CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

STREET AND UTILITY IN-LIEU FEES: TRANSPARENCY AND COORDINATION CAN IMPROVE THE ADMINISTRATION OF FEE PROGRAMS

Report 19-08
September 2019

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
Joe Rois, City Auditor

September 30, 2019

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Street and Utility In-Lieu Fees: Transparency and Coordination Can Improve the Administration of Fee Programs

New development can strain the City's infrastructure and amenities, and must meet City standards to be built. The City's General Plan states "new development should finance capital and facility needs..." directly attributable to the site. Developers are required to either construct some portion of the improvements in the area surrounding their property, or help pay for their share of improvements through an "in-lieu fee." These fees, required as a condition for permit approval and subject to the California Mitigation Fee Act, may also be referred to as "mitigation fees" or "impact fees." In accordance with the Mitigation Fee Act, the Administration reports annually to the City Council on the status of fees collected and their intended use.

The objective of this audit was to review the collection, tracking, and use of in-lieu fees, with a focus on street- and utility-related fees. The audit addressed fees related to: traffic impacts, utility undergrounding, traffic signals, landscaped median islands, street improvements, and storm collection system improvements. These fees are collected by the Department of Public Works, and tracked and used by Public Works and the Department of Transportation (DOT).

Finding 1: Consistency and Transparency in Fee Calculation Can Be Improved. Calculating in-lieu fees is often complicated. Public Works engineers must consider a variety of factors about a development, such as its location, size, use, number of parking spaces, and traffic impacts on the surrounding area. This may involve coordination with City staff in other work groups or departments, as well as with developers to ensure that fees are charged fairly and accurately. Overall, there were few instances in our sample in which we found that developers had not been charged in-lieu fees appropriately. However, it was not always clear whether a developer paid an appropriate fee, because decisions surrounding fee calculations were not always clearly documented. This lack of documentation may also affect staff's ability to use fees received, as discussed in Finding 2. To improve transparency of fees charged, we recommend Public Works develop guidelines for appropriate documentation. To improve the assessment of utility undergrounding fees, we recommend that staff clarify procedures surrounding undergrounding fees, and develop a digital tool to identify streets designated for utility undergrounding, including whether a parcel has frontage on a designated street and whether undergrounding fees have previously been paid.

Finding 2: Improved Tracking and Coordination Would Enable Program Staff to Better Use In-Lieu Fee Revenue. Collection of street-related in-lieu fees has tapered off in recent years, though the City had $11.2 million in its reserves for street-related in-lieu fees at the end of Fiscal Year (FY) 2018-19. During our review, we identified at least $810,000 in unspent in-lieu fees intended for public improvements that have already been constructed, and that should be reimbursed to either the City or the entity that constructed the improvement. We estimate that about half of the 40 unspent traffic signal in-lieu fees and a quarter of the 30 unspent median island fees may relate to public improvements that have already been completed. We recommend that staff review these in-lieu fees and public improvements to determine whether any monies should be transferred, improve coordination between program staff going forward, and update the annual in-lieu fee report to ensure that information is accurate.

Additionally, we noted that though most fees are correctly put into funds intended for in-lieu fees, it appears that a few were incorrectly placed in a separate fund intended to track deposits made by developers. These deposits are usually unrelated to the in-lieu fee process. As a result, these in-lieu fee revenues have not been used to fund public improvements appropriately. We also recommend that staff review the fees in the Depositor Fund to determine whether any in-lieu fees are held there erroneously.

Finding 3: The City Should Clarify Expectations of the Utility Undergrounding In-Lieu Fee Program. The City undergrounds utility lines through Rule 20A projects on major thoroughfares (funded by PG&E) and Rule 20B projects, which can be on major arterials, collectors, or near commercial zones (funded by the City and/or developers). Our review focused on the Rule 20B (in-lieu fee) program.

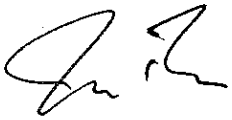
Rule 20B utility undergrounding is a time-consuming and capital-intensive process. Part of the 20B program's slow pace is due to the limited revenue generated through the City's in-lieu fees. Though 20B projects can be combined with 20A funding or completed by developers, the in-lieu fees are the only source of City funding to support this program. In recent years, the City has collected an average of $1.3 million annually through undergrounding in-lieu fees, which amounts to just 0.3 percent of the $382 million necessary to complete the current Undergrounding Master Plan. This is due, in part, to the way that the fee is structured. Fees are only charged when parcels are developed, and the fee only covers half the cost of undergrounding the frontage of the parcel. Though Public Works provides the City Council with annual reports on the City's undergrounding programs, unclear expectations on scope, timelines, and funding make it difficult to evaluate the 20B program's success. Given the slow collection of in-lieu fees, we recommend Public Works provide more realistic timeframes and more clearly describe the long-term nature of the program. We also recommend Public Works review the base fee to ensure it closely compares to the actual cost of undergrounding. If the City wants to pursue utility undergrounding more aggressively, it will need to identify additional funding for the program.

Finding 4: The City Has Improved Management of Revenues for Traffic Impact Fee-Funded Areas, But TIF Funding Will Remain Slow. The City has collected $85 million in developer fees for transportation infrastructure improvements in the North San José, Evergreen, US-101/Oakland/Mabury, and Winchester/280 areas (of which $68 million is still in reserves). In total, the City needs $1.2 billion for identified improvements, most of which are in and around North San José. Funding through traffic impact fees (TIFs) have been slow because there has been less development than anticipated (particularly within North San José) and developers receive

credits (effectively reducing the TIF) for existing use, entitlements pre-dating the policies, or constructing public improvements. In addition, the City instituted incentive programs to spur certain types of development in the North San José and US-101/Oakland/Mabury areas, effectively reducing or waiving fees. The City has only spent about $14 million from TIF funds, in part due to lack of matching funds. While the City anticipates that Measure B funds will help address funding needs for many improvements, and it has corrected reconciliation for an additional funding stream, TIF revenues will likely remain slow. We make two recommendations to improve the transparency and coordination of TIF waivers.

This report has 8 recommendations to improve the collection, tracking, and use of street and utility in-lieu fees. We plan to present this report at the October 7, 2019 meeting of the Transportation and Environment Committee of the City Council. We would like to thank the Department of Public Works; the Department of Transportation; the Department of Planning, Building, and Code Enforcement; the Office of Economic Development; the City Attorney's Office; and the Budget Office for their time and insight during the audit process. The Administration has reviewed the information in this report, and their response is shown on the yellow pages.

Respectfully submitted,



Joe Rois
City Auditor

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Introduction

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability, and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

In accordance with the City Auditor's Fiscal Year (FY) 2018-19 Audit Work Plan, we have completed an audit of the street and utility in-lieu fee programs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the "Audit Objective, Scope, and Methodology" section at the end of this report.

The Office of the City Auditor thanks the Department of Public Works; the Department of Transportation; the Department of Planning, Building, and Code Enforcement; the Office of the City Attorney; the Office of Economic Development; and the Budget Office for their time and insight during the audit process.

Background

The City requires new development and construction activity to meet certain standards supporting the City's goals for sustainable growth, and mitigate impacts on surrounding infrastructure and amenities. In some cases, the City requires developers to construct improvements in the area surrounding their property as a condition of approval for a development permit, or they may be required to help pay for their share of improvements through an "in-lieu fee."

For example, constructing a new office building will introduce new traffic to an area, and may require street improvements to ease traffic. A developer may be required to construct these improvements as they are developing, or they may be required to pay a fee to fund part of a larger, regional solution to traffic congestion. These fees may also be referred to as "impact fees" or "mitigation fees."

Generally, in-lieu fees allow the City to pool resources for improvements, completing an improvement all at once, rather than piecemeal. In other instances, in-lieu fees may be charged when, for whatever reason, a developer cannot

construct the improvement at the time of construction. The City or another developer then uses that money to complete the improvement at a later date.

Types of In-Lieu Fees

In this audit, we reviewed street and utility in-lieu fees. These include fees to address regional traffic impacts, and for utility undergrounding, traffic signals, landscaped median islands, street improvements, and storm collection system improvements. The City also charges in-lieu fees for affordable housing, urban village amenities, and parks; these were not covered in our review.[1]

The fee programs are established in the Municipal Code. The fees generally support City planning goals and policies. The City's General Plan states "new development should finance capital and facility needs... consistent with the Envision General Plan" and requires:

> *...new development to construct and dedicate to the City all public improvements directly attributable to the site. This includes neighborhood or community parks and recreation facilities, sewer extensions, sewer laterals, transportation network improvements, sidewalks, street lighting, fire hydrants, and the like... development is required to finance improvements to nearby intersections or downstream sewer mains in which capacity would be exceeded...*

Collection Process

When a developer applies for a development permit, planners in the Department of Planning, Building, and Code Enforcement (PBCE) review plans for compliance with City codes and land use policies and forward the plans to other departments for review. Development Services staff in the Department of Public Works, sometimes in coordination with staff in the Department of Transportation (DOT), identify improvements or fees that the City will require as a condition of approval. The planner includes these conditions within the permit, which are approved at a public hearing.

Following the planning permit approval, the developer works with Development Services staff in Public Works to ensure all requirements are met prior to the issuance of building permits. This is referred to as Public Works clearance. At this point, Public Works staff review any plans for improvements in the public right-of-way, and calculate and collect the street and utility in-lieu fees, sometimes in coordination with staff in other departments. (Finding 1 discusses the calculation process in greater detail.)

[1] The City has also been reviewing the possibility of establishing a universal development fee, potentially through one fee or through a standardized method of calculating fees that are due. As of the time of this report, this was included on the list of City Council priorities, and work was ongoing.

Once collected, fees are recorded in the City's permitting system and deposited into the appropriate fund in the City's budgeting system:

- Utility undergrounding fees are deposited into the Underground Utility Fund (Fund 416), where they are then spent on undergrounding projects by Public Works program staff. Fee revenues are pooled to spend on identified undergrounding projects.
- TIFs are deposited into the Route 101/Oakland/Mabury Traffic Impact Fee Fund (Fund 348), North San José Traffic Impact Fee Fund (Fund 349), Evergreen Traffic Impact Fee Fund (Fund 479), and I-280/Winchester Traffic Impact Fee Fund (Fund 311). Fee revenues are pooled into separate reserves to spend on regional traffic improvement projects in each area.[2]
- Street-related in-lieu fees (i.e., traffic signals, median islands, flood control, and street improvements) are deposited into the Developers Fees Fund (Fund 138). Revenues are then transferred out of Fund 138 for use on public improvements (or to reimburse for past work). Revenues are reserved for their intended use as identified within the planning permit, rather than being pooled with other revenues.

Staff in DOT and Public Works track and use the fee revenue in these funds for use on public improvements. DOT staff track TIFs, while Public Works staff track all other street and utility in-lieu fees.

Exhibit 1: Fees Are Deposited, Recorded, and Tracked in Separate Funds

Fee	Fund	Fund Name	End Balance (FY 18-19)	Tracked by	Programmed by
Undergrounding in-lieu	416	Underground Utility Fund	$7.9 million	Public Works	Public Works
US-101/ Oakland/ Mabury TIF	348	Route 101/Oakland/Mabury Traffic Impact Fee Fund	$17 million	DOT	DOT
North San José TIF	349	North San José Traffic Impact Fee Fund	$46.5 million	DOT	DOT
Evergreen TIF	479	Evergreen Traffic Impact Fee Fund	$4.2 million	DOT	DOT
I-280/ Winchester TIF	311	I-280/Winchester Traffic Impact Fee Fund	$243,000	DOT	DOT
Street-related in-lieu (traffic signals, median islands, flood control, street improvements)	138	Developers Fees Fund	$11.2 million	Public Works	DOT

Source: Auditor analysis of Budgeted Funds Guide, Financial Management System (FMS) data, and staff interviews.

[2] These funds are memo funds to the Construction Excise Tax Fund (Fund 465).

Traffic Impact Fees (TIFs)

TIFs are charged in areas with associated area development policies (ADPs) or transportation development policies (TDPs). These policies identify transportation improvements to mitigate or partially mitigate the cumulative effects of anticipated development on street traffic. Examples of improvements include new freeway interchanges, added turn lanes at intersections, and improved bike lanes. TIFs, along with state and regional grants and taxes, help to pay for these transportation infrastructure improvements.

Exhibit 2: The City Requires TIFs Based on Area Development Policies (ADPs) or Transportation Development Policies (TDPs)

	Area Development Policy (ADP)	Transportation Development Policy (TDP)
Lead department	PBCE	DOT
Basis for fee charged	Land use	Traffic impact analysis
Effect on land use	Caps on different types of use (e.g., residential units, square feet of commercial or industrial development)	None
Examples	North San José, Evergreen-East Hills	US-101/Oakland/Mabury, Winchester/280

Source: Auditor analysis of area and transportation development policies.

ADPs are broad planning documents that outline a vision for the areas' land use and amenities, including caps on certain types of development (e.g., residential dwelling units), and transportation improvements necessary to support corresponding levels of development. In ADPs, the TIF base rate is tied to the type of land use – residential, commercial, industrial, etc. – which provides a proxy for the number of trips a development will generate. Staff calculate the fees based on the number of residential units, number of hotel rooms, or the square footage of industrial, commercial, or office use of the proposed development.

In contrast, TDPs do not affect land use; they act solely as a funding mechanism for limited infrastructure improvements that are required to mitigate the impacts of new development. In TDPs, the base rate is tied to the number of trips generated by a development at a particular intersection. These fees are based on a traffic analysis, generally provided by the developer.

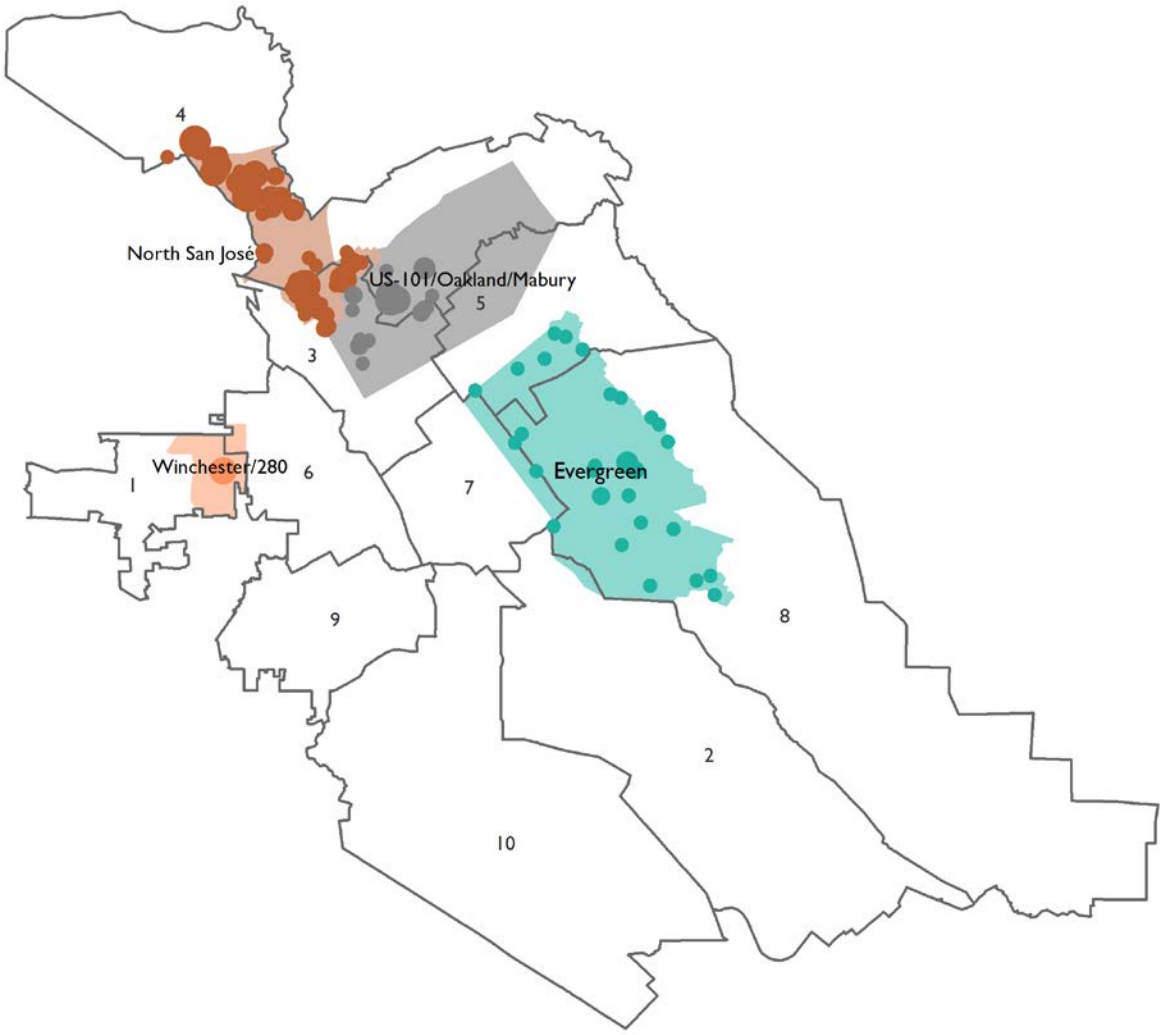
Under these policies, a development must pay a TIF if it will generate additional traffic (i.e., vehicle trips) in a specified geographic area. The development may be located in the policy area, or may affect an intersection designated for improvement in an area policy.

The City currently has four areas covered by a TIF.[3] These are North San José, US-101/Oakland/Mabury, Evergreen-East Hills, and Winchester/280. Each TIF is slightly different, and developments in different TIF areas pay different TIF rates. (This is discussed further in Findings 1 and 4.) Generally, the base rate for each TIF is calculated from the total cost of required improvements in the area, divided by the number of anticipated trips generated by new development. The City's TIF base rates automatically increase over time to account for inflation and changes in the cost of construction.

TIFs provide matching funds for other sources of funding, like grants or taxes, for the public improvements. The proportion of the cost of the improvements to be covered by TIFs affect the base rate. The trip generation rates of different types of use (for example, the number of trips a new residential unit will add, as opposed to the square footage of new office space) also affect the base rate for each area.

[3] The City has other area policies with transportation goals that do not charge TIFs to incoming developments. For example, the Midtown Specific Plan describes goals for transit and circulation of pedestrian and vehicle traffic, including the extension of specific streets to support a grid system. The Edenvale Development Policy Area Plan similarly seeks to manage traffic congestion through improvements to specific interchanges, to be funded by project developers, though through less formal funding mechanisms than those in North San José, for example. These fees may be charged as street improvement in-lieu fees.

Exhibit 3: San José Requires Payment of TIFs in Four Areas



Source: Auditor map based on the City's Public GIS Area Development Policies layer, the Winchester/280 TDP, and TIFs collected, based on data from the City's integrated permitting system (AMANDA) as of March 2019. The size of the dots on the map denote the location and relative size of the TIF paid by a developer. As a note, the US-101/Oakland/Mabury TDP and ordinance do not specify a geographic boundary; developments in the area may need to do a traffic analysis to identify potential impacts on the US-101 interchange.

Public Works staff calculate TIFs charged under ADPs and TDPs, and DOT staff track and use the revenues. Planning acts as the lead department for maintenance of ADPs, while DOT acts as the lead for TDPs.

Utility Undergrounding

Utility undergrounding is the process of moving above-ground utility lines into below-ground substructures and removing utility poles. Utility undergrounding improves the aesthetics of neighborhoods and may improve the resiliency of utility services. The purpose of the City's utility undergrounding in-lieu fee program is

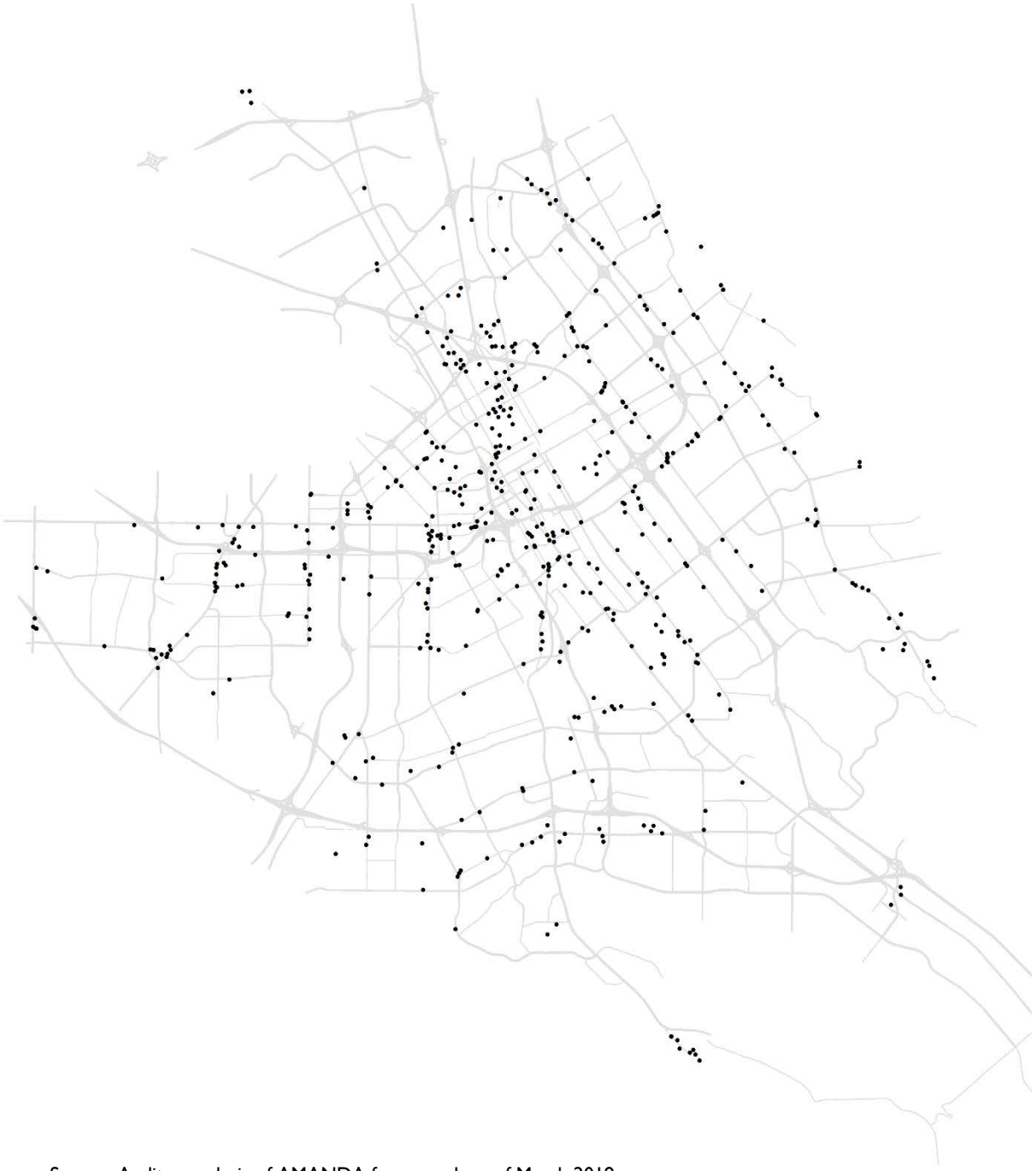
to implement the urban design policies of the City's General Plan. The City's General Plan describes the undergrounding infrastructure goal:

> *Require undergrounding of all new publicly owned utility lines. Encourage undergrounding of all privately owned utility lines in new developments. Work with electricity and telecommunications providers to underground existing overhead lines.*

Developments on streets designated as a "major collector or arterial" or that are "adjacent to property which is zoned for uses other than residential, agricultural or open space" may be required to pay an in-lieu utility undergrounding fee for the frontage of their property. Alternatively, they may underground existing utilities along the street fronting their property (regardless of the side which has the actual overhead lines). This work is performed by contracting with utility companies and a private contractor to underground the utility lines. Not all streets in San José are designated for undergrounding, and the City does not plan to underground all streets in San José.

Exhibit 4 shows the locations of developments that have paid in-lieu utility undergrounding fees.

Exhibit 4: Locations of Paid Utility Undergrounding Fees (1994-2019)



Source: Auditor analysis of AMANDA fee records as of March 2019.

Note: Dots represent undergrounding fees paid in AMANDA; some fees may predate AMANDA records. Streets (shown in grey) are for reference only and do not indicate designated streets.

Utility companies also make funds available to support utility undergrounding projects, under the California Public Utilities Commission's (CPUC) rules 20A and 20B:[4]

- **20A Projects** are coordinated by the City but funded and managed by the utility companies.[5] In order for the City to designate a new 20A project, the area must meet a set of requirements. 20A projects are specifically for major thoroughfares where there is a public interest in having the utility lines undergrounded. The City designates the areas and coordinates with the utilities, which either completes or contracts for the construction.
- **20B Projects** are funded primarily by cities, counties, or private developers who must pay for the undergrounding costs. The utilities may still be responsible for some costs, such as installing wires and equipment into the underground substructure and removing overhead facilities, including poles. 20B projects generally do not meet all of the criteria necessary to be a 20A project (e.g., not a major thoroughfare). The City of San José funds 20B projects through its utility undergrounding in-lieu fees as a City-run program. Other cities may fund 20B projects through bonds, utility surcharges, or general funds.

Public Works often tries to align 20A and 20B projects to construct larger projects, which provide a greater economy of scale.

Other Street-Related In-Lieu Fees

In-lieu fees for traffic signals, street improvements, landscaped median islands, and storm collection system improvements are collected and tracked by Public Works.

Traffic signal and street improvement in-lieu fees are local improvements needed due to a specific development. For example, if a new apartment complex is being built on a street corner without a traffic signal, and the intersection may soon warrant getting a traffic signal due to increased traffic, an in-lieu fee may be required. Generally, if a development creates enough traffic that their trips alone will warrant a new traffic signal, the developer will have to construct the traffic signal themselves. Traffic signal and street improvement in-lieu fees may be charged in areas with a TIF, as TIF projects are generally targeted toward larger area improvements rather than localized to one development's impacts.

Landscaped median island in-lieu fees are required on streets that are planned to have a median island, and either the median island is not landscaped or it is not yet

[4] The CPUC is currently engaging in a rulemaking process to consider changes to Rule 20.

[5] The City and PG&E have been in protracted negotiations since 2010, which stalled work on new 20A projects. Earlier this year, City Council adopted a resolution to execute a new agreement with PG&E to perform 20A projects. PG&E's declaration of bankruptcy may further stall 20A project work.

constructed. Whether a development project has to pay a fee depends on what street it is on. Similarly, the storm collection system improvements cover a small geographic area, and are intended to improve the storm drainage infrastructure.

Aside from the storm collection system improvements, the other street-related in-lieu fees are distributed across the City.

Exhibit 5: Map of In-Lieu Fees Collected for Traffic Signals, Landscaped Median Islands, Storm Collection System Improvements, and Street Improvements (1994-2018)

Source: Auditor analysis of AMANDA fee records as of March 2019.
Note: This does not include fees that were fully refunded.

Amount of Revenue and Number of In-Lieu Fees Collected Varies by Program

How much a developer must pay in an in-lieu fee, and how often an in-lieu fee gets charged, varies significantly by program.

Exhibit 6: Fees Paid and Revenues Generated Vary By Program

Program	*Beginning Year of Fee Data*	*Number of Fees Charged*	*Average Fee Paid*	*Total Fees Collected*
TIF – North San José	2007	63	$910,000	$57,100,000
TIF – US-101/ Oakland/ Mabury	2009	30	$650,000	$19,600,000
TIF – Evergreen-East Hills	2009	40	$110,000	$4,500,000
TIF – Winchester	2017	1	$2,240,000	$2,240,000
Undergrounding	1994	518	$47,000	$24,600,000
Traffic Signals	1994	84	$140,000	$12,500,000
Median Islands	1994	40	$27,000	$1,100,000
Street Improvement	1996	57	$190,000	$10,600,000
Storm Collection System	2000	7	$43,000	$300,000

Source: Auditor analysis of AMANDA fee record data as of March 2019.

Note: Excludes cancelled fees and unpaid fees, but includes fees that may have been later refunded. Fees may have been collected prior to the date listed, but that fee data was not listed in AMANDA.

While TIFs and undergrounding fees have been regularly charged to developers, fees for traffic signals, street improvement, and storm collection system improvements have decreased in recent years. The last time a median island in-lieu fee was charged was in 2007. Staff report that this is due to the location of developments and the City's overall approach to local transportation improvements.

In-Lieu Fees in Relation to the Cost of Development[6]

The amount that a developer must pay in street and utility in-lieu fees, and the proportion of the overall cost of a development due to in-lieu fees, varies by project. Because TIFs are related to the size of the overall development, a larger project that generates more trips would generally be charged a higher TIF. Similarly, traffic signal and street improvement in-lieu fees are set based on the impact of the development, so a large development would likely pay more in a fee.

Undergrounding fees, however, are based on the square footage of frontage on a designated street and the increase in intensity of use (see Finding 1 for more detail). A large development project with a small frontage—even if it increases its intensity of use by 100 percent—would be charged a relatively small

[6] In 2018, City staff presented to City Council a report on the cost of development in San José that included a consultant analysis of fees for several types of residential and mixed-use development (including some in-lieu fees and other fees relating to the development process). Staff reported that for those types of developments: "*[f]ees continue to be a relatively small portion of total development cost, with the major drivers of development feasibility remaining the broader construction cost and the available return. In almost all cases, the City fee stack is less than 10% of the value of a unit.*"

undergrounding fee. In this case, the undergrounding fee may be a minimal addition to the overall cost of City fees for the project. However, for a small project with a 100 percent increased intensity of use and a relatively large frontage—such as if the site is on a corner with multiple designated streets—the undergrounding fee could be more significant relative to the overall cost to the developer. A median island in-lieu fee functions similarly, in that the fee is charged based on the frontage length and size of the median island required, not on the overall size of the development project.

State Law Requires Cities to Track and Report on Mitigation Fees

Every year, staff in Public Works and DOT provide reports on the in-lieu fee programs to the City Council. These reports include information about fees collected, unspent fees, and planned public improvements, as required by the California Mitigation Fee Act.

The California Mitigation Fee Act applies to any fee established by a local agency as a condition of approval for a development project. It requires a local agency to identify the purpose of the fee and establish a reasonable relationship between the fee's use and the development. It also limits the use of fees. For example, fees cannot cover costs due to existing deficiencies in public facilities, only those attributable to increased demand on existing facilities. The Act further requires agencies to maintain mitigation fees in separate funds, and accrue interest within the fund so that it is only used toward the original purpose of the fee.

Finally, the Act requires regular reporting on each fund, including the:

- type and amount of the fee,
- beginning and end balances in the fund,
- interest earned,
- descriptions of any inter-fund loads or transfers,
- amount of any fees refunded,
- public improvements funded by fees,
- sources and approximate dates for the collection of funding for those public improvements, and
- approximate dates for the construction of the public improvement, if the agency determines sufficient funds have been collected.

Finding 1 Consistency and Transparency in Fee Calculation Can Be Improved

Summary

Calculating in-lieu fees is often complicated. Public Works engineers must consider a variety of factors about a development, such as its location, size, use, number of parking spaces, and traffic impacts on the surrounding area. This may involve coordination with City staff in other work groups or departments, as well as with developers to ensure that fees are charged fairly and accurately. Overall, there were few instances in our sample in which we found that developers had not been charged in-lieu fees appropriately. However, it was not always clear whether a developer paid an appropriate fee, because decisions surrounding fee calculations were not always clearly documented. This lack of documentation may also affect staff's ability to use fees received, as discussed in Finding 2. To improve transparency of fees charged, we recommend Public Works develop guidelines for appropriate documentation. To improve the assessment of utility undergrounding fees, we recommend that staff clarify procedures as to when an undergrounding fee should be charged. Public Works should also develop a digital tool to identify streets designated for utility undergrounding, including whether a parcel has frontage on a designated street and whether undergrounding fees have previously been paid.

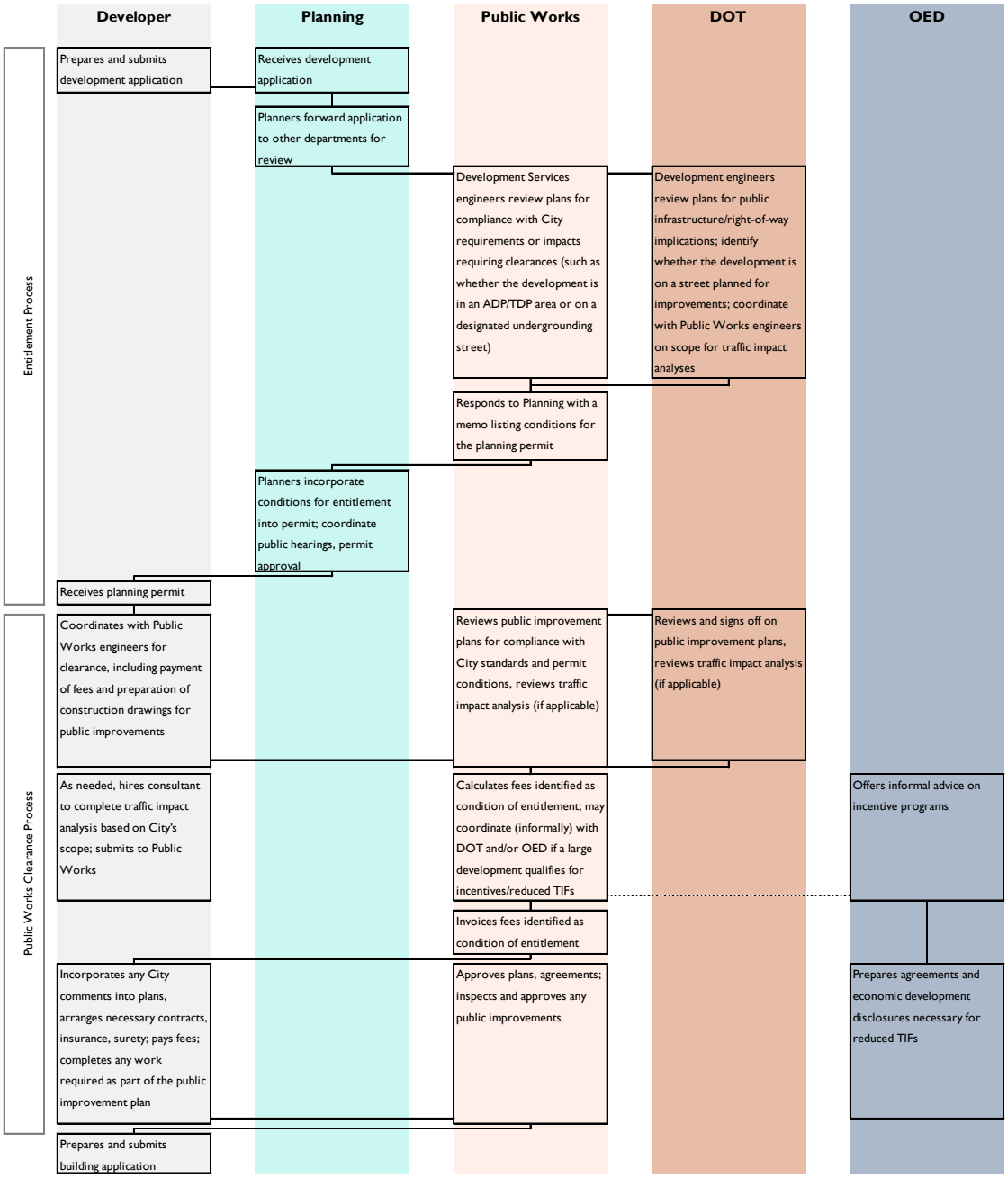
Calculating In-Lieu Fees Can Be a Complex Process

During the entitlement process, Planning staff in PBCE work with staff in Public Works to identify whether a developer should be required to pay any in-lieu fees to mitigate the impacts of the new development on the surrounding street network, or contribute to any planned improvements. A developer may be required to pay multiple, separate in-lieu fees.

In-Lieu Fee Calculations Are Development-Specific and Can Involve Staff in Multiple Departments

Calculating in-lieu fees for a development project can be a complex process, involving the evaluation of multiple factors and possibly coordination with other teams or departments. How staff in Public Works calculate the amount required for each fee depends on the fee type.

Exhibit 7: In-Lieu Fee Identification, Calculation, and Payment Span the Entitlement and Clearance Phases of Development



Source: Auditor analysis of San José Development Manual, Planning Guide, and staff interviews.

Utility Undergrounding Fees Are Based on Parcel's Location and Fee History

Undergrounding fees depend on a parcel's location, its frontage, the increase in its intensity of use, and its history of fee payment.

According to the San José Municipal Code, streets designated for utility undergrounding, where developments are potentially subject to an in-lieu fee, are "identified on the land use/transportation diagram of the City's general plan as a major collector or arterial" or "adjacent to property which is zoned for uses other than residential, agricultural or open space."

How much a developer must pay depends on whether a portion of the parcel's fee has been paid previously (by an old development), and the "increased intensity of use" of the new development.[7] Developers may pay up to 100 percent of the fee amount, which represents half the cost of undergrounding their street frontage (the other half would be paid by the parcel across the street). If the proposed development does not increase the intensity of use, no fees are due on that development. If a fee has already been paid on a parcel, the fee is further reduced based on the amount that has previously been paid. If 100 percent of the fee has been paid on the parcel, no further fees are due.

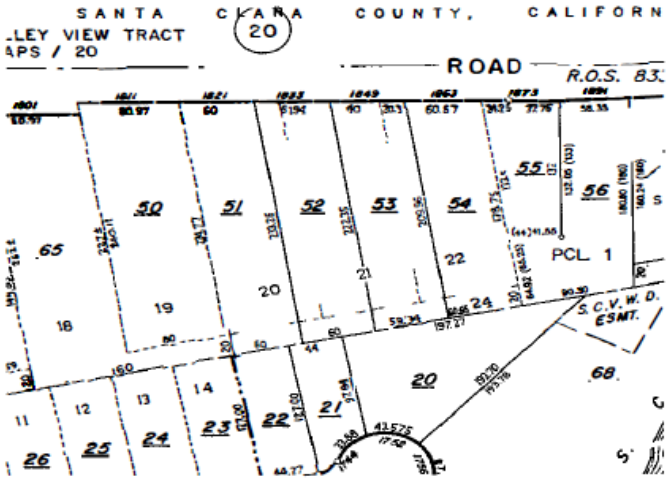
Once staff determine the percentage of the undergrounding fee to be paid, they generally use a standard form to calculate the cost of the fee. Using the tract map of the parcel, staff determine the linear footage across the parcel frontage that is subject to undergrounding. The footage is multiplied by the current undergrounding fee, which is set per linear foot (currently $489), and the percentage increase in intensity of use. In the following exhibit, item number four indicates that 100 percent of the fee will be paid due to the increased intensity of use.

[7] "Increased intensity of use" is determined by the increase in square footage, vehicle trips, or parking spaces, whichever is greater. This definition is specified in the Municipal Code.

Exhibit 8: Example of Utility Undergrounding Fee Calculation

UNDERGROUND FEE CALCULATION

1. The Utility Undergrounding (in-lieu) Fee for the subject development has been applied to frontage on:
   Almaden|Road linear feet: **385.88** (see below)
2. The total amount due is: **$180,977** For a footage of: **385.88 linear feet**
3. The total amount previously paid for parcel is: **$0**
4. Percent of fee Category:**100%** Planning Permit Number: [redacted]
5. PW File: [redacted] APNos.: [redacted] Map Quad No. **99**
6. Prepared by: [redacted] Checked by: [redacted] Council District **6**
7. Show where frontage fee was applied: how many feet; which frontage.



Fee (2017) = $469/lf

Frontage Lengths of 80.97', 60', 61.94', 40', 20.3', 60.67', and 24.25' were calculated from the above listed APN.

Total LF= (80.97'+60.00'+61.94'+40.00'+20.3'+60.67'+24.25') = 385.88 LF
Total Fee= 385.88 LF x $469/LF = $180,977.72 -> $180,977

Source: Public Works project files. Calculations and worksheet prepared by Public Works staff.

TIF Calculation and Base Rates Vary By Geographic Area

As described in the background, a development's location (in or near an area policy) and use affect whether it must pay a TIF. If a development project is not in an area covered by an area policy, nor affects the traffic in that area, the development will not be required to pay a TIF.

A TIF represents a development project's fair share contribution toward the area's transportation improvements. Because the fee is based on the improvements specific to an area policy, the base rate is different in each area. Citywide, the fee ranges from $13.94 per square foot of commercial or office space (in Evergreen) to $37,857 per trip added (in US-101/Oakland/Mabury).

Not every type of development will be charged in an area policy. For example, a newly constructed single-family home may be subject to a TIF in one area, but not in another.

Exhibit 9: TIF Base Rates Vary By Area, Based on the Relative Cost of Improvements Needed

		Residential (per unit)		**Non-Residential** (per sqft or hotel room)			
	Trip Fee	Single Family	Multifamily	Industrial	Office	Commercial	Hotel
North San José	$ 16,444.00	$ 10,326.00	$ 8,262.00	$ 15.41		$ 21.09	$ 4,560.00
Evergreen East Hills		$ 16,033.00		$ 13.94			$ -
US-101/Oakland/Mabury	$ 37,857.00						
Winchester/280	$ 26,344.00						

Source: 2017-18 Mitigation Fee Act Report.

Calculating the TIF for a specific development project is more complex than simply applying the base rate, however (see Exhibit 10). A variety of credits can be applied to reduce a development's required TIF. Developments where there has been existing use, like entitlements that pre-date the policy, receive credits for any trips that the existing use or entitlement generated, effectively lowering the TIF paid. The policies allow for these credits specifically to correct for the number of *net new* vehicle trips. For example, if a development project proposes to demolish an existing building, it receives credit based on the number of trips of the existing building (since the demolished building no longer contributes to area traffic).

In addition to credits, there are also incentives or waivers that can be applied. For example, in North San José, there was an incentive program in which developments with industrial uses could pay a reduced TIF.[8]

Staff in Public Works are primarily responsible for calculating the TIF for a development project, though they may consult with staff in DOT, Planning, or the Office of Economic Development (OED). Development Services project engineers, or the more specialized transportation team, complete the calculation and invoice.

[8] The North San José incentive requires developers to obtain certificates of occupancy by December 2019, so it will likely not apply to any more developments, barring extension. Finding 4 describes incentive programs in greater detail.

Exhibit 10: TIF Calculations Require Consideration of Many Variables

Project Name:	[redacted]
Location:	[redacted]
Project #:	[redacted]
Proposed:	573,980 s.f. of exisingt Office/R&D and the construction of 536,949 s.f. new Office/R&D
Existing:	Ex. Structures to Remain - No Structures on Proposed Buidling Locations

Parking Requirements

Phase	New / Existing	Gross Bldg S.F.	Existing Parking	Parking Required*	105% Parking	Parking Provided	Over 105% (Yes/No)	Excess Parking
0	Existing	573,980	1,699	N/A	1784	N/A	N/A	N/A
1**	Garage Only	0	1,699	1,626	1784	2,118	Yes	334
2	Ex. & Proposed	1,110,929	2,118	3,148	3305	3,148	No	N/A

* Parking Required = Gross Building S.F. x 0.85 x 3.19 spaces/1,000 S.F of Building

** 105% Parking based on Exisitng Parking existing at site.

Office/R&D Impact Fee

TIF Year	$/S.F.	$/S.F. Industrial Incentive***
2015	$14.44	$5.00
2017	$15.41	
2019	$16.45	

*** NSJ TIF Incentive allows for $5/sq. ft. subject to approval by 12/31/17 and CO by 12/31/19

Fee Calculation

Phase	Building #	Additional S.F.	Credit (S.F.)	S.F. Subject to TIF	Excess Parking Spaces	S.F. Equivalent****	TIF Year	TIF ($)	Receipt #
1	Existing & Garage G1	0	0	0	334	100,200	2017	$501,000.00	1144343
2	Building B1	270,871	100,200	170,671	0	0	2017	$2,630,040.11	
	Building B2	266,077	0	266,077	0	0	2017	$4,100,246.57	
							Total:	**$7,231,287**	

**** S.F. Equivalent = # Excess Parking SPace x 300 S.F./Parking Space

Source: Example TIF calculation from Public Works project files.

Other Street-Related In-Lieu Fees

Fees for other street-related in-lieu fees are generally determined through coordination between Public Works and program staff. Staff in DOT provide input on whether a traffic signal should be constructed or modified, or whether other street improvements are needed, due to a development project's impacts. Whether a development project must pay a median island fee or a fee for storm collection system improvements depends on the development's location. The storm collection system improvement fee covers a small geographic area; development projects in that area may pay the fee depending on the type of work.

How much is paid in a traffic signal or street improvement fee is related to the impacts of the new development and discussions with developers. For example, if an intersection needs a traffic signal in part because of the trips generated by a new development, the City may charge the developer a traffic signal in-lieu fee to cover part of the costs of the construction of the traffic signal. The exact amount of the fee should reflect the portion of the costs due to the new development.

Calculations for median islands are relatively straightforward—the calculation is based on the size of the median island required along the development project's frontage. The cost of construction per square foot (at the time of development) is multiplied by the size of the median island. The total cost is then divided in half—a development on the other side of the street would be responsible for the other half.

Lack of Documentation Limits Staff's Ability to Use Fee Revenues and Track Program Goals

Because fee calculations can be complex, it is important that they are clearly documented to ensure consistency, accuracy, and transparency. In many cases, we noted that there was little documentation surrounding in-lieu fee assessments, making it difficult to determine whether fees were consistently applied and calculated. It also makes the fee assessment process less transparent, and hinders staff's ability to review why and how past fees were calculated. This is important to understand how fee revenues are to be used and to assess progress on program goals.

Street-Related In-Lieu Fees Often Have Unclear Intended Uses

When a traffic signal or street improvement fee is assessed, the intended location of the public improvement may or may not be adjacent to the development site. For example, a traffic impact analysis may determine that an intersection a block away from the development site is going to be impacted because of the trips generated by the new site, and the developer must contribute to building a traffic signal at that intersection.

Documentation about the intended use of the in-lieu fees is therefore critical to determine how the fee should later be used. In our review of the 40 unspent traffic signal fees, nine did not have a clear description in the permit documentation as to what the fee was collected for—amounting to about $260,000 in revenues. For example, in 2001 a developer paid a traffic signal in-lieu fee of $15,000 for a development near Stallion Way and Staghorn Lane (close to the intersection of Capitol Expressway and US-101). The permit documentation mentions off-site traffic mitigation requirements for the developer to construct, but does not mention a traffic signal in-lieu payment. It is unclear whether the fee was meant to be in lieu of those mitigation requirements, or if it was for another purpose entirely. Further, documentation is critical because these fees can remain unspent for many years—some fees date back to the late 1990s.[9]

[9] It is possible that there is additional documentation in project files that may illuminate the intended use for these fees. Public Works staff may need to work with the City Attorney's Office to determine what should be done with each fee that was collected if the intended use is not clear.

Capacity Relating to TIFs Is Difficult to Track

ADPs have certain capacity requirements—that is, they have allotments on how much of each type of development can occur within the area to still be covered under the traffic analysis. For example, the North San José area development policy was originally split into four phases. Phase I had an allotted number of residential units and amount of industrial and commercial square footage that must be permitted before Phase 2 could begin.

In order to track these capacity limits, and to make strategic decisions about infrastructure funding and future planning, staff in Planning and DOT require up-to-date information about what types of development have been built and how much of the development capacity remains.

Determining how close development is to reaching its capacity limits requires careful tracking of what is built and what was demolished, as well as any other credits that were applied. Staff from Planning and OED have both been tracking capacity for different ADPs with help from Public Works. Because the application of credits can be technical, non-technical staff have spent significant time trying to identify how close an area is to meeting its capacity limits. Clearer documentation would assist planners and analysts in determining this information.

In Some Instances, In-Lieu Fees May Not Have Been Applied Consistently

During our review, we found instances in which in-lieu fees were not assessed, or were assessed at a lower rate, for a development when the full fees appeared to be applicable. However, we did not find corresponding documentation to indicate whether the fee was intentionally waived or changed, or whether this was an error.

Of development projects we reviewed, some that paid undergrounding fees did not have fee calculation worksheets in the project files. Because of this, it can be difficult to determine whether deliberate decisions were made to waive or reduce fees for certain projects. For example, in our limited review, we noted two projects that were on streets designated for undergrounding that had not been charged a fee, though no fees had previously been paid on the parcel. It did not appear that the developments warranted a waived fee (i.e., developers completed undergrounding work themselves), and City staff did not have documentation to indicate why fees were not paid.

We also identified a parcel that had paid two undergrounding fees (for two separate developments) and one of the two fees appeared to be inaccurate. However, we did not find accompanying documentation to indicate whether the fee was purposely reduced for some other reason, or whether this was simply due to a miscalculation.

Additionally, we found a development project for a new single-family home that fell within a TIF area policy, but did not pay a TIF. The project did not have documentation indicating that the fee had been intentionally waived, and staff confirmed that the fee should have been charged.

Documentation for how other street-related in-lieu fees are determined is extremely limited. In our sample of sixteen development projects with street-related in-lieu fees (traffic signals, median islands, street improvement, and storm collection), only two developments included documentation on how the fee was calculated. Both were median islands, which are more straightforward. Because most of the street-related in-lieu fees are relatively old, most of the sample we reviewed was from 2000-10.

Project engineering staff reported that the majority of their training was on-the-job, in which they asked questions of their supervisors as they were trying to calculate fees for a given development. This may result in varying interpretations or understandings of how different fees should be assessed and applied. These determinations are not often documented, making it difficult to assess overall consistency.

Recommendation #1: To ensure decisions during in-lieu fee assessment are transparent, Public Works should develop guidelines for the appropriate documentation of the calculation of in-lieu fees and why a development project did (or did not) get charged an in-lieu fee.

Better Tools Could Improve Utility Undergrounding Fee Assessment Process

During our review, we noted that improvements to the process for assessing utility undergrounding fees could help ensure fees are charged consistently. This includes clearer guidance on when fees should be assessed, and a digital tool to replace aging maps of utility undergrounding designated streets and previous fee payments.

Clearer Guidance on Fee Assessment Would Improve Consistency

While the formula for the undergrounding fee is straightforward, staff reported differing understandings of when a fee would be required. Some Public Works staff report that, in order to determine whether a development is liable for a utility undergrounding fee, they check whether the parcel has overhead utility lines. If there are no overhead lines, they will not charge the fee, even if it is on a designated street.

Not all staff followed this same process; some staff reported that if the parcel was on a designated street, they would assess the fee, regardless of whether there were currently overhead utility lines.

The City Relies on Old Maps to Track Undergrounding Fees

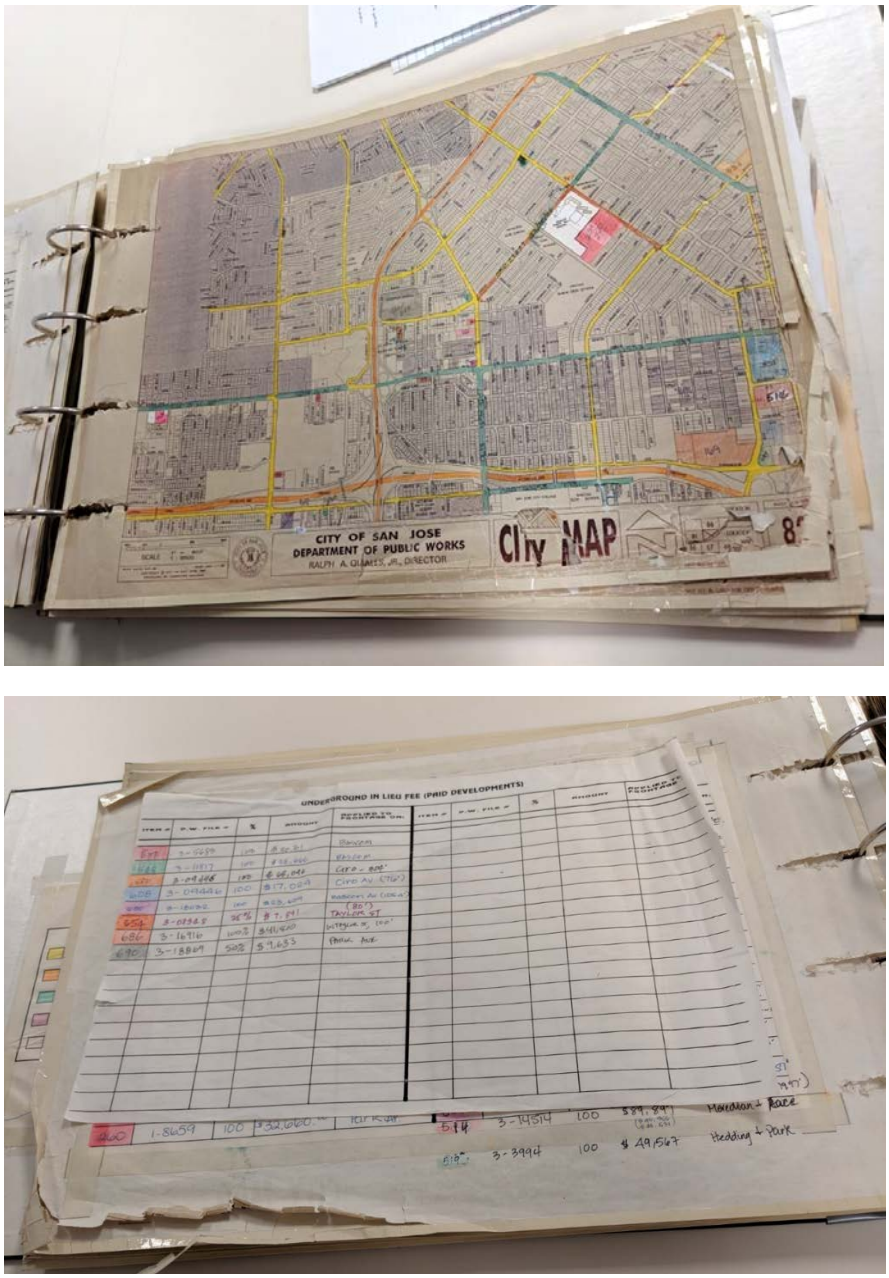
To determine whether a development needs either to underground a utility line or to pay an undergrounding in-lieu fee, Development Services engineers in Public Works use an old binder of city maps that designates streets for utility undergrounding. If a developer's parcel is on a designated street, they will need to pay a fee or underground the overhead wires.

In the binder, designated streets are marked with colored pencil (see Exhibit 11). The City's designated streets have not changed since the 1988 General Plan, so the binder (dated 1995) is still considered the definitive source to determine whether a parcel has frontage on a designated street.

Staff also use the binder to determine whether undergrounding fees have previously been paid on a parcel. Those parcels are colored in pencil and numbered; a table on the facing page indicates the percentage and the amount of the fee that has been paid.

As can be seen in the following exhibit, the maps in the binder are falling apart. The edges of the papers have been taped together in some places and have holes. The punched holes are nearly ripped through such that the maps are liable to fall out.

Exhibit 11: Aged Binder Is Definitive Source of Undergrounding Fees Paid



Source: Auditor photographs of Public Works' undergrounding map binder

Updating this map requires staff to hand-color property parcels and write notes on what fees were paid. For some map sections, like the one pictured, so many fees have been paid that a second table of fee payments is taped on top of the previous one.

Digital Tools Could Aid the Undergrounding Process

According to Public Works staff, there is a Google Earth layer that displays the designated streets as shown in the binder of maps. Some staff report using it; others do not because they do not consider it reliable. Public Works staff also provided us with a draft ArcGIS layer showing all undergrounding projects currently in the City, but not necessarily all the streets designated for undergrounding.

Building out a digital tool that assists staff in determining what parcels are on designated streets, what prior fees were paid, and what streets have undergrounded utilities would help Public Works staff determine when an undergrounding fee is required. It would also make it easier for engineers to review previous fees, which can be difficult to find in the binder. As parcels are developed or redeveloped, the binder will become inadequate to track the multiple fees that may have been paid on specific parcels. As such, having a digital tool would make it easier for City staff to track these payments. It would also help make the process more transparent for developers and residents who may want to know whether undergrounding fees have been paid on a particular parcel or street.

Recommendation #2: To ensure consistent assessment of utility undergrounding in-lieu fees across developments and to make the process more transparent, Public Works should:

a) **Develop standard procedures for when and how undergrounding in-lieu fees are assessed and provide training to staff on these procedures, and**

b) **Create a digital tool that includes designated utility undergrounding streets and previously paid undergrounding fees.**

Finding 2 Improved Tracking and Coordination Would Enable Program Staff to Better Use In-Lieu Fee Revenue

Summary

Collection of street-related in-lieu fees has tapered off in recent years, though the City had $11.2 million in its reserves for street-related in-lieu fees at the end of Fiscal Year (FY) 2018-19. During our review, we identified at least $810,000 in unspent in-lieu fees intended for public improvements that have been constructed, and that should be reimbursed to either the City or the entity that constructed the improvement. We estimate that about half of the 40 unspent traffic signal in-lieu fees and a quarter of the 30 unspent median island fees may relate to public improvements that have already been completed. We recommend that staff review the in-lieu fee public improvements to determine whether any monies should be transferred, improve coordination between program staff going forward, and update the annual in-lieu fee report to ensure that information is accurate.

Additionally, we noted that though most fees are correctly put into funds intended for in-lieu fees, it appears that a few in-lieu fees were incorrectly placed in a separate fund intended to track deposits made by developers unrelated to in-lieu fee collections. As a result, these in-lieu fee revenues have not been used to fund public improvements appropriately. We also recommend that staff should review the fees in the Depositor Fund to determine whether any in-lieu fees are being held there erroneously.

A Lack of Coordination Between Public Works and DOT Staff Has Left Some Street-Related In-Lieu Fee Revenues Unspent

Staff in Public Works are responsible for tracking and reporting on the in-lieu fees that have been collected. These fees are reported yearly to the City Council in compliance with the Mitigation Fee Act report. For street-related in-lieu fees, the report includes information regarding the amount of the fee, the date of receipt, the location of development, the developer, an identification of project, and proposed construction start date.

Exhibit 12: Public Works Presents a Variety of Information in the Annual In-Lieu Fee Report

DEPARTMENT OF PUBLIC WORKS IN-LIEU FEES COLLECTED BY PROGRAM TO DATE EXHIBIT B

MEDIAN ISLANDS, TRAFFIC SIGNALS, STREET IMPROVEMENTS, STORM COLLECTION SYSTEM IMPROVEMENTS

COUNCIL DISTRICT	DATE	RECEIPT	FILE #	LOCATION OF DEVELOPMENT	DEVELOPER	IN LIEU FEE AMOUNT	IDENTIFICATION OF PROJECT	STATUS OF PROJECT 1,2	PROPOSED CONSTRUCTION START DATE
TRAFFIC SIGNAL									
1	12/13/1995	PWD9500971	3-09960	HUFF AV (N/S), 200' N/O MAGLIOCCO DR	HOUSING AUTHORITY	$25,000	WINCHESTER & MAGLIOCCO	PROGRAMMED GP 2040	
1	3/11/1999	PWD9900292	3-03880	DE ANZA BL AND BOLINGER RD (SW/C)	HOME DEPOT USA	$10,000	BOLLINGER & DEANZA	PROGRAMMED GP 2040	2025
1	2/18/2005	337443/355063	3-15109	MAGLIOCCO DR (NW/C), HUFF AVE	MIGDAL MARK	$15,000	MAGLIOCCO AND HUFF	PROGRAMMED GP 2040	2025
1	10/22/2014	795341	3-18668	ORCHARD PARKWAY	FIRST AMERICAN TITLE COMPANY NATIONAL COMMERCIAL SERVICES	$100,000	ORCHARD PARKWAY	PROGRAMMED GP 2040	2035
2	4/4/1994	PWD9400087	3-11005	LISKA LN (E/S), SANTA TERESA BLVD (N)	PRODIGY CONSULTING, INC.	$12,500	ISKA AND SANTA TERESA BLV	PROGRAMMED GP 2040	2020
2	7/24/1995	PWD9500580	3-07311	HOSPITAL PKWY AND COTTLE RD (NE/C)	KAISER PERMANENTE	$95,000	HOSPITAL AND COTTLE	PROGRAMMED GP 2040	2020
2	2/12/1999	PWD9900180	3-11128	SILVER CREEK VALLEY RD AND PIERCY RD (SE/C)	ELECTROGLAS	$25,000	SILVER CREEK AND PIERCY	PROGRAMMED GP 2040	2025

Source: 2017-18 Public Works Annual Development In-Lieu Fee Report, Exhibit B

In recent years, Public Works staff have undertaken clean-up and reconciliation efforts to improve the accuracy of information reported in the annual in-lieu fee reports. This involved ensuring that the amounts presented in the reports match to the City's integrated permitting system (AMANDA) fee totals as well as amounts recorded in the City's financial management system (FMS).

Numerous In-Lieu Fee Revenues Should Have Been Spent on Already-Constructed Improvements

Of all the fees that have been paid for street-related in-lieu fees (excluding full refunds or corrections), 66 percent of the revenues remain in the reserve.

Our review identified numerous unspent in-lieu fees related to already-constructed public improvements. Even though the public improvements had been constructed, the fees continue to be tracked on Public Works' annual in-lieu fee report.

We estimate that about half of the 40 unspent traffic signal in-lieu fees and a quarter of the 30 unspent median island in-lieu fees may relate to public improvements that have already been completed. This amounts to roughly $810,000 of in-lieu fee revenues, which is about a third of all the fee revenue in the reserves for traffic signals and median islands.

For example, in 2003, an in-lieu fee for $35,000 was collected for a new traffic signal at Alum Rock Avenue and McCreery Avenue. This traffic signal was constructed, and then activated in 2005. According to staff in DOT, the traffic signal was funded out of the Building and Structure Construction Tax Fund (Fund 429). The in-lieu fee revenues have not been transferred out of the Public Works fund where they were initially deposited to reimburse for construction.

Exhibit 13: Traffic Signal at the Corner of Alum Rock Ave and McCreery Ave

Source: Auditor photograph taken August 2019

Other Public Improvements May Have Been Constructed

In addition to the public improvements that have been constructed as described previously, there are other public improvements that may have been constructed. There were a few public improvements for which part of the work appeared to be done, and several in which it was unclear what the intended improvement was (due to lack of documentation in the project files). In other cases, we could not determine whether the intended work had been completed during our review. Depending on the nature of the improvement, it may be that some of these revenues should also have been spent. We estimate roughly $790,000 of in-lieu fee revenues—about a third of all the fee revenue in the reserves for traffic signals and median islands—are intended for partially completed improvements or for which the improvement or completion status was unclear.

Funding sources for the completed public improvements varies, and may include City capital funds, developer funding, and grant funding. City staff will need to review funding sources when determining how to reimburse the in-lieu fees for already-constructed improvements.

DOT Staff May Not Be Aware of In-Lieu Fee Revenue

In-lieu fee revenues may go unspent simply because the staff responsible for making public improvements are not aware that the revenues exist. The street-related in-lieu fee revenues are collected and tracked by staff in Public Works, but staff in DOT are often responsible for programming the actual improvements. For example, staff in DOT are responsible for overseeing traffic signal and street improvements.

During our review, staff in DOT indicated that they were not aware of all available in-lieu fee revenue for traffic signals and were not sure how they would be notified if revenues were available.

Some fee revenues have been transferred out of Public Works to DOT funds in the past, primarily during the late-90s through the 2000s. Few street-related in-lieu fees have been spent since 2010.

The Annual In-Lieu Fee Report May Not Accurately Reflect Public Improvement Locations

Even if program staff were aware of in-lieu fee revenues, Public Works' current reporting does not clearly identify what public improvements the revenues should be spent on. The annual in-lieu fee report includes a column for "location of development" as well as "identification of project." What is listed under "identification of project," however, does not always match the language in the original permit for the intended use of the in-lieu fee.

For example, the annual in-lieu fee report lists that a there was a traffic signal in-lieu fee paid with the location of development at "Kentucky Pl" and the identified public improvement as "Kentucky Place." However, the permit documents state: "A traffic signal is warranted at the intersection of Alum Rock and McCreery. The applicant is required to contribute $10,000 towards the future signal installation." Though Kentucky Place is only a block away from McCreery Ave., based on the information in the annual in-lieu fee report, it would not be clear to a reader that these in-lieu fees were intended for that improvement.

Based on our review, almost half of the traffic signal in-lieu fee public improvements did not match the descriptions from the permit documents. For about a quarter of the fees, we were unable to identify the intended improvement based on our review of the permit documents.

Recommendation #3: To ensure that fee revenues are appropriately spent on intended public improvements, Public Works should:

a) **Work with program staff in relevant departments to identify which in-lieu fees were collected for public improvements that have been completed, and transfer fee revenues accordingly;**

b) **Going forward, coordinate with program staff when new in-lieu fees are paid to ensure program staff are notified that new revenues are available; and**

c) **Update the annual development in-lieu fee report to accurately describe the identified public improvement for unspent in-lieu fees.**

The Depositor Fund Should Be Reviewed for Potential In-Lieu Fee Revenues

As described in the Background section of the report, in-lieu fee revenues are collected by Development Services staff in Public Works. The fees are collected and recorded in the City's permitting system and deposited into the appropriate fund in the City's budgeting system. Per Mitigation Fee Act requirements, these fees are maintained in separate funds, so that all fees and any interest accrued goes toward the original purpose of the fee.

The City maintains another fund to account for deposits made by developers—the City's Depositor Fund (Fund 133). Staff may use the fund for a variety of reasons during the permitting process, usually unrelated to the in-lieu fee collection process. For example, if a developer is permitted to provide a check or cash instead of a certificate of deposit for a development project, this is put into the Depositor Fund. Staff may also put payments into the Depositor Fund when they are intended to be transferred directly to another fund or refunded.[10]

When a developer would like to underground the utility lines as part of the development, an in-lieu fee is first calculated and payment may be made into the Depositor Fund. Once the developer has a signed contract with PG&E to complete the undergrounding work, the fee is refunded to the developer. If the developer finishes the development project but chooses not to underground the utility lines, the fee should be transferred to the Utility Undergrounding Fund as an in-lieu fee. We found an instance of a $115,000 fee paid for undergrounding work—meant to be only a deposit pending a contract with PG&E—that has been in the Depositor

[10] A certificate of deposit may be required of a developer for required improvements, and is released when certain improvements have been made. Public Works staff may allow a cash deposit to be made instead. Other examples of possible deposits would be for contributions to larger existing capital improvement projects, meant to directly be transferred to other departments or agencies (such as the County) for use.

Fund since 2014. It is unclear why the fee has not been transferred to the Utility Undergrounding Fund or refunded to the developer.

Other fees that may be in-lieu fees were put into the Depositor Fund. For example, one $8,700 fee is listed with the comment "median island contribution" but was not charged as a median island in-lieu fee. The fee was paid in 2008. A $5,000 fee has the comment "traffic signal at Alum Rock and McCreery," which was paid in 2003. As detailed earlier in this Finding, there were fees paid for this same traffic signal that were classified as traffic signal in-lieu fees. Additionally, the traffic signal has been constructed. This money remains in the Depositor Fund.

Staff responsible for programming public improvements may not be aware of fee revenues in the Depositor Fund, as this is not where in-lieu fee revenues are normally kept. This limits their ability to use the revenues appropriately and report on the fees in compliance with state law. Neither the traffic signal nor median island fees were included in the most recent annual development in-lieu fee report.

Recommendation #4: To ensure appropriate tracking and use of in-lieu fee payments, Public Works should review the fees in the Depositors Fund to determine whether any monies should be refunded or transferred to other funds.

Finding 3 The City Should Clarify Expectations of the Utility Undergrounding In-Lieu Fee Program

Summary

The City undergrounds utility lines through Rule 20A projects on major thoroughfares (funded by PG&E) and Rule 20B projects, which can be on major arterials, collectors, or near commercial zones (funded by the City and/or developers). Our review focused on the Rule 20B (in-lieu fee) program.

Rule 20B utility undergrounding is a time-consuming and capital-intensive process. Part of the 20B program's slow pace is due to the limited revenue generated through the City's in-lieu fees. Though 20B projects can be combined with 20A funding or completed by developers, the in-lieu fees are the only source of City funding to support this program. In recent years, the City has collected on average $1.3 million annually through undergrounding in-lieu fees, which amounts to just 0.3 percent of the $382 million necessary to complete the current Master Plan. This is due, in part, to the way that the fee is structured. Fees are only charged when parcels are developed, and the fee only covers half the cost of undergrounding the frontage of the parcel. Though Public Works provides the City Council with annual reports on the City's undergrounding programs, unclear expectations on scope, timelines, and funding make it difficult to evaluate the 20B program's success. Given the slow collection of in-lieu fees, we recommend Public Works provide more realistic timeframes and more clearly describe the long-term nature of the program. We also recommend Public Works review the base fee to ensure it closely compares to the actual cost of undergrounding.

Undergrounding Utility Lines Requires Staff Coordination and Several Years to Complete

Staff in Public Works are responsible for overseeing the completion of utility undergrounding projects, both utility-funded (20A) and City-funded (20B). There are numerous potential projects for the City to undertake, which can involve a lengthy process from start to finish.

The City's Undergrounding Master Plan is approved by City Council every year through an annual undergrounding report. The Master Plan includes 317 "project candidates," which refers to street segments where some amount of undergrounding fees have been paid. All of these are potential 20B projects that may be funded by in-lieu fees paid by developers; some of these projects may instead be completed as 20A projects, if they meet the necessary criteria. New project candidates may be added to the Master Plan when a development pays an

undergrounding fee on a street segment that is not currently on the list. As such, the list of projects for utility undergrounding on the City's Master Plan will expand over time.[11]

City staff initiate a project candidate by meeting with utility companies to agree on the boundary and scope of a proposed project. They will host public meetings to inform the public of the process. Then, the Council will hold a public hearing to give the public the opportunity to comment. After the hearing, the Council may declare that area to be an undergrounding utility district, allowing construction to move forward.

City staff are also responsible for coordinating among the different utility providers, including creating a composite of all of the different technical requirements that they may have. Staff report that this coordination can be time-consuming.

Meanwhile, the City will begin the procurement process to select a contractor that can build the underground substructures. The utilities are responsible for installing or moving the lines into the underground substructures and removing the utility poles, but the City may facilitate this process. Public Works only has 1.25 FTE focused on coordinating these processes.

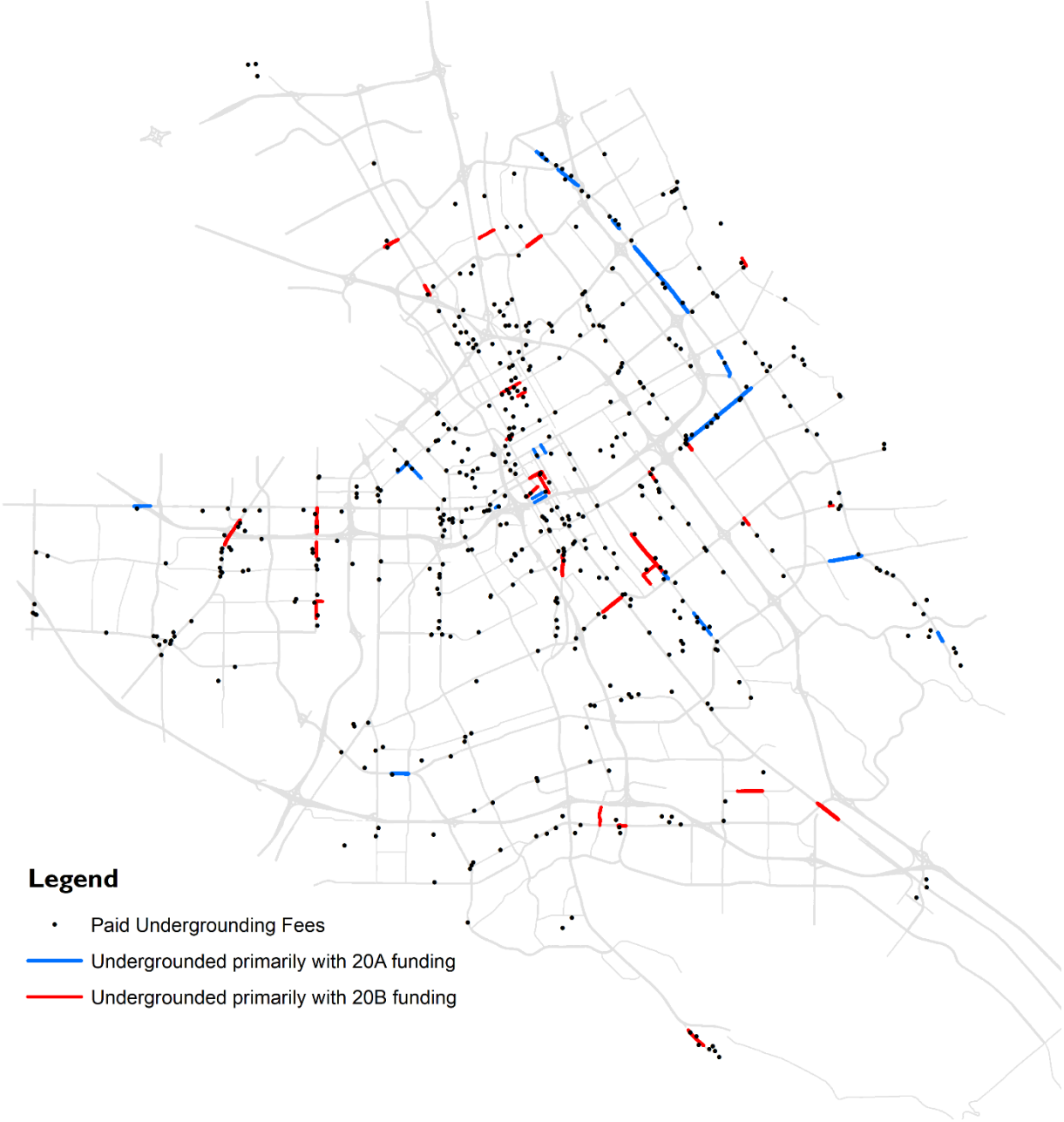
Altogether, it often takes years from the initiation of a project to its completion. The last project completed with only 20B funds was on Saratoga Avenue between I-280 and Kiely Blvd. The project was approved by Council in 1998. Construction began in 2007, and the project was completed in 2009.[12]

As the following exhibit shows, even though developers have paid utility undergrounding in-lieu fees throughout the city, utility undergrounding construction along those frontages has not been very extensive. This is in part because the City may have only collected one or two fee payments on some street segments that are project candidates. As described in the Background of the report, not every street in the City is designated for utility undergrounding.

[11] The current Master Plan includes only a portion of the City's major arterials, collectors, or other designated streets. Areas where no development has occurred, and no utility undergrounding in-lieu fees have been paid, are not the list of project candidates, even if the street is designated for undergrounding.

[12] In 2004, Public Works reported that the City took over the design and construction management of this project from its contractor. At that time, construction was rescheduled for FY 2004-05.

Exhibit 14: Map of Utility Undergrounding Fees and Related Projects[13]



Source: Auditor analysis of 2018-19 utility undergrounding report and data exported from AMANDA as of March 2019.

[13] This map is based on the best available information. However, the department reports that some projects were completed with a combination of 20A and 20B funding, and that may not be reflected in the report. The map does not reflect all areas of the City that were undergrounded as 20A projects, such as along N. First St. and Monterey Road. Also, some projects may have been completed prior to the City issuing regular reports, so they may not be accurately captured in the report.

Utility Undergrounding Has Limited Funding Streams

One reason that the City's utility undergrounding has progressed slowly is due to limited funding. As noted previously, development projects on streets designated for utility undergrounding may be obligated to underground overhead utility lines or pay an in-lieu fee. The fee is based on the linear feet of frontage on designated streets, the increased intensity of use, and the amount of fees that have previously been paid on the parcel.

The City estimates that the cost of utility undergrounding to the City is currently $978 per linear foot. The utility undergrounding in-lieu fee is half of the amount ($489 per linear feet) with the expectation that a development on the other side of the street will pay for the other half. The amount that is charged to developers is the fee multiplied by the frontage length, multiplied by the percentage of increased intensity of use. Based on these engineering estimates, this means that the estimated cost to the City to underground one mile is $5.2 million.[14]

The fee is intended to be the primary funding source for 20B projects, but some projects may overlap with 20A projects or a developer may choose to underground utility lines themselves.

20A Funding

PG&E, per California Public Utilities Commission (CPUC) rules, makes funding available for the City to use on major thoroughfares. Some of these thoroughfares may also be 20B candidate projects, so funding can be combined. As of May 2019, the City had **$34 million** in 20A credits from PG&E.

20B Funding

The City raises 20B funds through in-lieu fees. These fees are the only City funds that can be spent on any 20B project throughout the City. 20B projects can be on major thoroughfares, arterials, and collectors. As of June 2019, the City had **$7.9 million** in reserves from unspent developer in-lieu fees for 20B projects.

Developer-Completed Projects

Developers can elect to underground the utility lines on their frontage instead of paying an in-lieu fee. If this happens, they get reimbursed any in-lieu fees that had been collected for that frontage. According to staff, developers do not frequently choose this option.

[14] In 2015, San Francisco's Budget and Legislative Analyst's Office issued a memo that estimated the cost per mile to underground utilities in California cities ranged from $2.7 million in Oakland to $6.6 million in San Francisco. At the time, San José estimated its costs as $3.7 million per mile, which would put San José roughly in the middle.

The City Has $7.9 Million in Reserves Compared to $382 Million in Project Costs

The City's Undergrounding Master Plan lists the amount of in-lieu fees that have been collected to date for each potential project. In practice, the fees are pooled so that they can be put towards the City's immediate undergrounding projects. Though $24 million[15] has been collected through utility undergrounding in-lieu fees, most of those funds have already been spent on undergrounding projects, leaving $7.9 million in the reserves as of June 2019.

The total cost for all utility undergrounding on the City's most recent Master Plan (2019) is an estimated $382 million in present-day dollars. Since FY 2011-12, the City has collected an average of $1.3 million in undergrounding fees per year, or just 0.3 percent of the total cost of the Master Plan.

Exhibit 15 illustrates the gap in funding between the current reserve levels and the total cost of the Master Plan. It should be noted that the 20A allocation balance cannot be used towards all 20B projects, because they may not meet specific 20A CPUC criteria. Additionally, some projects may be completed by developers, although staff report that developers often prefer to pay the fee.

Exhibit 15: The City's Undergrounding Master Plan Project Costs Total $382 Million

Source: Auditor analysis of the 2018-19 Utility Undergrounding Work Plan, Master Plan, and related report to the City Council.

The slow revenue accumulation is not surprising given that the way the fee is structured has inherent limitations.

- **Relies on development:** Fees are only charged when development occurs. As such, if development slows in a certain area, the number of fees paid will slow as well. Without new funding coming in, the City will not be able to take on new undergrounding projects.
- **Increased intensity of use:** Developers only pay the fee when there is an increase in the intensity of use. If there is no increase in the intensity of

[15] This is based on the City's AMANDA reports and FMS reports.

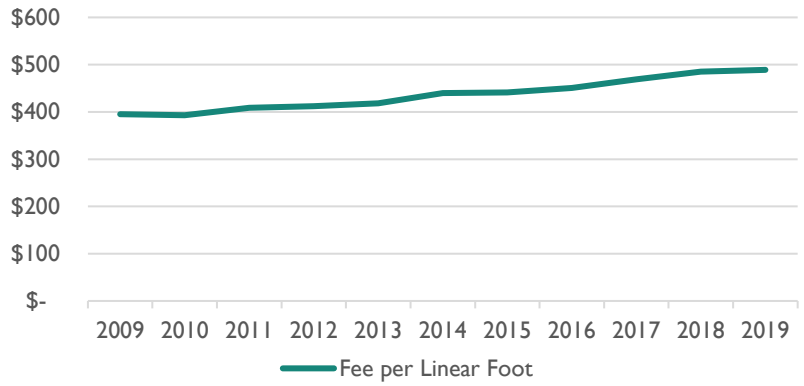
use, no fee is paid. If there is only a modest increase in the intensity of use, then only a percentage of the fee is paid. For example, if a small business makes minor renovations, but there is no increase in square footage or parking spaces, then no utility undergrounding fee would be due.[16]

- **Half the full cost:** Developers only pay half of the City's estimated cost of utility undergrounding, because the City has the expectation that developments across the street will pay the other half. In order to have full funding to underground utilities on a specific street, every parcel on both sides of the street would have to be developed and increase their intensity of use by over 50 percent.[17]

The Utility Undergrounding Fee Should Be Reviewed to Ensure It Covers the Full Cost

As noted earlier, the current in-lieu fee for utility undergrounding is $489 per linear foot of frontage on designated streets. In 2009, the City Council approved an amendment to the Undergrounding Utility Fee Ordinance that allows the fee to be adjusted annually according to the Engineering News Record (ENR) 20-City Average Construction Cost Index. Prior to this, the fee was not increased regularly. The intention of the amendment was to ensure that it continues to reflect a reasonable amount to cover the costs of utility undergrounding. The following exhibit shows how the utility undergrounding fee has increased since 2009.

Exhibit 16: Utility Undergrounding In-Lieu Fee per Linear Foot



Source: Utility undergrounding reports 2009-10 through 2018-2019

[16] Incorporating the increased intensity of use is how the City establishes a "reasonable relationship," as required under the Mitigation Fee Act.

[17] When a parcel's intensity of use is increased by 50 percent or more, the full undergrounding fee is charged.

City engineers believe that the current fee is a fair estimate of project costs. However, they estimate their next utility undergrounding project at Delmas Avenue and Park Avenue[18] will have construction costs of roughly $1,275,500 for 1,200 linear feet. If all undergrounding fees on this frontage had been paid, it would have generated only $1,173,600 in revenue. This estimate is already $102,000 less than the construction cost estimate, and it does not include the City-incurred expenses of design, engineering and inspection, which also should be covered by the undergrounding utility fee.[19] The City should reassess the fee to ensure it appropriately recovers all the City's costs associated with 20B utility undergrounding.

Recommendation #5: To ensure that the City's utility undergrounding fee is a fair estimate of the cost of utility undergrounding projects, Public Works should reassess the utility undergrounding in-lieu fee.

Current Funding Stream Creates Long Time Horizon for Undergrounding Completion

Though an increased undergrounding fee, as well as 20A project funding and developer-completed projects, would assist in funding projects more quickly, it seems likely that the overall timeline will remain very long. As of FY 2017-18, the City had only collected 6 percent of the project cost for the project candidates in the Master Plan.

Given that the amount of funding collected for the City's utility undergrounding in-lieu fee pales in comparison to the scale of the overall goal, most developments that pay the fee will not see results for many years.

Should the City decide that utility undergrounding projects are a higher priority, or that the current collection rate is insufficient to accomplish the City's goals for the program, an additional funding source will be necessary.

Alternative Means to Fund Undergrounding Projects

None of the California cities we reviewed charge development fees for utility undergrounding, and most are not pursuing City-funded undergrounding projects. San Francisco is not currently pursuing any undergrounding projects. It is relying on its 20A funding to pay off project overruns from years earlier. Long Beach has

[18] This project includes both 20A and 20B funding, so the project would not be expected to fully recover costs solely through its utility undergrounding in-lieu fees. However, its construction costs are the most recent project estimate for a utility undergrounding project, so it is the best available proxy for the cost of a 20B utility undergrounding project.

[19] City engineers have reported that this project is uniquely challenging for a number of reasons, including that it crosses VTA tracks in a congested utility corridor. However, it is difficult to calculate a more appropriate estimate for utility undergrounding project costs, because the City has not completed a project since 2009. In 2012, PG&E completed a 20A project that included some 20B funding.

a modest undergrounding plan focused only on 20A projects, so it uses no City funds and funds its program solely through 20A public utility funding.

There are a few options for alternative funding sources if the City chooses to pursue a more aggressive utility undergrounding timeline.

- **Developer obligations:** Currently, developers can elect to underground street segments along their frontage instead of paying an in-lieu fee, as specified in the Municipal Code. It may be possible to require developments over a certain size to underground utility lines along their frontage; this may require a change to the Municipal Code.
- **Steady funding stream through surcharge:** The only city that we reviewed that had a robust undergrounding program was San Diego. San Diego sets an ambitious goal of placing all of the City's utilities underground. In order to fund this, the CPUC approved a utilities surcharge, which provides $40 million of funding to pursue undergrounding every year. With this funding, the City is able to build underground substructures for approximately 15 miles of utility lines every year. They estimate that they have approximately 1,000 more miles to complete.
- **City funding sources:** No jurisdiction that we reviewed currently uses city funding sources, such as capital funds or their general fund, to fund undergrounding projects. In the past, Oakland has used bond revenue to fund utility undergrounding projects.
- **Community-funded:** In San Francisco, if residents are interested in undergrounding their streets, the City provides a toolkit that enables them to work with their neighbors to create and self-fund an undergrounding district in their neighborhood.

All of these funding options would require staff time and resources to secure, and would need to be evaluated as part of the City's overall prioritization of capital projects.

City Should Be More Transparent About Funding and Program Timelines

City staff have indicated that the 20B undergrounding program is intended to have a long program timeline, and that work will continue to be done over many years. However, this is not clearly communicated in documents and reports regarding undergrounding.

Regardless of whether the City identifies another funding source, greater transparency in the expected timeframe will better communicate to stakeholders how fees are used and when streets can realistically be expected to have utilities undergrounded. This information could also be helpful for developers who are deciding whether to pay an in-lieu fee or to underground the utility lines themselves.

The annual development in-lieu fee and undergrounding reports provide information to stakeholders about the performance of the program. The annual utility undergrounding report, especially, provides a lot of detail about the operations of the program, including both 20A and 20B projects. It regularly includes a five-year work plan with current reserve balances, summary of changes of projects, the Undergrounding Master Plan, proposed future projects, and any additional updates.

The Undergrounding Master Plan states that all projects have an anticipated full funding date of 2040 (see Exhibit 17). This seems unrealistic based on our analysis, considering only 0.3 percent of required costs have been collected annually in recent years through developer fees, and that in some cases fees collected to date only account for 1 to 2 percent of total expected project costs.

Exhibit 17: The Utility Undergrounding Master Plan Lists Anticipated Full Funding Collection at 2040

ATTACHMENT F

FY 17-18 RULE 20B (IN-LIEU FEE) UNDERGROUNDING MASTER PLAN
Proposed Project Areas that meet General Criteria

PROJECT LOCATION	COUNCIL DISTRICT	LENGTH OF PROJECT (FT)	IN-LIEU FEES PAID TO DATE				PROJECT COST	ANTICIPATED FULL FUNDING COLLECTION
			#	COLLECTED THIS FY 2017-2018 ($)	Total ($)	% PROJECT COST		
Prospect Rd - Lawrence Ex to Saratoga Av	1	1600	5	*$65,660*	$96,484	6%	($1,552,000)	2040
Prospect Rd - Miller Av to Provincetown Dr	1	1200	1		$21,280	2%	($1,164,000)	2040
Quito Rd - Elmwood Dr to Northlawn Dr	1	600	2	*-$146,328*	$156,469	27%	($582,000)	2040
Rainbow Dr - Arlington Ln to Blaney Av	1	1000	1		$12,963	1%	($970,000)	2040
Richfield Dr - Stevens Creek Bl to Albany Dr	1	600	1		$58,800	10%	($582,000)	2040
Rosewood Av - Stevens Creek Bl to 600' south	1	600	1		$7,840	1%	($582,000)	2040
San Tomas Aquino Rd - Bucknall Rd to Rincon Av	1	600	1		$63,504	11%	($582,000)	2040
Saratoga Av - Blackford Av to Belvedere Dr	1	800	3		$222,096	29%	($776,000)	2040
Saratoga Av - Venice Wy to Manzanita Dr	1	2400	6		$98,233	4%	($2,328,000)	2040
Saratoga Av - Graves Av to Prospect Rd	1	1200	1		$47,488	4%	($1,164,000)	2040
Saratoga Av - Latimer Av to Los Felice Dr	1	800	2	*$35,644*	$48,243	6%	($776,000)	2040
Saratoga Av - Kiely Bl to Stevens Creek Bl	1	1200	3		$42,399	4%	($1,164,000)	2040

Source: FY 2017-18 Undergrounding Master Plan

Though it may be difficult to predict an anticipated full funding collection date, given how fees are collected, this should be clearly stated so that stakeholders are aware of how distant the collection of these fees may be. The annual reports to Council do not clearly state the long-term nature of the overall undergrounding program, which is important information to understand the program's goals and evaluate its success.

Additional information would make the reports more useful for stakeholders. For example, the total amount of in-lieu fees paid to date, the total cost of all projects, and the percentage of the total cost that fees cover, would provide context on the program's progress. As it is currently presented in the annual undergrounding report, it appears as though the in-lieu fees paid to date are held in reserve for specific projects. It is not clear that the fees are pooled to construct projects in other parts of the city.

Recommendation #6: To increase transparency about the 20B undergrounding (in-lieu fee) program, Public Works should provide more realistic timeframes for anticipated full project funding or construction of 20B utility undergrounding projects in annual reports to the City Council. The reports should also more clearly describe the long-term nature of the program. If the City wants to pursue utility undergrounding more aggressively, staff should consider securing additional funding mechanisms.

Finding 4 The City Has Improved Management of Revenues for Traffic Impact Fee-Funded Areas, But TIF Funding Will Remain Slow

Summary

The City has collected $85 million in developer fees for transportation infrastructure improvements in the North San José, Evergreen, US-101/Oakland/Mabury, and Winchester/280 areas (of which $68 million is still in reserves). In total, the City needs $1.2 billion for identified improvements, most of which are in and around North San José. Funding through traffic impact fees (TIFs) have been slow because there has been less development than anticipated (particularly within North San José) and developers receive credits (effectively reducing the TIF) for existing use, entitlements pre-dating the policies, or constructing public improvements. In addition, the City instituted incentive programs to spur certain types of development in the North San José and US-101/Oakland/Mabury areas, effectively reducing or waiving fees. The City has only spent about $14 million from TIF funds, in part due to lack of matching funds. While the City anticipates that Measure B funds will help address funding needs for many improvements, and it has corrected reconciliation for an additional funding stream, TIF revenues will likely remain slow. We make two recommendations to improve the transparency and coordination of TIF waivers.

The City Has Four Traffic Impact Fees (TIFs), Dating Back to 2005

As described in the Background, the City has established TIFs in four areas: North San José, Evergreen, US-101/Oakland/Mabury, and Winchester/280. To establish these fees, the City identified transportation improvements necessary to support future build-out of development in each area, and City Council approved each area policy and implementing ordinance. The age of these policies vary, as do the size and scope of anticipated development and corresponding improvements.

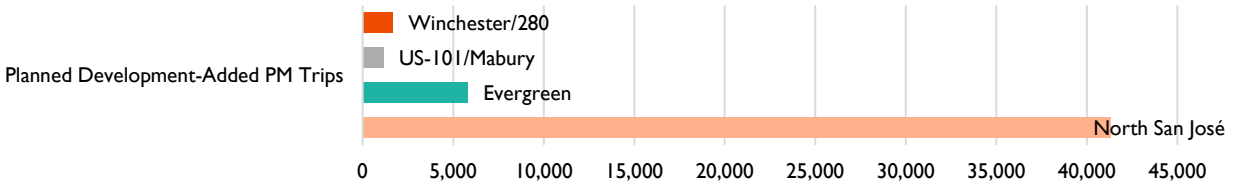
- **North San José** is the oldest and largest ADP. Adopted in 2005, the North San José policy anticipates build out of 26.7 million square feet of industrial and office space–including 1.7 million square feet of commercial space–and 32,000 new residential units, divided evenly over four phases. When fully built out, these land uses correspond to around 41,300 new evening trips in North San José.
- The **Evergreen-East Hills** ADP, adopted in 2008, allows an additional 500 residential units, 500,000 square feet of commercial space, and 75,000

square feet of office space. The City anticipates this development will lead to 5,800 new evening trips in Evergreen.

- The **US-101/Oakland/Mabury** TDP, adopted in 2007, anticipates new development in the area will contribute 1,153 new evening trips via US-101. This TDP stemmed from major development at the Flea Market site.
- The **Winchester/280** TDP, adopted in 2016, anticipates around 2,000 new evening trips via Interstate 280.

North San José has the largest policy scope by far. As shown in Exhibit 18, the North San José ADP anticipates the most new development and corresponding vehicle trips of any area policy. Accordingly, it also identifies the most transportation improvements and requires the most funding. (For a list of improvements in each policy area, see Appendix A.)

Exhibit 18: The North San José ADP Anticipates Over Four Times as Many Trips as the Other Policy Areas Combined



Source: Auditor analysis of anticipated development and corresponding trips based on area policies and supporting documents.

Note that PM refers to afternoon and evening trips.

TIFs Fund Improvements Gradually, Without Set Timelines

Generally, the area policies do not have set timelines for improvement completion. The ordinances state that TIFs will be collected until the public improvements identified in the analysis are fully funded and any City-contributed funds are reimbursed.[20] This means that funding follows development patterns, so when development slows, funding for improvements does as well. According to staff, this limits the City's ability to identify matching funds. So far, the City has spent about $14 million in TIFs.

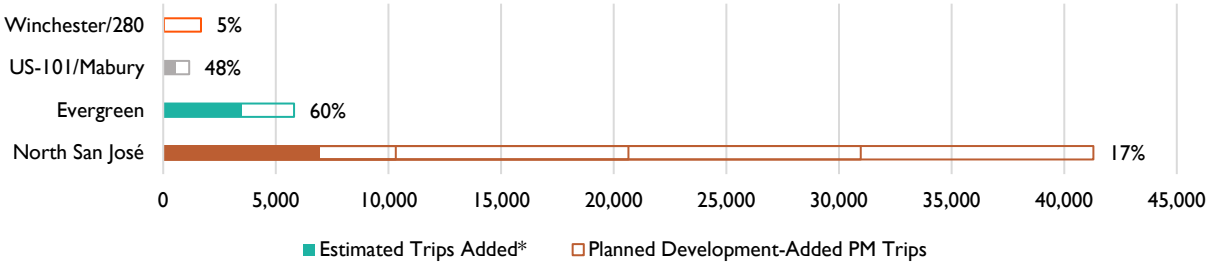
[20] At the time the TIFs were developed, the City used a level of service (LOS) metric as the basis of its transportation analysis, which evaluated the effect of a new development on traffic congestion at intersections. In accordance with new state requirements, the City has changed its assessment and mitigation, using vehicle miles traveled (VMT) as its basis for transportation analysis. VMT considers the impact of added vehicle trips and trip length to human health and the environment, rather than traffic. Currently, the City's revised VMT-based Transportation Analysis Policy (Council Policy 5-1) grandfathers in the old LOS-based area policies. As a result of the state's change, however, the City will likely need to review its mitigating improvements for each policy area. Such considerations are preliminary and ongoing.

Less Than 10 Percent of Total Costs of Improvement Have Been Collected to Date Through TIFs

Since the adoption of its first TIF, the City has collected $85 million in developer fees for transportation infrastructure improvements in the North San José, Evergreen, US-101/Oakland/Mabury, and Winchester/280 areas. In total, the City needs $1.2 billion for the improvements, most of which are in and around North San José. This represents less than 10 percent of the total costs of improvement. The City anticipates additional funding through Measure B and other regional grant funding, and new development reserves for the North San José and US-101/Oakland/Mabury areas, which dedicate construction taxes and other revenues from those areas. Though TIFs are only expected to cover a portion of the total improvement costs, funding has been slow to reach those targets.

Funding through TIFs has been slow in part because there has been less development than anticipated – particularly in North San José. We estimated the number of trips added by development, based on the assumed trip rates for new development used in the policies original fee calculations (see Exhibit 19). While TIF funding has been slow, the addition of vehicle trips to an area would have been slow too.

Exhibit 19: Most Policy Areas Have Not Yet Built Out



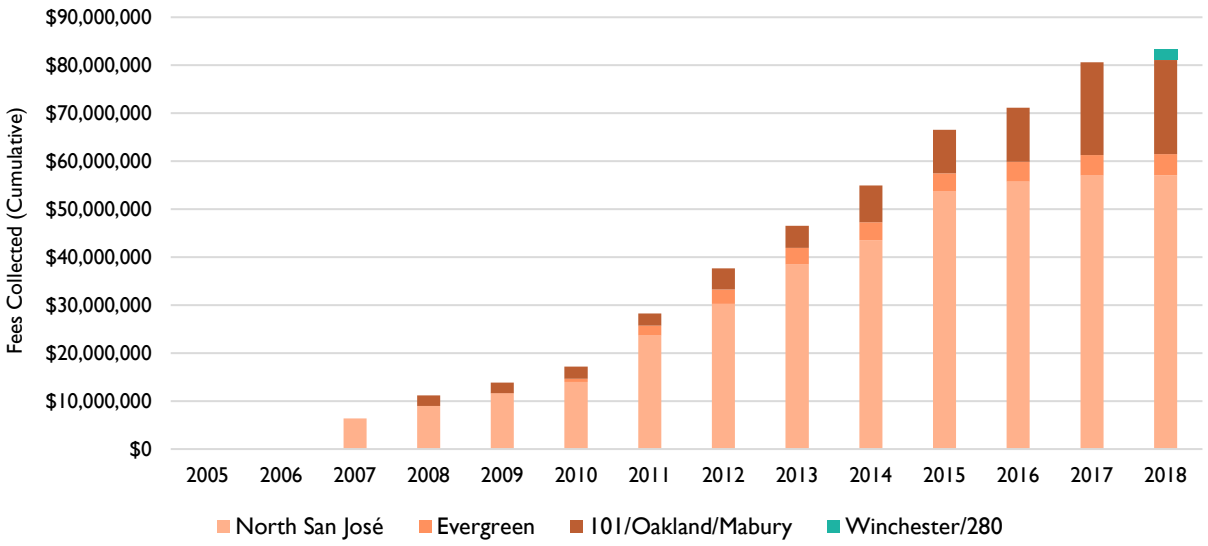
Source: Auditor estimates based on fees paid and waived and base rates per trip under each area policy, based on AMANDA data as of March 2019. Evergreen-East Hills estimates are based on trip projections from the supplemental environmental impact report, because the policy does not specify a per-trip base rate.

*Note that some developments with waived fees have not yet pulled building permits.

Other factors contributed to the slow growth of TIFs. For example, entitlements pre-dating policies are included as part of the area's baseline conditions, so several years elapsed between the adoption of the North San José policy and incoming TIFs. Then, after the City began collecting TIFs, development slowed due to the national economic recession in the late 2000s. Lastly, TIFs, like other in-lieu fees, are paid later in the development process – at the time of Public Works clearance – so there is a lag between increased development entitlements and TIF revenues. In addition, staff report that much of the development in the North San José area

has been intensification of existing use rather than new use, which results in lower fees.

Exhibit 20: Since 2005, the City Has Collected $85 Million in TIFs



Source: Fee data from AMANDA as of March 2019.

Note that years shown are the in-date for Public Works review for project clearance, and may be different from the year the TIF was paid. Chart does not show monies spent.

To Incentivize Development, the City Reduced TIFs for Industrial Developments

In response to the slow development, and to encourage job growth, the City instituted an incentive program in 2012 to reduce TIFs for industrial developments in the North San José area. While this program may have retained jobs in the area, or encouraged development that otherwise may not have occurred, it has also contributed to the relatively slow growth of TIF funds.

The incentive program reduced the traffic impact fee from $12.69 (in 2012) to $5 per square foot for industrial development projects larger than 100,000 square feet. In 2013, the Council expanded the incentive program to allow consideration of waivers for additional developments and later reduced the traffic impact fee to $2 per square foot for industrial development projects of at least 1 million square feet. The incentive rates do not increase year-to-year like the base rates.

The City Waived an Estimated $42 Million in TIFs Through Reduced Fees

The North San José area policy outlines eligibility criteria for a reduced TIF. In addition to the industrial use and square-footage requirements, a developer must:

- obtain all required planning and building approvals between February 1, 2012 and December 31, 2017

- obtain a certificate of occupancy within two years of the last planning or building approval, or by December 31, 2019, whichever occurs earlier, and
- enter into an agreement with the City implementing the incentive.

Seven developments[21] paid $11 million in fees at the incentive's reduced rate. Based on the going rates for industrial use and square footage of those development projects with reduced fees, we estimate the City has waived $42 million in North San José TIFs.[22]

Staff Corrected Reconciliation of Additional Revenues Intended to Supplement Reduced Fees, But Can Further Improve Coordination and Transparency of Incentive Programs

At the adoption of the initial incentive program for North San José, the City did not have a replacement funding source in place. Following the implementation of the incentive program (and the dissolution of the Redevelopment Agency, which would have contributed $15 million to North San José transportation improvements), City staff projected a shortfall of $50 million.

In response, the City Council approved a 2014 budget addendum to increase City contributions to the North San José improvements by: (1) setting aside reserve funding, along with $8 million from the Traffic Capital Program, and (2) dedicating future building and structure construction tax revenues from North San José, and future Business Cooperation Program revenues from new development in North San José.[23]

Under the North San José ADP, "new development that receives the incentive is required as a condition of the [agreement] to participate in the Business Cooperation Program." This program, administered by the Office of Economic Development (OED), allows the City and a developer to benefit from receipt of additional local sales taxes by obtaining permits for the development site through the state Board of Equalization.

At the time of the audit, Business Cooperation Program revenues had not been appropriately reconciled. As a result of the audit, the Budget Office and OED identified $370,000 in Business Cooperation Program revenues that will go towards North San José transportation improvements. They have also included a worksheet in the Budget Office's Annual Report procedures for reconciliation going forward.

[21] One development has extended the waiver through a development agreement with the City. It has not yet paid TIFs.

[22] This includes the extended waiver.

[23] Staff in PBCE and DOT reconcile construction taxes twice a year to the North San José and US-101/Oakland/Mabury New Development Reserves, which dedicate additional funding towards infrastructure improvements in those areas. In FY 2018-19, the reserves totaled $4.7 million in North San José and $2.6 million in US-101/Oakland/Mabury.

Public Works and OED Can Improve Coordination on the Application of Incentives

Half of the developments that paid reduced TIFs under the North San José incentive did not have agreements as required by the policy. In one instance, this is because OED was not aware of the application of the incentive. According to Public Works and OED staff, coordination on the application of incentives is informal.

The application of incentive rates without an agreement in place represents a missed opportunity for additional Business Cooperation Program revenue, as participation was a requirement of eligibility.[24] Additionally, the lack of formal coordination makes it difficult for OED to meet the City's reporting requirements for the disclosure of economic development subsidies under state law (California Gov. Code 53083) and the City's Open Government Resolution.[25] While the North San José incentive is nearing sunset, the City has a similar incentive in the US-101/Oakland/Mabury area.

Moving forward, Public Works and OED should establish a process to ensure developments receiving reduced TIFs meet the eligibility criteria of current or any future incentive programs, including any necessary agreements with the City. Such coordination would also support the City's new labor requirements for subsidized development.

Recommendation #7: Public Works should establish a process to alert the Office of Economic Development to potential waivers under incentive programs, ensuring developments receiving waivers meet all eligibility criteria (including agreements with the City, as applicable).

The City Can Improve Transparency of US-101/Oakland/Mabury Incentives

The US-101/Oakland/Mabury TDP provision on incentives states:

> *The TDP exempts future industrial development activities from the Traffic Impact Fee program...the TDP exempts up to 115 trips related to future industrial developments from the Traffic Impact Fee requirement to promote the General Plan Economic Development Major Strategy, the Industrial Land Use goal and policies, and to help improve the jobs/housing balance in the City.*

[24] Staff anticipated the Business Cooperation Program revenues would contribute $7 million to the North San José New Development Reserve when the budget addendum was proposed.

[25] California Government Code 53083 requires disclosures for subsidies for economic purposes – including fee waivers – greater than $100,000. The City's Open Government Resolution (§2.3.2.6 C) requires disclosures for waivers or reductions of fees or taxes of $1 million or more. Both require after-action reports describing the extent to which the subsidy is generating outcomes as predicted.

It does not list criteria for eligibility like the North San José ADP. Rather, an internal memo describes qualified industrial development uses (including research and development, wholesale sale establishment, and trade and vocational schools) and minimum square footage for eligibility for more than one trip waiver. The memo also caps the number of waived trips to 10 per development project.

Under the US-101/Oakland/Mabury TDP, the City has waived at least six trips, representing over $200,000 in TIFs, for one developer. While the application of that waiver went to City Council, Council has not approved the criteria for the application of the incentive more generally. To ensure transparency of the criteria and application of the incentive, DOT should include the criteria within the US-101/Oakland/Mabury TDP.

Recommendation #8: To ensure transparency in the application of economic development incentives, the Administration should take to the City Council a recommendation for the adoption of the industrial incentive criteria for inclusion in the US-101/Oakland/Mabury Transportation Development Policy.

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Conclusion

The City's General Plan states "new development should finance capital and facility needs..." directly attributable to the site. Developers are required to either construct some portion of public improvements in the area surrounding their property, or help pay for their share of improvements through an "in-lieu fee" or "impact fee." These fees are required as a condition for permit approval and subject to requirements of the Mitigation Fee Act.

Calculating in-lieu fees is often complicated and very development-specific. While our review of street and utility-related in-lieu fees found few verified instances where developers had not been charged in-lieu fees appropriately, we identified potential improvements to the consistency and transparency of calculations through training, documentation guidelines, and development of a digital tool for utility undergrounding fee assessment. The City should also review its utility undergrounding fee to ensure it closely compares to the costs of undergrounding, and improve the transparency of undergrounding project funding timelines. We also recommend improved coordination between departments to ensure fees appropriately reimburse expenditures toward the completion of public improvements, and to ensure developments that receive reduced fees or fee waivers sign necessary agreements with the City.

RECOMMENDATIONS

Finding 1: Consistency and Transparency in Fee Calculation Can Be Improved

Recommendation #1: To ensure decisions during in-lieu fee assessment are transparent, Public Works should develop guidelines for the appropriate documentation of the calculation of in-lieu fees and why a development project did (or did not) get charged an in-lieu fee.

Recommendation #2: To ensure consistent assessment of utility undergrounding in-lieu fees across developments and to make the process more transparent, Public Works should:

a) Develop standard procedures for when and how undergrounding in-lieu fees are assessed and provide training to staff on these procedures, and

b) Create a digital tool that includes designated utility undergrounding streets and previously paid undergrounding fees.

Finding 2: Improved Tracking and Coordination Would Enable Program Staff to Better Use In-Lieu Fee Revenue

Recommendation #3: To ensure that fee revenues are appropriately spent on intended public improvements, Public Works should:

a) Work with program staff in relevant departments to identify which in-lieu fees were collected for public improvements that have been completed, and transfer fee revenues accordingly;

b) Going forward, coordinate with program staff when new in-lieu fees are paid to ensure program staff are notified that new revenues are available; and

c) Update the annual development in-lieu fee report to accurately describe the identified public improvement for unspent in-lieu fees.

Recommendation #4: To ensure appropriate tracking and use of in-lieu fee payments, Public Works should review the fees in the Depositors Fund to determine whether any monies should be refunded or transferred to other funds.

Finding 3: The City Should Clarify Expectations of the Utility Undergrounding In-Lieu Fee Program

Recommendation #5: To ensure that the City's utility undergrounding fee is a fair estimate of the cost of utility undergrounding projects, Public Works should reassess the utility undergrounding in-lieu fee.

Recommendation #6: To increase transparency about the 20B undergrounding (in-lieu fee) program, Public Works should provide more realistic timeframes for anticipated full project funding or construction of 20B utility undergrounding projects in annual reports to the City Council. The reports should also more clearly describe the long-term nature of the program. If the City wants to pursue utility undergrounding more aggressively, staff should consider securing additional funding mechanisms.

Finding 4: The City Has Improved Management of Revenues for Traffic Impact Fee-Funded Areas, But TIF Funding Will Remain Slow

Recommendation #7: Public Works should establish a process to alert the Office of Economic Development to potential waivers under incentive programs, ensuring developments receiving waivers meet all eligibility criteria (including agreements with the City, as applicable).

Recommendation #8: To ensure transparency in the application of economic development incentives, the Administration should take to the City Council a recommendation for the adoption of the industrial incentive criteria for inclusion in the US-101/Oakland/Mabury Transportation Development Policy.

Audit Objective, Scope, and Methodology

This audit was requested by a resident. The objective of this audit was to review the collection, tracking, and use of in-lieu fees, with a focus on street- and utility-related in-lieu fees.

We sought to understand and evaluate the controls over the City's street and utility in-lieu fee programs. To achieve our objective, we analyzed the City's collection, tracking, and use of in-lieu fees as follows:

Collection

- Reviewed the City's Municipal Code, General Plan, and area policies to understand the nexus authority and method of calculation for each fee.
- Interviewed development services staff in Planning, Public Works, and Transportation on the development review process, including seven Public Works engineers on methods of fee calculation.
- Interviewed staff in Public Works and the Office of Economic Development on the application of incentive programs for reduced traffic impact fees.
- Reviewed the calculation and payment of:
    - 16 undergrounding fees
    - 16 street-related in-lieu fees
    - 12 traffic impact fees.
- Reviewed project documentation and fee payment information for a sample of seven development projects on designated undergrounding streets, 30 development projects on streets designated for median islands, and 34 development projects in or near TIF areas.
- Identified eight reduced traffic impact fees and estimated the amount subsidized based on the square footage of the reduced fee calculation and the regular base rate from the year the fee was paid.

Tracking

- Interviewed administrative staff in Public Works and DOT on how fees are tracked and reconciled.
- Reviewed the Mitigation Fee Act and the City's Mitigation Fee Act reports from FY 2015-16 through FY 2017-18 and compared data from the City's Mitigation Fee Act reports to data from the City's financial management and integrated permitting systems.
- Reviewed trends and information on the payment of all street- and utility-related in-lieu fees from AMANDA.

- Reviewed deposits for Public Works in the Depositor Fund.
- Identified funds for in-lieu and impact fee deposit and expenditure, and reviewed capital budgets for those funds.

Use

- Analyzed the expenditures of funds from in-lieu and impact fee revenues.
- Interviewed program staff in Public Works and DOT and reviewed internal project planning documents relating to the use of funds.
- Reviewed the permits related to all unspent traffic signal in-lieu fees.
- Verified a sample of 53 traffic signal and median island public improvements for completion.
- Reviewed information provided by DOT on the funding sources for potential public improvements relating to 6 traffic signal in-lieu fees.
- Benchmarked in-lieu fee programs to other jurisdictions and agencies, including: the City of San Diego and San Diego Gas & Electric, the City and County of San Francisco, the City of Sacramento and the Sacramento Municipal Utility District, the City of Long Beach, the City of Cupertino, the City of Los Angeles, the City of Oakland, and the City of Palo Alto.

APPENDIX A

Proposed Transportation Improvements in Each Area Policy

US 101/Oakland/Mabury (2007)	North San José (2005)

• Improvement of the US-101/Oakland Road interchange
  o widening Oakland Road between Commercial Street and US-101 to 8 lanes, with dual left turn lanes in both directions
  o widening US-101 on-ramps and off-ramps
  o widening eastbound Commercial Street
  o signal modifications at:
  ▪ US-101 and Oakland Road
  ▪ Oakland Road and Commercial Street
• Construction of the US-101/Mabury Road interchange
  o new northbound diagonal off-ramp and new loop on-ramp on southeast quadrant of US-101/Mabury
  o new southbound diagonal off-ramp and new loop on-ramp on southwest quadrant
  o installation of new traffic signals at Mabury Road
	PHASE 1
	• Widen Montague Expressway[1]
	• Improvement of the US 101/ Trimble Road interchange
	• Montague Expressway / Trimble Road Connection
	
	PHASE 2
	• Charcot Avenue extension
	• Zanker Road widening
	
	PHASE 3
	• North First Street / SR 237 interchange
	• McCarthy Boulevard / Montague Expressway interchange
	
	PHASE 4
	• Zanker Road / Skyport Drive connection
	• US 101 / Mabury interchange
	
	As well as:
	• 33 intersection improvements (increase capacity)
	• North San José grid system improvements
	• Bicycle, pedestrian, and transit improvements

Evergreen (2008)	**I-280/Winchester (2016)**

• Improvement at Capitol Expressway and Quimby Road to add exclusive northbound and eastbound right-turn lanes
• Improvement to Nieman Boulevard and Yerba Buena Road to add second westbound left-turn lane
• Improvement to Tully Road and McLaughlin avenue to add an exclusive northbound right-turn lane
• Improve White Road and Aborn Road intersection to add a second westbound left lane
• Convert a westbound lane at US 101 and Yerba Buena Road (East) to a shared through/right-turn lane
• improve White Road and Aborn Road to add a second northbound left-turn lane
• Improve San Felipe Road and Yerba Buena Road (South) to add a second eastbound left-turn lane and second southbound left-turn lane
• New/modified traffic signals at:
  o Ruby Avenue/Norwood Avenue
  o I-680 Ramps (N)/Jackson Avenue
  o Ruby Avenue/Tully Road/Murillo Avenue
  o Story Road/Clayton Road
  o Marten Avenue/Mt. Rushmore Drive
  o Marten Avenue/Flint Avenue
  o Quimby Road/Scottsdale Drive
  o Nieman Boulevard/Daniel Maloney Drive
  o Story Road/Lancelot Lane
  o Ocala Avenue/Hillmont Avenue
  o Ocala Avenue/Adrian Way
	• Partially fund planned freeway off-ramp from northbound I-280 to Winchester Boulevard

[1]Due to a 2006 settlement agreement, the City and Santa Clara County are obligated to make additional improvements beyond the ADP, such as constructing improved interchanges along portions of Montague expressway and widening portions of San Tomas Expressway. Also note that North San José improvements are being rephased.

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: JOE ROIS
CITY AUDITOR

FROM: Matt Cano
John Ristow

SUBJECT: **SEE BELOW**

DATE: September 20, 2019

Approved  Date 9-26-19

SUBJECT: **RESPONSE TO THE AUDIT OF STREET AND UTILITY IN-LIEU FEES**

The Departments of Public Works and Transportation have reviewed the Audit of Street and Utility In-Lieu Fees. The Departments greatly appreciate the important work of the City Auditor's Office and commends their efforts to provide recommendations supporting process improvements and efficiencies in the administration of Street and Utility In-Lieu Fees. The Departments are in agreement with the recommendations identified in the report. The following are the Departments' responses to each of the auditor's recommendations.

Finding 1: Consistency and Transparency in Fee Calculation Can Be Improved.

Recommendation #1: To ensure decisions during in-lieu fee assessment are transparent, Public Works should develop guidelines for the appropriate documentation of the calculation of in-lieu

Response: Staff agrees with the recommendation and will develop clear written guidelines for the appropriate documentation of in-lieu fee calculation.

Target Date of Completion: June 2020

Recommendation #2: To ensure consistent assessment of utility undergrounding in-lieu fees across developments and to make the process more transparent, Public Works should:

a) Develop standard procedures for when and how undergrounding in-lieu fees are assessed and provide training to staff on these procedures, and

b) Create a digital tool that includes designated utility undergrounding streets and previously paid undergrounding fees.

Response: Staff agrees with the recommendation and will develop a clear written procedure, provide training to staff, and create a digital tool to manage utility underground in-lieu fees.

Target Date of Completion: The written procedures and training will be completed by June 2020. The tool for managing the fees will be completed by December 2020.

Finding 2: Improved Tracking and Coordination Would Enable Program Staff to Better Use In-Lieu Fee Revenue.

Recommendation #3: To ensure that fee revenues are appropriately spent on intended public improvements, Public Works should:

a) Work with program staff in relevant departments to identify which in-lieu fees were collected for public improvements that have been completed, and transfer fee revenues accordingly;

b) Going forward, coordinate with program staff when new in-lieu fees are paid to ensure program staff are notified that new revenues are available; and

c) Update the annual development in-lieu fee report to accurately describe the identified public improvement for unspent in-lieu fees.

Response: Staff agrees with the recommendation and will coordinate with relevant departments. This will be an iterative process to go through all existing fees to determine which fees should be kept for future improvements and which fees may be transferred to existing City funds for work already performed, such as the Traffic Capital Improvement Program funds. This analysis for existing fees will be completed by the end of 2020. On an ongoing basis, staff will update the annual development in-lieu fee report and coordinate with relevant departments on an annual basis regarding in-lieu fees paid.

Target Date of Completion: December 2020

Recommendation #4: To ensure appropriate tracking and use of in-lieu fee payments, Public Works should review the fees in the Depositors Fund to determine whether any monies should be refunded or transferred to other funds

Response: Staff agrees with the recommendation and will review fees in the Depositors Fund and take appropriate actions.

Target Date of Completion: June 2020

Finding 3: The City should clarify expectations of the Utility Undergrounding In-Lieu Fee Program.

Recommendation 5: To ensure that the City's utility undergrounding fee is a fair estimate of the cost of utility undergrounding projects, Public Works should reassess the utility undergrounding in-lieu fee.

Response: Staff agrees with the recommendation to reassess the utility undergrounding in-lieu fee. However, the Mitigation Fee Act limits fee increases to ensure that developers are not paying more than their share of the cost of improvements. The City cannot control where, when or the rate that development occurs, which limits setting the in-lieu fee rate to a level to match when the actual construction occurs. In 2009, the City Council approved an amendment to the Underground Fee Ordinance that allows the fee to be adjusted annually according to the Engineering News Record (ENR) 20-City Average Construction Cost Index (CCI). Since then, the fee has been adjusted accordingly to align with construction cost trends and staff intends to reassess the fee once a sample of Rule 20B projects are completed. The review of the base fee was intended to occur more frequently as 20B projects were completed. Unfortunately, the delays by PG&E on the Delmas/Park project has prevented that review. The Delmas/Park and McKee/Jose Figueres 20B projects are expected to be completed by the end of 2020 and 2021, respectively. The In-Lieu Fee will be reassessed by June 2021, after the completion of the Delmas/Park project. The fee will then be re-assessed annually thereafter utilizing the ENR CCI.

Target Date of Completion: June 2021

Recommendation 6: To increase transparency about the 20B undergrounding (in-lieu fee) program, Public Works should provide more realistic timeframes for anticipated full project funding or construction of 20B utility undergrounding project in annual reports to the City Council. The reports should also more clearly describe the long-term nature of the program. If the City wants to pursue utility undergrounding more aggressively, staff should consider securing additional funding mechanisms.

Response: Staff agrees with the recommendation related to providing more realistic timeframes for anticipated full project funding in the annual report to the City Council. Additionally, staff agrees additional funding would be needed to implement undergrounding more aggressively. However, staff is not recommending prioritizing funding for this effort at this time, given the significant other infrastructure needs throughout the City, and electrical infrastructure is the responsibility of PG&E at this point in time.

The 2018-19 report was the first time staff provided dates on the Master Plan as a target date for full funding. Given the nature of the development projects, the City cannot control where, when or the rate at which development or fee payments will occur. So, the timelines included are only estimates. Staff will include more details on time lines and expectations in future reports to Council.

Currently, developers are given the option to self-perform the utility undergrounding or pay the in-lieu fees. Prior to development project approval and fee collection, staff performs research and feasibility study of the area for utility undergrounding and compares it against the 5-Year Utility Undergrounding Workplan. Staff will continue to take additional steps in reviewing projects against 5-Year Utility Undergrounding Workplan, Utility Undergrounding GIS map, and potential development and communicate it clearly to developers about the long-term nature of the program. Staff is currently updating the utility underground GIS map which will allow easier access to project updates, and assist in the coordination with in-lieu fee collection and transparency. The GIS map will be available to general public on the City website upon completion.

Staff has continued to complete utility undergrounding through PG&E's Rule 20A program and developer undergrounding projects. Whenever feasible, staff will continue do 20B projects or combine with PG&E's Rule 20A projects, even though, at the time of construction of the undergrounding projects, 100% of In-Lieu fees may not have been collected within the 20B project limits. In 2009, the City Council approved an amendment to the Underground Fee Ordinance to allow reimbursement to developers who choose to underground. As a financial incentive to encourage and facilitate undergrounding, a developer who elects to underground is reimbursed any fees previously collected within the limits of the undergrounding.

Staff will provide estimated timelines on when Master Plan locations could be expected to be completed based on 20A and 20B projected funding. Projections will continue to fluctuate due to PG&E's lack of prioritization of 20A projects, the CPUC's Order Instituting Rulemaking, PG&E's bankruptcy and their prioritization to restore wildfire damaged areas over non-emergency related Rule 20A projects.

Target Date of Completion: June 2020

Finding 4: The City Has Improved Management of Revenues for Traffic Impact Fee-Funded Areas, but TIF Funding Will Remain Slow.

Recommendation #7: Public Works should establish a process to alert the Office of Economic Development to potential waivers under incentive programs, ensuring developments receiving waivers meet all eligibility criteria (including agreements with the City, as applicable).

Response: Staff agrees with the recommendation and will develop a clear written procedure to alert the Office of Economic Development to potential waivers under incentive programs.

Target Date of Completion: December 2019.

Recommendation #8: To ensure transparency in the application of economic development incentives, the Administration should take to the City Council a recommendation for the adoption of the industrial incentive criteria for inclusion in the US-101/Oakland/Mabury Transportation Development Policy.

Response: The Administration conceptually agrees with the recommendation for improved transparency. The Administration is implementing the council approved US-101/Oakland/Mabury TDP (TDP) direction to exempt some new or expanded industrial developments. The TDP exempts 115 trips related to new or expanded industrial developments from the TIF. To support this exemption, sources of funding (state, regional, city) were identified to cover a proportionate funding of those 115 trips towards the TDP's improvements. To implement the exemption, an internal process clarifies eligibility and ensures that the industrial exemption would not be allocated to one large industrial development at the expense of the smaller industrial developments proposed for intensification, in line with the original intent of the TDP.

The audit recommendation is based on a comparison between the industrial incentives in the TDP and those in the North San Jose Area Development Policy (ADP). The context for the North San Jose ADP incentives differs from that of the TDP. The City Council amended the North San Jose ADP to forego certain TIFs through reduced fees and outlined the eligibility criteria. The US-101/Oakland/Mabury TDP incentives were included at first adoption and supporting funding was identified. The internal process serves the purpose of implementing council direction.

The Administration will continue to follow a clear and transparent practice of allocating economic development incentives in the US-101/Oakland/Mabury TDP through the process developed in the internal process. The Administration will increase transparency by posting the process to the City's website with the TDP. Transparency will also be improved through implementation of Recommendation #7.

Target Date of Completion: December 2019

/s/

Matt Cano
Director of Public Works

/s/

John Ristow
Director of Transportation

For questions, please contact Matt Cano, Director of Public Works, at 535-8477 or John Ristow, Director of Transportation, at 535-3845.