North San José project. The projected Hetch Hetchy water supply is based on the City's pending request to SF PUC for 7,100 AFY during normal conditions. In accordance with BAWCSA's Interim Water Shortage Allocation Plan, the City's Hetch Hetchy allocation during drought conditions would be reduced by 45.62 percent to 3,834 AFY. This amount would be the same during a single dry year or multiple dry years

As shown in **Table 9**, Hetch Hetchy and recycled water supplies would be supplemented with groundwater pumping. This could occur in response to drought, as summarized in **Table 9**, or other scenarios resulting in an interruption of Hetch Hetchy supply. This supplemental pumping is estimated at 754 AFY to avoid any shortfall under normal conditions. Similarly, groundwater pumping also is included in the water supply for drought years. However, in drought years, the simplifying assumption is made in **Table 9** that the City would pump no more than its historical maximum amount, 924 AFY. The City has the facilities and capacity to pump additional groundwater; however, this assumption provides recognition that the sufficiency of the groundwater supply is defined not only by the capacity of City facilities, but also by the overall condition of the groundwater basin, which is a shared source of water supply. The City will work with SCVWD to better define available groundwater under a variety of scenarios, including drought and interruption of other supplies.

Recycled water is recognized for its reliability during dry conditions. Accordingly, in **Table 9**, the water supply from recycled water remains constant during normal, single dry, and multiple dry years.

## COMPARISON OF SUPPLY AND DEMAND

**Table 10** provides a comparison of current water supplies and water demands under normal and drought conditions, while **Table 11** compares water supplies and demands in 2025 with the North San José project

As indicated in **Table 10**, current water supplies are sufficient for current water demands under normal conditions, assuming continued delivery of Hetch Hetchy water at recent rates. Under drought conditions, Hetch Hetchy supplies are reduced.

Historically, the City of San José has responded to drought in part by instituting water demand management measures; the latter measures are incorporated in the demand values for the dry years. The City of San José also has responded to drought by pumping groundwater; such pumping is incorporated in the supply values for the dry years. As noted previously, the City has the capacity to pump groundwater to meet its own water demands during drought; however, the groundwater basin is a shared resource with constraints on its use. As discussed in the previous section on Groundwater Quantity, SCVWD already is challenged to meet demands in multiple dry years without groundwater pumping at rates that risk inducing land subsidence. Accordingly, a shortfall in water supply already exists under multi-year drought conditions.

**Table 11** provides the comparison of water supply and water demand under projected conditions with the North San José project. As indicated, water supplies are available to meet water demands under normal conditions. However, as shown in **Table 9**, the Hetch Hetchy and recycled water supplies would be supplemented with groundwater pumping. Similarly, groundwater pumping also is included in the water supply for drought years. In drought years, the same simplifying assumption is made in **Table 11** as in **Table 9** that the City would pump no more than the historical maximum. Despite this pumping, a shortfall in water supply is indicated for drought conditions.

According to the Water Code section 10911, if the water supplies are deemed insufficient, the City is required to provide plans for acquiring additional water supplies. These plans may include, but are not limited to, information concerning all of the following.

- Estimated total costs and the proposed method of financing the costs for acquiring the additional water supplies
- All federal, state, and local permits, approvals, or entitlements to acquire and develop the additional water supplies
- The estimated timeframes to acquire the additional water supplies.

A sufficient water supply for the project may be achieved at least in part and perhaps wholly through water demand management. As discussed in the previous section on Water Demand, relatively high water demand rates were applied (based on historical usage data) to estimate projected water demand. This indicates an opportunity for water demand management

The City of San José is currently working (in cooperation SCVWD and other agencies) to conserve water and decrease overall system demand. Their ongoing work in conservation includes the following best management practices (BMPs):

- Water Survey Programs for Residential Customers
- Residential Plumbing Retrofit
- System Water Audits, Leak Detection and Repair
- Metering with Commodity Rates for All New Connections and Retrofit Existing
- Large Landscape Conservation Programs and Incentives
- High Efficiency Washing Machine Rebate Program
- Public Information Programs
- School Education Programs
- Conservation Programs for All CII Accounts
- Conservation Pricing
- Conservation Coordinator
- Water Waste Prohibition
- Residential ULF Toilets Replacement Programs

These conservation measures and other future programs will decrease the overall water demand. However, as mentioned previously, the ability for short-term drought reduction would be limited as a result of demand hardening

Indoor residential water demand is a large portion of the total potable water demand for the proposed North San José project. If the City of San Jose takes an aggressive approach in water conservation, building on the programs already developed, the water demand can be decreased significantly. To quantify the decrease in demand, the largest indoor residential water uses were examined. Toilets, showers, and washing machines typically account for 50 to 75percent of the water used indoors in residential units. By increasing the efficiency of these uses, the residential demand can be reduced, as explained below.

The City of San José has mandated Ultra Low Flow toilets (ULFT) be installed in all new residential units built since the early 1990's. The City's plumbing code requires low flow toilets to have no greater than 2 gallons per flush. Currently ULFTs use 1.6 gallons per flush or less; as the water technology advances, toilets may use even less water (Gleick et al, 2003). Assuming that 90percent of the units in North San José currently have 2 gallons per flush toilets and the remainder has 4 gallons per flush, retrofitting all toilets to the 1.6 gallons per flush model can save 6 gpd/du. Given that the projected water use is based on current usage, the total demand savings could be 175 AFY in 2025.

Showers account for about 20percent of indoor residential water use. Efficient low flow shower heads can decrease the amount of water used per shower. Newer shower heads use approximately 8 gallons of water less per shower than those on the market in the mid-1990's (Gleick et al, 2003). If two showers are taken per unit per day, the newer shower head could

reduce water demand by 16 gpd/du. This change in shower heads would result in a water demand reduction of 470 AFY in 2025.

The City of San Jose currently has a program to provide rebates for high efficiency washing machines to encourage use. The average washing machine on the market in the mid-1990's used 35.8 gallons of water per load of laundry. In 2007, the water usage for a washer is required to be less than 24.2 gallons/load (Gleick et al, 2003). The average California household does 0.96 loads per day. Assuming all older washers are replaced by the new 24.2 gal/load model, the water demand would be reduced by 11gpd/du. The total reduction could be 325 AFY in 2025. The actual demand reduction may be lower as multi-family units may use the washing machines less frequently or share communal laundry facilities.

In summary, water demand management measures will decrease the water demand from the 225 gpd/du used to calculate projected demand for multi-family residential land use. Using more efficient toilets, shower heads, and washing machines may reduce the water demand by 33 gpd/du and reduce total demand by approximately 1,000 AFY in 2025.

## CONCLUSIONS

1. The proposed North San José project entails modification of plans and policies, including the City's General Plan, and implementation of infrastructure improvements to support proposed development.
2. The proposed project entails increased water demands; this report addresses the North San José/Alviso service area of the City of San José, including portions of the proposed North San José project
3. Proposed sources of water supply include additional water from the San Francisco Public Utilities Commission (SF PUC) Hetch Hetchy system, groundwater from the Santa Clara Valley groundwater basin, which is managed by Santa Clara Valley Water District (SCVWD), and recycled water.
4. Future water demands for North San José reflect the changes in land use plans and policies described in the *North San José DEIR*; the major change is an increase in water demand for multi-family residential land uses.
5. Water demand is estimated to increase from the current (2004) 5,969.5 AFY to 12,130.3 AFY at buildout of the North San José project in 2025.
6. North San José/Alviso currently is supplied by the SF PUC Hetch Hetchy system through a contract for a temporary and interruptible supply up to 3,000 AFY (2.68 mgd).
7. The City is negotiating with SF PUC to change its contract status to permanent and to increase its contract to 6.35 mgd (7,100 AFY).
8. The City has been able to obtain more Hetch Hetchy water than its contracted amount under normal water supply conditions; deliveries in recent years have exceeded 5,300 AFY.
9. Groundwater has been identified as a source of water supply for the project. The City has four wells in North San José and has used groundwater in the past as a supplemental supply under drought conditions.
- 10 Groundwater is actively managed by SCVWD to replenish the groundwater basin, sustain the basin's water supplies, help to mitigate groundwater overdraft and prevent subsidence, and sustain storage reserves for use during dry periods.
- 11 SCVWD has analyzed the reliability of its water supplies, including groundwater, concluding that supplies are sufficient in normal and wet years, but inadequate in dry years. A supply of 924 AFY is identified, based on historical use, this should be refined

by the City and SCVWD.

12. Recycled water has been identified as a significant water supply source for the North San José project for landscape irrigation, toilet flushing and other uses. A usage of 4,276.7 AFY is identified in North San Jose by 2025; additional water recycling opportunities exist.
13. Comparison of water supply and water demand under projected conditions with the North San José project indicates a shortfall in water supply for drought conditions.
14. A sufficient water supply for the project may be achieved through water demand management, including use of more efficient toilets, shower heads, and washing machines.

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**Table 1 Climate Data**

	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Annual</b>
Precip, in	3.06	2.53	2.30	1.07	0.39	0.09	0.04	0.08	0.20	0.72	1.74	2.32	14.30
Temp, °F	56.00	59.22	62.78	65.89	71.45	75.69	78.76	78.75	77.63	71.20	61.43	55.70	67.88
ETO, in	1.35	1.87	3.45	5.03	5.93	6.71	7.11	6.29	4.84	3.61	1.8	1.36	49.35

Sources: Precipitation and temperature from the NOAA NCDC San Jose station, and evapotranspiration from CIMIS San Jose station



**Table 2 Population Projections**

	<b>2000</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>
City of San Jose: North San Jose	9,613	11,990	21,548	31,106	40,664	50,222
San Jose Water: North San Jose	6,010	6,576	11,178	15,780	20,382	24,984
Total North San Jose	15,623	18,566	32,726	46,886	61,046	75,206
City of San Jose: Alviso	2,128	2,292	2,470	2,660	2,866	3,088
Total North San Jose/Alviso	11,741	14,282	24,018	33,766	43,530	53,310

Table 2

**Table 3 Water Demand by Water Use Sectors, AFY**

<b>North San Jose</b>					<b>Proposed</b>			
<b>Customer Type</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>	<b>2004</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>
Residence - Single	0.0	84.0	130.8	133.9	133.9	133.9	133.9	133.9
Residence - Multi	537.9	510.8	700.5	854.2	2,213.4	3,572.7	4,931.9	6,291.2
Irrigation	0.0	1,179.4	1,945.8	1,991.8	2,087.1	2,182.3	2,277.6	2,372.8
Commercial	119.1	143.4	167.9	156.5	234.5	312.5	390.5	468.5
Industrial	1,766.3	1,888.2	2,056.0	2,155.1	2,157.6	2,160.1	2,162.6	2,165.1
Public	250.1	67.2	250.3	320.3	320.3	320.3	320.3	320.3
Temporary	9.4	9.0	76.0	19.0	19.0	19.0	19.0	19.0
<b>TOTAL</b>	<b>2,682.7</b>	<b>3,882.0</b>	<b>5,327.3</b>	<b>5,630.7</b>	<b>7,165.7</b>	<b>8,700.7</b>	<b>10,235.7</b>	<b>11,770.7</b>

<b>Alviso</b>					<b>Proposed</b>			
<b>Customer Type</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>	<b>2004</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>
Residence - Single	122.5	113.8	148.9	169.0	171.5	174.1	176.7	179.4
Residence - Multi	53.5	129.1	34.8	40.1	40.7	41.3	41.9	42.6
Irrigation	0.0	60.8	0.0	0.0	0.0	0.0	0.0	0.0
Commercial	23.4	17.1	1.3	1.1	1.1	1.1	1.1	1.1
Industrial	28.4	8.3	51.8	99.6	101.1	102.6	104.1	105.7
Public	16.3	4.4	17.4	20.3	20.6	20.9	21.2	21.6
Temporary	2.5	0.0	17.0	8.7	8.9	9.0	9.1	9.3
<b>TOTAL</b>	<b>246.8</b>	<b>333.5</b>	<b>271.2</b>	<b>338.8</b>	<b>343.9</b>	<b>349.0</b>	<b>354.3</b>	<b>359.6</b>

<b>Total</b>					<b>Proposed</b>			
<b>Customer Type</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>	<b>2004</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>
Residence - Single	122.5	197.8	279.7	302.8	305.4	308.0	310.6	313.2
Residence - Multi	591.4	639.9	735.4	894.3	2,254.1	3,614.0	4,973.8	6,333.7
Irrigation	0.0	1,240.2	1,945.8	1,991.8	2,087.1	2,182.3	2,277.6	2,372.8
Commercial	142.5	160.4	169.2	157.5	235.5	313.6	391.6	469.6
Industrial	1,794.7	1,896.6	2,107.8	2,254.7	2,258.6	2,262.7	2,266.7	2,270.8
Public	266.5	71.6	267.7	340.6	340.9	341.2	341.5	341.8
Temporary	11.9	9.0	93.0	27.8	27.9	28.0	28.2	28.3
<b>TOTAL</b>	<b>2,929.5</b>	<b>4,215.5</b>	<b>5,598.5</b>	<b>5,969.5</b>	<b>7,509.6</b>	<b>9,049.7</b>	<b>10,590.0</b>	<b>12,130.3</b>

Table 3

**Table 4 Existing Water Demand in Normal and Dry Years, AFY**

Customer type	Normal (2000)	1991-1992 Rebound	Estimated Drought Reduction				
				Single dry	Multiple Dry - 2	Multiple Dry - 3	Multiple Dry - 4
Residence- Single	280	0.23	0.25	210	210	210	210
Residence- Multi	735	0.22 *	0.25	552	552	552	552
Commercial	169	0.17	0.15	144	144	144	144
Industrial	2,108	0.10	0.10	1,897	1,897	1,897	1,897
Public	268	0.53	0.50	134	134	134	134
Irrigation	1,946	n/a	0.40	1,167	1,167	1,167	1,167
Temporary	93	0.37	0.35	60	60	60	60
<b>TOTAL</b>	<b>5,599</b>			<b>4,164</b>	<b>4,164</b>	<b>4,164</b>	<b>4,164</b>

\*Rebound based on North San Jose only.

**Table 5 Future Water Demand in Normal and Dry Years, AFY**

Customer type	Normal (2025)	1991-1992 Rebound	Estimated Drought Reduction				
				Single dry	Multiple Dry - 2	Multiple Dry - 3	Multiple Dry - 4
Residence- Single	313	0.23	0.25	235	235	235	235
Residence- Multi	6,334	0.22 *	0.25	4,750	4,750	4,750	4,750
Commercial	470	0.17	0.15	352	352	352	352
Industrial	2,271	0.10	0.10	1,703	1,703	1,703	1,703
Public	342	0.53 **	0.00	342	342	342	342
Irrigation	2,373	n/a **	0.00	2,373	2,373	2,373	2,373
Temporary	28	0.37	0.35	21	21	21	21
<b>TOTAL</b>	<b>12,130</b>			<b>9,776</b>	<b>9,776</b>	<b>9,776</b>	<b>9,776</b>

\*Rebound based on North San Jose only

\*\*No reduction assumed for recycled water

**Table 6 Water Supply Sources**

Supply	AFY	Entitlement	Right	Contract	Ever used
SFPUC (Hetch-Hetchy)	3,000			x	yes
SCVWD (Groundwater)*	4,500				yes
Recycled Water	650				yes

\*The annual amount is based on a reported existing well capacity of 5,600 gpm with year-round pumping for 12 hours per day; see text.

**Table 7 Current and Projected Water Supply in a Normal Year, AFY**

Water Supply Sources	1980*	1985	1990	1995	2000	2005**
SFPUC (Hetch-Hetchy)	1,756	3,255	2,443	4,357	5,303	5,300
SCVWD (Groundwater)	0	138	811	117	0	0
Recycled Water	0	0	0	0	403	608
<b>Total</b>	1,756	3,393	3,254	4,474	5,706	5,908

Water Supply Sources	2,010	2,015	2,020	2,025
SFPUC (Hetch-Hetchy)	7,100	7,100	7,100	7,100
SCVWD (Groundwater)	0	0	0	754
Recycled Water	2,830	3,312	3,794	4,277
<b>Total</b>	9,930	10,412	10,894	12,131

\* The water received in the nearest normal year (precipitation within 20% of average) was selected. The water received in 1982 was used for 1980, 1985 for 1985, 1992 for 1990, 1996 for 1995, 2001 for 2000, and 2004 for 2005.

\*\* Comparison of the total 2005 (2004) water supply of 5,908 AF with the Table 3 total water demand of 2004 (5,969.5 AF) reveals a discrepancy of 61.5 AF. This is due to differing billing cycles.

**Table 8 Current supply (AF) available by source for single-dry and multiple-dry years**

Source	Normal*	Single Dry	Multiple Dry Years		
			2	3	4
SFPUC (Hetch-Hetchy)	5,303	3,000	3,000	3,000	3,000
SCVWD (Groundwater)	0	761	761	761	761
Recycled Water	403	403	403	403	403
<b>TOTAL</b>	<b>5,706</b>	<b>4,164</b>	<b>4,164</b>	<b>4,164</b>	<b>4,164</b>

\* Normal year supply based on 2000

**Table 9 Projected supply (AF) available by source for single-dry and multiple-dry years**

Source	Normal	Single Dry	Multiple Dry Years		
			2	3	4
SFPUC (Hetch-Hetchy)	7,100	3,834	3,834	3,834	3,834
SCVWD (Groundwater)	754	924	924	924	924
Recycled Water	4,277	4,277	4,277	4,277	4,277
<b>TOTAL</b>	<b>12,131</b>	<b>9,035</b>	<b>9,035</b>	<b>9,035</b>	<b>9,035</b>

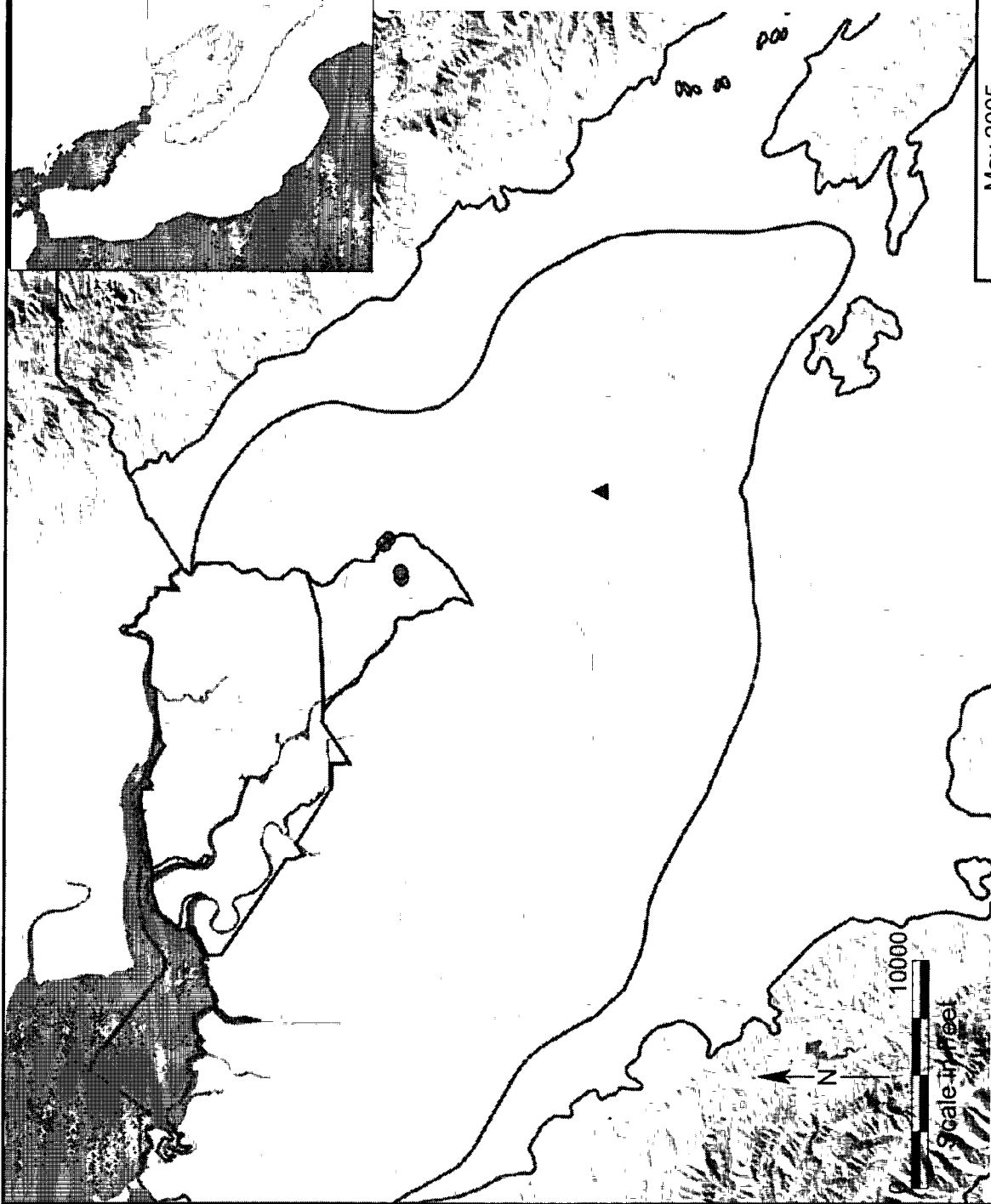
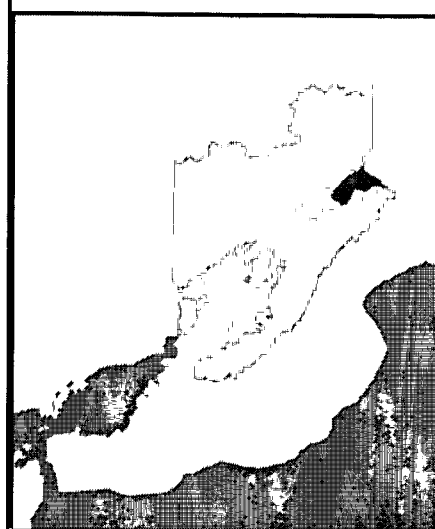
\* Normal year supply based on 2025

**Table 10 Comparison of current supply and demand for normal, single dry and multiple dry years**

Current Supply and Demand	Normal	Single Dry	Multiple Dry Years		
			2	3	4
Supply total	5,706	4,164	4,164	4,164	4,164
Demand total	5,599	4,164	4,164	4,164	4,164
Difference	108	0	0	0	0

**Table 11 Comparison of 20 year projection of supply and demand for normal, single dry and multiple dry years**

2025 Supply and Demand with Project	Normal	Single Dry	Multiple Dry Years		
			2	3	4
Supply total	12,131	9,035	9,035	9,035	9,035
Demand total	12,130	9,776	9,776	9,776	9,776
Difference	0	-741	-741	-741	-741



**LEGEND**

- ▲ Rain Station
- ▭ Subbasin
- Well
- ▭ Water Body
- Percolation Pond
- ▭ Project Area
- ▭ Parcel
- Roads
- Highway

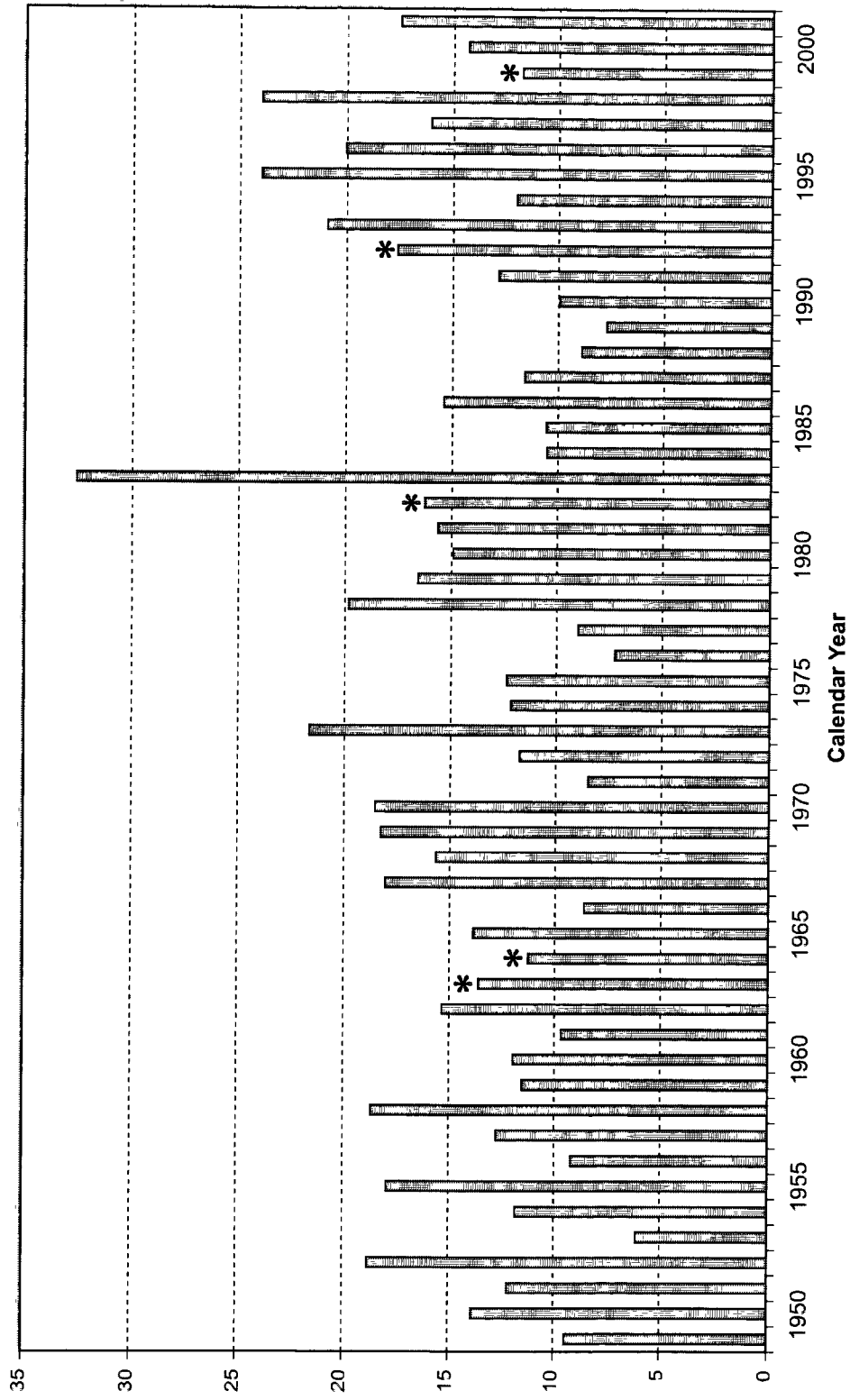
**DRAFT**

May 2005

**Figure 1  
Location Map**

TODD ENGINEERS  
Emeryville, California

Source: DEM - USGS, Parcel Project Area and Wells - City of San Jose.  
Rain Station, Subbasins, Percolation Ponds, Water Bodies - SCVWD.  
Roads - ESRI

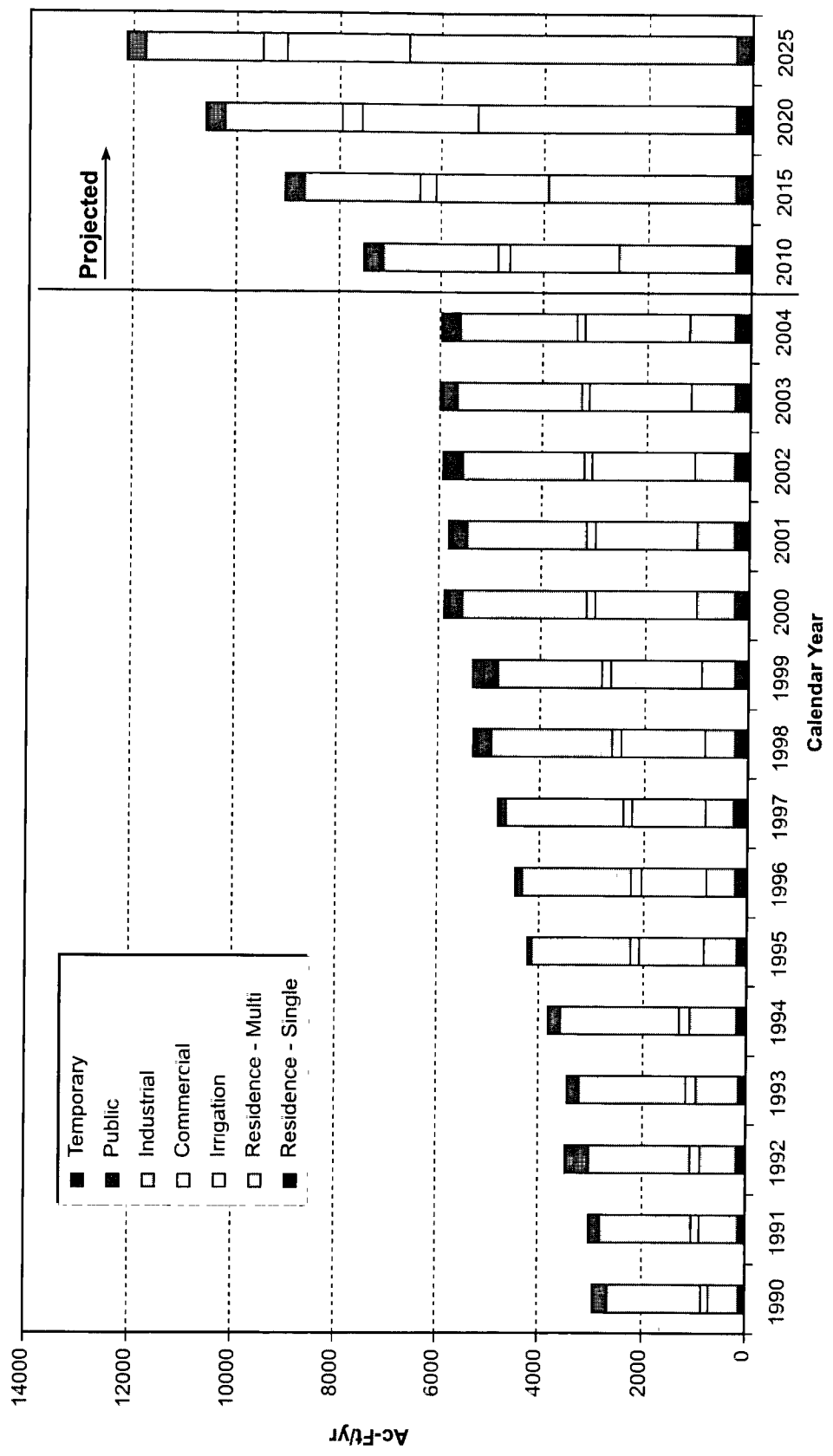


Year	* Missing Month(s)
1963	October, November, December
1964	January
1982	March
1992	August
1999	September, October

May 2005  
 TODD ENGINEERS  
 Emeryville, California

**Figure 2**  
 Yearly  
 Precipitation  
 San Jose

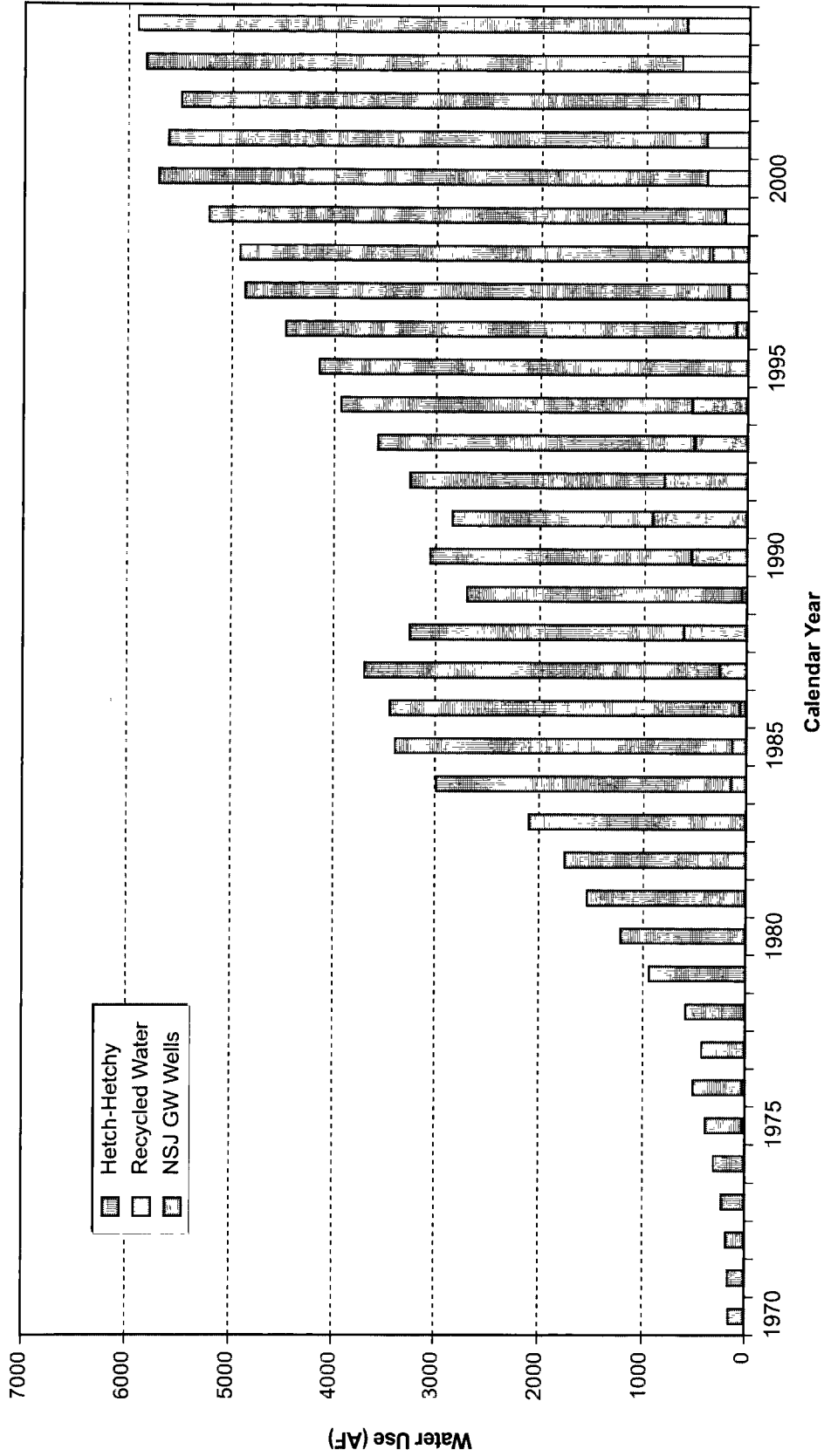




May 2005

**Figure 3**  
**North San Jose/Alviso**  
**Water Demand**

TODD ENGINEERS  
 Emeryville, California



**Figure 4**  
**North San Jose/Alviso**  
**Water Use**

May 2005  
 TODD ENGINEERS  
 Emeryville, California

# **APPENDIX A**

Settlement Agreement and Master Water Sales  
Contract between the City and County of San  
Francisco and Certain Suburban Purchasers

JUN 12 1984

69

## WATER SUPPLY CONTRACT

This Contract, dated as of August 8, 1984, is entered into by and between the City and County of San Francisco ("City") and the City of San Jose ("Customer").

### RECITALS

The City and the Customer have entered into a Settlement Agreement and Master Water Sales Contract ("Master Agreement"), which sets forth the terms and conditions under which the City will continue to furnish water for domestic and other municipal purposes to Customer and to other suburban purchasers. The Master Agreement contemplates that the City and each individual suburban purchaser will enter into individual contracts describing the location or locations at which water will be delivered to each purchaser by the San Francisco Water Department ("SFWD"), the purchaser's service area within which water so delivered is to be sold and other similar provisions unique to the individual purchaser. This Water Supply Contract is the Individual Contract contemplated by the Master Agreement.

### AGREEMENTS OF THE PARTIES

1. Incorporation of the Master Agreement

The terms and conditions of the Master Agreement are

incorporated into this Contract as if set forth in full herein.

2. Term

The term of this Contract shall be three years and shall terminate on June 30, 1987. On or before July 1, 1985, the City shall exercise one of the options set forth in Section 9.03(a) of the Master Agreement, and if appropriate the term of this Contract shall be modified as provided therein.

3. Service Area

Water delivered by the City to the Customer may be used or sold within the service area shown on the map designated Exhibit M to the Master Agreement and Exhibit A attached hereto. Except as provided in Section 7.05 of the Master Agreement, Customer shall not use or sell any water delivered by the City outside this service area without the prior written consent of the City.

4. Location and Description of Service Connections

Sale and delivery of water to Customer will be made through a connection or connections to the SFWD system at the location or locations shown on Exhibit A attached hereto and with the applicable present account number, description, connection size, and meter size as shown on Exhibit B attached hereto.

5. Interties With Other Water Systems

Customer maintains interties with neighboring water systems at the location or locations shown on Exhibit A attached hereto and with the connection size as shown on Exhibit C attached hereto.

6. Billing and Payment

The City shall compute the amounts of water delivered and bill Customer therefor on a monthly basis consistent with existing practice. Beginning July 1, 1986, the bill shall show the separate components of the charge (e.g., service, consumption, demand). Customer shall pay the amount due within thirty (30) days after receipt of the bill.

If Customer disputes the accuracy of any portion of the water bill it shall (a) notify the General Manager of the SFWD in writing of the specific nature of the dispute and (b) pay the undisputed portion of the bill within thirty (30) days after receipt. Customer shall meet with the General Manager of the SFWD or a delegate to discuss the disputed portion of the bill.

7. Minimum and Maximum Water Delivery Levels

a. The City will deliver and Customer will pay for the following minimum annual average quantities of water:

<u>Fiscal Year</u>	<u>Quantity (mgd)</u>
1984/85	1.3
1985/86	1.4
1986/87	1.5

b. Customer's usage shall not exceed the following quantities:

<u>Fiscal Year</u>	<u>Average Annual (mgd)</u>	<u>Day (mgd)</u>	<u>Hour (mgd)</u>
1984/85	1.95	3.9	4.68
1985/86	2.10	4.2	5.04
1986/87	2.25	4.5	5.40

c. The minimum and maximum quantities set forth above in subsections 9(a) and (b) shall not obligate the City to supply Customer with any water in addition to the quantities to which Customer otherwise is entitled under Sections 7.03 and 9.03 of the Master Agreement (and Section 7.02 of the Master Agreement if that Section becomes applicable to Customer pursuant to Section 9.03(b)(i)). Nor shall the maximum quantities set forth above in Section 7(b) obligate the City to supply the peak monthly, daily, or hourly demands of Customer, except as provided in Section 7.01 of the Master Agreement.

8. Temporary Water Supply

Service to Customer under this Contract is temporary only. By supplying water to Customer, the City does not dedicate water or a water supply to Customer nor obligate

itself, contractually or otherwise, to supply water to Customer beyond the term of this Contract. Customer acknowledges that it is not presently a permanent customer of the City.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, to become effective upon the effectiveness of the Master Agreement, by their duly authorized



representatives.

DATED: August, 1984.

Authorized by Public Utilities  
Commission Resolution No. 84-0144  
Adopted April 10, 1984.

Romaine A. Boldridge  
Romaine A. Boldridge, Secretary

*JH* Approved by Board of Supervisors  
~~Resolution~~ No. 320-84  
*Ordinance*  
Adopted June 28 1984.

John L. Taylor  
John L. Taylor Clerk

DATED: June 18, 1984.

ATTEST:  
Helen E. Jackson  
Helen E. Jackson City Clerk

CITY AND COUNTY OF  
SAN FRANCISCO

By Rudolf Nothenberg  
Rudolf Nothenberg  
General Manager of  
Public Utilities

APPROVED AS TO FORM:  
GEORGE AGOST  
ATTORNEY  
BY George Agost  
UTILITIES GENERAL COUNSEL

CITY OF SAN JOSE

By Thomas McEnery  
Its Thomas McEnery Mayor

Authorized by Resolution  
No. 57539 of the City  
Council of the City of San Jose

050984/2-196603Rk

Emergency Connections With Other Water Systems  
-- Normally Closed Valving

<u>Symbol on Exhibit A</u>	<u>Location</u>	<u>Connection With</u>	<u>Size</u>
C-1	Trimble Road and Del La Cruz	City of Santa Clara	6 inch
C-2	Old Mountain View/Alviso Road and east city limits	City of Santa Clara	10 inch [proposed]

051584/3-196603Rk-2

EXHIBIT C

# **APPENDIX B**

Master Supply Contract between City and  
County of San Francisco and City of San José

MAY 22 1984

10L

**WORKING COPY ONLY**

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**SETTLEMENT AGREEMENT**  
**and**  
**MASTER WATER SALES CONTRACT**  
**between**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**and**  
**CERTAIN SUBURBAN PURCHASERS**  
**in**  
**SAN MATEO COUNTY, SANTA CLARA COUNTY**  
**AND ALAMEDA COUNTY**

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## ARTICLE IX

### IMPLEMENTATION AND SPECIAL PROVISIONS AFFECTING CERTAIN SUBURBAN PURCHASERS

#### Section 9.01. *General.*

As described in Section 7.02, the City previously entered into water supply contracts with each of the suburban purchasers, typically for terms of 20 years. The initial terms of the majority of those contracts have now expired and, except as provided below, the suburban purchasers will execute new water supply contracts with the City concurrently with their approval of this Agreement. These Individual Contracts will describe the service areas of each suburban purchaser, identify the size and location of connections between the SFWD transmission system and the suburban purchaser's distribution system, provide for periodic rendering and payment of bills for water usage, and in some instances, contain additional specialized provisions unique to each purchaser and not of general concern or applicability. A sample of the Individual Contract to be entered into is attached as Exhibit L. The Individual Contracts between the City and the suburban purchasers will not contain any provisions inconsistent with Articles I through VIII of this Agreement, except: (1) as provided below in this Article; or (2) to the extent that such provisions are not in derogation of the rights that other suburban purchasers have under this Agreement and their Individual Contracts. Any provisions in an Individual Contract which are in violation of this Section shall be void.

#### Section 9.02. *California Water Service Company.*

The parties recognize that the California Water Service Company, one of the suburban purchasers, is a private, for-profit corporation and, as such, has no claim to co-grantee status under the Act, which specifically bars private parties from receiving for resale any water produced by the City's Hetch Hetchy system or otherwise subject to the Raker Act. The parties also recognize that the California Water Service Company is a member of the Bay Area Water Users Association, the entity which has coordinated Plaintiffs' maintenance of the action, and that the suburban purchasers have insisted upon the inclusion of the California Water Service Company as a party to this Agreement as a precondition for their own acquiescence hereto. Accordingly, the following provisions shall apply to the California Water Service Company, anything to the contrary elsewhere in this Agreement notwithstanding:

(a) The total quantity of water delivered by the City to the California Water Service Company shall not in any calendar year exceed 47,400 acre feet, unless through improvements in the City's local production facilities in Santa Clara, Alameda, San Mateo, or San Francisco Counties, made after August 21, 1961 (the date of the previous contract between the City and California Water Service Company) the City develops or has developed additional local sources in those counties, in which event the maximum stated herein may be increased by the City, upon determination by it of the need by California Water Service Company for water service in excess of the maximum stated herein. Such an increase shall automatically increase the Supply Assurance commitment to the suburban purchasers collectively (including the California Water Service Company) by an equivalent amount, but only if it is based on development of additional local sources after the effective date of this Agreement. It is agreed that the City has no obligation to deliver water to California Water Service Company in excess of the maximum stated herein, except as such maximum may be increased by the City pursuant to this subsection. Nothing in this Agreement shall preclude the City from selling water to any county, city, town, district, political subdivision, or other public agency for resale to customers within the service area of the California Water Service Company. The maximum annual quantity set forth in this subsection is intended to be a limitation on the total quantity of water that may be allocated to California Water Service Company; it is not itself intended to serve as an allocation of water under Section 7.02.

(b) Nothing in this Agreement shall require or contemplate any delivery of water to California Water Service Company in violation of the Act, which statute imposes certain obligations upon the City as a grantee from the United States in regard to the disposal of water and electricity from the Hetch Hetchy project.

(c) Nothing in this Agreement shall alter, amend or modify the Findings of Fact and Conclusions of Law and the Judgment dated May 25, 1961, in that certain action entitled *City and County of San Francisco v. California Water Service Company* in the Superior Court of the State of California in and for the County of Marin, No. 23286, as modified by the Quitclaim Deed from California Water Service Company to the City dated August 22, 1961. The rights and obligations of the City and California Water Service Company under these documents shall continue as therein set forth.

(d) Notwithstanding anything in Section 7.06 to the contrary, California Water Service Company shall have the right to assign to a public agency having the power of eminent domain all or a portion of the rights of California Water Service Company under any contract between it and the City applicable to any individual district of California Water Service Company in connection with the acquisition by such public agency of all or a portion of the water system of California Water Service Company in such district. In the event of any such assignment of all the rights, privileges and obligations of California Water Service Company under such contract, California Water Service Company shall be relieved of all further obligations under such contract provided that the assignee public agency expressly assumes the obligations of California Water Service Company thereunder. In the event of such an assignment of a portion of the rights, privileges and obligations of California Water Service Company under such contract, California Water Service Company shall be relieved of such portion of such obligations so assigned thereunder provided that the assignee public agency shall expressly assume such obligations so assigned to it.

#### Section 9.03. *City of San Jose and City of Santa Clara.*

The suburban purchasers recognize that the City has in the past provided water to the City of San Jose ("San Jose") and the City of Santa Clara ("Santa Clara") on a temporary and limited basis. In light of this fact, certain provisions of this Agreement shall be inapplicable to San Jose and Santa Clara, in the following respects:

(a) *City of San Jose.* The City's last agreement with San Jose expired on June 30, 1982. Water delivered to San Jose by the City between July 1, 1982 and July 31, 1983 shall be charged by the City and paid for by San Jose at the City's water rates which were in effect prior to July 31, 1983. From August 1, 1983 through June 30, 1985, the City will furnish water to San Jose at the same rates as those applicable to other suburban purchasers pursuant to this Agreement. On or before July 1, 1985, the City will exercise one of the following options with respect to its continuing water service to San Jose after that date.

(i) The City may elect to take on San Jose as a permanent customer, subject to minimum and maximum water delivery levels to be negotiated between the City and San Jose, provided that San Jose's service area and maximum annual usage during the balance of the Term of this Agreement shall not exceed those shown in Exhibit M. If the City so elects and San Jose accepts this offer: (1) San Jose will pay for water in accordance with the methodology set forth in this Agreement, such rates to be identical to those charged the other suburban purchasers; (2) water delivered to San Jose shall be included within the Supply Assurance, (3) San Jose will be entitled to a supply guarantee (to be included within the Supply Assurance) based on its usage during calendar year 1981 (500,239,960 gallons); and (4) its share of residual water will be determined in accordance with Section 7.02.

(ii) Alternatively, the City may continue to sell water to San Jose on a temporary and, after June 30, 1987, interruptible basis, but at rates identical to those charged other suburban

purchasers. If the City continues to provide water to San Jose on a temporary and, after June 30, 1987, interruptible basis, the amount of water furnished to San Jose shall not be included within the Supply Assurance. The City will provide at least two years notice to San Jose prior to termination of service, and the water delivered to San Jose after June 30, 1987, shall be limited by the City's ability to meet the full needs of all its other water customers (including in-City residents and other direct City water users). Delivery of water to San Jose may be subject to minimum and maximum water delivery levels, which will be negotiated between the City and San Jose, provided that San Jose's service area and maximum annual usage shall not exceed that set forth in Exhibit M.

(iii) Finally, the City may elect to terminate its water service to San Jose. If the City elects to exercise this option, it shall notify San Jose of its intention to do so no later than July 1, 1985, and the termination of service shall occur no earlier than July 1, 1987.

(b) *City of Santa Clara.* The City's existing contract with Santa Clara expires on June 30, 1984. From July 1, 1984 through June 30, 1985, the City shall furnish water to Santa Clara on the same rates as those applicable to other suburban purchasers pursuant to this Agreement. On or before July 1, 1985, the City will exercise one of the following options with respect to its continuing water service to Santa Clara after that date.

(i) The City may elect to take on Santa Clara as a permanent customer, subject to maximum and minimum water delivery levels to be negotiated between the City and Santa Clara, provided that Santa Clara's service area and maximum annual usage during the balance of the Term of this Agreement shall not exceed those shown in Exhibit M. If the City so elects and Santa Clara accepts this offer: (1) Santa Clara will continue to pay for water in accordance with the methodology set forth in this Agreement, such rates to be identical to those charged the other suburban purchasers, (2) water delivered to Santa Clara shall be included within the Supply Assurance; (3) Santa Clara will be entitled to a supply guarantee (to be included within the Supply Assurance) based on its usage during calendar year 1981 (633,810,320 gallons); and (4) its share of residual water will be determined in accordance with Section 7.02.

(ii) Alternatively, the City may continue to sell water to Santa Clara on a temporary and, after June 30, 1987, interruptible basis, but at rates identical to those charged other suburban purchasers. If the City continues to provide water to Santa Clara on a temporary and, after June 30, 1987, interruptible basis, the amount of water furnished to Santa Clara shall not be included within the Supply Assurance. The City will provide at least two years notice to Santa Clara prior to termination of service, and the water delivered to Santa Clara after June 30, 1987, shall be limited by the City's ability to meet the full needs of all its other water customers (including in-City residents and other direct City water users). Delivery of water to Santa Clara may be subject to minimum and maximum water delivery levels, which will be negotiated between the City and Santa Clara, provided that Santa Clara's service area and maximum annual usage shall not exceed that set forth in Exhibit M.

(iii) Finally, the City may elect to terminate its water service to Santa Clara. If the City elects to exercise this option, it shall notify Santa Clara of its intention to do so no later than July 1, 1985, and the termination of service shall occur no earlier than July 1, 1987.

(c) In signing this Agreement, neither San Jose nor Santa Clara waives any of its rights to contend, in the event the City does not elect to take it on as a permanent customer in 1987, that it is entitled to that status and to be charged rates identical to those charged other suburban purchasers under this Agreement, pursuant to the Raker Act or any other federal or state law. In signing this Agreement, the City does not waive its right to deny any or all of such contentions.

arising out of that certain deed dated May 22, 1884, from Charles Crocker to Spring Valley Water Works, a corporation, recorded on May 24, 1884, in Book 37 of Deeds at page 356, Records of San Mateo County, California, as amended by that certain Deed of Exchange of Easements in Real Property and Agreement for Trade in Connection Therewith, dated July 29, 1954, recorded on August 4, 1954, in Book 2628, at page 298, Official Records of said San Mateo County, or with respect to or arising out of that certain action involving the validity or enforceability of certain provisions of said deed entitled *City and County of San Francisco v. Crocker Estate Company*, in the Superior Court of the State of California in and for the County of Marin, No. 23281.

DATED: August 8, 1984

CITY AND COUNTY OF SAN FRANCISCO  
By Rudolph Nothenberg  
Rudolph Nothenberg, General Manager  
of Public Utilities

Authorized by Public Utilities Commission  
Resolution No. 84-0144  
Adopted April 10, 1984  
Romaine A. Boldridge  
Romaine A. Boldridge, Secretary

Approved as to form:  
GEORGE AGNOST  
City Attorney  
By McMorris M. Dow  
McMorris M. Dow, Utilities General Counsel

Approved by Board of Supervisors  
Ordinance  
Resolution No. 320-84  
Adopted June 28, 1984  
John L. Taylor  
John L. Taylor, Clerk

DATED: JUN 04 1984

CITY OF SAN JOSE  
By Thomas McInerney  
Name: Thomas McInerney  
Title: MAYOR

Authorized by Ordinance No. \_\_\_\_\_ / Resolution No. 57504 / Motion  
(Indicate form of action and number if appropriate)  
Adopted 5-22-84 10L  
Helen E. Jackson  
Name: Helen E. Jackson  
Title: Secretary/City Clerk



RESOLUTION NO. 57504

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING AND APPROVING A SETTLEMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND CERTAIN SUBURBAN PURCHASERS IN SAN MATEO COUNTY AND SANTA CLARA COUNTY AND ALAMEDA COUNTY.

WHEREAS, for the last several years the City, as a member of the San Francisco Bay Area Water Users Association, has supported litigation, Palo Alto v. San Francisco, in which the objective allocation of water costs between San Francisco and its suburban customers was the main issue; and

WHEREAS, said Settlement Agreement provides that City of San Jose will continue to receive water from San Francisco until June 30, 1985; and

WHEREAS, after the June 30, 1985 date, San Francisco may choose to take the City on as a permanent customer, continue to sell water on an interruptable basis or terminate water service whereby termination will not occur before June 1, 1987; and

WHEREAS, said Settlement Agreement provides for objective allocation of water costs to the suburban users and sufficient water to meet the City of San Jose needs for the short term.

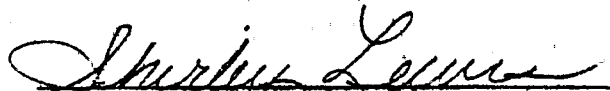
NOW, THEREFORE, BE IT RESOLVED that the Settlement Agreement be hereby approved.

ADOPTED this 22nd day of May 1984, by the following vote:

AYES: ALVARADO, BEALL, FLETCHER, HAMMER, IANNI, RYDEN, SAUSEDO, WILLIAMS AND LEWIS

NOES: NONE

ABSENT: ESTRUTH AND McENERY

  
SHIRLEY LEWIS VICE Mayor

ATTEST:

  
Helen E. Jackson, City Clerk

**San Jose Water Company's  
North First Street  
Water Supply Assessment**



**Prepared by:  
Nicole Dunbar, P.E.**

**With Assistance From:  
Bill Tuttle, P.E.  
Brian Dunbar**

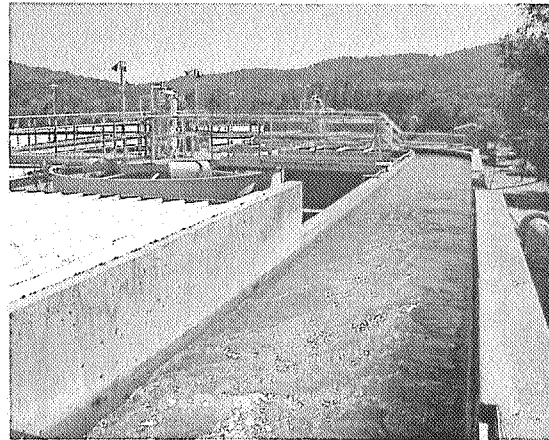
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### Appendix Index

A	SJWC's License from the State Water Board
B	SJWC & SCVWD 3-Year Treated Water Purchase Contract
C	SJWC's Urban Water Management Program (February 2003)
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San Jose Water Company (SJWC) has provided reliable and high quality water service to the citizens of San Jose for more than 139 years. SJWC is the largest privately owned urban water system in the United States, providing high-quality water and exceptional customer service to nearly one million residents of Santa Clara County in Northern California.



### Service Area & Climate Description

SJWC's service area encompasses 138 square miles, including most of San Jose, most of Cupertino, the entire cities of Campbell, Monte Sereno, Saratoga, the Town of Los Gatos and parts of unincorporated Santa Clara County.

The San Jose area experiences a low-humidity climate with an average of 14 inches of rain annually. Temperatures range from the mid 60's to the high 80's (°F) in spring and summer and range from the mid 40's to mid 50's (°F) in the winter. Most of the precipitation in the area occurs between November and March with December and January typically being the wettest months. Further climate data is listed in the table below.

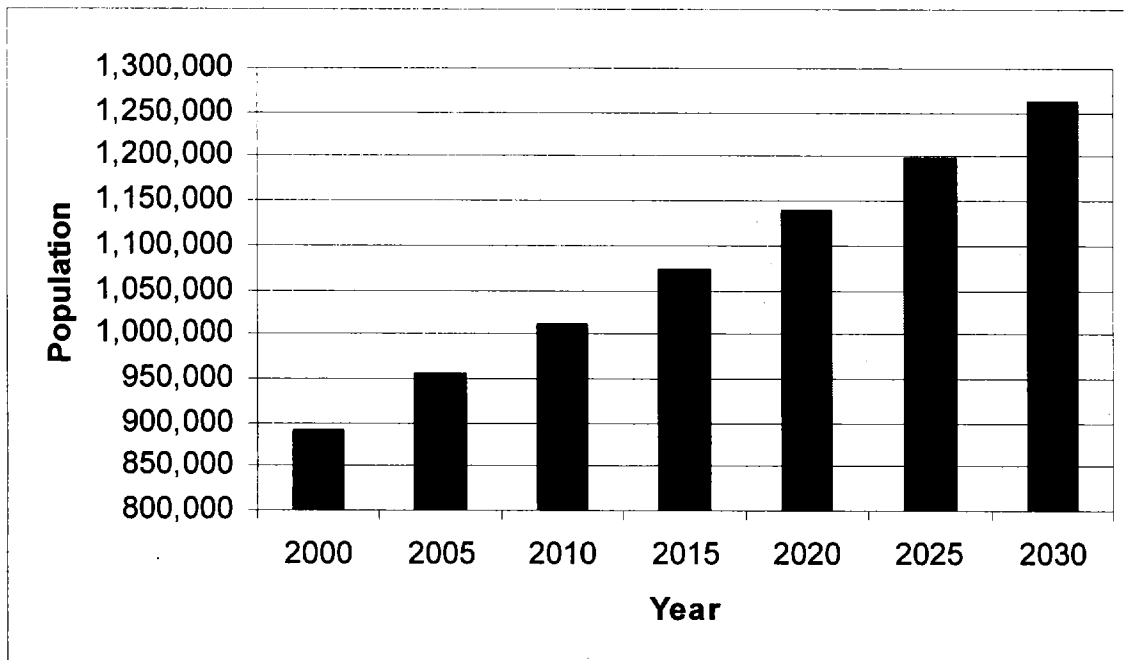
### Climate Data

	Jan	Feb	Mar	Apr	May	Jun
<b>Average Precip (in)</b>	2.9	2.5	2.1	1.1	0.4	0.1
<b>Average Temp (°F)</b>	49.6	53.1	55.5	58.7	62.7	66.9
<b>Evapo-transpiration (in)</b>	1.48	1.88	3.35	4.74	5.36	6.25

	Jul	Aug	Sep	Oct	Nov	Dec	Annual
<b>Average Precip (in)</b>	0	0.1	0.2	0.7	1.6	2.5	14.2
<b>Average Temp (°F)</b>	69.4	69.3	68.3	63.2	55.5	49.7	60.2
<b>Evapo-transpiration (in)</b>	6.74	5.99	4.52	3.34	1.82	1.48	47.04

The population of SJWC's service area is shown in the chart below. These population projections are based on the Association of Bay Area Governments' (ABAG) population projections.

## Projected SJWC Service Area Population



## Past, Current and Future Water Use

The majority of connections to SJWC's distribution system are either residential or commercial. SJWC also provides water to industry, municipal, private fire services and fire hydrant connections. The table below lists a complete breakdown of the number of connections based on customer type. The number of future connections was calculated based on the estimated population projection from ABAG.

### Number of Water Use Connections

Customer Type	2000	2005	2010	2015	2020	2025	2030
Residential	188,896	193,106	205,618	219,368	234,874	248,191	262,870
Business	19,696	19,626	20,898	22,296	23,871	25,225	26,717
Industrial	80	69	73	78	83	88	93
Public Authority	1,622	1,677	1,785	1,905	2,039	2,155	2,282
Resale	30	30	32	34	37	39	41
Other	251	266	284	303	324	342	363
<b>Total</b>	<b>210,575</b>	<b>214,774</b>	<b>228,690</b>	<b>243,983</b>	<b>261,229</b>	<b>276,040</b>	<b>292,367</b>

A complete breakdown of the actual and estimated future usage based on water use sectors is shown in the table below. The future usage was calculated based on the estimated population projections from ABAG. The estimated future usage includes an additional 3267 AF/yr (based on City of San Jose estimates) for the North First Street Project added between years 2010 and 2025 in the sectors shown in the General Plan for the North First Street Project. These anticipated water demands were distributed by

adding 817 AF/yr in 2010, 817 AF/yr in 2015, 817 AF/yr in 2020, and 816 AF/yr in 2025.

**Water Use Sectors (Includes North First Street project) (AF/yr)**

Customer Type	2000	2005	2010	2015	2020	2025	2030
Residential	86,509	86,772	93,051	99,887	107,512	114,153	120,749
Business	47,974	46,377	49,446	52,814	56,601	59,861	63,386
Industrial	1,135	645	783	924	1,073	1,213	1,262
Public Authority	8,381	8,387	8,931	9,528	10,201	10,780	11,417
Resale	739	774	824	880	942	995	1,054
Other	249	218	233	248	266	281	297
<b>Total</b>	<b>144,987</b>	<b>143,175</b>	<b>153,269</b>	<b>164,281</b>	<b>176,594</b>	<b>187,282</b>	<b>198,166</b>

SJWC total demand is not limited to the above metered customer use. Between six and seven percent of the water produced (pumped, treated, or purchased) never gets billed and is classified as unaccounted for water. Unaccounted for water includes authorized unmetered uses including fire fighting, main flushing and public use. The remaining unmetered water is likely due to inaccurate meter reading, reservoir cleaning, malfunctioning valves, leakage and theft. The table below shows the actual amount of total system demand in 2000 and projects the amount until 2030.

**Total System Demand (Includes North First Street project) (AF/yr)**

	2000	2005	2010	2015	2020	2025	2030
Customer Metered Demand	144,987	143,175	153,269	164,281	176,594	187,284	198,168
Unaccounted for Water	9,967	9,767	10,400	11,096	11,880	12,553	13,296
<b>Total System Demand</b>	<b>154,955</b>	<b>152,943</b>	<b>163,669</b>	<b>175,377</b>	<b>188,474</b>	<b>199,837</b>	<b>211,464</b>

**Water Rights, Contracts and Entitlements**

SJWC has “pre-1914 surface water rights” to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted and it grandfathered in all existing water entitlements to licensee holders. SJWC filed for a license in 1947 and was granted license number 10933 in 1976 by the State Water Resources Board to draw 6240 AF/yr from Los Gatos Creek. A copy of this license is attached in Appendix A. SJWC has upgraded the collection and treatment system that draws water from this watershed which has increased the capacity of this entitlement to approximately 11,200 AF/yr for an average rain year.

In 1981, SJWC entered into a 70-year master contract with the Santa Clara Valley Water District (District) for the purchase of treated water. The contract provides for rolling three-year purchase schedules establishing fixed quantities of water to be purchased during each period. The maximum peak day rate for delivery of water from the District under the 2004 - 2005 schedule is 108 MGD. The District's sources of supply include

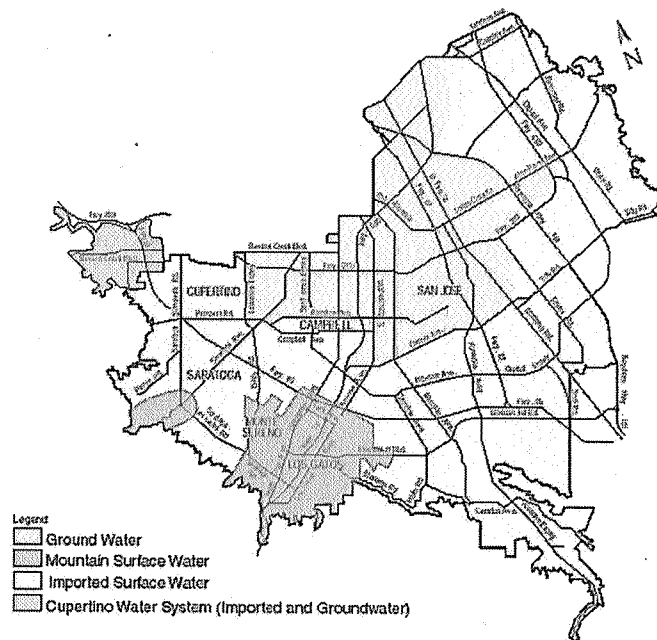
local surface water from ten reservoirs, water imported from the South Bay Aqueduct of the State Water Project, and water imported from the Federal Central Valley Project, San Felipe Division. The District, along with other public agencies, contracts for water from these projects. The water is treated at one of three the District-operated treatment plants (Rinconada, Penitencia and Santa Teresa). SJWC and the District currently have a three year treated water contract that covers 2005 – 2008, with contract supply ranging from 67,504 AF/yr in 2005 to 69,039 AF/yr in 2008. A copy of this contract is attached in Appendix B. SJWC may also purchase “non-contract” water from the District at a reduced rate if excess supply is available at their Rinconada Treatment Plant. The non-contract water available to SJWC varies annually.

SJWC has rights to pump water from the aquifers in the service area because SJWC owns various parcels in the service area and property owners have the right to withdraw groundwater from aquifers below said property when in compliance with the District’s permitting requirements. In Santa Clara County, this right is subject to a groundwater pumping fee levied by the District based on the amount of groundwater pumped into SJWC’s distribution system. SJWC generally uses the most economically source of water, which is largely determined by the District’s pump tax rates and contracted water rates.

### Sources of Water

SJWC has three sources of supply: groundwater, imported treated surface water and local raw surface water. A map of these sources is shown to the right.

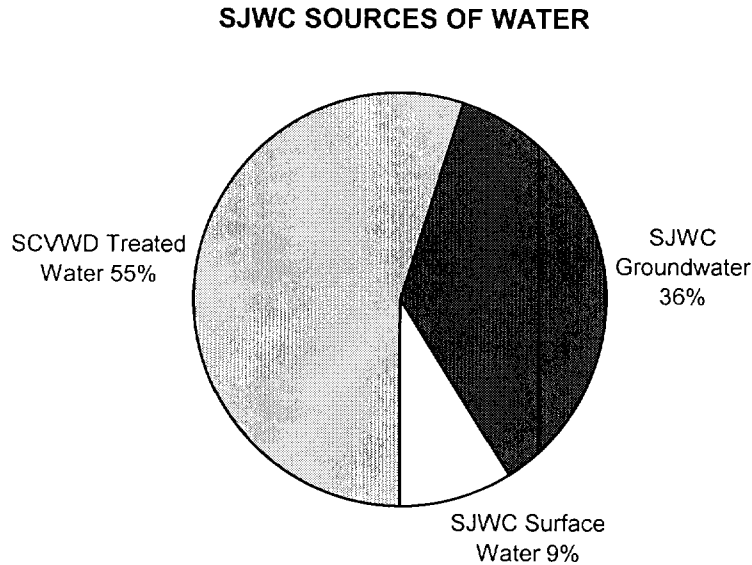
Groundwater comprises just over one third of SJWC’s water supply. Approximately 110 wells pump water from the major water-bearing aquifers of the Santa Clara Valley Groundwater Subbasin. These aquifers are recharged naturally by rainfall and artificially by a system of local reservoirs, percolation ponds, and injection wells operated by the District.



SJWC is under contract with the District in the purchase of just over fifty percent of the water supply. This water originates from several sources including local reservoirs, the State Water Project and the federally funded Central Valley Project San Felipe Division. It is piped into SJWC’s system at various turnouts after it is treated at one of the three

District water treatment plants (Rinconada to the west side pipeline and Penitencia and Santa Teresa to the east side pipeline).

SJWC's final source of supply is from surface water in the local watersheds of the Santa Cruz Mountains. It provides approximately ten percent of the water supply in normal rainfall years; however it can be much lower in drought years. A series of dams and automated intakes collect the water released from SJWC's Lakes. The water is then sent to SJWC's Montevina Filter Plant for treatment prior to entering the distribution system. SJWC's Saratoga Treatment Plant draws water from a local stream which collects water from the nearby Santa Cruz Mountains. The pie chart below shows SJWC's current supply source breakdown.



The table below show the actual amount of water supplied to SJWC's distribution system from each source in 2004 as well as projections until 2030. The amount of surface water for 2005 and forward is based on a long term average (LTA) for the past 23 years (1984-2004). The groundwater and the District treated water projections include SJWC's plan to acquire the additional needed water for development projects, such as North First Street, by installing new production wells as needed within our distribution system and by purchasing more imported treated water from the District. The District's overall long-term strategy for groundwater as discussed in the District's 2003 Integrated Water Resource Plan (IWRP) Draft (a copy is attached in Appendix F) is to maximize the amount of water available in the groundwater basins to protect against drought and



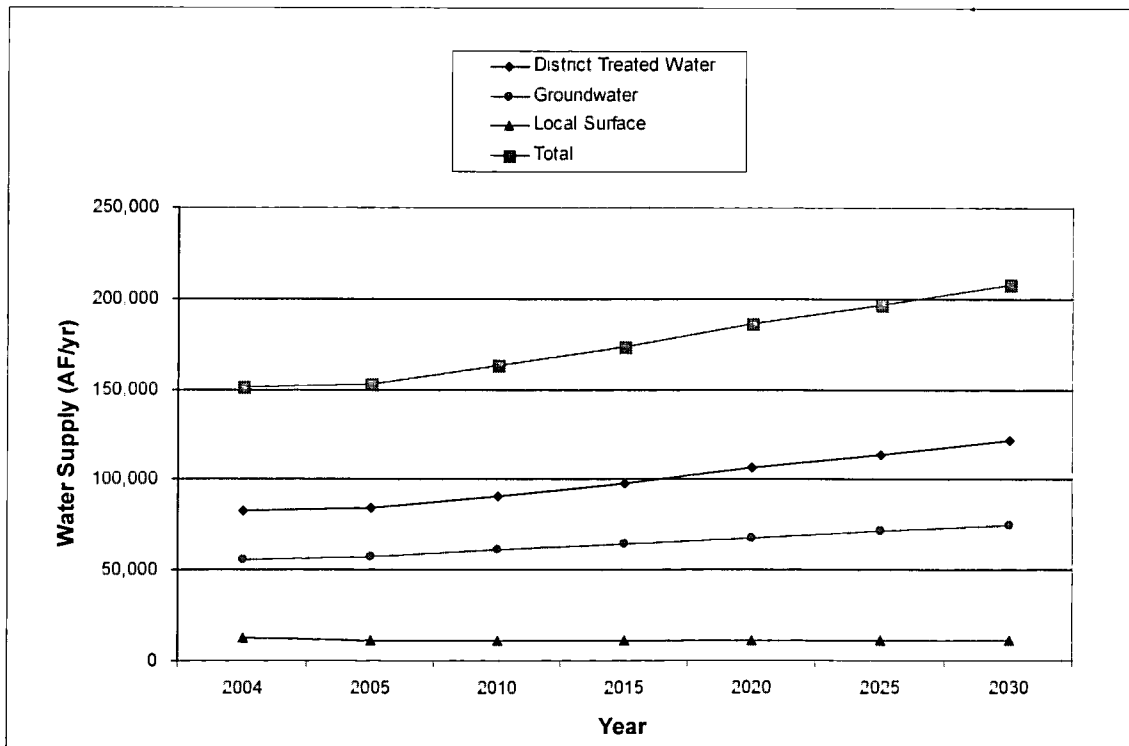
emergencies. The District seeks to maximize the use of treated local and import water when available.

The District has advised SJWC against significantly increasing groundwater use in the future. SJWC has discussed the projected increases in supply from groundwater and District treated water with the District, and final projections will be coordinated with the District in the development of the 2005 Urban Water Management Plan (UWMP). The maximum amount of groundwater SJWC is allowed to pump annually has not been specifically set by the District, but the District has suggested that the amount of groundwater pumped should not exceed 75,000 AF/yr in year 2030. SJWC has sufficient capacity with the existing well infrastructure to pump this additional well water by pumping during peak PG&E charge ratings, using well fields that currently operate as a back-up, and reconditioning existing wells. SJWC also plans to use additional treated water from the District.

**Current and Planned Water Supply without North First Street Project (in AF/yr)**

Water Supply Source	2004	2005	2010	2015	2020	2025	2030
District Treated Water	83,013	84,260	90,648	98,016	106,774	113,799	121,904
Groundwater	55,519	57,389	60,911	64,433	67,956	71,478	75,000
Local Surface	13,067	11,293	11,293	11,293	11,293	11,293	11,293
<b>Total</b>	<b>151,599</b>	<b>152,943</b>	<b>162,852</b>	<b>173,743</b>	<b>186,023</b>	<b>196,570</b>	<b>208,197</b>

**Water Supply per Year by Source**



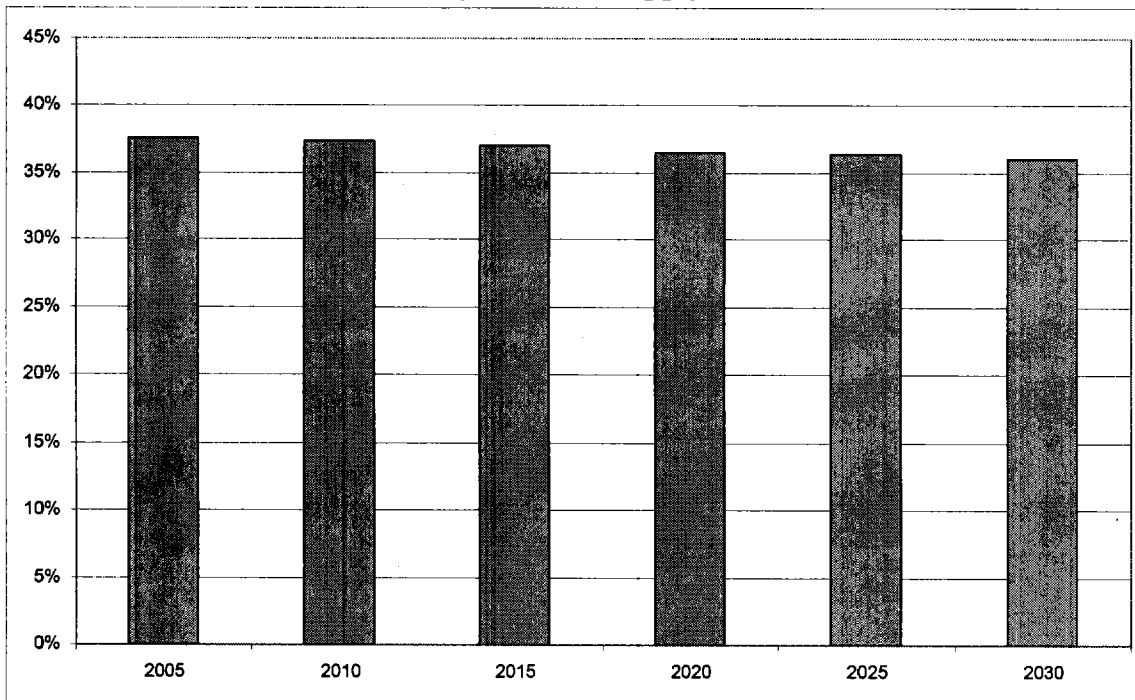
## Groundwater Analysis

Groundwater from the Santa Clara Valley Groundwater Subbasin is a substantial source of water for SJWC's entire distribution system. Groundwater will be the primary source of water for the North First Street project due to its location relative to the District's treated water turnouts. In the past five years, groundwater has been the source for approximately one third of SJWC's total supply. Based on SJWC's projections, groundwater will continue to be a vital source of water, comprising just over thirty-five percent of the supply by year 2030.

The District does not control groundwater withdrawal directly, but manages the groundwater subbasins through conjunctive use and pricing. The District's 2003 IWRP states "although supplies are adequate to meet needs in wet and average years, the expected dry-year shortages will grow over time from approximately 50,000 AF/yr in 2010 to 75,000 AF/yr in 2040." The District's IWRP also states that additional recharge capacity is needed to maintain groundwater as a reliable source now and into the future.

The chart below shows groundwater as a percentage of total projected supply until 2030.

**Projected Groundwater Percentage of Total Supply**



According to SJWC's current system design capacity, if all production wells were run 24 hours a day, approximately 190 MGD or 650,000 AF/yr could be produced during a normal year. These numbers are only theoretical as the District's 2001 Urban Water Management Plan states that the operational storage capacity of the Santa Clara Valley Subbasin is estimated to be 350,000 AF/yr and the groundwater pumping in the basin should not exceed a maximum of 200,000 AF/yr in any given year to avoid land

subsidence. The District is currently in the process of updating its 2001 Groundwater Management Plan and refining their groundwater model to more accurately quantify the amount of water that will be available for SJWC and other water retailers to pump annually to ensure supply reliability.

### **Water Supply Vulnerability**

The District's 2003 IWRP predicts shortages now, and the frequency and magnitude of these shortages will be increased by this development. The City of San Jose's CEQA consultant is in the process of revising the Draft Environmental Impact Report (DEIR) to include this information. The District apparently plans to address these shortages by undertaking a variety of investments over time. Growth greater than expected was modeled as a risk scenario as part of the IWRP and the District has identified additional investments than can address this increased demand.

Since the majority (approximately ninety percent) of SJWC's water supply originates through the District, SJWC will work with the District to ensure that water supply for the North First Street project and appropriate investments are made to ensure reliability in dry and multiple dry years. The District has concerns regarding the use of groundwater as the sole source of supply for the North First Street project and has recommended that additional recharge capacity be added to keep this water supply source at the 95% reliability shown in their 2003 IWRP during significant water shortages that occur during multi year droughts. In addition, SJWC can use less groundwater in other areas to achieve the overall balance that best meets the District's and SJWC's operational goals.

The District encourages water retailers to provide at least two different sources of supply to make certain emergency water supplies are available in the event treated water supplies are interrupted by disaster. SJWC's current three sources of water supply and connections to other retail water agencies contribute to SJWC's ability and flexibility to respond in the event of emergency situations. In addition, SJWC has recently expended millions of dollars installing diesel fueled generators that will operate wells and pumps in the event of power outages.

### **Transfer and Exchange Opportunities**

SJWC's distribution system has interties with other water retailers in the San Jose area to allow for SJWC to provide additional water to other retailers or serve as another potential supply source. SJWC is connected to the following retailers: City of Santa Clara, City of San Jose Municipal Water, Great Oaks Water and the District West Pipeline in Cupertino. The connection to the District West Pipeline allows SJWC to provide water to the Cupertino leased system that SJWC operates. SJWC currently has no plans to use these interties for normal system operation as they solely serve as potential emergency sources.

## Supply Reliability

SJWC and other retailers are coordinating efforts on the 2005 UWMP. SJWC will use the base years the District will be using for the normal water year, single dry water year and multiple dry water years in their 2005 UWMP as listed in the table below.

### Basis of Water Year Data

Water Year Type	Base Years
Average Water Year	2000
Single-Dry Water Year	1977
Multiple-Dry Water Years	1987-1991

Documented in the table below is the quantity of water SJWC received from each source of water during the average water year, single dry water year and multiple dry water years. It is important to note that SJWC's service area population has increased by nearly 62% from 1977 to 2000 and that the District added the 100 MGD Santa Teresa Water Treatment Plant in 1989 to increase capacity and redundancy.

### Supply Reliability in AF/yr

Water Source	Average Water Year (2000)	Single Dry Water Year (1977)	Multiple Dry Water Years				
			Year 1 (1987)	Year 2 (1988)	Year 3 (1989)	Year 4 (1990)	Year 5 (1991)
District Treated water	80,803	36,220	57,879	65,935	81,405	64,143	63,093
Local Surface	13,445	1,364	4,576	3,548	6,500	3,719	6,435
Groundwater	60,707	72,962	92,257	81,964	37,020	55,363	42,513
<b>Totals</b>	<b>154,955</b>	<b>110,545</b>	<b>154,712</b>	<b>151,447</b>	<b>124,925</b>	<b>123,225</b>	<b>112,042</b>

The table below takes the supply received in each of the drought years listed above and divides it by the supply received in the average water year to generate a percentage of normal supply SJWC may expect to see during a future drought period.

### Supply Reliability as a Percentage of Normal Water Year (2000)

Water Source	Single Dry Water Year (1977)	Multiple Dry Water Years				
		Year 1 (1987)	Year 2 (1988)	Year 3 (1989)	Year 4 (1990)	Year 5 (1991)
% of Normal District Treated water	44.8%	71.6%	81.6%	100.7%	79.4%	78.1%
% of Normal Local Surface	10.1%	34.0%	26.4%	48.3%	27.7%	47.9%
% of Normal Groundwater	120.2%	152.0%	135.0%	61.0%	91.2%	70.0%
<b>Totals</b>	<b>71.34%</b>	<b>99.84%</b>	<b>97.74%</b>	<b>80.62%</b>	<b>79.52%</b>	<b>72.31%</b>

The District will be making investments to increase reliability to ninety-five percent of demand in any given year which may include alternate sources of water as stated in their

2003 IWRP. However, SJWC does not currently envision any additional sources of water to supplement supply in event of dry water years. The possibility of transfers (other than through emergency interties) or desalination are not available given SJWC's service area location. Recycling of water in San Jose is primarily done through South Bay Water Recycling, which SJWC is an active participant and wholesaler. In the event of a dry water year, SJWC will employ water-use efficiency or demand management measures which are outlined in the following section of this report and enact the existing Water Shortage Contingency Plan (a copy of this plan is included in Appendix D) written in January 1992. In the event of a drought, this plan spells out a mandatory water rationing plan approved by the District. The plan defines prohibited uses of water, possible penalties and an enforcement mechanism. This plan includes both voluntary and mandatory components and addresses shortages up to 50%. The greatest percent shortage shown in the table above is 28.66% which would be covered in Stage 3 of SJWC's existing four stage Water Shortage Contingency Plan.

The District is in the process of developing their 2005 UWMP, which will better determine groundwater and the District treated water availability during dry water years. These results which are expected at the end of August 2005 and will be included in SJWC's 2005 UWMP and future Water Supply Assessments.

### **Water Demand Management Measures**

SJWC provides a full range of water conservation services to both residential and commercial customers, the cornerstone of which is our water audit program. In 2004 alone, SJWC's three Water Conservation Inspectors performed over 2,000 water audits. These water audits comprise of a SJWC water conservation inspector doing a thorough investigation of the customer's home or business. The inspector carefully inspects the property for leaks and measures the flow rates of all showers, faucets and toilets. The program targets the top 10% of users in each sector (residential, commercial, industry, municipal and dedicated landscape accounts). SJWC first contacts the customers by letter and follows up with a phone call. The goals of this program are to identify the source of the customer's water consumption and recommend methods for more efficient water use.

SJWC participates in the District's residential clothes washer rebate program in which any washer labeled "Energy Star" qualifies the customer to a \$150 rebate. SJWC informs the customers of this program through the water audits and at retail outlets where washing machines are sold. SJWC also augments its water audit program by providing customers with free low-flow showerheads and faucet aerators which are purchased by the District. These are distributed during water audits, during customer's visits to SJWC's main office, and during customer participation in public events.

SJWC is the wholesale retailer for the South Bay Water Recycling Program which takes treated wastewater that would normally be discharged into the San Francisco Bay and pipes it back into the basin to be used for landscape irrigation.

SJWC constantly performs a system-wide audit by maintaining extensive records on each customer's water use. Water production and usage are compared to determine the percentage of unaccounted for water, which is currently about 7% of water produced. The unaccounted for water includes authorized unmetered uses such as fire fighting and main flushing. The remaining unmetered water is usually due to inaccurate meter readings, stuck meters, malfunctioning valve, leakage and theft.

SJWC has two full time staff member working to provide leak detection of the water distribution system. The highly skilled maintenance personnel use a leak detector to detect underground leaks. Once a leak is detected, crews are scheduled as quickly as possible to make the repair. SJWC also works with customers to resolve water loss and will assist customers in locating leaks on their facilities.

SJWC has a regular schedule of meter calibration and replacement for all meter types in the distribution system. Larger meters are routinely replaced, repaired and tested based on consumption. Smaller meters (1" and smaller) are replaced according to the manufacturer's recommended service life. If a customer believes the water meter is faulty, the meter is removed and tested. The customer is invited to witness the test in accordance with the California Public Utility Commission's (CPUC) rules

SJWC provides and participates in numerous consumer education programs. SJWC has encouraged water conservation to its customers in many ways, including: providing water-efficient plumbing fixtures brochures (in conjunction with the City of San Jose), providing a landscape irrigation brochure encouraging efficient outdoor water use, and providing annual water quality reports as a bill insert.

SJWC also attempts to reach the community in ways that go beyond the development and distribution of written materials. These methods include speaking to service groups, civil clubs, school groups and participating in annual Water Awareness Month activities. SJWC also participates in a few school education programs including San Jose Unified School District's "Adopt A School" program. SJWC has coordinated development of an outdoor classroom project of a water-saving garden and pond filter system, multiple classroom presentations, and provides funding for annual field trips to science-related locations.

### **Supply and Demand Comparison**

SJWC's projected supply and demand for normal water years is listed in the table below. The table shows that SJWC's projected supply will now need to include the North First Street project demand of 3267 AF/yr

**Supply and Demand Comparison for Normal Water Year (Previous Projection)**

	2005	2010	2015	2020	2025	2030
<b>Supply</b>	152,943	162,852	173,743	186,023	196,570	208,197
<b>Demand</b>	152,943	162,852	173,743	186,023	196,570	208,197
<b>Demand Total (including proposed project)</b>	152,943	163,669	175,377	188,474	199,837	211,464
<b>Difference</b>	(0)	(0)	(0)	(0)	(0)	(0)
<b>Difference (including proposed project)</b>	(0)	(817)	(1,634)	(2,451)	(3,267)	(3,267)

Listed in the tables below are comparisons between 2005 and 2025 projected supply and demand during normal, single dry and multiple year droughts. These numbers were generated by multiplying the current and 2025 demands by the percentages of normal water supply SJWC experienced during the 1977 single year and the 1987-1992 multi-year droughts. During these drought times, SJWC may experience significant shortages of supply and will enact the current Water Shortage Contingency Plan.

**Current supply and demand for normal, single dry and multiple dry years**

2005 Supply & Demand	Normal	Single dry	Multiple Dry Years				
			Year 1	Year 2	Year 3	Year 4	Year 5
Supply Total	152,943	109,110	152,703	106,639	123,110	84,803	89,016
Demand Total	152,943	152,943	152,943	152,943	152,943	152,943	152,943
Difference	(0)	(43,833)	(240)	(46,303)	(29,833)	(68,139)	(63,926)

**20-year projected supply and demand for normal, single dry and multiple dry years**

2025 Supply & Demand	Normal	Single dry	Multiple Dry Water Years				
			Year 1	Year 2	Year 3	Year 4	Year 5
Supply Total	196,570	140,234	140,014	136,844	110,324	87,733	63,437
Demand Total	196,570	196,570	196,570	196,570	196,570	196,570	196,570
Demand Total (including proposed project)	199,837	199,837	199,837	199,837	199,837	199,837	199,837
Difference	(0)	(56,336)	(56,556)	(59,726)	(86,246)	(108,837)	(133,133)
Difference (including proposed project)	(3,267)	(59,603)	(59,823)	(62,993)	(89,513)	(112,104)	(136,400)

**Summary**

SJWC continues to address the amount of supply available in the future while SJWC and the District complete the analyses for the 2005 UWMP. The City of San Jose is in the process of revising their General Plan to include the North First Street project and this demand will be incorporated into both SJWC's and the District's 2005 UWMP. The District is stressing that the use of water recycling and conservation be maximized in all future developments, including North First Street, to minimize the effects on water supply in a drought situation. However, in the case of the North First Street project, quantity of supply is not the only concern. This proposed development is located in one

of our largest pressure zones and experiences lower than average pressure area. The demand increase (3267 AF/yr) would have a large impact on current system operations. Additional sources of supply within the zone would be required to serve the proposed project area with adequate pressure. For the most part, the North First Street project area is currently designed for a fire flow of approximately 4500 gpm and it is not likely that any extensive pipe upsizing in the area would be required. Also, no additional storage is believed to be required to serve the area. There maybe some projects which would require isolated areas of infrastructure improvement and those would be paid for by the developers on a project specific basis.

Another possible source of supply for this project is the District treated water. The use of water from this source would be more expensive since its source would be further away from the project area and it would have to be run through a booster pump station to provide adequate operating pressure for the North First Street project. The District is considering expanding their treated water delivery infrastructure such that SJWC could receive treated water closer to the North First Street project area to lower SJWC's cost for this supply option.

### **Plan to Acquire Additional Supply**

SJWC is planning to acquire additional water supplies for the North First Street project by adding up to three additional wells in the North First Street Project area. These wells would pump water for the same basin as all of SJWC's existing wells, the Santa Clara Valley Groundwater Subbasin. SJWC will invest in new wells required to serve the additional demand of the North First Street project with adequate pressure. The time frame to select a well site, design, permit and construct a new well could range from 9 months to two years per well. Water to supply this project can be provided to SJWC's system using District treated water, but ultimately it is foreseen that one to three additional wells will be required in the area to provide adequate water pressure at a reasonable cost.



A COPY OF ALL OF THE TECHNICAL APPENDICES TO THIS WATER SUPPLY ASSESSMENT IS AVAILABLE AT THE SAN JOSÉ DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT DURING REGULAR BUSINESS HOURS.