



LAFCO MEETING AGENDA

Isaac Newton Senter Auditorium, 70 West Hedding Street, First Floor
San Jose, CA 95110

April 2, 2014
1:15 PM

**PLEASE NOTE
CHANGE IN VENUE**

CHAIRPERSON: Susan Vicklund Wilson • VICE-CHAIRPERSON: Linda J. LeZotte

COMMISSIONERS: Cindy Chavez, Sequoia Hall, Johnny Khamis, Margaret Abe-Koga, Mike Wasserman

ALTERNATES: Pete Constant, Yoriko Kishimoto, Terry Trumbull, Cat Tucker, Ken Yeager

NOTICE TO THE PUBLIC

1. Pursuant to Government Code §84308, no LAFCO commissioner shall accept, solicit, or direct a contribution of more than \$250 from any party, or his/her agent; or any participant or his /or her agent, while a LAFCO proceeding is pending, and for three months following the date a final decision is rendered by LAFCO. Prior to rendering a decision on a LAFCO proceeding, any LAFCO commissioner who received a contribution of more than \$250 within the preceding 12 months from a party or participant shall disclose that fact on the record of the proceeding. If a commissioner receives a contribution which would otherwise require disqualification returns the contribution within 30 days of knowing about the contribution and the proceeding, the commissioner shall be permitted to participate in the proceeding. A party to a LAFCO proceeding shall disclose on the record of the proceeding any contribution of more than \$250 within the preceding 12 months by the party, or his or her agent, to a LAFCO commissioner. For forms, visit the LAFCO website at www.santaclara.lafco.ca.gov. No party, or his or her agent and no participant, or his or her agent, shall make a contribution of more than \$250 to any LAFCO commissioner during the proceeding or for 3 months following the date a final decision is rendered by LAFCO.
2. Pursuant to Government Code Sections 56100.1, 56300, 56700.1, 57009 and 81000 et seq., any person or combination of persons who directly or indirectly contribute(s) a total of \$1,000 or more or expend(s) a total of \$1,000 or more in support of or in opposition to specified LAFCO proposals or proceedings, which generally include proposed reorganizations or changes of organization, may be required to comply with the disclosure requirements of the Political Reform Act (See also, Section 84250 et seq.). These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. More information on the scope of the required disclosures is available at the web site of the FPPC: www.fppc.ca.gov. Questions regarding FPPC material, including FPPC forms, should be directed to the FPPC's advice line at 1-866-ASK-FPPC (1-866-275-3772).
3. Pursuant to Government Code §56300(c), LAFCO adopted lobbying disclosure requirements which require that any person or entity lobbying the Commission or Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. In addition to submitting a declaration, any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. Additionally every applicant shall file a declaration under penalty of perjury listing all lobbyists that they have hired to influence the action taken by LAFCO on their application. For forms, visit the LAFCO website at www.santaclara.lafco.ca.gov.
4. Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commissioners less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office, 70 W. Hedding Street, 11th Floor, San Jose, California, during normal business hours. (Government Code §54957.5.)
5. In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408)299-6415.

70 West Hedding Street • 11th Floor, East Wing • San Jose, CA 95110 • (408) 299-5127 • www.santaclara.lafco.ca.gov

COMMISSIONERS: Cindy Chavez, Sequoia Hall, Johnny Khamis, Margaret Abe-Koga, Linda J. LeZotte, Mike Wasserman, Susan Vicklund Wilson

ALTERNATE COMMISSIONERS: Pete Constant, Yoriko Kishimoto, Terry Trumbull, Cat Tucker, Ken Yeager

EXECUTIVE OFFICER: Neelima Palacherla

1. ROLL CALL

2. PUBLIC COMMENTS

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

3. APPROVE MINUTES OF FEBRUARY 5, 2014 LAFCO MEETING

CONSENT ITEM

4. WEST BAY SANITARY DISTRICT SPHERE OF INFLUENCE (SOI) AMENDMENT AND ANNEXATION (830 LOS TRANCOS ROAD)

Recommended Action:

CEQA Action

1. As Lead Agency under CEQA, determine that the proposal is categorically exempt from the provisions of CEQA pursuant to State CEQA Guidelines 15319 (a) and (b) and Section 15303(d).

Project Action

Forward the following recommendation to the San Mateo Local Agency Formation Commission, for its consideration:

2. Approve amendment of the West Bay Sanitary District's sphere of influence (SOI) to include Assessor Parcel Number 182-36-031, as shown in Attachment A, and adopt SOI determinations.
3. Conditionally approve the annexation of Assessor Parcel Number 182-36-031, located at 830 Los Trancos Road in the City of Palo Alto, to the West Bay Sanitary District, as described and depicted in Attachment B (Exhibits A and B), provided:
 - a. Resolutions of a zero percent property tax exchange reflecting the annexation of the parcel to the West Bay Sanitary District are adopted by the West Bay Sanitary District and the City of Palo Alto.

PUBLIC HEARING

5. SAN JOSE URBAN SERVICE AREA (USA) AMENDMENT 2014 AND EVERGREEN NO. 202 REORGANIZATION

Recommended Action:

CEQA Action

As a Responsible Agency under CEQA, LAFCO must take the following actions regarding the Mitigated Negative Declaration for this project:

1. Find that the Initial Study and Mitigated Negative Declaration approved by the City of San Jose on January 24, 2012 were completed in compliance with

CEQA and are an adequate discussion of the environmental impacts of the project.

2. Find that prior to making a decision on this project, LAFCO reviewed and considered the environmental effects of the project as outlined in the Initial Study and Mitigated Negative Declaration.
3. Find that a mitigation monitoring program was approved by the City of San Jose as Lead Agency and that the monitoring program ensures compliance with the mitigation measures identified in the Mitigated Negative Declaration that would mitigate or avoid significant impacts associated with the urban service area amendment and reorganization, over which LAFCO has responsibility.

Project Action

4. Approve the City of San Jose's request for urban service area (USA) boundary amendment to include approximately 1.27 acres of lands comprising of a portion of APN 659-25-002 and a portion of APN 659-25-001, located at 3678 /3770 Quimby Road.
5. Conditionally approve the proposed reorganization (Evergreen No. 202) involving annexation of the two parcels (APNs 659-25-002 and APN 659-25-001), to the City of San Jose and concurrent detachment from the Santa Clara County Fire Protection District and the County Library Service Area provided that the proposed conservation easement to maintain property above the 15% slope line as permanent non-buildable open space is dedicated to the City of San Jose and recorded with the County Recorders' Office. Waive protest proceedings pursuant to Government Code §56662(a).

6. PROPOSED LAFCO BUDGET FOR FISCAL YEAR 2015

Recommended Action:

1. Adopt the Proposed LAFCO Budget for Fiscal Year 2014-2015.
2. Find that the Proposed LAFCO Budget for Fiscal Year 2015 is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorize staff to transmit the Proposed LAFCO Budget adopted by the Commission including the estimated agency costs as well as the LAFCO public hearing notice on the adoption of the Fiscal Year 2015 Final Budget to the cities, the special districts, the County, the Cities Association and the Special Districts Association.

7. PROPOSED LAFCO BYLAWS

Possible Action: Adopt the proposed LAFCO Bylaws.

ITEMS FOR ACTION / DISCUSSION

8. **SARATOGA FIRE PROTECTION DISTRICT SPECIAL STUDY DRAFT REPORT**
For information only.
9. **RESPONSES FROM AGENCIES TO RECOMMENDATIONS IN LAFCO'S SPECIAL DISTRICTS SERVICE REVIEW REPORT: PHASE 2**
Recommended Action: Accept staff report and provide direction as necessary.
10. **CALAFCO REGIONAL FORUMS**
Recommended Action: Accept report and provide direction.
11. **AB 2762 (ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT) CORTESE-KNOX-HERTZBERG (CKH) ACT OMNIBUS BILL**
Recommended Action: Take a support position on AB 2762 and authorize staff to send a letter of support.
12. **EXECUTIVE OFFICER'S REPORT**
13. **PENDING APPLICATIONS / UPCOMING PROJECTS**
14. **COMMISSIONER REPORTS**
15. **NEWSPAPER ARTICLES / NEWSLETTERS**
16. **WRITTEN CORRESPONDENCE**
 - 16.1 Letter from the El Camino Hospital re. El Camino Hospital Corporation - Notice of Intent to Purchase a Real Property (dated March 18, 2014)
 - 16.2 Notice from the County of Santa Clara re. Notice of CEMA Contract Expiration (dated March 26, 2014)
 - 16.3 Letter from Mrs. Carol Neal re. Southeast Quadrant Land Annexation and Uses (dated February 13, 2014)

CLOSED SESSION

17. **CLOSED SESSION**
Public Employee Performance Evaluation (Government Code 54957)
Title: LAFCO Executive Officer
18. **ADJOURN**
Adjourn to the regular LAFCO meeting on Wednesday, June 4, 2014, at 1:15 PM in the Board Meeting Chambers, 70 West Hedding Street, San Jose.

**LAFCO MEETING MINUTES
WEDNESDAY, FEBRUARY 5, 2014**

CALL TO ORDER

Chairperson Susan Vicklund Wilson called the meeting to order at 1:15 p.m.

1. ROLL CALL

The following commissioners were present:

- **Chairperson Susan Vicklund Wilson**
- **Commissioner Cindy Chavez**
- **Commissioner Sequoia Hall**
- **Commissioner Margaret Abe-Koga**
- **Commissioner Linda J. LeZotte** (arrived at 1:30 p.m.)
- **Commissioner Susan Vicklund Wilson**
- **Commissioner Mike Wasserman**
- **Commissioner Johnny Khamis**
- **Alternate Commissioner Yoriko Kishimoto** (voted in place of Commissioner Linda LeZotte)
- **Alternate Commissioner Terry Trumbull**
- **Alternate Commissioner Cat Tucker**

The following staff members were present:

- **LAFCO Executive Officer Neelima Palacherla**
- **LAFCO Assistant Executive Officer Dunia Noel**
- **LAFCO Counsel Mala Subramanian**

2. PUBLIC COMMENTS

There were no public comments.

3. APPROVE MINUTES OF DECEMBER 4, 2013 LAFCO MEETING

The Commission approved the minutes of December 4, 2013 LAFCO meeting.

Motion: Chavez

Second: Wasserman

AYES: Chavez, Hall, Khamis, Kishimoto, Abe-Koga, Wasserman, Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

8. EXECUTIVE OFFICER’S REPORT

8.1 FINANCE COMMITTEE FOR FISCAL YEAR 2014-2015 LAFCO BUDGET

Ms. Palacherla, Executive Officer, presented the staff report.

In response to an inquiry by the Chairperson, **Commissioner Wasserman** declined his reappointment on the Committee in view of his other responsibilities. **Commissioners Hall, Khamis** and **Abe Koga** expressed interest to serve on the Committee.

The Commission established the Finance Committee composed of Commissioners Hall, Khamis and Abe-Koga to work with staff to develop and recommend the proposed FY 2014-2015 LAFCO budget for consideration by the full Commission.

Motion: Wasserman Second: Abe-Koga

AYES: Chavez, Hall, Khamis, Kishimoto, Abe-Koga, Wasserman, Wilson

ABSTAIN: None ABSENT: None

MOTION PASSED

8.2 UPDATE ON SARATOGA FIRE PROTECTION DISTRICT SPECIAL STUDY

Ms. Palacherla presented the staff report.

8.3 2014 CALAFCO STAFF WORKSHOP

Ms. Palacherla presented the staff report.

The Commission authorized staff to attend the 2014 CALAFCO Staff Workshop and authorized travel expenses funded by the LAFCO budget.

Motion: Kishimoto Second: Khamis

AYES: Chavez, Hall, Khamis, Kishimoto, Abe-Koga, Wasserman, Wilson

ABSTAIN: None ABSENT: None

MOTION PASSED

9. SB 751: NEW LAW REQUIRES AGENCIES TO PUBLICLY ANNOUNCE VOTES

Ms. Subramanian presented the staff report.

10. PENDING APPLICATIONS

Ms. Palacherla reported the status of pending applications.

11. COMMISSIONER REPORTS

There were none.

12. NEWSPAPER ARTICLES / NEWSLETTERS

There were none.

13. WRITTEN CORRESPONDENCE

The **Chairperson** noted a memorandum from the City Clerk of San Jose, dated February 3, 2014, relating to the appointment of Alternate Commissioner Khamis as LAFCO Commissioner and Commissioner Pete Constant as Alternate LAFCO Commissioner.

***4. TAKEN OUT OF ORDER – CERTIFICATES OF APPRECIATION FOR OUTSTANDING SERVICE TO LAFCO OF SANTA CLARA COUNTY**

The Chairperson presented certificates of appreciation for outstanding service to the following: Valerie Altham, Graphic Designer, Santa Clara County Office of the County Executive; Greg Bazhaw, GIS Administrator, Santa Clara County Planning Office; and, Steve Borgstrom, GIS Technician, Santa Clara County Planning Office.

14. ADJOURN

The meeting was adjourned at 1:34 p.m. to the next meeting on Wednesday, April 2, 2014 in the Board Meeting Chambers, County Government Center, 70 West Hedding Street, San Jose, California.

Approved:

Susan Vicklund Wilson, Chairperson
Local Agency Formation Commission of Santa Clara County

By: _____
Emmanuel Abello, LAFCO Clerk

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: WEST BAY SANITARY DISTRICT SPHERE OF INFLUENCE (SOI)
AMENDMENT AND ANNEXATION (830 Los Trancos Road)

STAFF RECOMMENDATION

CEQA ACTION

1. As Lead Agency under CEQA, determine that the proposal is categorically exempt from the provisions of CEQA pursuant to State CEQA Guidelines 15319 (a) and (b) and Section 15303(d).

PROJECT ACTION

Forward the following recommendation to the San Mateo Local Agency Formation Commission, for its consideration:

2. Approve amendment of the West Bay Sanitary District's sphere of influence (SOI) to include Assessor Parcel Number 182-36-031, as shown in **Attachment A**, and adopt SOI determinations.
3. Conditionally approve the annexation of Assessor Parcel Number 182-36-031, located at 830 Los Trancos Road in the City of Palo Alto, to the West Bay Sanitary District, as described and depicted in **Attachment B (Exhibits A and B)**, provided:
 - a. Resolutions of a zero percent property tax exchange reflecting the annexation of the parcel to the West Bay Sanitary District are adopted by the West Bay Sanitary District and the City of Palo Alto.

PROJECT DESCRIPTION AND BACKGROUND

LAFCO of Santa Clara County received an application, by landowner petition, to amend the Sphere of Influence of the West Bay Sanitary District (WBSD) to include Assessor Parcel Number 182-36-031 and to annex the parcel into the District in order to allow the District to provide sanitary sewer services to the parcel. The parcel consists of 9.43 acres and is located at 830 Los Trancos Road in the City of Palo Alto. The landowners are in

the process of constructing a new 8,400 square foot single-family residence and pool on the property which would replace the now removed original residence. The property has steep slopes covered with oak trees. The property owners would like to abandon the existing septic system and connect to the District's sanitary sewer system. **Attachment A** includes a map of the existing and proposed SOI boundaries. **Attachment B (Exhibits A and B)** describe and depict the boundaries of the proposed annexation.

2002 SOI Amendment and Annexation

In 2002, the SOI for the District was amended to include four parcels along Arastradero Road and Los Trancos Road, and a total of fourteen parcels located near Los Trancos Creek were annexed to the District in order to address an environmental health problem for residences along Los Trancos Creek. At the time, the SOI boundary was defined primarily to include all parcels that were directly along the creek based on information obtained from the Santa Clara County Environmental Health Department. The Department conducted surveys of the area and identified parcels that were likely to be underlain with high ground water and/or where available septic leachfield or leachfield expansion potential was limited due to parcel setback requirements.

The current proposal seeks to include a parcel that is not directly along Los Trancos Creek. This parcel was not included in the District's 2002 SOI Amendment request, but is adjacent to that area.

Inter-LAFCO Agreement

Pursuant to Government Code Section 56123, San Mateo LAFCO, as principal LAFCO for the West Bay Sanitary District, first received this SOI amendment and annexation application. Consistent with LAFCO of Santa Clara County's "Policies and Procedures for Processing Proposals Affecting More than One County," San Mateo LAFCO forwarded this application to LAFCO of Santa Clara County because the territory involved is located in Santa Clara County. LAFCO of Santa Clara County will hold a public hearing and forward a recommendation to San Mateo LAFCO which will then take the final action at its own hearing. LAFCO of Santa Clara's action is therefore only advisory in this matter.

ENVIRONMENTAL ASSESSMENT

Categorical Exemption

LAFCO of Santa Clara County is a Lead Agency under the California Environmental Quality Act (CEQA) for the proposed SOI amendment and annexation to the West Bay Sanitary District.

The proposed project is exempt under State CEQA Guidelines Section 15319(a) & (b) and Section 15303(d) that state:

Section 15319: Class 19 consists of only the following annexations:

- (a) Annexation to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.
- (b) Annexation of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

Section 15303: Class 3 consists of construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures...The number of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:

- (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

SPHERE OF INFLUENCE AMENDMENT

Effective January 1, 2001, the CKH Act of 2000 requires that a service review be conducted prior to the establishment or update of a SOI. As stated earlier, San Mateo LAFCO is the principal LAFCO for WBSD. In 2009, San Mateo LAFCO conducted and adopted a service review and SOI update for the District which included service review determinations and SOI determinations. In 2013, LAFCO of Santa Clara conducted and adopted a service review of the WBSD. However, Santa Clara LAFCO did not adopt service review determinations or SOI determinations for the WBSD because San Mateo LAFCO is the principal LAFCO for the District.

Proposed Sphere of Influence Determinations

In considering and recommending approval of this sphere of influence amendment, LAFCO of Santa Clara County must prepare a written statement of determinations with respect to each of the following:

1. The nature, location, extent, functions, and classes of services provided.

West Bay Sanitary District provides sanitary sewer services and solid waste collection services to the City of Menlo Park, portions of the Cities of East Palo Alto and Redwood City, the Towns of Atherton, Woodside, and Portola Valley, portions of unincorporated south San Mateo County, and several parcels in Santa Clara County near Los Trancos Creek.

2. Present and planned land uses in the area, including agricultural and open-space lands.

The subject parcel is located in the City of Palo Alto and is designated Open Space/Controlled Development in the City's General Plan. This land use designation

includes residential uses. A new single-family residence and pool is being constructed on the parcel. No change in land uses are proposed or planned for the parcel. The parcel does not include agricultural and open space lands as defined in the CKH Act.

3. Present and probable need for public facilities and services in the area.

The subject parcel is located in the City of Palo Alto and the property owners are in the process of constructing a new single-family residence on the parcel. The parcel originally had a residence on it which was served by a septic system. The property owners would like to connect their new residence to the WBSD's sewer system that is located nearby. The City of Palo Alto provides water and police services to the subject parcel.

4. Present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The West Bay Sanitary District has the ability to provide sanitary sewer services to the subject parcel. The District's present capacity of public facilities and services is adequate.

5. Existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.

The parcel is located in the City of Palo Alto, but access to the parcel is through the Town of Portola Valley which is served by the West Bay Sanitary District. The parcel and surrounding rural estates are separated from other neighborhoods in Santa Clara County by open space preserves and parklands.

6. Present and probable need for water, wastewater, and structural fire protection facilities and services of any disadvantaged unincorporated communities within the existing sphere of influence.

There are no disadvantaged unincorporated communities within the District's service area in Santa Clara County based upon mapping information provided by the State of California Department of Water Resources. It is anticipated that San Mateo LAFCO will make a determination concerning disadvantaged unincorporated communities within the District's existing sphere of influence in Santa Mateo County.

CONSISTENCY WITH LAFCO FACTORS AND POLICIES

Impacts to Prime Agricultural Lands and Open Space

The subject parcels are not under a Williamson Act Contract and do not contain open space or prime agricultural lands as defined in the Cortese Knox Hertzberg Act. Therefore the proposed SOI amendment and annexation will not impact agricultural or open space lands.

Logical, Orderly and Efficient Boundaries

The proposed expansion is contiguous to the District's boundary and SOI. The subject parcel is located in the City of Palo Alto, but located outside of the City's Urban Service Area Boundary. The City of Palo Alto Planning & Community Environment Department has approved the construction of a new single-family residence on the property to be served by a septic system, as City sanitary sewer services are not available in this area. However, the Department indicated that they do not have an issue with the proposed SOI amendment and annexation which would allow the parcel to receive sanitary sewer services from the WBSD.

Public Health and Safety Issues

The County's Department of Environmental Health (DEH) issues septic system permits and oversees system installations and repairs for properties in Santa Clara County, including those within cities. DEH staff indicated that they have approved "as-built plans" for a septic system on the subject parcel and noted that the site is very steep and densely covered with oak trees. DEH staff also stated that they are not aware of any existing public health and safety issues associated with the site.

Growth Inducing Impacts

The subject parcel is approximately 9.43 acres in size and is located within the City of Palo Alto. The landowners are in the process of constructing a new single-family residence and would like to abandon their existing septic system and receive sanitary sewer services from the WBSD. The parcel has a City of Palo Alto land use designation of Open Space/Controlled Development and is zoned OS (open space) with a 10 acre minimum lot size requirement. The parcel is not eligible for further subdivision due to its size. Further development of the parcel would be subject to the City of Palo Alto's development regulations.

Directly to the north and west of the subject parcel are unincorporated lands that are already within the WBSD. Directly northeast of the parcel is the City of Palo Alto's Pearson-Arastradero Preserve. Directly south of the parcel are several rural estates which are located within the City of Palo Alto and served by septic systems. Including the subject parcel in WBSD's SOI and annexing the parcel to the District will allow the District to provide sanitary sewer services to the property. As a result, new sewer infrastructure would be extended closer to these rural estates and could potentially lead to additional landowners seeking sanitary sewer services from the District. However, these remaining parcels are zoned OS (Open Space) and are not eligible for further subdivision due to their size.

Ability of District to Provide Services

WBSD has indicated that it has adequate sewer capacity to provide sanitary sewer services to the subject parcel without detracting from the existing service levels within the District. As such, the overall impact on services is minimal.

According to the WBSD, the owners of APN 182-36-031 will have to install a new privately maintained sewer lateral in order to serve the subject parcel. The new 4-inch lateral will be approximately 800 feet in length and will serve only the subject parcel. While half of the sewer lateral will be constructed on the subject parcel, the remaining 400 feet will be constructed in an existing sanitary sewer easement located on a neighboring parcel. The new lateral will connect to the terminus of the District's existing sewer main.

Property Tax Exchange

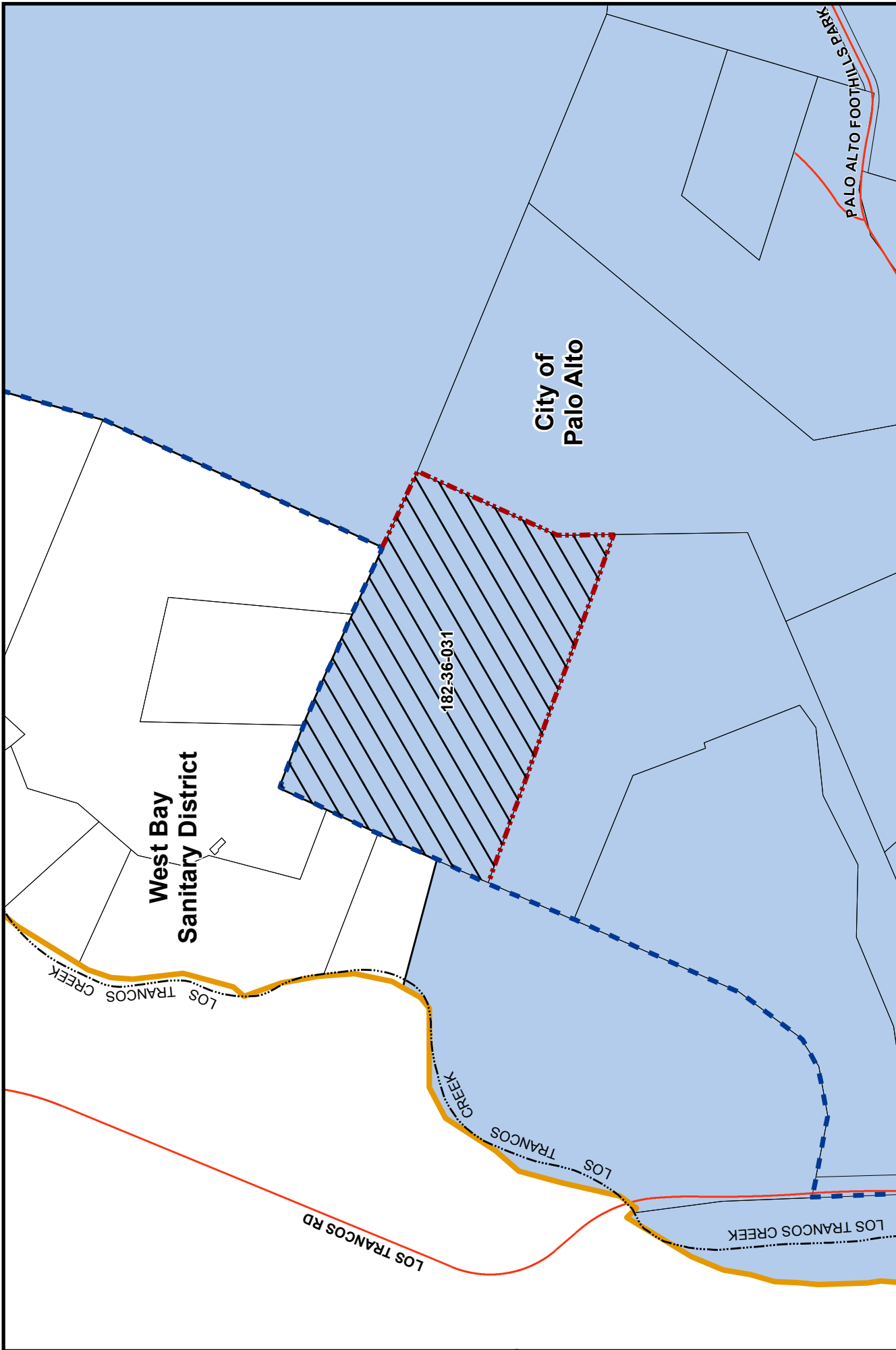
The West Bay Sanitary District is not party to the Master Tax Agreement between Santa Clara County and special districts and cities in the county because the District lies almost entirely within San Mateo County. The subject parcel is located in the City of Palo Alto. Therefore, resolutions negotiating a zero percent property tax exchange are required to be adopted by the City of Palo Alto and the WBSD prior to San Mateo LAFCO's final action on this proposal.

CONCLUSION AND NEXT STEPS

The owners of APN 182-36-031 are in the process of constructing a new single-family residence and would like to abandon an existing septic system and connect the new residence to the District's nearby sanitary sewer system. The District has the capacity to provide sanitary sewer services to the subject parcel without detracting from the existing service levels within the District. The owners of the subject parcel have agreed to construct a new sewer lateral which will connect the residence to the District's existing sewer main. The subject parcel is located in the City of Palo Alto and due to its zoning designation and size, cannot be further subdivided. The project has no significant growth inducing impacts or negative impacts on agricultural or open space resources in the area. Therefore, staff recommends approval of the amendment of WBSD's SOI to include APN 182-36-031 and the annexation of the subject parcel to the District. If directed by LAFCO, staff will forward this recommendation to San Mateo LAFCO for their consideration and final action.

ATTACHMENTS

- Attachment A: Map of West Bay Sanitary District's Existing and Proposed Sphere of Influence Amendment Boundary and subject parcel
- Attachment B: Legal Description (Exhibit A) and Map (Exhibit B) of Proposed Annexation to the West Bay Sanitary District



LEGEND:

- - - Existing West Bay Sanitary S.O.I. Boundary
- - - Proposed West Bay Sanitary S.O.I. Boundary
- County Boundary
- City of Palo Alto
- Proposed Annexation Area
- Assessor's Parcel Number

182-36-031

TITLE:


West Bay Sanitary District Sphere of Influence Amendment and Annexation 2012-01

9.43 Acres ±

Prepared by the Office of the County Surveyor
November 7, 2012
Gwendolyn Gee, County Surveyor

County of Santa Clara
Department of Planning and Development
Office of the County Surveyor

County Government Center, East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110



GEOGRAPHIC DESCRIPTION
WEST BAY SANITARY DISTRICT
SPHERE OF INFLUENCE AMENDMENT AND ANNEXATION 2012-01
APN: 182-36-031 (830 LOS TRANCOS ROAD, PALO ALTO)

All that real property situated in the City of Palo Alto in the County of Santa Clara, State of California, being a portion of Rancho El Corte De Madera, described as follows:

Being Parcel 3 as shown on that certain map entitled "Parcel Map of a Resubdivision of a Portion of Volume 39 Maps Page 25, Also Being Described in, D199 O.R. 581 Records of Santa Clara County" recorded on July 28, 1980 in Book 468 of Maps at Pages 1 and 2 in the Office of the Recorder of the County of Santa Clara, State of California, and described in the Grant Deed recorded on April 22, 2011 as Document No. 21154179 in the Office of said Recorder and being more particularly described as follows:

BEGINNING at the northerly corner of said parcel and on the existing West Bay Sanitary District Boundary as established by Resolution No. 98-14 recorded on February 4, 1999 as Document No. 14640165 in the Office of said Recorder; thence, proceeding clockwise the following courses and distances:

- (1) South 70°00'00" East, 175.24 feet; thence,
- (2) South 67°30'00" East, 148.44 feet; thence,
- (3) South 66°53'00" East, 283.25 feet; thence leaving said existing boundary,
- (4) South 66°53'00" East, 192.06 feet; thence,
- (5) South 23°06'00" West, 356.76 feet; thence,
- (6) South 00°54'00" East, 130.00 feet; thence,
- (7) North 71°26'57" West, 853.96 feet to a point on said existing boundary; thence along said boundary,

(8) North 22°14'00" East, 130.00 feet; thence,

(9) North 23°20'00" East, 402.38 feet to the POINT OF BEGINNING.

Containing 9.434 acres more or less.

For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

November 5, 2012

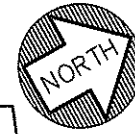




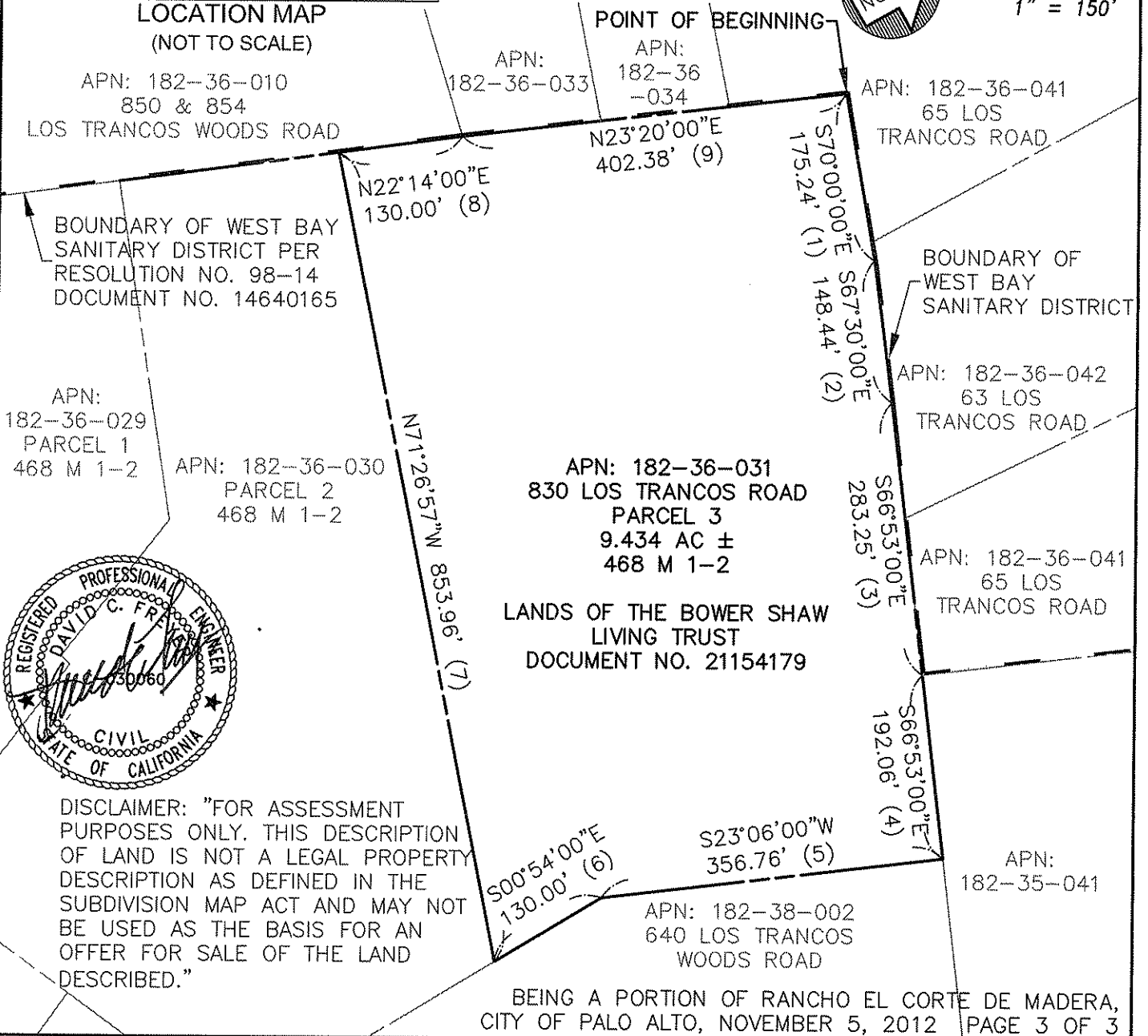
LOCATION MAP
(NOT TO SCALE)

LEGEND

- PROPOSED S.O.I. AND ANNEXATION BOUNDARY LINE
- EXISTING PROPERTY LINE
- EXISTING WEST BAY SANITARY DISTRICT BOUNDARY LINE AND S.O.I.
- S.O.I. SPHERE OF INFLUENCE



SCALE
1" = 150'



DISCLAIMER: "FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED."

FREYER & LAURETA, INC.
 CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS
 144 North San Mateo Drive • San Mateo, CA 94401
 (650)344-9901 • Fax (650)344-9920 • www.freyerlaureta.com

WEST BAY SANITARY DISTRICT S.O.I.
 AMENDMENT AND ANNEXATION 2012-01
 LANDS OF THE BOWER SHAW LIVING TRUST
 APN: 182-36-031 (830 LOS TRANCOS ROAD)

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: SAN JOSE URBAN SERVICE AREA (USA) AMENDMENT 2014 AND
EVERGREEN NO. 202 REORGANIZATION

STAFF RECOMMENDATION

CEQA Action

As a Responsible Agency under CEQA, LAFCO must take the following actions regarding the Mitigated Negative Declaration for this project:

1. Find that the *Initial Study* and *Mitigated Negative Declaration* approved by the City of San Jose on January 24, 2012 were completed in compliance with CEQA and are an adequate discussion of the environmental impacts of the project.
2. Find that prior to making a decision on this project, LAFCO reviewed and considered the environmental effects of the project as outlined in the *Initial Study* and *Mitigated Negative Declaration*.
3. Find that a mitigation monitoring program was approved by the City of San Jose as Lead Agency and that the monitoring program ensures compliance with the mitigation measures identified in the *Mitigated Negative Declaration* that would mitigate or avoid significant impacts associated with the urban service area amendment and reorganization, over which LAFCO has responsibility.

Project Action

4. Approve the City of San Jose's request for urban service area (USA) boundary amendment to include approximately 1.27 acres of lands comprising of a portion of APN 659-25-002 and a portion of APN 659-25-001, located at 3678 /3770 Quimby Road. See **Attachment B** for the map and legal description of the USA boundary amendment.
5. Conditionally approve the proposed reorganization (Evergreen No. 202) involving annexation of the two parcels (APNs 659-25-002 and APN 659-25-001), to the City of

San Jose and concurrent detachment from the Santa Clara County Fire Protection District and the County Library Service Area provided that the proposed conservation easement to maintain property above the 15% slope line as permanent non-buildable open space is dedicated to the City of San Jose and recorded with the County Records' Office. Waive protest proceedings pursuant to Government Code §56662(a). See **Attachment C** for the map and legal description of the Evergreen No. 202 reorganization.

PROJECT DESCRIPTION

The City of San Jose proposes to amend its USA boundary to include approximately 1.27 acres of land comprising of a portion of APN 659-25-002 and a portion of APN 659-25-001, located at 3678 /3770 Quimby Road. The purpose of the USA amendment is to make the USA boundary coterminous with the City's Urban Growth Boundary (UGB) and the 15% slope line. In 1996, the City of San Jose adopted its UGB or Greenline, which in the east foothills, was generally designated along the 15% slope line with the intent to reduce development potential above the 15% slope and preserve hillsides as open space. In 1995, LAFCO approved (LAFCO Resolution No. 95-12) a request by the City to exclude several areas from the City's USA that were located above the 15% slope line, in order to align the USA boundary with the 15% slope line. However, in 2011, the City conducted a site specific analysis using the new Light Detection and Ranging (LIDAR) technology, which resulted in a more precise delineation of the 15% slope line and identified a minor discrepancy. The proposed USA amendment corrects a cartographical error regarding the placement of the 15% slope line and seeks to align the USA boundary with the corrected 15% slope line and UGB.

The City also proposes to annex the two parcels (APNs 659-25-002 and APN 659-25-001), a portion of one of which (APN 695-25-001) will remain outside the USA. Because the City is seeking annexation of an area outside the City's USA, the City must seek LAFCO approval. The City Council, by Resolution No. 76941 initiated reorganization proceedings with LAFCO to include annexation to the City of San Jose and detachment from the Santa Clara County Central Fire Protection District and the County Library Service Area.

See **Attachment A** for a map depicting the general boundaries of the proposed USA amendment and annexation.

The USA amendment and annexation to the City would allow for development of up to 7 single family homes on the portion of the property located below the 15% slope line; and will ensure maintenance of the portion of property above the 15% slope line as non-buildable open space in perpetuity. The property owner proposes to dedicate an open space conservation easement to the City, for the portion of property above the 15% slope line and outside the proposed USA, in order to maintain it as non-buildable open space in perpetuity. See **Attachment D** for the proposed Conservation Easement.

EXISTING AND PROPOSED LAND USES AND DESIGNATIONS

The subject site contains gently sloping open grassland and is currently developed with a single family residence (built in 1946) and several accessory structures. The subject site is located within the unincorporated County and a small portion of the subject site (approximately 0.59 acre) is currently located within the City's USA. Table 1 depicts the County's and City's General Plan and Zoning designations for the two parcels comprising the subject site.

TABLE 1: COUNTY /CITY LAND USE DESIGNATIONS

APN	COUNTY GENERAL PLAN	COUNTY ZONING	CITY GENERAL PLAN Adopted on November 1, 2011	CITY PRE-ZONING Adopted on February 14, 2012
659-25-001	Rural Residential	RR-d1-sr	Open Hillside Lower Hillside	A(PD) Planned Development
659-25-002	Rural Residential	RR-d1	Lower Hillside	A(PD) Planned Development

Upon LAFCO approval of annexation, the City General Plan and Zoning designations would apply to the parcels.

The prezoning for the subject site is A(PD). The base zoning district is A Agriculture Zoning District. The Planned Development (PD) zoning of the subject site is the development plan for the subject property entitled "General Development Plan – Exhibit C", referenced in the City's Prezoning Ordinance No. 29030. The "General Development Plan – Exhibit C" depicts seven lots for single family residences below the 15% slope line, with development precluded on the remainder of the property above the 15% slope line.

Surrounding Land Uses

The subject site is generally surrounded by large lot single-family detached residences to the north, open hillside and undeveloped property to the east, a large religious facility to the south, and single-family detached residences to the west across Quimby Road. Lands to the immediate south and west of the subject parcels are located within the city limits of San Jose.

ENVIRONMENTAL ASSESSMENT

The City of San Jose is the Lead Agency under the California Environmental Quality Act (CEQA) for the proposed San Jose Urban Service Area Amendment and Reorganization. LAFCO is a Responsible Agency under CEQA for the proposal.

The City of San Jose determined that the proposed urban service area amendment is pursuant to or in furtherance of the Final Program Environmental Impact Report (FEIR) for the Envision San Jose 2040 General Plan, for which findings were adopted by the San Jose City Council Resolution No. 76041 on November 1, 2011.

Per City Resolution No. 76134, the City approved a Mitigated Negative Declaration for the City's Planned Development pre-zoning and proposed reorganization of the subject properties on January 24, 2012. The reorganization involves annexation of the two parcels to the City of San Jose and their concurrent detachment from the Santa Clara County Central Fire Protection District and the County Library Service Area. The City is requiring mitigation measures to reduce the potential significant environmental effects to a less than significant level for air quality, biologic resources, and geology and soils. The mitigation measures were included in the project in the form of development standards for the Planned Development Zoning, as well as, in the Mitigation Monitoring Program. The Mitigation Monitoring Program will ensure compliance with the mitigation measures that would mitigate or avoid significant impacts associated with the project, over which LAFCO has responsibility. See **Attachment E** for City's environmental document.

CONSISTENCY WITH SAN JOSE GENERAL PLAN

The City of San Jose adopted its Urban Growth Boundary (UGB) or Greenline in 1996. The UGB establishes the maximum extension of urban development and urban services - both intended and anticipated, in the City's General Plan. The City's policies for its UGB state that no urban development should be allowed outside the UGB and that the UGB should contain lands suitable and appropriate for urban purposes including all USA lands and certain lands located below the 15% slope line and deemed potentially suitable for future development. To ensure integrity of the boundary, significant modifications to the boundary and its policies are strongly discouraged. Significant modifications may be considered only during a comprehensive review of the General Plan and only if the City Council makes certain findings regarding service capacities/impacts, fiscal impacts and public benefit considerations, among others. However, minor modifications to the UGB may be considered during the Annual Review of the General Plan if certain criteria are met such as the slope of the property, size of area affected and location of property relative to existing and planned urban uses and services among others. The voter approved UGB limits the City's outward expansion and supports preservation of the surrounding hillsides as open space areas. The most recent update of the City's General Plan further commits to accommodate its next 30 years of growth within its current boundaries without outward expansion.

The City has indicated that since the discrepancy in the location of the UGB is a geographic/mapping error, a General Plan Amendment is not needed to rectify it. Expansion of the UGB above the 15% slope line is prohibited. The proposed USA expansion and annexation confine development to property located below the 15% slope line.

CONSISTENCY WITH LAFCO POLICIES

The subject site does not contain prime agricultural lands and will not have any impact on agricultural lands. The portion of property above the 15% slope line will be

maintained as non-buildable open space in perpetuity, through an open space conservation easement dedicated to the City.

Currently, a portion of APN 659-25-002 is located within the City's USA, which was established as the 15% slope line in 1995. However, in more recent years, using more advanced technology, the City has mapped the 15% slope line more precisely. The proposed USA boundary aligns with the cartographically corrected 15% slope line. While the proposed USA boundary follows the 15% slope line, it splits lines of assessment and the City proposes to annex the entirety of the parcel that is split by the USA boundary. Annexation of the entire parcel allows the City to apply the appropriate land use and zoning designations to the portion of the parcel outside the USA in order to ensure its open space status. LAFCO policies strongly discourage annexations of land outside a city's urban service area except in instances where such annexations would help promote preservation of agricultural or open space lands. In this case, the property owner proposes to place the remaining portion of the parcel outside the proposed USA boundary under an open space conservation easement dedicated to the City in order to preclude any future development on the parcel outside the USA boundary and above the 15% slope line. Therefore, the USA amendment and annexation would only allow for development and urban services on the portion of the subject site below the 15% slope line and within the USA.

Historically, LAFCO has allowed urban service area boundaries in the east foothills to split lines of assessment to follow the 15% slope line where it is appropriate and where it can be ensured that future development will be precluded on the property above the 15% slope line. Because of the restriction of USA boundary expansion above the 15% slope line and because of the proposed open space conservation easement, it is not likely that there would be any further growth inducing impacts as a result of the proposed boundary changes, apart from the seven single family residences proposed on the subject site.

LAFCO policies encourage the use of vacant lands within existing boundaries prior to outward expansion of boundaries. However, this proposed USA amendment only seeks to confirm with the City's original intent to align the USA with the 15% slope line and to its General Plan policies which do not envision outward expansion to accommodate growth.

The County Surveyor's Office has determined that the proposed annexation boundaries are definite and certain. The proposal is contiguous to the current city boundary and does not create islands or areas difficult to provide services. The proposal also meets LAFCO's street annexation policies.

LAFCO's policies require cities to annex unincorporated islands prior to requesting USA amendments. The City of San Jose has made substantial progress in annexing islands that qualify for the streamlined annexation process.

Annexation would allow the City to provide urban services to the property. As indicated by the City, upon annexation, the City would provide sewer service and the San Jose Municipal Water System would provide water service to the property. The City would provide residential solid waste, yard waste and recycling services through a contract with Green Waste Recovery. The City has indicated that it has the capacity to serve the proposed development and that construction of new facilities for wastewater treatment, storm drainage, water, or waste disposal would not be required.

The City has indicated that upon annexation, the San Jose Fire Department would provide fire protection service and the San Jose Police Department would provide police service to the property. The project site is located adjacent to an existing residential area that is currently served by the City. The City has indicated that no new facilities or personnel will be required by the police or the fire departments to adequately serve the two annexed parcels.

CONCURRENT DETACHMENT FROM SPECIAL DISTRICTS

Currently the Santa Clara County Central Fire Protection District provides fire service to the area. Since San Jose has its own Fire Department, the subject site will be detached from the Santa Clara County Central Fire Protection District, concurrent with annexation to the City.

Currently, the subject site is within the County Library Service Area boundary and receives service from the County Library system. Since the City has its own library service system which provides service to the City's residents, the subject site will be detached from the County Library Service Area, concurrent with annexation to the City.

WAIVER OF PROTEST PROCEEDINGS

The proposed annexation area is considered uninhabited territory, that is, it includes less than 12 registered voters. The property owners of the two parcels have consented to the annexation. Because it is uninhabited territory and the proposed annexation has received consent from all the property owners, LAFCO may waive protest proceedings pursuant to Government Code §56662(a).

CONCLUSION

The existing USA boundary was intended to be coterminous with the 15% slope line when it was amended by LAFCO in 1995. The proposed USA amendment seeks to align the USA with the correct 15% slope line which was recently identified by the City using more advanced technology. The proposal is consistent with the original intent of the City and consistent with the City's General Plan which limits urban expansion to properties below the 15% slope line and within the City's UGB. The UGB defines the maximum extent of urban development anticipated in the City's General Plan. The most recent update of the City's General Plan seeks to accommodate the next 30 years of growth without outward expansion of City boundaries.

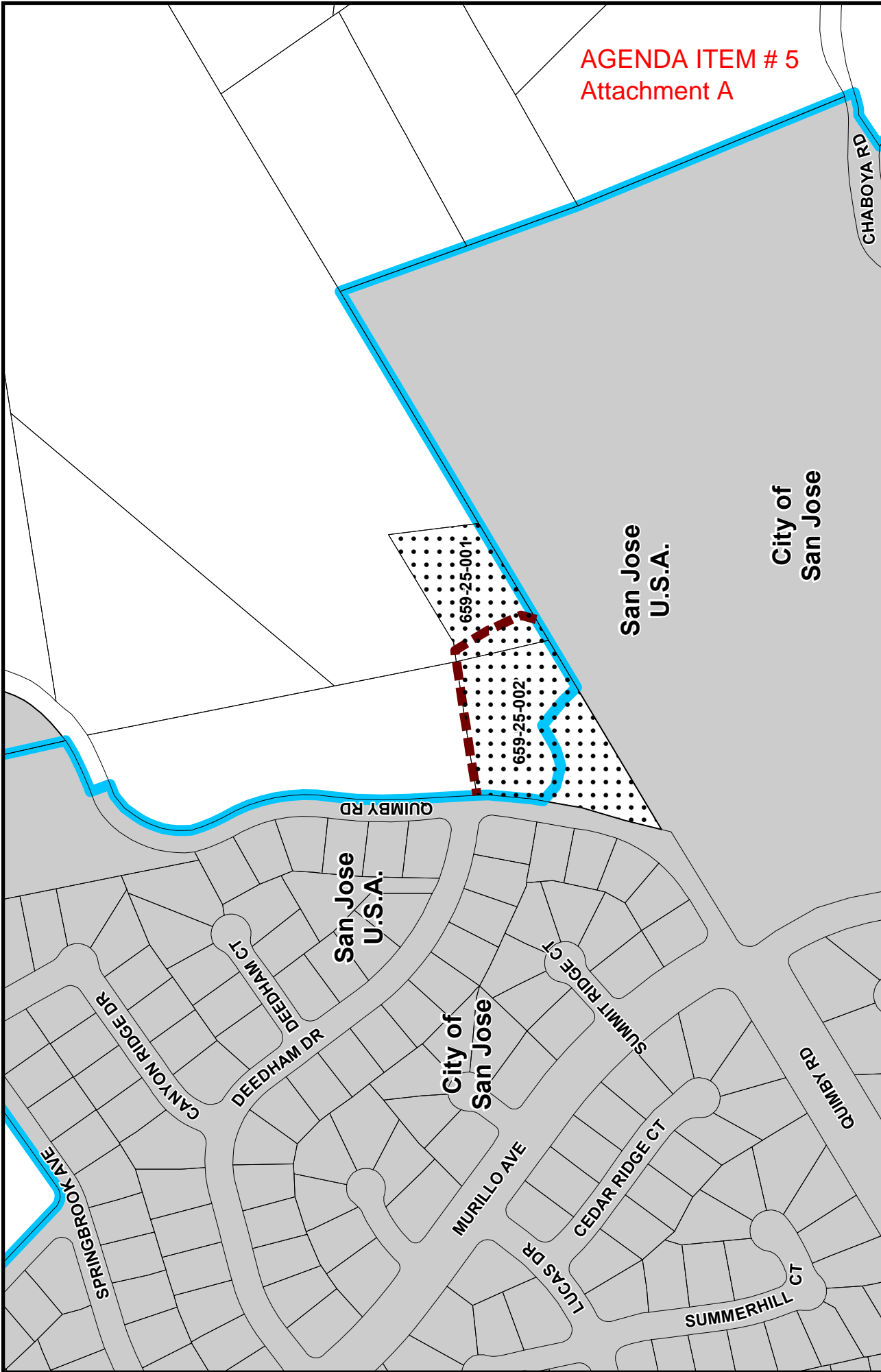
While the proposed USA splits lines of assessment (because it follows the 15% slope line), the proposed annexation includes both the parcels even though a portion of one of the parcels will remain outside the USA. However, the City has established a rezoning designation to limit development to property within the USA boundary, prohibiting development on the property outside the USA. More importantly, the property owner proposes to place the property outside the USA and above the 15% slope line in a permanent open space conservation easement dedicated to the City. The assurance that the property outside the USA will remain undeveloped will enable LAFCO to make a rare exception to allow annexation of property outside the USA.

The proposal addresses an exceptional situation caused by a mapping discrepancy, does not adversely impact agricultural or open space lands, and does not have further growth inducing impacts. For these reasons, staff recommends approval of the USA and annexation conditioned on recordation of the open space conservation easement.

ATTACHMENTS

- Attachment A: Map depicting boundaries of the proposed USA amendment and the proposed reorganization
- Attachment B: Map and Legal Description of USA Amendment
- Attachment C: Map and Legal Description of Evergreen No. 2 Reorganization
- Attachment D: Proposed Conservation Easement
- Attachment E: City of San Jose's Environmental Document

**AGENDA ITEM # 5
Attachment A**



LEGEND:

- Existing San Jose U.S.A. Boundary
- Proposed San Jose U.S.A. Boundary
- Area of Proposed Annexation Evergreen No. 202
- City of San Jose
- Unincorporated Lands
- Assessor's Parcel Number 659-25-001

**San Jose Urban Service Area
Amendment 2014 (1.27 Acres ±)
Evergreen No. 202 Annexation (2.86 Acres ±)**

Prepared by the Office of the County Surveyor
March 26, 2014
Gwendolyn Gee, County Surveyor

**County of Santa Clara
Department of Planning and Development
Office of the County Surveyor**

County Government Center, East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110

N

0 50 100 200 Feet

Sheet 1 of 1

TITLE:



AGENDA ITEM # 5
Attachment B

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Beginning at the northeasterly corner of that certain 34.975 acre tract of land lying within the Rancho Yerba Buena, shown as Parcel 2 on the Parcel Map recorded at Book 681 of Maps, Page 38, Santa Clara County Records; Thence along the northerly line of said Parcel 2, said line also being the southeasterly line of Lot One, as said Lot is shown on a Map entitled, "Map of the Subdivision of Lot "L" forming a part of the partition of the Yerba Buena Rancho", which Map was filed for record in the office of the Recorder of the County of Santa Clara, in Book "A" of Maps, page 90, South 57° 59' 37" West, 530.71 feet, to the Southeasterly corner of that certain 2.84 acre (more or less) Parcel transferred into the Tammy Huang and Euson Huang Trusts by Grant Deed recorded May 22, 2008 as Document No. 19862843, Official Records, Santa Clara County;

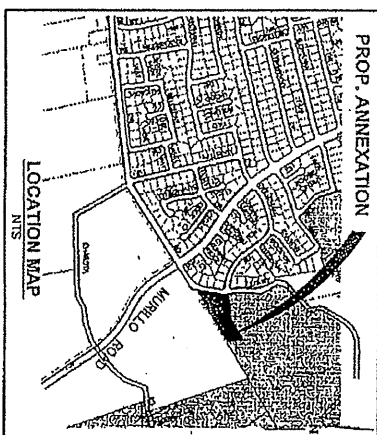
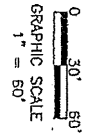
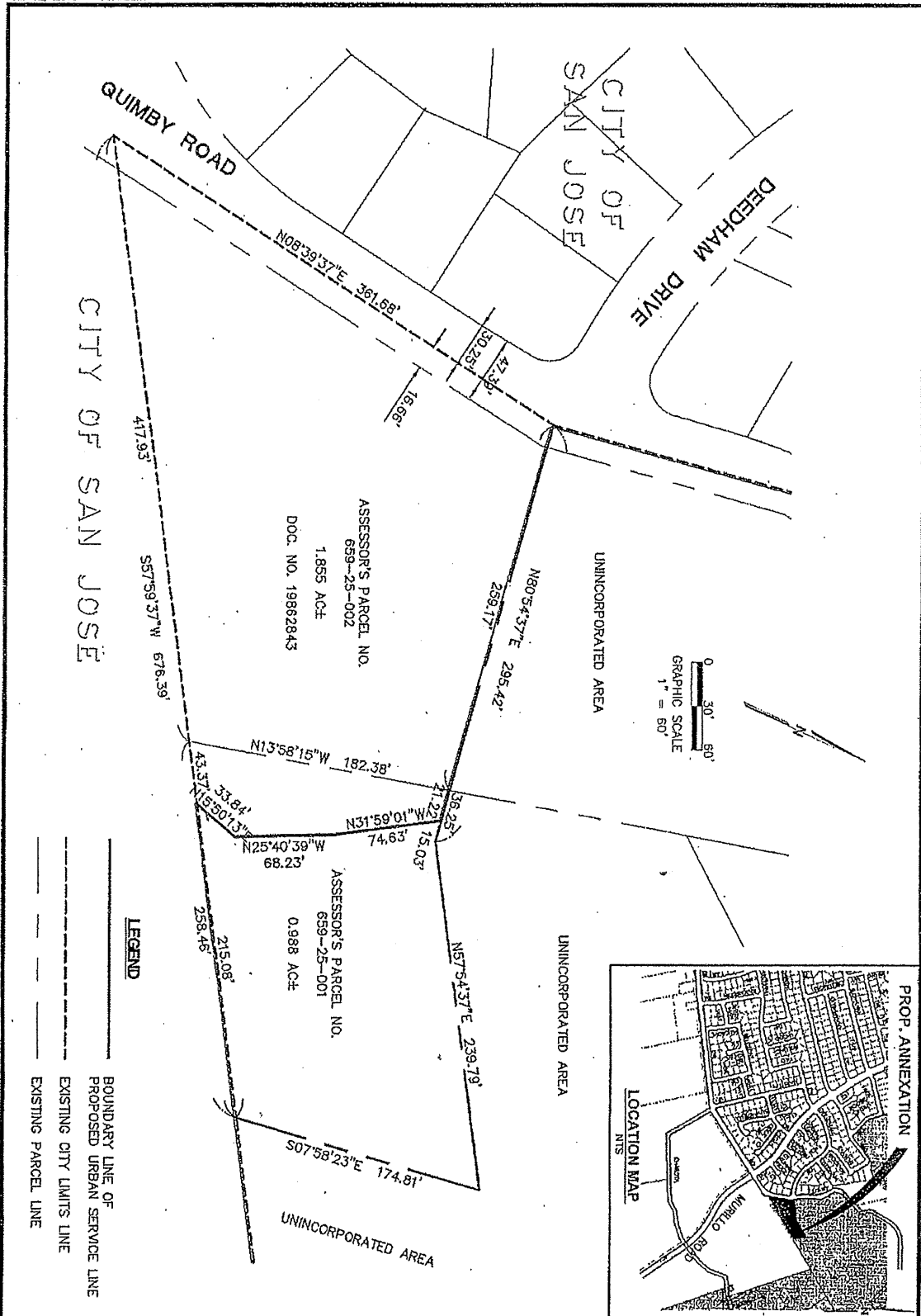
Thence continuing along said line, South 57° 59' 37" West, 215.08 feet; Thence across said Huang Parcel, generally following the "15% Slope Line" the following three courses: 1) North 15° 50' 13" East, 33.84 feet; 2) North 25° 40' 39" West, 68.23 feet; 3) North 31° 59' 01" West, 74.63 feet, to the northerly line of said Huang Parcel;

Thence along said northerly line, South 80° 54' 37" West, 280.39 feet to the centerline of Quimby Road, and the Point of Termination of this description.

And being within Lot "B2" as said Lot is shown on the Map accompanying the Report of the Referees in the Partition suit of Matilda Chaboya, et al vs. Salvador Chaboya, et al in the District Court of the Third Judicial District of the State of California, in and for the County of Santa Clara, SUI 2412, and within Lot One of the aforementioned Subdivision of Lot "L", Surveyed July, 1942 by Raymond W. Fisher, Surveyor and Civil Engineer, San Jose, California.

APN: 659-25-001, 659-25-002

Prepared by:
Ruth and Going Inc.
2216 The Alameda
Santa Clara, CA 95050
(408) 236-2400
R+G Job # 04-053A



LEGEND

———— BOUNDARY LINE OF PROPOSED URBAN SERVICE LINE

- - - - - EXISTING CITY LIMITS LINE

———— EXISTING PARCEL LINE

EXHIBIT B
 PROPOSED REVISION
 TO THE CITY OF SAN JOSE
 URBAN SERVICE BOUNDARY

SAN JOSE CALIFORNIA

DRAWN: JM
 CHKD.: GDY
 DEPT.:

R+G RUTH AND GOING, INC.
 Civil Engineering Land Surveying
 2216 THE ALAMEDA SANTA CLARA, CA 95059 (408) 236-2400

SCALE: 1"=60'
 DATE: 07-12-13
 JOB # 04053A

EVERGREEN NO 202
ANNEXATION TO THE CITY OF SAN JOSE

AGENDA ITEM # 5
Attachment C

GEOGRAPHIC DESCRIPTION

All that certain real property, situate in Rancho Yerba Buena, in the County of Santa Clara, State of California, described as follows:

Beginning at a point in the Easterly right of way line of Quimby Road (originally 40 feet wide), said point also being the intersection of the easterly line of Annexation Evergreen No. 133 and the northerly line of Annexation Evergreen No. 180, dated February 27, 1980 and June 27, 1995 respectively, said point also lying on the Southeasterly line of Lot One, as said Lot is shown on a Map entitled, "Map of the Subdivision of Lot "L" forming a part of the partition of the Yerba Buena Rancho", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book "A" of Maps, page 90,

Thence, (1) along said easterly line of Quimby Road and said easterly line of Annexation Evergreen No. 133, North 08° 39' 37" East 347.52 feet;

Thence, (2) continuing along said easterly line of Quimby Road and said easterly line of Annexation Evergreen No. 133, North 08° 32' 23" West 3.22 feet, more or less, to a point on the northerly line of that certain parcel of land described in that Grant Deed recorded May 22, 2008 as Document 19862843, Santa Clara County Records;

Thence, (3) leaving said easterly line of Quimby Road and said easterly line of Annexation Evergreen No. 133, along said northerly line North 80° 54' 37" East 275.42 to an angle point;

Thence, (4) continuing along said northerly line North 57° 54' 37" East 239.79 feet to the northeast corner of said parcel;

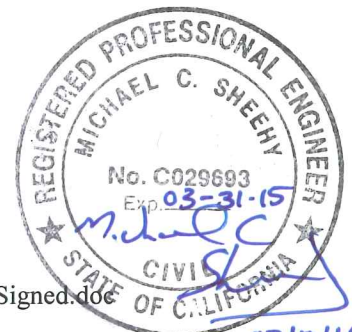
Thence, (5) along the easterly line of said parcel South 7° 58' 23" East 174.81 feet, more or less, to said northerly line of Annexation Evergreen No. 180;

Thence, (6) southwesterly along said northerly line of Annexation Evergreen No. 180 South 57° 59' 37" West 650.02 feet, more or less, to said easterly line of Annexation Evergreen 133 and the Point of Beginning.

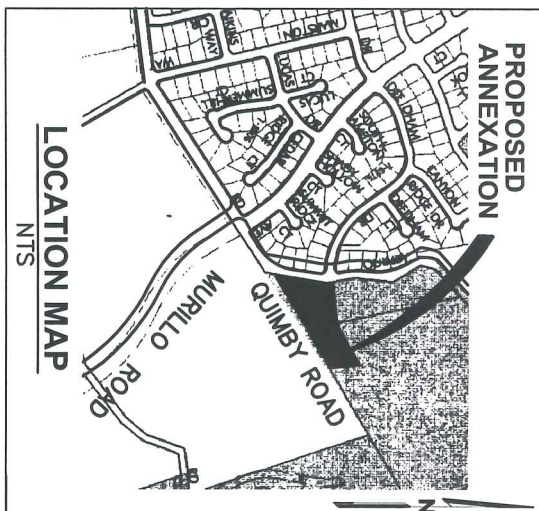
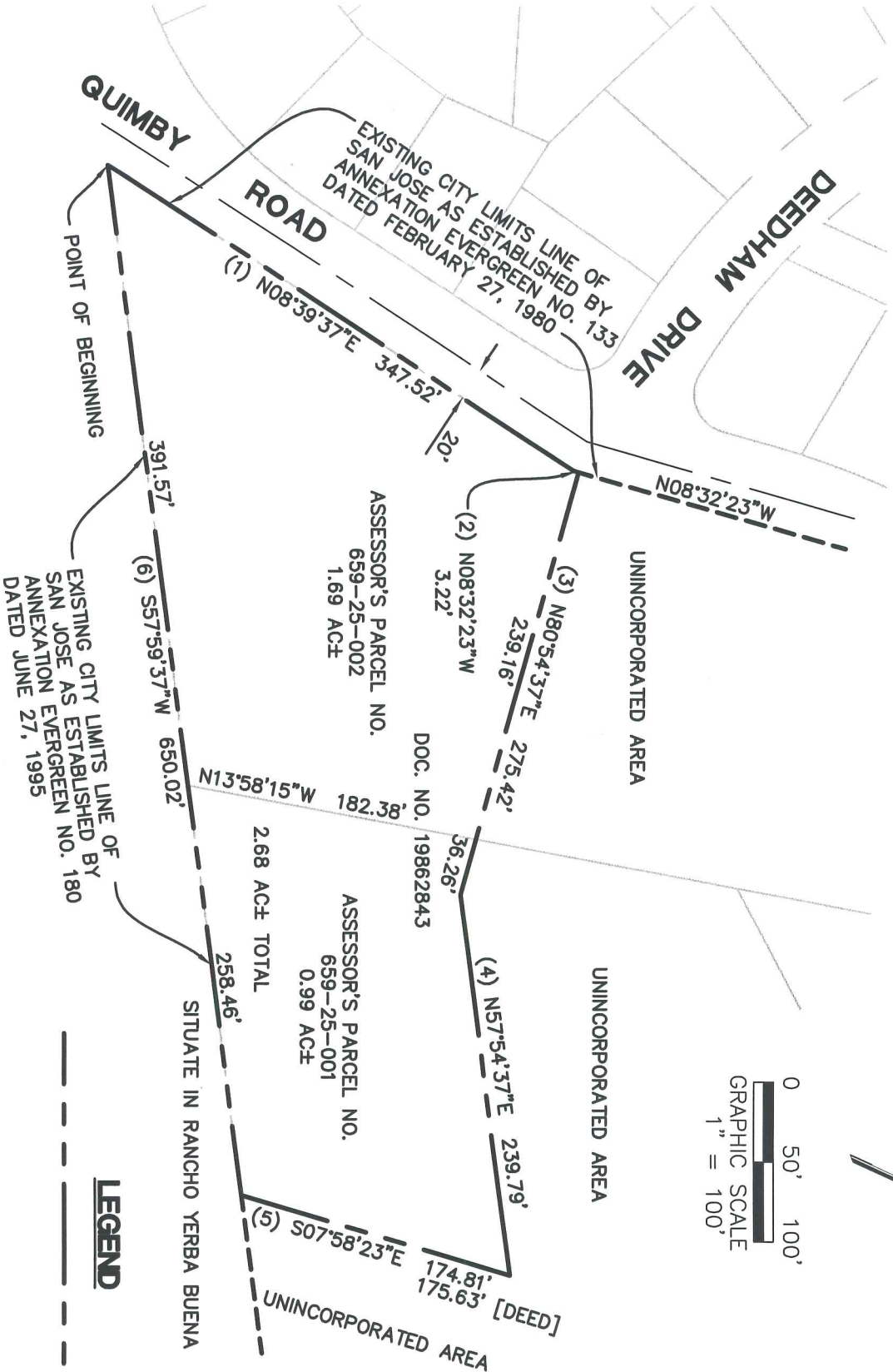
Comprising 2.68 acres, more or less.

For assessment purposes only. This description of land is not a legal property description as defined by the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

Prepared by: Ruth and Going Inc.
2216 The Alameda, Santa Clara, CA 95050
(408) 236-2400
R+G Job # 04-053A
Date: February 2, 2012; Rev. March 10, 2014



DISCLAIMER:
 FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED BY THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED.



LEGEND

- BOUNDARY LINE OF PROPOSED ANNEXATION
- EXISTING CITY LIMITS LINE
- EXISTING PARCEL LINE



RUTH AND GOING, INC.
 Civil Engineering Land Surveying
 2216 THE ALAMEDA SANTA CLARA, CA. 95050
 (408) 236-2400

PROPOSED ANNEXATION TO THE CITY OF SAN JOSE ENTITLED EVERGREEN NO. 202

EXHIBIT B

City of San Jose

CALIFORNIA

03-10-14	04053A	Drwn.: JM
Dept.:	Scale: 1" = 100'	Chkd.: MCS

Recording Requested By:

When Recorded Send To:

City of San Jose
Department of Planning, Building & Code Enforcement
Planning Division
200 East Santa Clara Street
San Jose, CA 95113

Project No:
APN(s): 659-25-001& 002

DRAFT CONSERVATION EASEMENT

This Conservation Easement is granted on this day of _____, 2014, by Euson Huang and Tammy Huang, residing at 1862 Hunt Drive, Burlingame CA 94010 (the “Grantors”), to the City of San Jose, a municipal corporation of the State of California (the “Grantee”).

A. RECITALS

WHEREAS, the Grantor is the owner of approximately 0.99 acres of real property located on the east side of Quimby Road, approximately 440 feet east of Murillo Road (3678/ 3770 Quimby Road) in San Jose, more particularly described in Exhibit A attached hereto (hereinafter the “Premises”); and

WHEREAS, the Premises are undeveloped open fields, and comprises a portion of a parcel in the unincorporated County of Santa Clara that has been pre-zoned by Grantee in anticipation of a request for annexation of the parcel into the City of San Jose for purposes of development; and

WHEREAS, the City Council approved a Planning Development Prezoning (File No. PDC10-002) on February 14, 2012 to prezone the subject 2.84 gross acre site from unincorporated County of Santa Clara to A (PD) Zoning District to allow the development of seven (7) detached residences below the 15% slope line, and restrict any development on the Premises to protect hill-side areas above the 15% slope line.

As a part of this Annexation, a Conservation Easement will be recorded for the said area to preclude any future development on the area above the 15% slope line.

WHEREAS, the City Council approved the Envision San Jose 2040 General Plan on November 1, 2011, and designated the subject site as Lower Hillside encompassing 1.57 gross acres and Open Hillside on the 1.23 acres; and which prohibits any development above the 15% slope line and thereby outside of the City's Urban Growth Boundary.

WHEREAS, the Grantee has initiated the annexation of the parcel, including the Premises, with the Santa Clara County Local Agency Formation Commission ("LAFCO") which is the conducting authority for the subject annexation;

WHEREAS, a condition of the LAFCO approval of the annexation is that the Premises remain undeveloped open space, preserving its rural and natural character, consistent with the Grantee's General Plan and the approved rezoning for the parcel, which shall be further ensured through this Conservation Easement;

WHEREAS, California Civil Code Section 815.1 defines "conservation easement" as any limitation in a deed, will or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition;

WHEREAS, it is Grantee's intention that the limitations set forth below, shall run with the land and be binding on Grantee, its successors and assigns in perpetuity;

NOW THEREFORE, pursuant to the laws of California, including Sections 815-816 of the California Civil Code, Grantors do hereby grant to Grantee a conservation easement in perpetuity over the Premises of the nature and character and to the extent set forth herein, and the grant is made subject to the following:

B. LIMITATIONS

1. Restrictions. Pursuant to Civil Code Section 815 et seq., the following restrictions shall apply in perpetuity to the Premises:
 - a. *Permissible Uses*. The Premises shall be dedicated and maintained solely for open space in perpetuity.

- b. *Structures*. No structures or improvements shall be erected on the Premises without written approval of Grantee.
2. Covenants and Conditions. Pursuant to Civil Code Section 815 et seq., the following covenants and conditions shall apply in perpetuity to the Premises:
- a. *Run with the Land*. The restrictions, covenants and conditions set forth herein shall run with the land and bind the Premises in perpetuity.
- b. *Recordation*. This instrument shall forthwith be recorded in the Office of the Recorder of County of Santa Clara, California.
- c. *Access/Right to Inspect*. Grantee, its representatives and assigns shall have reasonable access to the Premises to monitor compliance with the restrictions, covenants and conditions set forth herein.

C. ENFORCEMENT

1. General. Grantee shall have the right and power to enforce the restrictions, covenants and conditions set forth herein, by any proceedings at law or in equity, against any person or persons violating or attempting to violate any restriction, covenants and/or condition set forth herein; to restrain violations; to require specific performance and/or to recover damages.
2. Procedure. If Grantee determines that Grantors are in violation of the restrictions, covenants and conditions set forth herein or that a violation is threatened, the Grantee shall give written notice to Grantors of such violation and demand corrective actions sufficient to cure the violation, and, where the violation involves injury to the Premises resulting from any use or activity inconsistent with the permitted uses of the restrictions, covenants and conditions set forth herein, to restore that portion of the Premises so injured. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Grantee may bring an action at law or equity in a Court of competent jurisdiction to enforce the limitations, restrictions, covenants and conditions set forth herein, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction to recover any damages to which it may be entitled for violation of the restrictions, covenants and conditions set forth herein, or injury to any public interest protected by the restrictions, covenants and conditions set forth herein, and to require the restoration of the Premises to the condition that existed prior to such injury.

3. Relief. Grantors agree that the Grantee's remedies at law for any violation of the restrictions, covenants and/or conditions set forth herein are inadequate, and that the Grantee shall be entitled to the injunctive relief described in the immediately preceding paragraph 2, above, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the restrictions, covenants and conditions set forth herein, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
4. Cost(s) of enforcement. Any costs incurred by the Grantee in enforcing the restrictions, covenants and conditions set forth herein against Grantors, their successors and/or assigns including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the restrictions, covenants and conditions set forth herein shall be borne, joint and severally, by Grantors, their successors and/or assigns.
5. No Waiver. The failure by the Grantee to enforce any restriction, covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Grantor:

Grantor:

Eason Huang

Tammy Huang

Exhibits: Exhibit A (Legal Description of Premises subject to Conservation Easement)

**AGENDA ITEM # 5 Santa Clara County Clerk – Recorder's Office
Attachment E State of California**

County of Santa Clara
Office of the County Clerk-Recorder
Business Division



County Government Center
70 West Hedding Street, E. Wing, 1st Floor
San Jose, California 95110 (408) 299-5688



Document No.: **483**
Number of Pages: **3**
Filed and Posted On: **11/18/2011**
Through: **12/18/2011**
CRO Order Number:
Fee Total: **0.00**

REGINA ALCOMENDRAS, County Clerk – Recorder
by **Mary Rattanapanya, Clerk – Recorder Office Spe,** *MR*

CEQA DOCUMENT DECLARATION

ENVIRONMENTAL FILING FEE RECEIPT

PLEASE COMPLETE THE FOLLOWING:

1. LEAD AGENCY: CITY OF SAN JOSE
2. PROJECT TITLE: FILE NO. PDC10-002 PLANNED DEVELOPMENT PREZONING 3770 QUIMBY ROAD
3. APPLICANT NAME: EUSON HUANG PHONE: 408-705-8848
4. APPLICANT ADDRESS: 1862 HUNT DRIVE, BULINGAME, CA 94010
5. PROJECT APPLICANT IS A: Local Public Agency School District Other Special District State Agency Private Entity
6. NOTICE TO BE POSTED FOR 30 DAYS.

7. CLASSIFICATION OF ENVIRONMENTAL DOCUMENT

a. PROJECTS THAT ARE SUBJECT TO DFG FEES

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------|-------------|----------------|
| <input type="checkbox"/> 1. ENVIRONMENTAL IMPACT REPORT (PUBLIC RESOURCES CODE §21152) | \$ 2,839.25 | \$ <u>0.00</u> |
| <input type="checkbox"/> 2. NEGATIVE DECLARATION (PUBLIC RESOURCES CODE §21080(C)) | \$ 2,044.00 | \$ <u>0.00</u> |
| <input type="checkbox"/> 3. APPLICATION FEE WATER DIVERSION (STATE WATER RESOURCES CONTROL BOARD ONLY) | \$ 965.50 | \$ <u>0.00</u> |
| <input type="checkbox"/> 4. PROJECTS SUBJECT TO CERTIFIED REGULATORY PROGRAMS | \$ 949.50 | \$ <u>0.00</u> |
| <input type="checkbox"/> 5. COUNTY ADMINISTRATIVE FEE (REQUIRED FOR a-1 THROUGH a-4 ABOVE)
Fish & Game Code §711.4(e) | \$ 50.00 | \$ <u>0.00</u> |

b. PROJECTS THAT ARE EXEMPT FROM DFG FEES

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------|
| <input type="checkbox"/> 1. NOTICE OF EXEMPTION (\$50.00 COUNTY ADMINISTRATIVE FEE REQUIRED) | \$ 50.00 | \$ <u>0.00</u> |
| <input type="checkbox"/> 2. A COMPLETED "CEQA FILING FEE NO EFFECT DETERMINATION FORM" FROM THE DEPARTMENT OF FISH & GAME, DOCUMENTING THE DFG'S DETERMINATION THAT THE PROJECT WILL HAVE NO EFFECT ON FISH, WILDLIFE AND HABITAT, OR AN OFFICIAL, DATED RECEIPT / PROOF OF PAYMENT SHOWING PREVIOUS PAYMENT OF THE DFG FILING FEE FOR THE *SAME PROJECT IS ATTACHED (\$50.00 COUNTY ADMINISTRATIVE FEE REQUIRED) | | |
| DOCUMENT TYPE: <input type="checkbox"/> ENVIRONMENTAL IMPACT REPORT <input type="checkbox"/> NEGATIVE DECLARATION | \$ 50.00 | \$ <u>0.00</u> |

c. NOTICES THAT ARE NOT SUBJECT TO DFG FEES OR COUNTY ADMINISTRATIVE FEES

- | | | | |
|------------------------------------------------|------------------------------------------------------|--------|------------------|
| <input type="checkbox"/> NOTICE OF PREPARATION | <input checked="" type="checkbox"/> NOTICE OF INTENT | NO FEE | \$ <u>NO FEE</u> |
|------------------------------------------------|------------------------------------------------------|--------|------------------|

8. OTHER: _____ FEE (IF APPLICABLE): \$ _____

9. TOTAL RECEIVED..... \$ 0.00

*NOTE: "SAME PROJECT" MEANS NO CHANGES. IF THE DOCUMENT SUBMITTED IS NOT THE SAME (OTHER THAN DATES), A "NO EFFECT DETERMINATION" LETTER FROM THE DEPARTMENT OF FISH AND GAME FOR THE SUBSEQUENT FILING OR THE APPROPRIATE FEES ARE REQUIRED.

THIS FORM MUST BE COMPLETED AND ATTACHED TO THE FRONT OF ALL CEQA DOCUMENTS LISTED ABOVE (INCLUDING COPIES) SUBMITTED FOR FILING. WE WILL NEED AN ORIGINAL (WET SIGNATURE) AND THREE COPIES. (YOUR ORIGINAL WILL BE RETURNED TO YOU AT THE TIME OF FILING.)

CHECKS FOR ALL FEES SHOULD BE MADE PAYABLE TO: SANTA CLARA COUNTY CLERK-RECORDER

PLEASE NOTE: FEES ARE ANNUALLY ADJUSTED (Fish & Game Code §711.4(b)); PLEASE CHECK WITH THIS OFFICE AND THE DEPARTMENT OF FISH AND GAME FOR THE LATEST FEE INFORMATION.

"... NO PROJECT SHALL BE OPERATIVE, VESTED, OR FINAL, NOR SHALL LOCAL GOVERNMENT PERMITS FOR THE PROJECT BE VALID, UNTIL THE FILING FEES REQUIRED PURSUANT TO THIS SECTION ARE PAID." Fish & Game Code §711.4(c)(3)

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

File No. and Project Name/Description:

File No. PDC10-002. The proposed project is a rezoning of the subject 2.8 gross acre site, located on the south side of Quimby Road, approximately 400 feet easterly of Murillo Avenue (3770 Quimby Road), to the A(PD) Planned Development Zoning District to allow for the development of up to seven (7) single-family detached residential units. (Council District: 8)

The City has performed environmental review on the project. Environmental review examines the nature and extent of any adverse effects on the environment that could occur if a project is approved and implemented. Based on the review, the City has prepared a draft Mitigated Negative Declaration (MND) for this project. An MND is a statement by the City that the project will not have a significant effect on the environment if protective measures (mitigation measures) are included in the project.

The public is welcome to review and comment on the draft Mitigated Negative Declaration.

The draft Mitigated Negative Declaration, initial study, and reference documents are available online at: <http://www.sanjoseca.gov/planning/eir/MND.asp>.

The documents are also available for review from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, located at City Hall, 200 East Santa Clara Street; and at the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street.

For additional information, please contact Lesley Xavier at (408) 535-7852, or by e-mail at lesley.xavier@sanjoseca.gov.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on:

11/17/2011

John Dinkson

Deputy

File#: 489

11/18/2011



11/18/2011

File#: 488

File No: PDC10-002
 District: 8

Location

MITIGATION MONITORING AND REPORTING PROGRAM

Huang / Quimby Road

File No. PDC10-002



November 2011

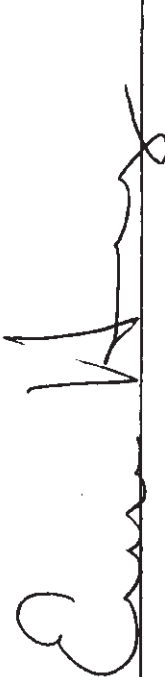
PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

On _____, 2011, the City Council certified the Initial Study for the Huang / Quimby Road Project. The Initial Study concluded that the implementation of the project could result in significant impacts on the environment and mitigation measures were incorporated into the proposed project or were required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

In order to avoid or significantly reduce significant environmental impacts of the project to a less than significant level so that a Mitigated Negative Declaration may be adopted, the applicant must agree to revise the project to include the mitigation measures contained herein before a proposed Mitigated Negative Declaration and initial study are released for public review in accordance with the California Environmental Quality Act Guidelines 15070 (b)(1).

I, _____, the applicant, on the behalf of _____, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an initial study and Mitigated Negative Declaration for my proposed project. I understand that these Mitigation Measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Applicant's Signature 

Date 11/21/2011



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM
For Huang / Quimby Road
 File No. PDC10-002

Environmental Impacts	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>The project, with the implementation of the following standard BAAQMD measures during all phases of construction, would not result in significant construction-related air quality impacts.</p>	<p style="text-align: center;">Air Quality</p> <ul style="list-style-type: none"> ▪ Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives. ▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard; ▪ Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. ▪ Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and ▪ Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets. 	<p>The project applicant and their contractors are responsible for implementing these measures during all site excavation, grading, and construction activities.</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning, Building, and Code Enforcement (PBCE).</p>



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM
 For Huang / Quimby Road
 File No. PDC10-002

Environmental Impacts	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>The project, with the implementation of the following standard measures, would reduce impacts to raptors, burrowing owls, bats, and migratory birds to a less than significant level.</p>	<p align="center">Biological Resources</p> <ul style="list-style-type: none"> ▪ Raptors. If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit. 	<p>The project applicant is responsible for restricting construction activities between the months of October and December (inclusive)</p> <p align="center">- or -</p> <p>If it is not feasible to schedule construction between October and December, the project applicant is responsible for having a qualified ornithologist complete pre-construction/pre-disturbance no more than 14 days prior to the start of construction between the months of January and April and no more than 30</p>	<p>These measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning, Building, and Code Enforcement (PBCE).</p>



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM
 For Huang / Quimby Road
 File No. PDC10-002

Environmental Impacts

Mitigation and Avoidance Measures

▪ **Burrowing Owls.** The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (February 1 through August 31). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

Timeframe and Responsibility for Implementation

days prior to the start of construction between May and August.

Method of Compliance

Submit documentation verifying compliance with the identified mitigation measures to the Environmental Principal Planner and print all measures on all construction documents, contracts, and project plans.

Oversight of Implementation

Director of Planning, Building, and Code Enforcement (PBCE).



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM
 For Huang / Quimby Road
 File No. PDC10-002

Environmental Impacts	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>■ Bats. Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A</p>	<p>The project applicant is responsible for the completion of the pre-demolition surveys by a qualified biologist no more than 30 days prior to the start of demolition or construction activities.</p>	<p>Submit documentation verifying compliance with the identified mitigation measures to the Environmental Principal Planner and print all measures on all construction documents, contracts, and project plans.</p>	<p>Director of Planning, Building, and Code Enforcement (PBCE).</p>



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM
 For Huang / Quimby Road
 File No. PDC10-002

Environmental Impacts	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit.</p>			

Environmental Impacts	Mitigation and Avoidance Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
<p>The project, with the implementation of the following measure, would reduce geologic and soil, impacts to a less than significant level.</p>	<p>Geology and Soils</p> <ul style="list-style-type: none"> ▪ Prior to the development of the site, a soil engineering study shall be performed on the parcel to develop recommendations for site grading, foundations, retaining walls, utility trench backfill and site drainage. 	<p>The project applicant is responsible for implementing these measures prior to the issuance of a grading permit or Public Works Clearance.</p>	<p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Director of Planning, Building, and Code Enforcement (PBCE).</p>

Document No.:
Number of Pages:
Filed and Posted On:
Through:
CRO Order Number:
Fee Total:



County of Santa Clara
Office of the County Clerk-Recorder
Business Division

County Government Center
70 West Hedding Street, E. Wing, 1st Floor
San Jose, California 95110 (408) 299-5665

REGINA ALCOMENDRAS, County Clerk - Recorder
by Esther Duarte, Deputy Clerk - Recorder, *[Signature]*

CEQA DOCUMENT DECLARATION

ENVIRONMENTAL FILING FEE RECEIPT

PLEASE COMPLETE THE FOLLOWING:

- 1. LEAD AGENCY: City of San Jose
- 2. PROJECT TITLE: Huang / Quimby Road, File No. PDC10-002
- 3. APPLICANT NAME: Euson Huang PHONE: (408) 705-8848
- 4. APPLICANT ADDRESS: 1862 Hunt Drive, Burlingame, CA 94010
- 5. PROJECT APPLICANT IS A: Local Public Agency School District Other Special District State Agency Private Entity
- 6. NOTICE TO BE POSTED FOR 20 DAYS.

7. CLASSIFICATION OF ENVIRONMENTAL DOCUMENT

a. PROJECTS THAT ARE SUBJECT TO DFG FEES

- 1. ENVIRONMENTAL IMPACT REPORT (PUBLIC RESOURCES CODE §21152) \$ 2,839.25 \$ 0.00
- 2. NEGATIVE DECLARATION (PUBLIC RESOURCES CODE §21080(C)) \$ 2,044.00 \$ 0.00
- 3. APPLICATION FEE WATER DIVERSION (STATE WATER RESOURCES CONTROL BOARD ONLY) \$ 965.50 \$ 0.00
- 4. PROJECTS SUBJECT TO CERTIFIED REGULATORY PROGRAMS \$ 949.50 \$ 0.00
- 5. COUNTY ADMINISTRATIVE FEE (REQUIRED FOR a-1 THROUGH a-4 ABOVE) \$ 50.00 \$ 0.00
Fish & Game Code §711.4(e)

b. PROJECTS THAT ARE EXEMPT FROM DFG FEES

- 1. NOTICE OF EXEMPTION (\$50.00 COUNTY ADMINISTRATIVE FEE REQUIRED) \$ 50.00 \$ 0.00
- 2. A COMPLETED "CEQA FILING FEE NO EFFECT DETERMINATION FORM" FROM THE DEPARTMENT OF FISH & GAME, DOCUMENTING THE DFG'S DETERMINATION THAT THE PROJECT WILL HAVE NO EFFECT ON FISH, WILDLIFE AND HABITAT, OR AN OFFICIAL, DATED RECEIPT / PROOF OF PAYMENT SHOWING PREVIOUS PAYMENT OF THE DFG FILING FEE FOR THE *SAME PROJECT IS ATTACHED (\$50.00 COUNTY ADMINISTRATIVE FEE REQUIRED)
DOCUMENT TYPE: ENVIRONMENTAL IMPACT REPORT NEGATIVE DECLARATION \$ 50.00 \$ 0.00

c. NOTICES THAT ARE NOT SUBJECT TO DFG FEES OR COUNTY ADMINISTRATIVE FEES

- NOTICE OF PREPARATION NOTICE OF INTENT NO FEE \$ NO FEE

8. OTHER: _____ FEE (IF APPLICABLE): \$ _____

9. TOTAL RECEIVED..... \$ 0.00

*NOTE: *SAME PROJECT* MEANS NO CHANGES. IF THE DOCUMENT SUBMITTED IS NOT THE SAME (OTHER THAN DATES), A "NO EFFECT DETERMINATION" LETTER FROM THE DEPARTMENT OF FISH AND GAME FOR THE SUBSEQUENT FILING OR THE APPROPRIATE FEES ARE REQUIRED.

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CHECKS FOR ALL FEES SHOULD BE MADE PAYABLE TO: SANTA CLARA COUNTY CLERK-RECORDER

PLEASE NOTE: FEES ARE ANNUALLY ADJUSTED (Fish & Game Code §711.4(b)); PLEASE CHECK WITH THIS OFFICE AND THE DEPARTMENT OF FISH AND GAME FOR THE LATEST FEE INFORMATION.

"... NO PROJECT SHALL BE OPERATIVE, VESTED, OR FINAL, NOR SHALL LOCAL GOVERNMENT PERMITS FOR THE PROJECT BE VALID, UNTIL THE FILING FEES REQUIRED PURSUANT TO THIS SECTION ARE PAID." Fish & Game Code §711.4(c)(3)

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Huang / Quimby Road

PROJECT FILE NUMBER: PDC10-002

PROJECT DESCRIPTION: The proposed project is a rezoning of the subject 2.8 gross acre site, located on the south side of Quimby Road, approximately 400 feet easterly of Murillo Avenue (3770 Quimby Road), to the A(PD) Planned Development Zoning District to allow for the development of up to seven (7) single-family detached residential units.

PROJECT LOCATION & ASSESSORS PARCEL NO.: South side of Quimby Road, approximately 400 feet easterly of Murillo Avenue (3770 Quimby Road) (APN 659-25-001; -002)

COUNCIL DISTRICT: 8

APPLICANT CONTACT INFORMATION: Euson Huang, 1862 Hunt Drive, Burlingame, CA 94010

FINDING:

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. **AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

III. AIR QUALITY.

- a. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- c. Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
- e. Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

IV. BIOLOGICAL RESOURCES.

- a. **Raptors.** If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.
- b. **Burrowing Owls.** The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (February 1 through August 31). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.
- c. **Bats.** Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a bat biologist shall designate buffer zones (both

physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit.

V. CULTURAL RESOURCES. The project will not have a significant impact on cultural resources, therefore no mitigation is required.

VI. GEOLOGY AND SOILS.

- a. Prior to the development of the site, a soil engineering study shall be performed on the parcel to develop recommendations for site grading, foundations, retaining walls, utility trench backfill and site drainage.

VII. GREENHOUSE GAS EMISSIONS. The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

VIII. HAZARDS AND HAZARDOUS MATERIALS. The project will not have a significant hazards and hazardous materials impact, therefore no mitigation is required.

IX. HYDROLOGY AND WATER QUALITY. The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.

X. LAND USE AND PLANNING. The project will not have a significant land use impact, therefore no mitigation is required.

XI. MINERAL RESOURCES. The project will not have a significant impact on mineral resources, therefore no mitigation is required.

XII. NOISE. The project will not have a significant noise impact, therefore no mitigation is required.

XIII. POPULATION AND HOUSING. The project will not have a significant population and housing impact, therefore no mitigation is required.

XIV. PUBLIC SERVICES. The project will not have a significant impact on public services, therefore no mitigation is required.

XV. RECREATION. The project will not have a significant impact on recreation, therefore no mitigation is required.

XVI. TRANSPORTATION / TRAFFIC. The project will not have a significant traffic impact, therefore no mitigation is required.

XVII. UTILITIES AND SERVICE SYSTEMS. The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE. The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **December 7, 2011**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period, from November 18, 2011 to December 7, 2011



Deputy

Revised 5-6-11 jam

INITIAL STUDY

PROJECT FILE NO.: PDC10-002

PROJECT DESCRIPTION: This Initial Study evaluates the potential environmental impacts which might reasonably be anticipated to result from the subject project located on a 2.8 gross acre site, which proposes rezoning to the A(PD) Planned Development Zoning District to allow for the development of up to seven (7) single-family detached residential units.

In addition to the proposed Planned Development Rezoning, other related permits to be obtained from the City of San Jose and/or any other public agency approvals required for this project by other local, State or Federal agencies are as follows: Annexation of APN 659-25-002 into the City of San Jose; Planned Development Permit, Tentative Map, Final Map, Grading Plan, and Building Permits.

PROJECT LOCATION AND ASSESSOR'S PARCEL NUMBER(s): South side of Quimby Road, approximately 400 feet easterly of Murillo Avenue (3770 Quimby Road) (APN 659-25-001; -002)

SAN JOSE 2020 GENERAL PLAN DESIGNATION: Low Density Residential (5 DU/AC) and Non-Urban Hillside.

ENVISION SAN JOSE 2040 GENERAL PLAN DESIGNATION: Lower Hillside and Open Hillside.

EXISTING ZONING: Unincorporated

EXISTING LAND USE: The existing, gently sloping parcel is open grassland with 10 existing trees and a single-family residence (built in 1966) and accessory structures. The site is currently used for grazing and appears to have been graded in some areas. (Also see the General Plan map, Zoning map, aerial, and site photos).

SURROUNDING LAND USES / GENERAL PLAN / ZONING:

North: Vacant Hillside/NUH/Unincorporated South: Vacant Hillside/Hillside Lots (Evergreen) /A(PD)
East: Vacant Hillside/NUH/Unincorporated West: Single-family detached/LDR (5 DU/AC)/R-1-5

PROJECT APPLICANT'S NAME AND ADDRESS: Euson Huang, 1862 Hunt Drive, Burlingame, CA 94010

LEAD AGENCY CONTACT INFORMATION: City of San Jose (Lesley Xavier), 200 E. Santa Clara Street, 3rd Floor Tower, San Jose, CA 95113

OTHER PUBLIC AGENCIES WHOSE APPROVAL IS REQUIRED: NA

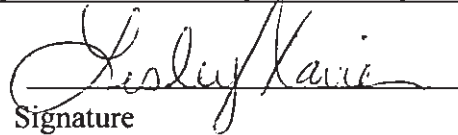
<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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DETERMINATION:

On the basis of this initial study:

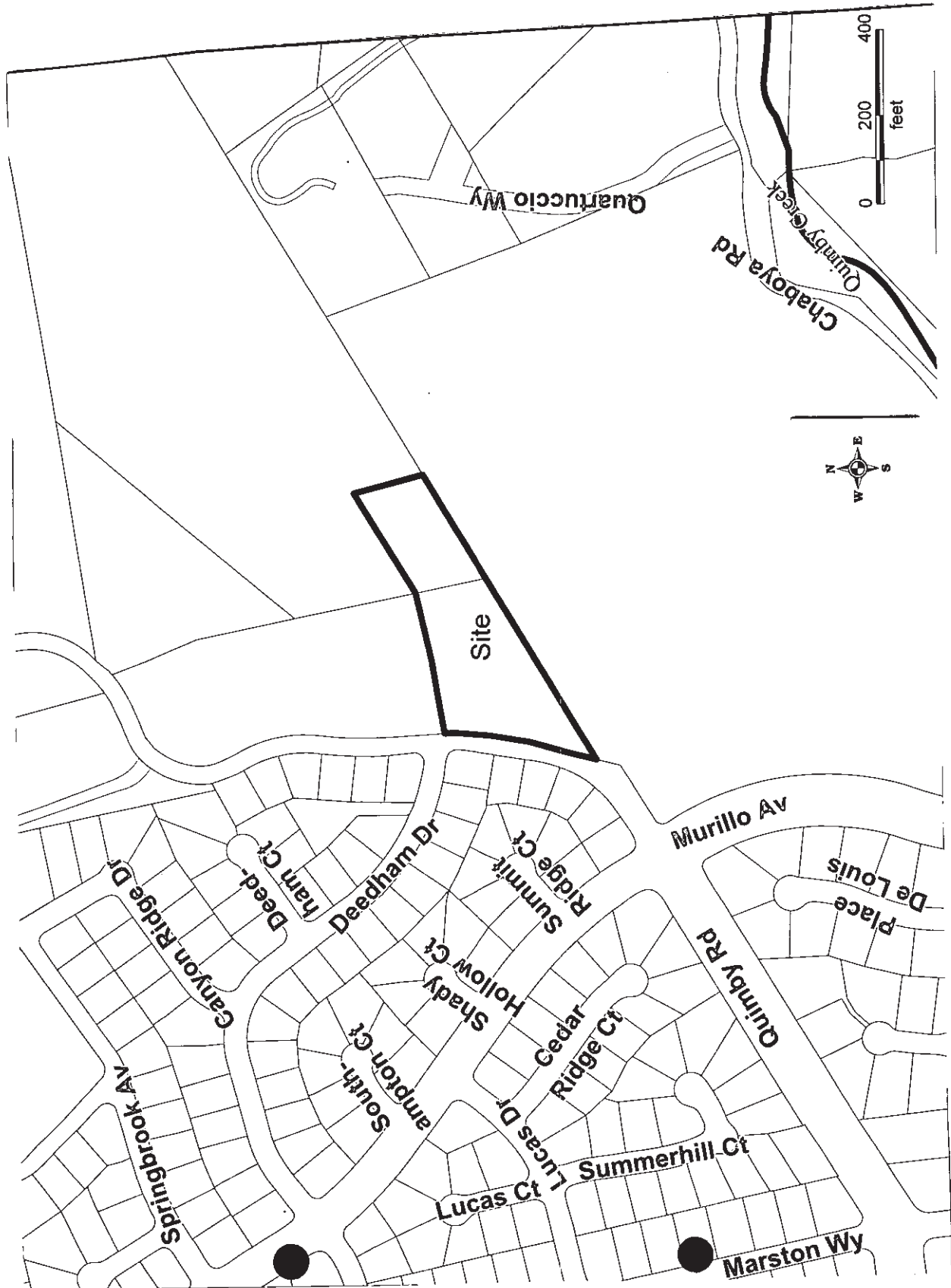
<input type="checkbox"/>	I find the proposed project could not have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
<input checked="" type="checkbox"/>	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the project proponent has agreed to revise the project to avoid any significant effect. A MITIGATED NEGATIVE DECLARATION will be prepared.
<input type="checkbox"/>	I find the proposed project could have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT(EIR) is required.
<input type="checkbox"/>	I find the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated impact” on the environment, but at least one effect has been (1) adequately analyzed in a previous document pursuant to applicable legal standards, and (2) addressed by mitigation measures based on the previous analysis as described in the attached sheets/initial study. An EIR is required that analyzes only the effects that were not adequately addressed in a previous document.
<input type="checkbox"/>	I find that although the proposed project could have a significant effect on the environment, no further environmental analysis is required because all potentially significant effects have been (1) adequately analyzed in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (2) avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION , including revisions or mitigation measures that are included in the project, and further analysis is not required.

Nov. 17, 2011
Date

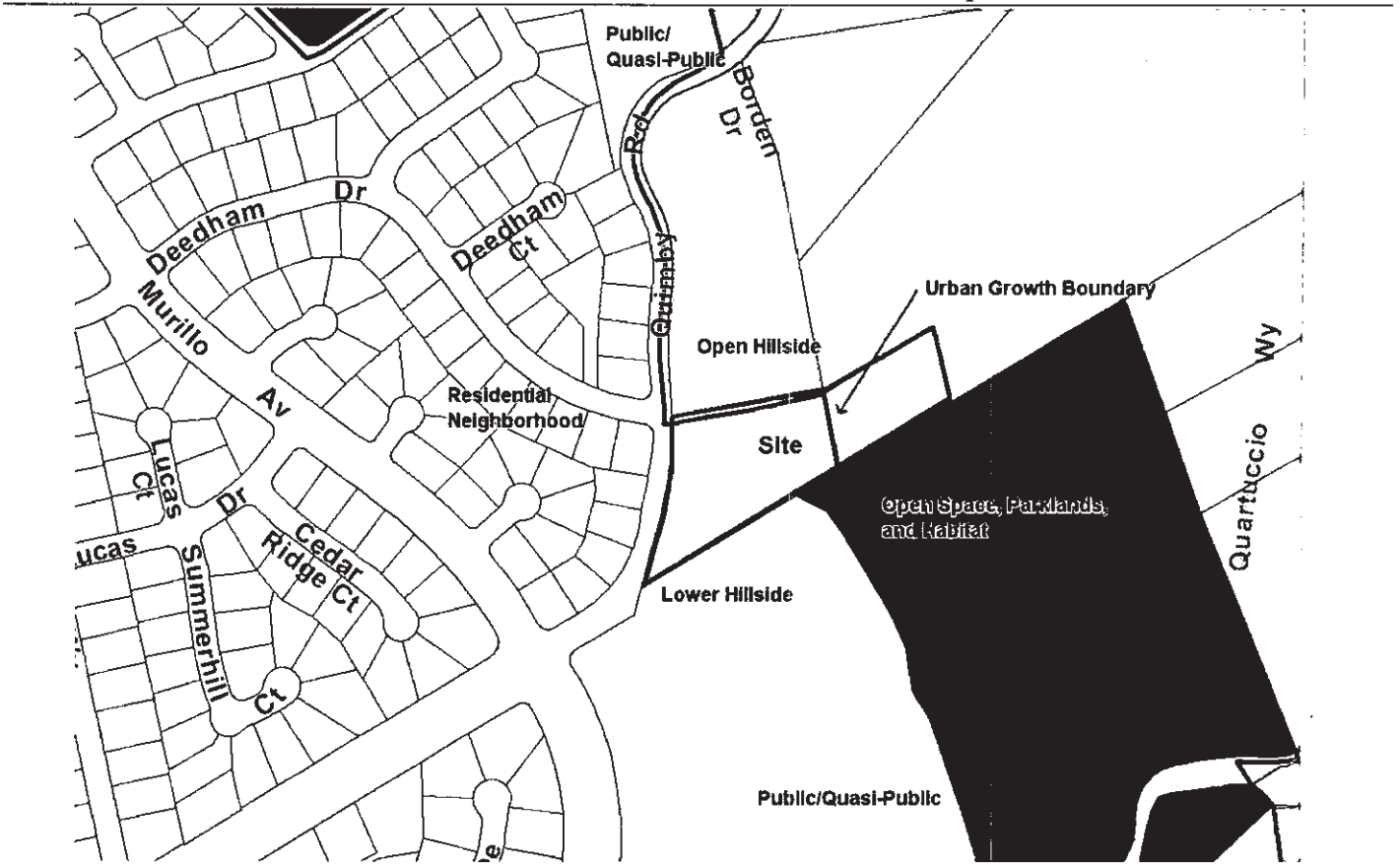

Signature

Name of Preparer: Lesley Xavier

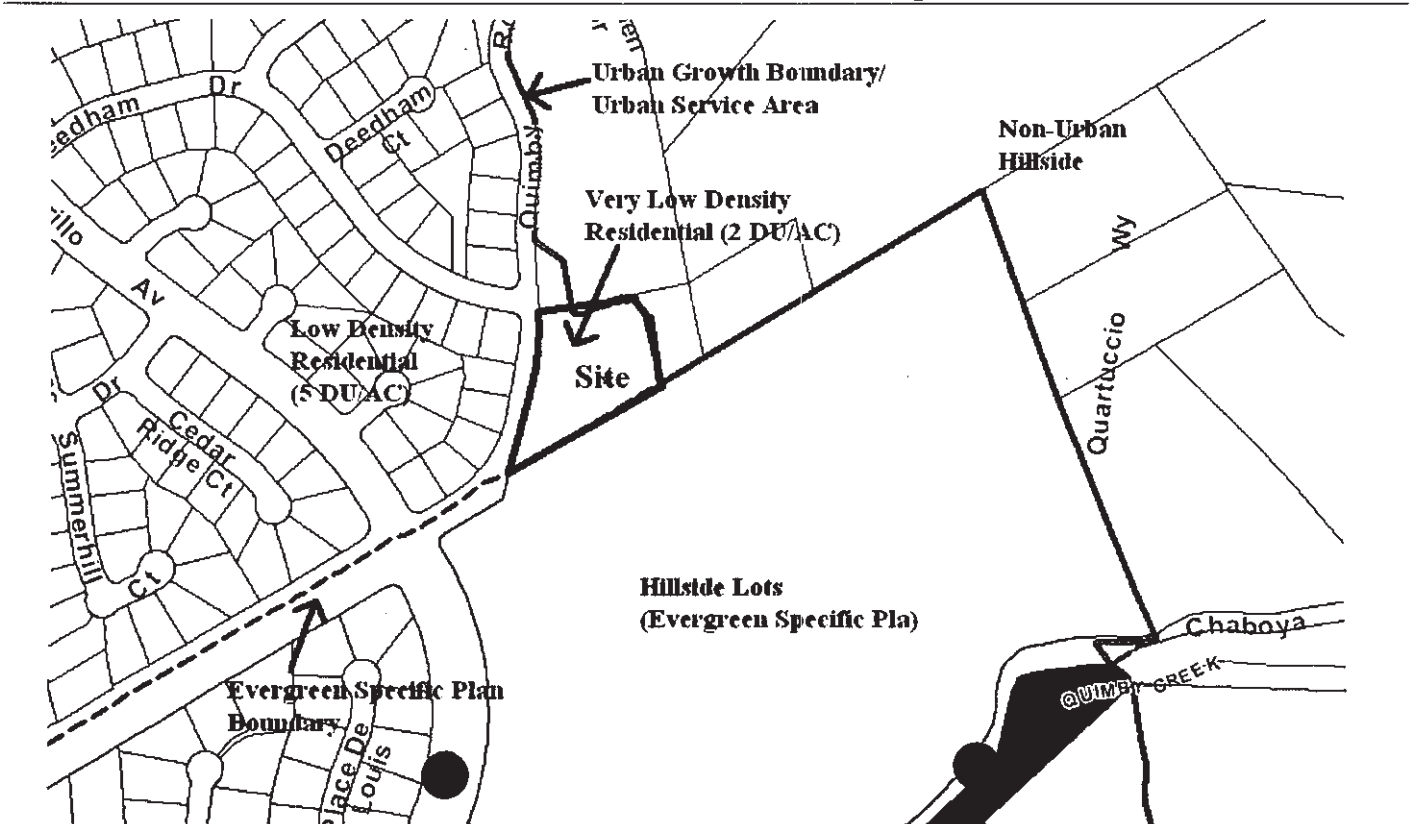
Location Map



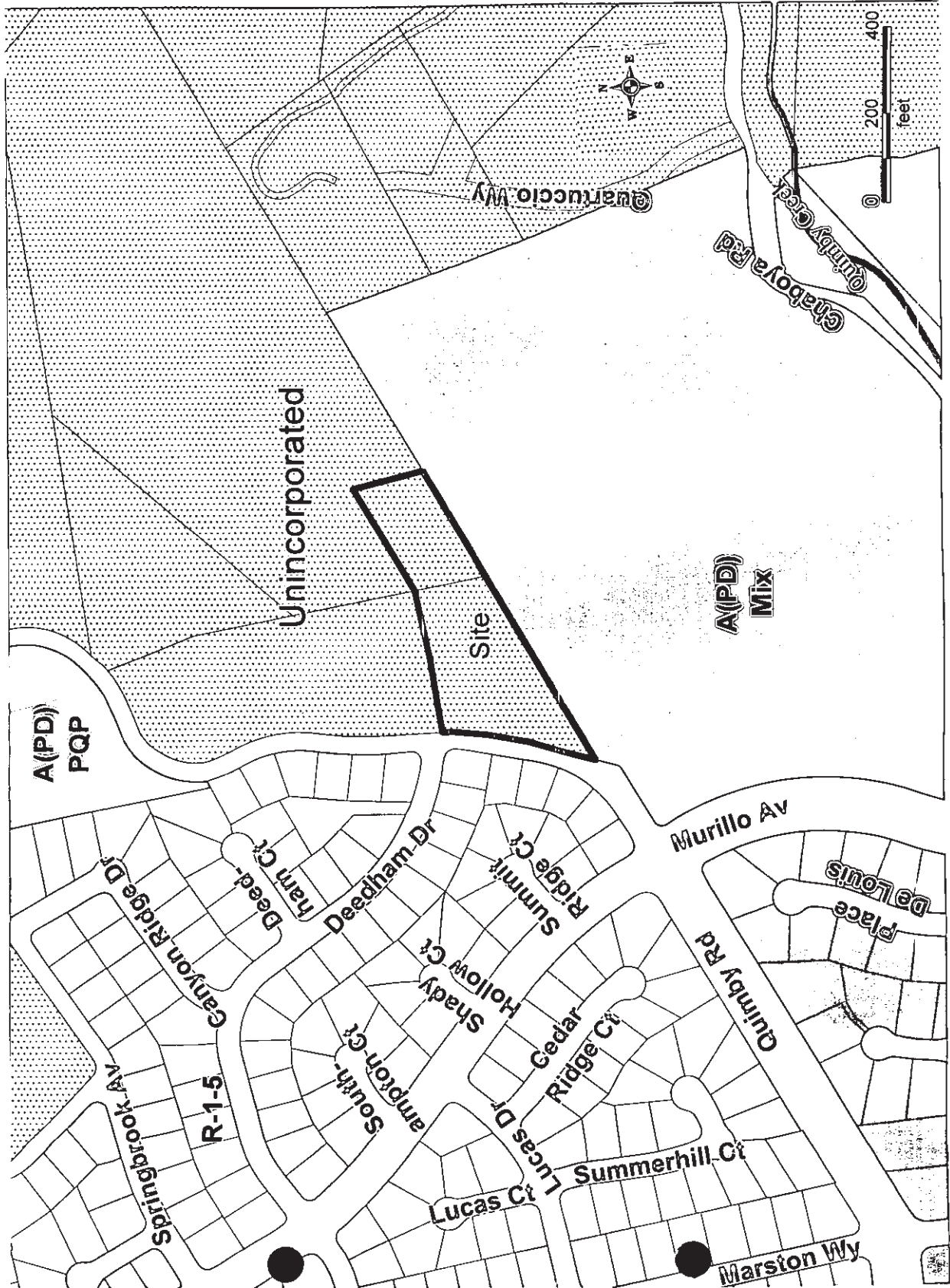
Envision San Jose 2040 General Plan Map



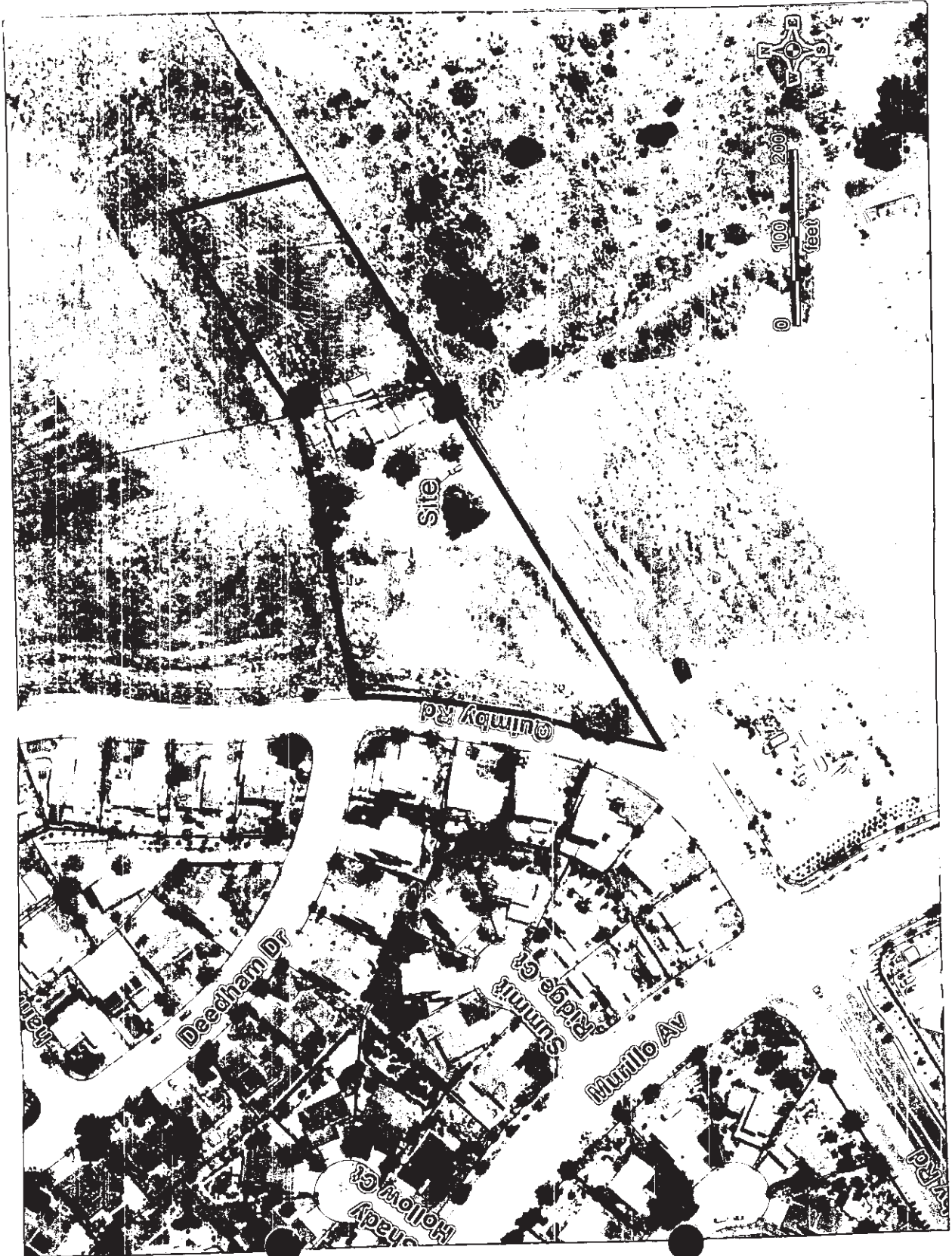
San Jose 2020 General Plan Map



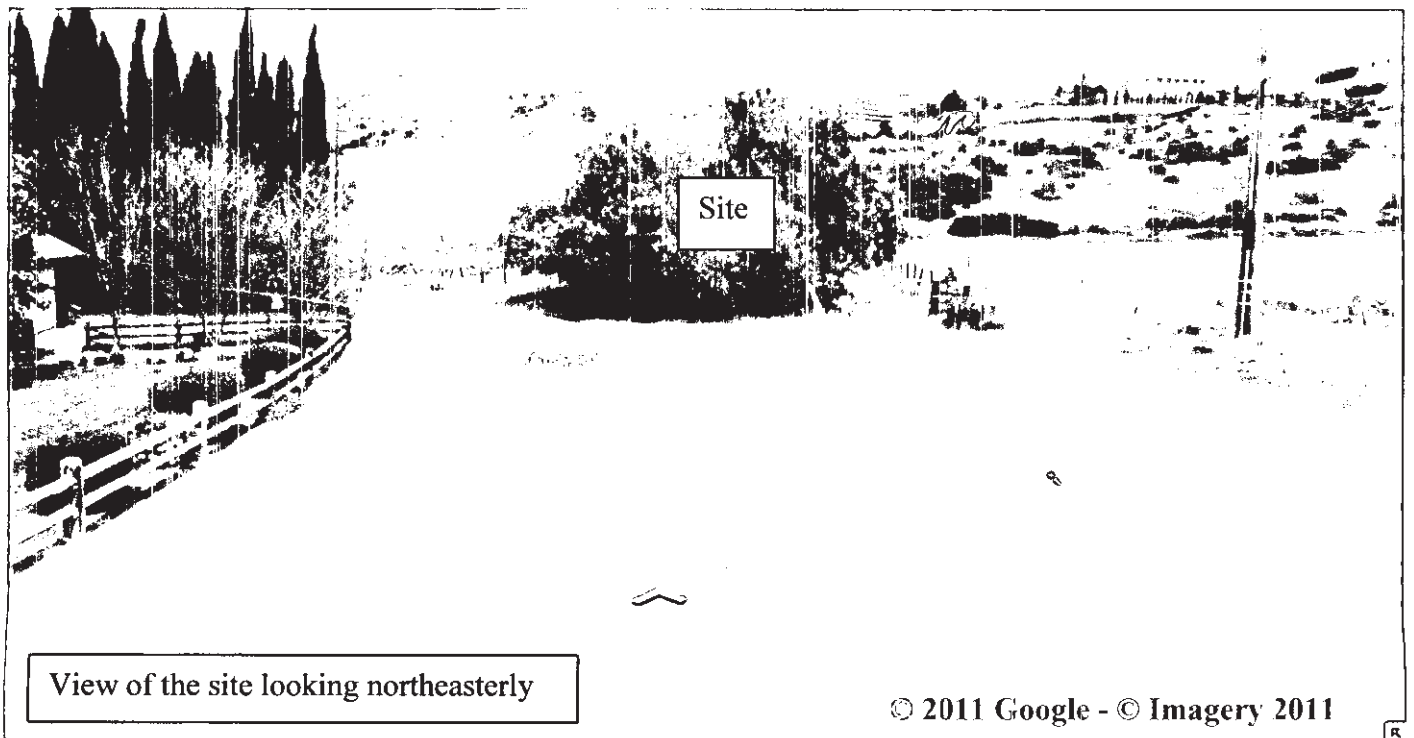
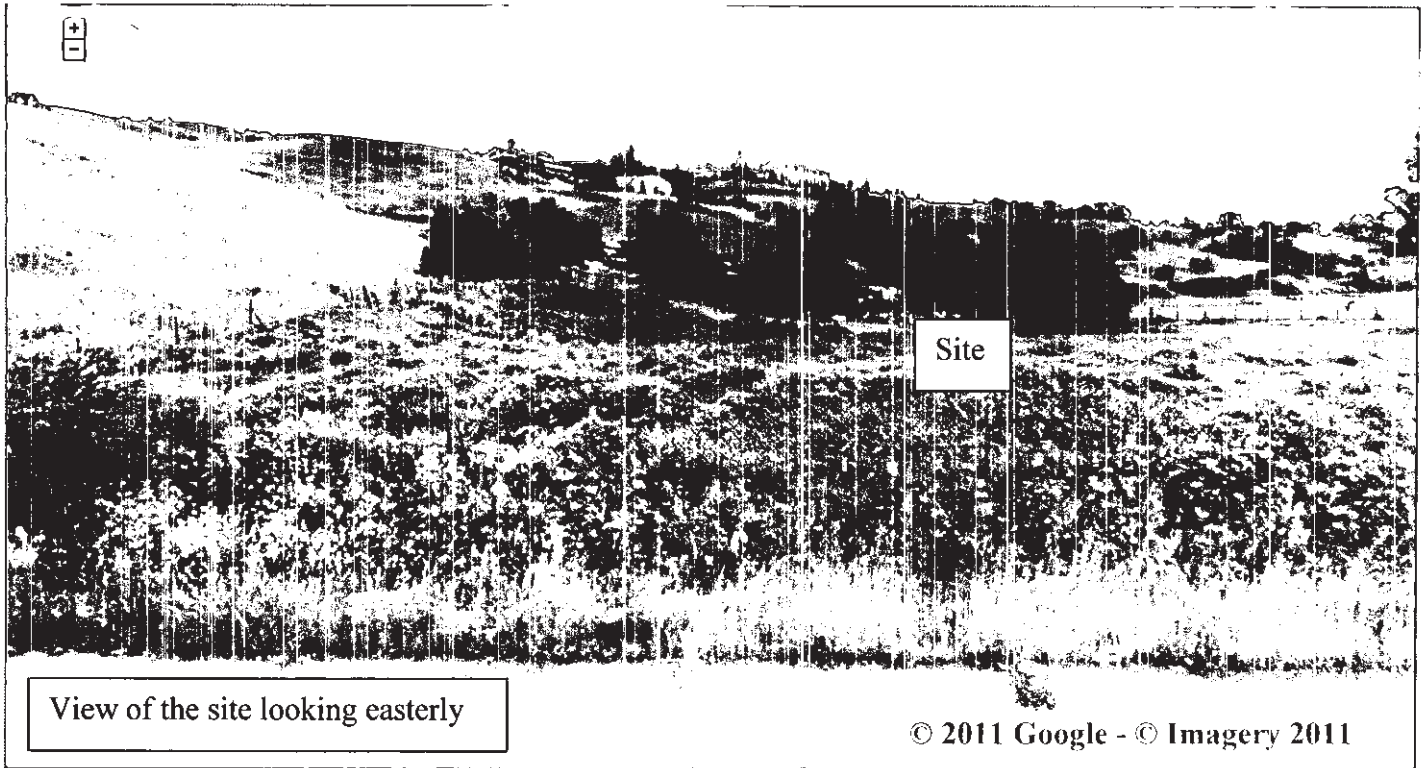
Zoning Map



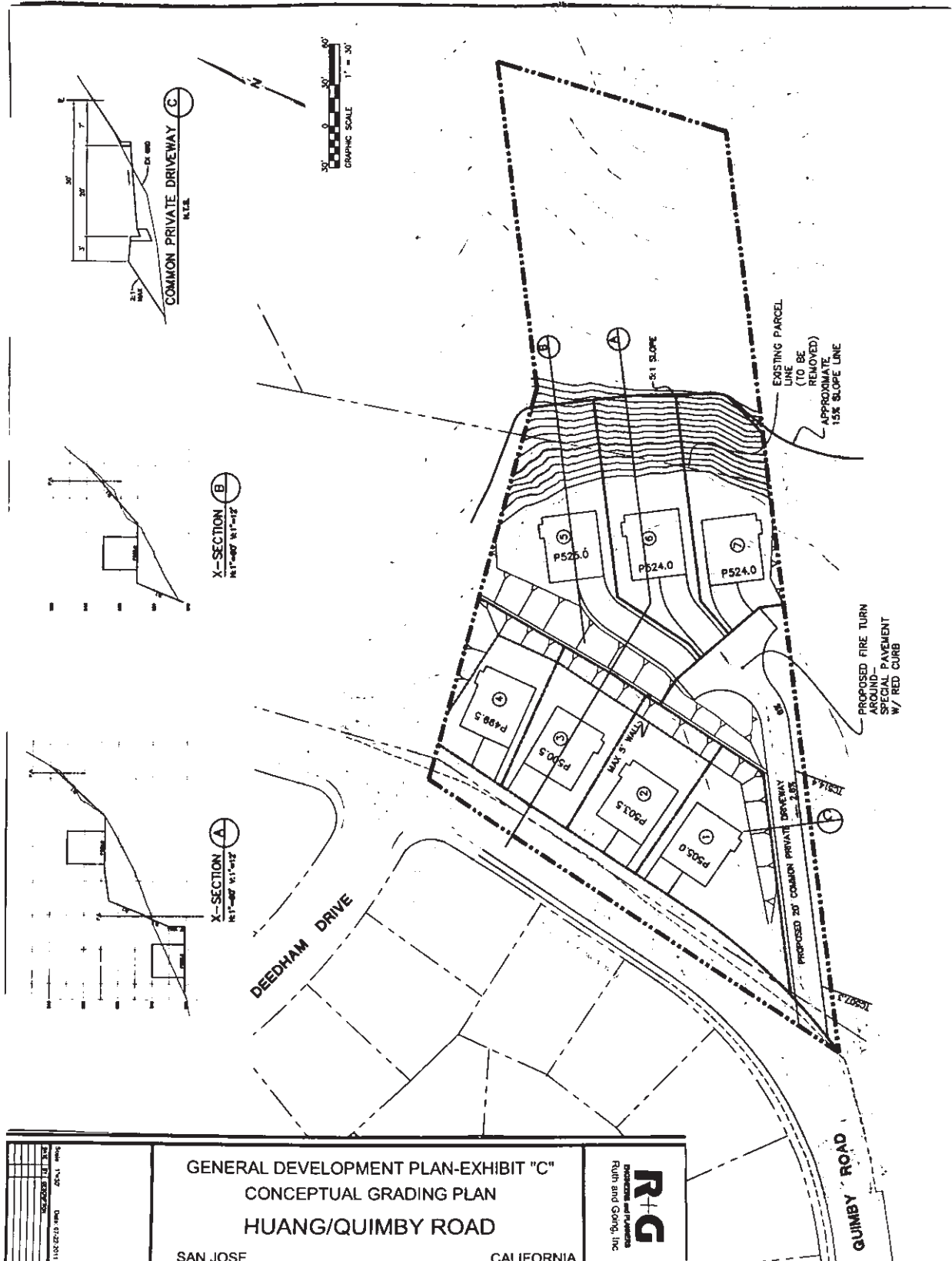
Aerial Map



Site Pictures



Conceptual Site Plan



GENERAL DEVELOPMENT PLAN-EXHIBIT "C"
 CONCEPTUAL GRADING PLAN
 HUANG/QUIMBY ROAD

SAN JOSE

CALIFORNIA

R+G
 ENGINEERS AND ARCHITECTS
 ROTH and GONG, INC.

DATE	DESCRIPTION
11/27/10	ISSUED FOR PERMITTING
07/27/11	DATE

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Information Sources
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I. AESTHETICS - Would the project:

a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
b) Substantially damage scenic resources, including, but not limited to, trees, rock out-croppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
e) Increase the amount of shading on public open space (e.g. parks, plazas, and/or school yards) ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2

FINDINGS: The proposed project would alter the existing visual character of the site and its surroundings through various means including the demolition of the existing residence and accessory structures, and tree removals, and the construction of seven single-family detached residences. However, the proposed project would not significantly degrade the existing visual character of the site in that the project would be required to undergo architectural and site design review by Planning Staff to ensure compatibility with the surrounding neighborhood.

Various policies in the City’s Envision San Jose 2040 General Plan have been adopted for the purpose of avoiding or mitigating visual and aesthetic impacts resulting from planned development within the City. Development of the site would be subject to the policies in the General Plan, including the following:

- **CD-1.1** Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
- **CD-1.12** Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
- **CD-4.4** In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.
- **CD-9.1** Ensure that development within the designated Rural Scenic Corridors is designed to preserve and enhance attractive natural and man-made vistas.

Lighting

Exterior building and parking lot lighting associated with the new development would likely create a minor increase in the amount of nighttime lighting than the existing land use on the site, however it would not adversely affect views in the area. The project would be required to be consistent with the City’s *Residential Design Guidelines* (or other Design Guidelines; please specify) and to the standards of the City’s Outdoor Lighting Policy. Therefore, less than significant impacts would occur as a result of the project.

In addition to the policies of the San José 2020 General Plan, the project shall implement the following City Policies:

- Design of the project shall be consistent with the City’s *Residential Design Guidelines*.
- Lighting on the site shall conform to the City’s Outdoor Lighting Policy (4-3).

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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MITIGATION MEASURES: None required.

II. AGRICULTURE AND FOREST RESOURCES - Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,3,4
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,3,4
c) Conflict with existing zoning for, or cause rezoning of, forest land [as defined in PRC Section 12220(g)], timberland, (as defined by PRC Section 4526), or timberland zoned Timberland Production [as defined by GC Section 51104(g)]?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,3,4
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,3,4
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,3,4

FINDINGS: The project site is not located in an area identified as prime farmland, nor is the site being used for or zoned for agricultural use. Therefore, the proposed project will not result in a significant impact on the City's or Region's agricultural resources.

The City of San Jose does not contain any forest lands or timberlands suitable for timber production nor are there any areas of the zoned Timberland Production. The project site is outside of any timberland areas, and will therefore not result in a significant impact from the loss forest lands or timberlands.

MITIGATION MEASURES: None Required.

III. AIR QUALITY - Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,14
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,14
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,14
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,14
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,14

FINDINGS: The City of San José is within the San Francisco Bay Area Air Quality Management District (BAAQMD). The District is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Air quality standards are set by the federal government (the 1970 Clean Air Act and its subsequent amendments) and the state (California Clean Air Act of 1988 and its subsequent

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amendments). Regional air quality management districts such as the BAAQMD must prepare air quality plans specifying how state standards would be met. The BAAQMD's most recently adopted CEQA Guidelines were adopted in 1999. The most recently adopted Clean Air Plan (CAP) is the 2005 Bay Area Ozone Strategy.

The City of San Jose uses the threshold of significance established by the Bay Area Air Quality Management District (BAAQMD) to assess air quality impacts. Based on the BAAQMD threshold of significance, projects that – use screening tables and new threshold listed in BAAQMD CEQA GUIDELINES updated June 2010, any number less than 56 single-family dwelling units are not considered major air pollutant contributors and do not require a technical air quality study. This project will allow for the development of up to seven (7) single-family detached residential units, therefore no air quality report was prepared for this project.

Temporary Air Quality Impacts

Temporary Air Quality impacts may result from demolition of the existing structure(s), excavation of soil, and other construction activities on the subject site. Implementation of the mitigation measures listed below will reduce the temporary construction impacts to a less than significant level.

MITIGATION MEASURES: The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site.

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
- Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

IV. BIOLOGICAL RESOURCES - Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,10,27
b) Have a substantial adverse effect on any aquatic, wetland, or riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,6,10,27
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act including, but not limited to, marsh, vernal pool, coastal, etc., through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,6,27
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,10,27

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,11,27
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2,27

FINDINGS: The existing site is open grassland with 16 existing trees (see Tree Survey and Aerial Photo on the next page) and no signs of breeding habitat, nesting, feeding areas, or rock outcroppings; the site is not located within 300 feet of a riparian area. The site has been previously graded and is currently used for horse grazing. No rare, threatened, endangered or special status species of flora or fauna are known to inhabit the site.

The City of San José has established regulations for removal of landscape trees at least 56 inches in circumference measured two feet above grade. The proposed project will obtain a permit for the removal of the three ordinance-sized trees on the subject site and provide for the replacement of removed trees in conformance with the City of San José Tree Ordinance. There are currently 16 trees on the site, ranging from 25 inches to 113 inches in circumference (see table below).

Number	Tree Species	Size (circumference)	Ordinance- Size Trees	Condition of Tree	Tree to be Removed	Tree to be Retained
1.	Pepper	38		Good	No	
2.	Pepper	25		Good	No	
3.	Pepper	32		Good	No	
4.	Cherry	25		Dying	By Mother	Nature
5.	Pepper	32		Good	No	
6.	Pepper	32		Good	No	
7.	Pepper	56	Yes	Good	No	
8.	Pepper	25		Good	No	
9.	Pepper	44		Good	No	
10.	Walnut	38		Good	Potentially	
11.	Pepper	38		Good	Potentially	
12.	Almond	32		Dying	By Mother	Nature
13.	Almond	44		Good	No	
14.	Oak	56	Yes	Good	No	
15.	Redwood	75	Yes	Good	No	
16.	Pepper	113	Yes	Good	Potentially	

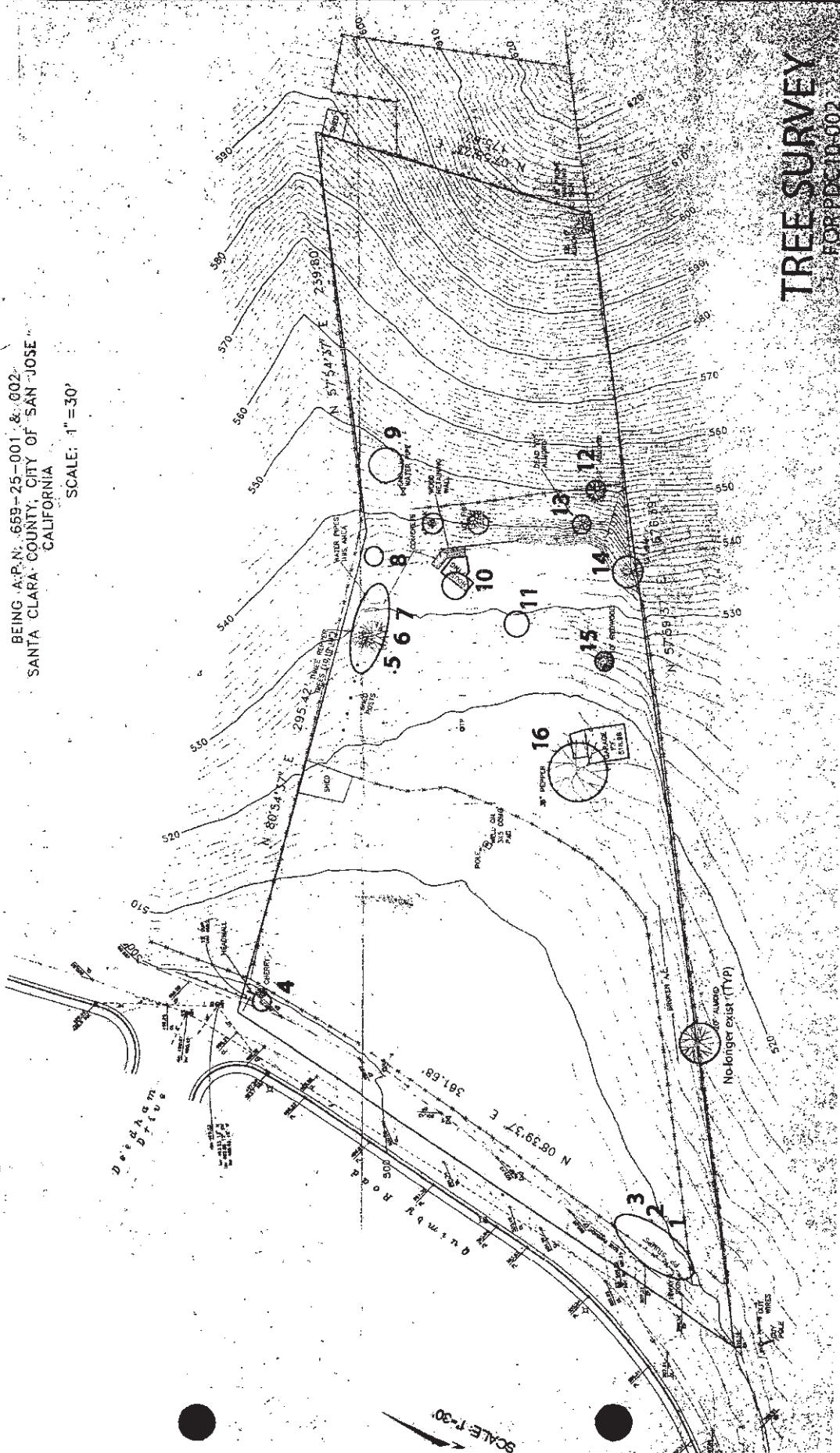
Construction of the proposed project would likely result in the removal of five (5) trees from the site, which would include one (1) ordinance sized tree. The exact number of trees to be removed will be determined at the development permit stage. Removal of these trees would not be considered a significant impact. However, the project will be required to conform to the City's tree preservation ordinance, and will provide replacement trees in conformance with City Policy. Replacement trees will be over and above the regular landscaping to be provided on the site.

TOPOGRAPHIC SURVEY

TAMMY AND EUSON HUANG

BEING A.P.N. 659-25-001 & 002
SANTA CLARA COUNTY, CITY OF SAN JOSE
CALIFORNIA

SCALE: 1" = 30'



TREE SURVEY
FOR PDC10-002

SCALE: 1" = 30'



© 2009 Tele Atlas

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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Burrowing Owls

The burrowing owl is a small, terrestrial owl that occurs in annual and perennial grasslands, deserts and scrublands with low growing vegetation. Suitable owl habitat may also include trees and shrubs if the canopy does not cover more than 30 percent of the ground surface. Burrows, which provide protection, shelter and nests for burrowing owls, represent an essential component of this species' habitat. Burrowing owls typically use burrows made by fossorial (burrowing) animals, such as ground squirrels or badgers, but they will also use man made structures such as culverts, or openings beneath cement, asphalt paving or debris piles. Burrowing owls use such sites for breeding, wintering, foraging and migration stopovers. Occupancy of suitable habitat may be verified by observations of one or more burrowing owls on the site or by the presence of owl feathers, cast pellets (or prey remains), eggshell fragments or excrement in or near a burrow entrance. Burrowing owls are protected under a variety of state and federal laws including the Migratory Bird Treaty Act and the State Fish and Game Code as a "Species of Special Concern".

The project site provides both potential foraging and breeding habitat (ground squirrel burrows) for burrowing owls. While burrowing owls were not observed on the site during the May 2010 site survey, they could utilize the site at some future date. Therefore, pre-construction surveys for burrowing owls should be conducted.

Bats

The structures and mature trees on the site provide potentially suitable habitat for bats. The site does not currently contain any known roosting bats; however, pre-construction bat surveys should be conducted prior to any demolition.

Raptors

The project site may provide habitat for wildlife species associated with urban areas. Trees in urban areas provide food and cover for wildlife adapted to this environment, including birds such as house finch, mourning dove, house sparrow, and Brewer's blackbird. In addition, mature trees on the project site may provide nesting habitat for raptors (birds of prey). Raptors and their nests are protected under the Migratory Bird Treaty Act of 1918 and California Department of Fish and Game (CDFG) Code Sections 3503 and 3503.5. Although no raptors or nests were observed on the site, mature trees suitable for raptor nesting occur on the site. Despite the disturbed nature of the site, there remains the potential for raptors to nest in these trees. No other rare, threatened, or endangered animal species were observed on the project site, nor are any expected to occur since the area is generally developed.

Habitat Conservation Plan (HCP)

To promote the recovery of endangered species while accommodating planned development, infrastructure and maintenance activities, the Local Partners, consisting of the City of San Jose, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County and the cities of Gilroy and Morgan Hill, are preparing a joint Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan). The Santa Clara Valley Habitat Plan (Plan) is being developed in association with the U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and the National Marine Fisheries Service (NMFS) and in consultation with stakeholder groups and the general public to protect and enhance ecological diversity and function within more than 500,000 acres of southern Santa Clara County.

The Santa Clara Habitat Plan Planning Agreement outlines the Interim Project Process to ensure coordination of projects approved or initiated in the Planning Area before completion of the Habitat Plan to help achieve the preliminary conservation objectives of the plan, and not preclude important conservation planning options or connectivity between areas of high habitat values. The Interim Project Process requires the local participating agencies to notify the wildlife agencies (DFG and USFWS) of projects that have the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives of the Habitat Plan. The Wildlife Agencies comments on Interim Projects should recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives of the Habitat Plan.

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The subject site does not meet the threshold that requires an interim HCP project referral it will not have a potentially adverse impact on natural communities.

Additionally, the project shall implement the following standard City conditions:

- All trees that are to be removed shall be replaced at the following ratios:

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement.

- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
 - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
 - An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or Jaime.Ruiz@sanjoseca.gov for specific park locations in need of trees.
 - A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

Tree Protection (if trees are to remain)

- The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:
 - Pre-construction treatments:
 - The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.

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- Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
- Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.
- During construction:
 - No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
 - Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
 - Supplemental irrigation shall be applied as determined by the consulting arborist.
 - If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
 - No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
 - Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
 - As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

MITIGATION MEASURES:

- **Raptors.** If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City’s Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.
- **Burrowing Owls.** The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (February 1 though August 31). Prior to the issuance of any grading or building permits, the developer shall submit a biologist’s report to the City’s Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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- **Bats.** Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit.

V. CULTURAL RESOURCES - Would the project:

a) Cause a substantial adverse change in the significance of an historical resource as defined in CEQA Guidelines §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,7
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,8
c) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,8
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,8

FINDINGS: The subject site contains one ranch style single-family detached residence built circa 1946. This structure is not listed on the City of San Jose's Historic Resources Inventory nor is it listed on the National or California Register of Historic Places.

According to the City's Archaeological Sensitivity Map, the project site has a low potential for the discovery of archaeological resources and is not considered archaeologically sensitive. The project is not anticipated to impact archaeological resources. However, in the event any resources are found during grading, their disturbance would be a significant impact.

Should evidence of prehistoric cultural resources be discovered during construction, work within 50 feet of the find shall be stopped to allow adequate time for evaluation and mitigation by a qualified professional archaeologist. The material shall be evaluated and if significant, a mitigation program including collection and analysis of the materials at a recognized storage facility shall be developed and implemented under the direction of the City's Environmental Principal Planner.

As required by County ordinance, this project has incorporated the following guidelines. - Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall

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attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

VI. GEOLOGY AND SOILS - Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
1) Rupture of a known earthquake fault, as described on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25, 26
2) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25,26
3) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25,26
4) Landslides?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25,26
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25,26
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24, 25,26
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,5,24,25 26
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,5,24

FINDINGS: Due to its location within a seismically active region, the project site would likely be subject to at least one moderate to major earthquake that could affect the project after construction. The site would be subject to strong ground shaking in the event of a major earthquake on one of the region's active faults. Because the potential for liquefaction on the site is considered high, liquefaction and differential settlement could occur on the site during an earthquake. The proposed structures on the site would be designed and constructed in conformance with the Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site. Conformance with standard Uniform Building Code Guidelines would minimize potential impacts from seismic shaking on the site. Therefore, this impact is considered less than significant.

The soils on the site are clay stone and fine sandstone and the site is gently sloping with flat graded areas. There is no evidence of seeps or springs and no evidence of active landslide. The potential for geologic and soils impacts resulting from conditions on the site can be mitigated by utilizing standard engineering and construction techniques. Prior to issuance of a Public Works Clearance, the developer must obtain a grading permit before commencement of excavation and construction. Implementation of standard grading and best management practices would prevent substantial erosion and siltation during development of the site.

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Additionally, the project shall implement the following standard City permit conditions:

- The proposed structures on the site would be designed and constructed in conformance with the Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.
- A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report).

On September 15, 2011, the City of San Jose's Geologist, issued a Certificate of Geologic Hazard Clearance for the subject development, which was based on the November 2008 Geologic Hazards Evaluation Update and Fault Investigation Study and the subsequent August 2011 Quantitative Slope Stability Analysis for the subject site.

The reports concluded that the slopes at and near the site are considered to be stable under static conditions, but that some land sliding could occur during wet conditions and/or during an earthquake. The main foreseeable geologic hazard at the site is moderate to strong ground shaking due to an earthquake on one of the known active faults in the Bay Area.

MITIGATION MEASURES:

- Prior to the development of the site, a soil engineering study shall be performed on the parcel to develop recommendations for site grading, foundations, retaining walls, utility trench backfill and site drainage.

VII. GREENHOUSE GAS EMISSIONS - Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,14
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,14
(Note: Greenhouse gas(es) include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride)					

FINDINGS: Gases that trap heat in the atmosphere are referred to as greenhouse gases (GHGs) because they capture heat radiated from the sun as it is reflected back into the atmosphere, much like a greenhouse does. The accumulation of GHGs has been implicated as a driving force for global climate change. Definitions of climate change vary between and across regulatory authorities and the scientific community, but in general can be described as the changing of the earth's climate caused by natural fluctuations and anthropogenic activities which alter the composition of the global atmosphere. California State law defines greenhouse gases as including, but not limited to: (1) Carbon Dioxide (CO2) Hydrofluorocarbons; (2) Methane (CH4) Perfluorocarbons; and (3) Nitrous Oxide (N2O) Sulfur Hexafluoride.

The overall approach to the GHG discussion is based upon the technical advisory of the Governor's Office of Planning and Research (OPR) embodied in the document *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review*. According to the Governor's OPR, the most common GHG that results from human activity is carbon dioxide, followed by methane and nitrous oxide. For this discussion, only carbon dioxide, methane and nitrous oxide emissions are considered.

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The BAAQMD adopted *CEQA Guidelines* significance thresholds for GHG emissions include quantitative thresholds of significance for GHG emissions. The *Guidelines* provide that a development project, other than a stationary source, would have a significant cumulative impact unless:

- The project can be shown to be in compliance with a qualified Climate Action Plan; or
- Project emissions of CO₂ equivalent GHGs (CO₂e) are less than 1,100 metric tons per year; or
- Project emissions of CO₂ equivalent GHGs are less than 4.6 metric tons per year per service population (residents plus employees)

The project's incremental increases in GHG emissions associated with traffic increases and direct and indirect energy use would contribute to regional and global increases in GHG emissions and associated climate change effects. The City of San Jose does not currently have a qualified Climate Action Plan. According to the BAAQMD's *CEQA Guidelines*, projects below the applicable screening criteria (single-family residential – 56 dwelling units) would not exceed the 1,100 metric tons per year of CO₂-eq GHG threshold of significance. Therefore, the proposed seven (7) single-family residential dwelling units would not have a significant impact on GHG emissions.

MITIGATION MEASURES: None required.

VIII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,12
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
g) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1

FINDINGS: Hazardous materials encompass a wide range of substances, some of which are naturally-occurring and some of which are man-made. Examples include pesticides, herbicides, petroleum products, metals (e.g., lead, mercury, arsenic), asbestos, and chemical compounds used in manufacturing. Determining if such substances are present on or near project sites is important because, by definition, exposure to hazardous materials above regulatory thresholds can result in adverse health effects on humans, as well as harm to plant and wildlife ecology.

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Due to the fact that these substances have properties that are toxic to humans and/or the ecosystem, there are multiple regulatory programs in place that are designed to minimize the chance for unintended releases and/or exposures to occur. The Regulation of Hazardous Materials Table below summarizes many of these regulations.

Regulation of Hazardous Materials	
Agency	Responsibilities
U.S. Environmental Protection Agency (EPA)	Oversees Superfund sites; evaluates remediation technologies; develops standards for hazmat disposal & cleanup of contamination; implements Clean Air & Clean Water Acts.
U.S. Department of Transportation (DOT)	Regulates and oversees the transportation of hazardous materials.
U.S. Occupational Safety & Health Administration (OSHA)	Implements federal regulations and develops protocol regarding the handling of hazmat for the protection of workers.
CA Department of Toxic Substances Control (DTSC)	Authorized by EPA to implement & enforce various federal hazmat laws & regulations; implements state hazmat regulations; oversees remediation of contamination at various sites.
CA Occupational Safety & Health (Cal-OSHA)	Implements state regulations and develops protocol regarding the handling of hazmat for the protection of workers.
CA Air Resources Board/Bay Area Air Quality Management District (BAAQMD)	Regulates emissions of toxic air contaminants & requires public dissemination information regarding the risk of such emissions.
CA Water Resources Control Board/Regional Water Quality Control Board (RWQCB)	Regulates the discharge of hazmat to surface and ground waters; oversees remediation of contamination at various sites.
Santa Clara County Department of Environmental Health (SCCDEH)	Oversees & enforces state/local regulations pertaining to hazardous waste generators and risk management programs, including the California Accidental Release Program.
City of San José Fire Department (SJFD)	Implements City's Toxic Gas and Hazardous Material Storage Ordinances; requires businesses that use or store hazmat to prepare a management plan; regulates installation & removal of above- and below-ground storage tanks; reviews plans for compliance with the Uniform Fire and the Flammable & Combustible Liquids Codes.

The project site does not contain hazardous materials nor is it listed on the State of California toxic sites listing. Development of the proposed project will require the demolition of one single-family residence on the site, which may contain asbestos building materials and/or lead-based paint. In conformance with State and Local laws, a visual inspection/pre-demolition survey, and possible sampling, will be conducted prior to the demolition of the building to determine the presence of asbestos-containing materials and/or lead-based paint. Demolition done in conformance with these Federal, State and Local laws and regulations, will avoid significant exposure of construction workers and/or the public to asbestos and lead-based paint.

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Additionally, the project shall implement the following standard City permit conditions:

- In conformance with State and Local laws, a visual inspection/pre-demolition survey, and possible sampling, will be conducted prior to the demolition of the building to determine the presence of asbestos-containing materials and/or lead-based paint.
- All potentially friable asbestos-containing materials shall be removed in accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards, contained in Title 8 of the California Code of Regulations (CCR), Section 1529, to protect workers from exposure to asbestos. Materials containing more than one percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations.
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations 1532.1, including employees training, employee air monitoring and dust control. Any debris or soil containing lead-based paint or coatings will be disposed of at landfills that meet acceptance criteria for the waste being disposed.

MITIGATION MEASURES: None required.

IX. HYDROLOGY AND WATER QUALITY - Would the project:

a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,15
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
c) Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on-or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on-or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,17
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
g) Place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,9
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,9
i) Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
j) Be subject to inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1

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FINDINGS:

Flooding/Drainage

Based on the FEMA flood insurance maps for the City of San Jose, the project site is not located within a 100-year floodplain and would therefore have no impact on 100-year flows. The project would not expose people to flood hazards associated with the 100-year flood. The site is not subject to seiche or tsunامي.

Water Quality

The discharge of stormwater from the City's municipal storm sewer system is regulated primarily under the federal Clean Water Act (CWA) and California's Porter-Cologne Water Quality Control Act. The San Francisco Bay Regional Water Quality Control Board (RWQCB) implements these regulations at the regional level. Under the CWA, the RWQCB has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications. Under Section 401 of the CWA, permits are issued in combination with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Water Discharge Requirements for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs) from the Water Board.

New construction in San Jose is subject to the conditions of the City's National Pollutant Discharge Elimination System (NPDES) Permit, which was reissued by the RWQCB in February 2001. Additional water quality control measures were approved in October 2001 (revised in 2005), when the RWQCB adopted an amendment to the NPDES permit for Santa Clara County. This amendment, which is commonly referred to as "C3" requires all new and redevelopment projects that result in the addition or replacement of impervious surfaces totaling 10,000 sq ft or more to 1) include storm water treatment measures; 2) ensure that the treatment measures be designed to treat an optimal volume or flow of storm water runoff from the project site; and 3) ensure that storm water treatment measures are properly installed, operated and maintained. On October 14, 2009, the RWQCB adopted the Municipal Regional Stormwater NPDES Permit No.CAS612008 for the San Francisco Bay Region; this Permit replaces current countywide municipal stormwater permits with a Municipal Regional Permit (MRP) for all 76 Bay Area municipalities in an effort to standardize stormwater requirements in the region.

The City has developed a policy that implements Provision C.3 of the NPDES Permit, requiring new development projects to include specific construction and post-construction measures for improving the water quality of urban runoff to the maximum extent feasible. The City's Post-Construction Urban Runoff Management Policy (6-29) established general guidelines and minimum Best Management Practices (BMPs) for specified land uses, and includes the requirement of regular maintenance to ensure their effectiveness. Later, the City adopted the Post-Construction Hydromodification Management Policy (8-14) to manage development related increases in peak runoff flow, volume and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to local rivers, streams and creeks. Implementation of these Policies will reduce potential water quality impacts to less than significant levels.

Additionally, in line with the Municipal Regional Stormwater Permit (MRP), San Jose's City Council Policy 6-29 :Post-Construction Urban Runoff Management emphasizes the use of Low Impact Development (LID) measures. LID includes preserving and creating new pervious areas (Site Design), preventing stormwater contact with pollutants (Source Control) and treating runoff with either infiltration, stormwater collection and reuse (Harvesting and Reuse), and/or with landscaped-based treatment measures (Biotreatment). Site design and Source control measures should be used to reduce treatment-requiring runoff as much as possible to limit the need for expensive treatment measures that require space, piping, and long-term maintenance.

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The proposed project is 1.7 acres in size. The site is currently covered with 1,644 sq. ft. of impervious surface. The development of the site with seven (7) single-family detached residences will increase the square footage of impervious surface. Development of the site, shall comply with the City's Post-Construction Urban Runoff Management Policy (6-29) and the City's Post-Construction Hydromodification Management Policy (8-14) to manage development related increases in peak runoff flow, volume and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to local rivers, streams and creeks. Implementation of these Policies will reduce potential water quality impacts to less than significant levels.

In addition, development of the site, shall comply with the City of San Jose's Grading Ordinance, including erosion and dust controls during site preparation, and the City of San Jose's Zoning Ordinance requirement of keeping adjacent streets free of dirt and mud during construction.

PERVIOUS AND IMPERVIOUS SURFACES COMPARISON						
	Existing Condition (sq ft)	%	Proposed Condition (sq ft)	%	Difference (sq ft)	%
Site (acres): 1.7	Site (sq ft): 122,000					
Building Footprint(s)	1,000		18,000		17,000	
Parking	0		18,000		18,000	
Sidewalks, Patios, Paths, etc.	0		0		8,700	
Landscaping	0		na			
Total	1,000		44,700		43,700	
Impervious Surfaces	1,000		44,700		43,700	
Pervious Surfaces	121,000		77,300		43,700	
Total	122,000		122,000			

Implementation of the following standard permit conditions, consistent with NPDES Permit and City Policy requirements, will reduce potential construction impacts to surface water quality to less than significant levels:

Construction Measures

- Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:
 - The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities;
 - The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

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- The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities.
- Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 E. Santa Clara Street, San Jose, California 95113. The Erosion Control Plan may include BMPs as specified in ABAG’s *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City’s storm drainage system from construction activities.
- The project applicant shall comply with the City of San Jose Grading Ordinance, including erosion and dust control during site preparation and with the City of San Jose Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:
 - Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season.
 - Utilize on-site sediment control BMPs to retain sediment on the project site;
 - Utilize stabilized construction entrances and/or wash racks;
 - Implement damp street sweeping;
 - Provide temporary cover of disturbed surfaces to help control erosion during construction;
 - Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Post-Construction

Prior to the issuance of a Planned Development Permit, the applicant must provide details of specific Best Management Practices (BMPs), including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled “No Dumping – Flows to Bay” to the satisfaction of the Director of Planning, Building and Code Enforcement.

- The project shall comply with Provision C.3 of NPDES permit Number CAS612008, which provides enhanced performance standards for the management of stormwater of new development.
- The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29), which establishes guidelines and minimum BMPs for all projects and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically sized (or hydraulically sized) TCMs.

X. LAND USE AND PLANNING - Would the project:

a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2

FINDINGS: The subject site has a San Jose 2020 General Plan Land Use/Transportation Diagram land use designation of Low Density Residential (5 DU/AC) on 1.7 acres and Non-Urban Hillside on 1.1 acres. The new General Plan, Envision San Jose 2040, was adopted by the City Council on November 1, 2011 and will become

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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effective during the circulation period of this document. The subject site has an Envision San Jose 2040 General Plan Land Use/Transportation Diagram land use designation of Lower Hillside on 1.57 acres and Open Hillside on 1.23 acres. (See General Plan Map on page 4.)

Projects that have the potential to physically divide an established community include new freeways and highways, major arterials streets, and railroad lines. The proposed seven (7) lot single-family detached project would provide infill housing within an existing residential neighborhood, and would therefore not physically divide an established community but rather provide a completion of that community. The proposed project will be subject to architectural and site design review by the City at the Planned Development Permit stage. Such review will include conformance with the City's adopted Residential Design Guidelines. The Guidelines are intended to ensure that new development is compatible with existing neighborhood character and does not adversely impact neighboring residential uses. A less than significant impact would occur as a result of the project.

Habitat Conservation Plan (HCP)

As discussed in the preceding Biological Resources section, Local Partners, consisting of the City of San Jose, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County and the cities of Gilroy and Morgan Hill, are preparing a joint Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan). The Santa Clara Valley Habitat Plan (Plan) is being developed in association with the U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and the National Marine Fisheries Service (NMFS) and in consultation with stakeholder groups and the general public to protect and enhance ecological diversity and function within more than 500,000 acres of southern Santa Clara County.

The Santa Clara Habitat Plan Planning Agreement outlines the Interim Project Process to ensure coordination of projects approved or initiated in the Planning Area before completion of the Habitat Plan to help achieve the preliminary conservation objectives of the plan, and not preclude important conservation planning options or connectivity between areas of high habitat values. The Interim Project Process requires the local participating agencies to notify the wildlife agencies (DFG and USFWS) of projects that have the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives of the Habitat Plan. The subject site does not meet the threshold that requires an interim HCP project referral it will not have a potentially adverse impact on natural communities.

MITIGATION MEASURES: None Required.

XI. MINERAL RESOURCES - Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2,23
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2,23

FINDINGS: Extractive resources known to exist in and near the Santa Clara Valley include cement, sand, gravel, crushed rock, clay, and limestone. Santa Clara County has also supplied a significant portion of the nation's mercury over the past century. Pursuant to the mandate of the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated: the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, State Route 87, and Hillside Avenue, as containing mineral deposits which are of regional significance as a source of construction aggregate materials.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits which are either of statewide significance or the significance of which requires further evaluation. Therefore, other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA.

The project site is outside of the Communications Hill area, and will therefore not result in a significant impact from the loss of availability of a known mineral resource.

MITIGATION MEASURES: None Required.

XII. NOISE - Would the project result in:

a) Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2,13,18
b) Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1

FINDINGS: Noise intrusion over the site originates primarily from vehicular traffic sources along Quimby Road. The San Jose 2020 General Plan states that the City's acceptable exterior noise level is 55 DNL long term, and 60 DNL short term. The acceptable interior noise level is 45 DNL. The plan recognizes that the noise levels may not be achieved in the Downtown, and in the vicinity of major roadways and the Mineta San Jose International Airport. Quimby Road runs along the western property line and is not designated as a having noise level that exceeds the *City of San Jose Year 2020 Noise Exposure Map for Major Transportation Noise Sources*.

The project site is currently developed with one single-family residence and associated accessory buildings. The proposed zoning would allow for the development of six additional single-family residences on the site consistent with the surrounding development. Acoustical studies may be required at the project design-level to determine any project-specific noise impacts resulting from future development.

Short-Term Construction Impacts

Noise from the construction of the proposed project could potentially pose a significant impact to the surrounding residential properties. To limit the construction noise impacts on nearby properties, various mitigation measures have been incorporated into the proposal.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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Additionally, the project shall implement the following standard City permit conditions:

- Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.
- Locate stationary noise generating equipment as far as possible from sensitive receptors. Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as residential uses.
- The developer will implement a Construction Management Plan approved by the Director of Planning, Building and Code Enforcement to minimize impacts on the surrounding sensitive land uses to the fullest extent possible. The Construction Management Plan would include the following measures to minimize impacts of construction upon adjacent sensitive land uses:
 - Early and frequent notification and communication with the neighborhood of the construction activities.
 - Prohibit unnecessary idling of internal combustion engines.
 - Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

MITIGATION MEASURES: None required.

XIII. POPULATION AND HOUSING - Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1

FINDINGS: The proposed project would not induce substantial population growth because it has a net density of 2.94 DU/AC which is consistent with the General Plan Land Use/Transportation Diagram designation of Low Density Residential (5 DU/AC).

MITIGATION MEASURES: None required.

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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XIV. PUBLIC SERVICES

a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
Fire Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
Police Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
Other Public Facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2

FINDINGS: The project site is located in an urbanized area of San Jose, and well served by existing Fire, Police, School, Park and other Public Facilities. The site is served by fire station No. 31 which is within 2 miles of the subject site. No additional Fire or Police personnel or equipment are necessary to serve the proposed project.

As required by California Government Code Section 53080, the project will be required to pay a school impact fee for residential development to offset the increased demands on school facilities caused by the project. Therefore, the project will have a less than significant impact on school facilities.

There is one developed park within walking distance (0.75 miles) of the project site. Groesbeck Hill Park is located approximately 0.8 miles and contains a playground, basketball court, volleyball court, softball field, tennis court and an exercise course. The City has established a Parkland Dedication Ordinance that requires dedication of land and/or payment of fees for neighborhood and community park or recreational purposes in accordance with the Services and Facilities and the Parks and Recreation Goals and Policies of the General Plan. There are currently no plans to dedicate land for park purposes with the project. Fees would be paid to improve park features in the area.

Additionally, the project shall implement the following standard City permit conditions:

- In accordance with California Government Code Section 65996, the developer shall pay a school impact fee, to the School District, to offset the increased demands on school facilities caused by the proposed project.
- The project shall conform to the City's *Park Impact Ordinance (PIO)* and *Parkland Dedication Ordinance (PDO)* (Municipal Code Chapter 19.38).

MITIGATION MEASURES: None required.

XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
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FINDINGS: There is one developed park within walking distance (0.75 miles) of the project site. Groesbeck Hill Park is located approximately 0.8 miles and contains a playground, basketball court, volleyball court, softball field, tennis court and an exercise course.

The City of San José has adopted the Parkland Dedication Ordinance (PDO) (Chapter 19.38) and Park Impact Ordinance (PIO) requiring residential developers to dedicate public parkland or pay in-lieu fees, or both, to offset the demand for neighborhood parkland created by their housing developments. Each new residential project is required to conform to the PDO and PIO. The acreage of parkland required is based upon the Acreage Dedication Formula outlined in the Parkland Dedication Ordinance.

The proposed project would increase the number of residents on the site. The project would add to the residential population using nearby recreational facilities. However, the project is not expected to increase the use of existing parks such that substantial deterioration would occur or be accelerated.

Additionally, the project shall implement the following standard City permit conditions:

- The project shall conform to the City’s *Park Impact Ordinance (PIO)* and *Parkland Dedication Ordinance (PDO)* (Municipal Code Chapter 19.38).

MITIGATION MEASURES: None required.

XV. TRANSPORTATION / TRAFFIC - Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,2,19
b) Cause the level of service at any local intersection to degrade from an acceptable LOS D or better under to an unacceptable LOS E or F under project conditions; or cause an increase in critical delay of 4.0 or more seconds and an increase in the critical demand to capacity ratio (V/C) of 0.010 or more at a City intersection that is projected to operate at LOS E or F under project conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2,19
c) Cause an increase of one percent or more of the capacity at a freeway segment that is projected to operate at LOS F under project conditions; or cause a freeway segment to deteriorate from LOS E or better to LOS F?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2,19
d) Substantially impede the operation of a transit system as a result of congestion?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2,19
e) Create an operational safety hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,2,19
f) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,19
g) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible land uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,19
h) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1,20

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
i) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,2,18

FINDINGS: Access to the project site is provided by Quimby Road, which is a 2-lane street that provides access to Capitol Expressway. The City’s Department of Public Works has analyzed the proposed project and determined that it would be in conformance with the City’s Transportation Level of Service Policy (Council Policy 5-3) and would not create a significant traffic impact.

Evergreen-East Hills Development Policy

The subject site is also located within the Evergreen-East Hills Development Policy (EEHDP) Area, which encompasses the land bounded by Story Road, U.S. 101, Hellyer Avenue, and the Urban Growth Boundary in the eastern foothills. The EEHDP was adopted in August, 1976 and revised most recently in 2008. The 2008 update to the Policy allowed for an additional development pool of 500 residential units, 500,000 square feet of commercial/retail development, and 75,000 square feet of office development; and authorized a decreased level of service at four major intersections [Capitol Expressway and Nieman Boulevard, San Felipe Road and Yerba Buena Road (North), San Felipe Road and Delta Road, and Evergreen Commons and Tully Road] and establish the Evergreen–East Hills Development Policy Traffic Impact Fee.

The EEHDP provides traffic allocation for a development pool of 500 residential units on various sites throughout the Evergreen-East Hills area. Under the revised 1995 version of the Policy, the project site has one (1) unit of traffic allocation. The project proposes to secure six (6) additional units from the development pool established in the 2008 update of the EEHDP in order to develop seven (7) single-family residences on the site. The project qualifies as a “small residential project” under the Policy. As required for small residential projects drawing from the EEHDP Development Pool, the proposed project does not conflict with the City’s ordinances, design guidelines, and the General Plan’s Major Strategies, Goals and Policies. The project will be required to pay the Traffic Impact Fee that has been created to fund the identified transportation improvements. Therefore, LOS impacts resulting from the project would not require mitigation, and the project would not result in any additional significant traffic impacts.

Parking

The proposed project is providing two (2) garage parking spaces per unit, which is in conformance with City’s Residential Design Guidelines of two (2) spaces per unit.

MITIGATION MEASURES:

- The Traffic Impact Fee established by the Evergreen–East Hills Development Policy shall be paid to fund and construct the transportation improvements necessary for the additional development of the Evergreen–East Hills Development Policy Area.

XVI. UTILITIES AND SERVICE SYSTEMS - Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,15
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,2,21
c) Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,17

<i>Issues</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Information Sources</i>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,22
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,21
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,21
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,21

FINDINGS: Water service to the project area is provided by San José Municipal Water System. Sanitary sewer and storm drain lines are owned and maintained by the City of San José. Residential solid waste, yard waste, and recycling services are provided to the project area by Green Waste Recovery. The proposed project would not require construction of new facilities for wastewater treatment, storm drainage, water, or waste disposal because the subject site is located within the City of San Jose Urban Service Area where such facilities exist, and have the capacity to serve the proposed project.

MITIGATION MEASURES: None required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

a) Does the project have the potential to (1) degrade the quality of the environment, (2) substantially reduce the habitat of a fish or wildlife species, (3) cause a fish or wildlife population to drop below self-sustaining levels, (4) threaten to eliminate a plant or animal community, (5) reduce the number or restrict the range of a rare or endangered plant or animal, or (6) eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1,10
b) Does the project have impacts that are individually limited, but cumulatively considerable? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,16
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1

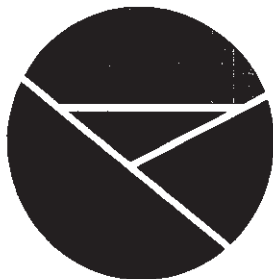
FINDINGS: As discussed in the previous sections, the proposed project could potentially have significant environmental effects with respect to air quality and biological resources. With the above noted mitigation, however, the impacts of the proposed project would be reduced to a less than significant level.

ADDITIONAL MITIGATION MEASURES: None required.

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CHECKLIST REFERENCES

1. Environmental Clearance Application – File No. PDC10-002
2. San Jose 2020 General Plan
3. USDA, Soil Conservation Service, Soil Survey of SC County, August 1968
4. USDA, Soil Conservation Service, Important Farmlands of SC County map, June 1979
5. State of California's Geo-Hazard maps / Alquist Priolo Fault maps
6. Riparian Corridor Policy Study 1994
7. San Jose Historic Resources Inventory
8. City of San Jose Archeological Sensitivity Maps
9. FEMA Flood Insurance Rate Map, Santa Clara County, 1986
10. California Department of Fish & Game, California Natural Diversity Database, 2001
11. City of San Jose Heritage Tree Survey Report
12. California Environmental Protection Agency Hazardous Waste and Substances Sites List, 1998
13. City of San Jose Noise Exposure Map for the 2020 General Plan
14. BAAQMD CEQA Guidelines, Bay Area Air Quality Management District. April 1996, revised 1999.
15. San Francisco Bay Regional Water Quality Control Board 1995 Basin Plan
16. Final Environmental Impact Report, City of San Jose, SJ 2020 General Plan
17. Santa Clara Valley Water District
18. City of San Jose Title 20 Zoning Ordinance
19. San Jose Department of Public Works
20. San Jose Fire Department
21. San Jose Environmental Services Department
22. San Jose Water Company, Great Oaks Water Company
23. California Division of Mines and Geology
24. Cooper Clark, San Jose Geotechnical Information Maps, July 1974
25. Geologic Hazards Evaluation Update and Fault Investigation Study, Parcel Subdivision of 2.84 Acre Site, 3770 Quimby Road, San Jose, California, ES Geotechnologies, November 2008
26. Quantitative Slope Stability Analysis, 3770 Quimby Road, San Jose, California, Earth Systems Pacific, August 2011
27. Huang/Quimby Road Project Site, Biological Constraints Analysis, City of San Jose, California, Monk & Associates, Inc., June 17, 2010



District 8 Community Round Table - D8CRT

To: Members of Planning Commission, City of San Jose
Land Use Committee

Fr: District 8 Community Round Table

Re: PDC10-002 Quimby Road

Dear Commissioners,

The District 8 Community Round Table is a community based organization composed of community activist, small business leaders, association presidents, school board trustees, local city commissioners, and residents. We had the opportunity to review some information regarding a PD Rezoning on this site, (12/1/2011). The presenter, Gerry De Young, was very thorough in his presentation.

The District 8 Community Round Table fully supports Mr. De Young's proposal. We do however have some friendly amendments to the proposal. They are listed below:

1. The lower 4 homes be 2 story and the upper 3 homes be single story to mitigate any issues of height and profile from the homes below.
2. The project create a geological assessment district to insure the 7 homes against landslides.

Housing issues and land use is a high priority for our area. The D8CRT closely follows any development in the Evergreen area that may impact the General Plan. In 2009, the D8CRT supported the GP Amendment to Low Density Residential (5du/ac). The District 8 Community Round Table feels that Gerry De Young's proposal falls neatly into the needs of the community.

Best Regards,

Tom Paramo, President D8CRT

(408) 250-5937

www.d8crt.org



Ruth and Going, Inc.
Engineering
Planning

P.O. Box 26460
San Jose, CA
95159-6460
Phone: 408/236-2400
Fax: 408/236-2410

LETTER OF TRANSMITTAL

To LESLEY XAVIER
PLANNING DEPT
CITY OF SAN JOSE

DATE	11-23-11	JOB NO.	05-053
ATTENTION			
RE	PDC 10-002 QUIMBY ROAD		

GENTLEMEN:

- WE ARE SENDING YOU Attached Under separate cover via _____ the following items:
- Shop drawings Prints Plans Samples Specifications
- Copy of letter Change order _____

COPIES	DATE	NO.	DESCRIPTION
3	11-28-11		FULL SIZE, REVISED PLAN SETS
1	11-8-11		YOUR CHECK PRINT COMMENTS
1	11-28-11		11x17 PLAN SET

THESE ARE TRANSMITTED as checked below:

- For approval Approved as submitted Resubmit _____ copies for approval
- For your use Approved as noted Submit _____ copies for distribution
- As requested Returned for corrections Return _____ corrected prints
- For review and comment For Recording _____
- FOR BIDS DUE _____ 19 _____ PRINTS RETURNED AFTER LOAN TO US

REMARKS LET ME KNOW HOW MANY 11x17 2-FOLDED
COPIES YOU NEED FOR DISTRIBUTION.

COPY TO _____

SIGNED: BERRY DE YOUNG

Xavier, Lesley

From: Xavier, Lesley
Sent: Thursday, November 17, 2011 11:14 AM
To: 'Gerry De Young'
Subject: File No. PDC10-002 (Quimby Rd)
Attachments: PDC10-002 MND.doc; PDC10-002 MMRP.doc

Hi Gerry – attached is the MND, and MMRP. Please have the applicant sign the MMRP and return it to me. The MND is going to circulate between November 18, 2011 and December 7, 2011, with the Planning Commission Hearing being on December 7, 2011. Please let me know if you have any questions. I will send you the Initial Study in a 2nd email as the file is large.

Many thanks.

Lesley

Lesley Xavier, Planner II
Planning Division
Planning, Building and Code Enforcement
City of San José
200 E. Santa Clara Street, 3rd Flr, Tower
San Jose, CA 95113
Tel: (408) 535-7852 FAX: (408) 292-6055

If you need basic information regarding a property's zoning and land use, or information about our environmental clearance requirements please go to our website at:
<http://www.sanjoseca.gov/planning/counter/Are-You-New-to-Our-Website.pdf>

Interested in being informed about Planning, Development, and Land Use Issues in San Jose? You can subscribe to e-mail notifications on the issues that interest you by going to:
www.sanjoseca.gov/development/subscription/email_updates.asp

Xavier, Lesley

From: Xavier, Lesley
Sent: Wednesday, November 09, 2011 10:26 AM
To: 'Gerry De Young'
Subject: Quimby Rd Project (File No. PDC10-002)
Attachments: PDC10-002 check print 11-9-11.pdf; PDC10-002 Dev Standards.Draft.docx

Hi Gerry-

A few items on the above mentioned project:

1. The environmental senior planner, John Davidson, is reviewing the environmental clearance and I hope to have it circulating by the end of next week.
2. I have attached a check print with a few planning comments on the site plan.
3. I have also attached the draft development standards. Please comment.

Thanks!

Lesley

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If you need basic information regarding a property's zoning and land use, or information about our environmental clearance requirements please go to our website at:

<http://www.sanjoseca.gov/planning/counter/Are-You-New-to-Our-Website.pdf>

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HUANG/QUIMBY ROAD PROJECT SITE
BIOLOGICAL CONSTRAINTS ANALYSIS
CITY OF SAN JOSE, CALIFORNIA

June 17, 2010

Prepared for

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Attention: Ms. Sarah Lynch

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Table 3. Special-Status Plant Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site Project Site.

Table 4. Special-Status Wildlife Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site.

1. INTRODUCTION

On behalf of Ruth & Going, Inc., Monk & Associates, Inc. (M&A) has completed a biological resources constraints analysis for the approximately 2.84-acre Huang/Quimby Road project site (the "project site") located in San Jose, California (Figures 1 and 2). The purpose of this analysis is to provide a description of existing biological resources within the project site, and to identify potential impacts to these resources from proposed development. This report discusses biological resources that potentially occur on the site or near the site, and that may pose a constraint to the proposed development project. It also discusses the laws and regulations that protect sensitive biological resources known from the region of the project site, and a review of the pertinent issues and M&A's recommendations.

2. SETTING/PROJECT SITE DESCRIPTION

The approximately 2.84-acre project site is located in southeastern San Jose at the base of the Mt. Hamilton Range. The project site is a long, rectangular site that extends upslope onto the lower slopes of the Mt. Hamilton Range. This rural farmland site currently supports goats, chickens, horses, dogs, and their corrals/coops/sheds. The project site currently does not support a residence. Rural farmland is located adjacent to the project site to the east, south, and north. To the west, on the opposite side of Quimby Road, is an existing housing development. Larger, single-family homes are also distributed across the upper slopes of the Mt. Hamilton Range upslope (east) of the project site (see Figure 3).

3. PROPOSED PROJECT

Six, single-family, detached residential units are proposed on the project site. The project site's upper slopes would be dedicated as open space (approximately 0.82-acre of open space).

4. ANALYSIS METHODS

Prior to preparing this biological resource constraints analysis, M&A researched the most recent version of the California Department of Fish and Game's (CDFG) Natural Diversity Database, RareFind 3.2 application (CNDDDB) for historic and recent records of special-status plant and animal species (that is, threatened, endangered, rare) known to occur in the region of the project site. All special-status species records were compiled in tables. Figure 4 provides a graphical illustration of the closest known records for special-status species within 5 miles of the project site and helps readers visually understand the number of sensitive species that occur in the vicinity of the project site. M&A examined all known record locations for special-status species to determine if special-status species could occur on the project site or within an area of affect.

After completing background research, on May 17, 2010, M&A biologist Sarah Lynch conducted a field reconnaissance of the site. The results of the background research and field reconnaissance are detailed in the sections below.

5. RESULTS OF RESEARCH AND PROJECT SITE ANALYSES

5.1 Hydrology

The project site slopes steeply to the west with all surface runoff flowing down to the southwestern corner. The flattest portion of the site is the western quarter. No creeks or obvious drainage patterns were observed during the May 17, 2010 site survey which was conducted in the rain. All rain water sheet flows overland and off the project site. No areas of inundation or evidence of long-term standing water were observed at the time of the survey.

5.2 Plant Communities and Associated Wildlife Habitats

A complete list of plant species observed on the project site is presented in Table 1. Nomenclature used for plant names follows *The Jepson Manual* (Hickman 1993) and changes made to this manual as published on the Jepson Interchange Project website (<http://ucjeps.berkeley.edu/interchange/index.html>). Table 2 is a list of wildlife species observed on the project site. Nomenclature for wildlife follows CDFG's *Complete list of amphibian, reptile, bird, and mammal species in California* (2006) and any changes made to species nomenclature as published in scientific journals since the publication of CDFG's list.

5.2.1 RUDERAL/ANTHROPOGENIC

The project site supports a ruderal (weedy) grassland community with anthropogenic (man-induced) components. The western and eastern ends of the project site support true ruderal grassland areas dominated by non-native plants (primarily weeds) adapted to grazing pressure such as mustards (*Hirschfelda incana*, *Sinapis arvensis*), mallow (*Malva* sp.), horehound (*Marrubium vulgare*), milk thistle (*Silybum marianum*), and Italian thistle (*Carduus pycnocephala*). Coyote brush (*Baccharis pilularis*), a native shrub that colonizes disturbed ground surfaces is found scattered throughout the project site, especially along the dirt driveway. On the western end of the project site the grasses and forbs are closely-cropped due to the grazing by livestock. The steeper, eastern end of the site is located behind sheds and chicken coops. It is likely that grazing does not occur on this portion of the site because the grasses and forbs (broad-leaved plants) are much taller and denser than on other portions of the site. The milk thistle and Italian thistle in this area was 6-feet high at the time of M&A's survey. The interior of the site is covered by farm animal sheds, cages, and corrals and the ground is primarily barren.

The anthropogenic components of the site are the sheds, corrals and livestock pens that have been erected and the associated mature, ornamental trees that have been planted on the project site. These trees include several Peruvian pepper trees (*Schinus molle*), a pear tree (*Pyrus* sp.), an almond tree (*Prunus dulcis*), and a cherry plum (*Prunus cerasifera*). A California black walnut tree (*Juglans hindsii*) and a blue elderberry (*Sambucus nigra caerulea*) shrub are growing in the project site's southwestern corner and a coast live oak tree (*Quercus agrifolia*) is growing along the southern property fence line. These three native species may be naturally occurring (that is, not planted).

Wildlife observed on the site were common species adapted to rural farm fields and man-induced conditions. Species observed during the May 17, 2010 survey included Anna's hummingbird

(*Calypte anna*), Brewer's blackbird (*Euphagus cyanocephalus*), California towhee (*Pipilo crissalis*), California ground squirrel (*Spermophilus beechyi*), house finch (*Carpodacus mexicanus*), Columbian black-tailed deer (*Odocoileus hemionus columbianus*), California meadow vole (*Microtus californicus*), feral cat (*Felis catus*). For a complete list of wildlife observed please refer to Table 2.

6. POTENTIALLY OCCURRING SPECIAL-STATUS PLANT AND ANIMAL SPECIES

Special-status plant and wildlife species known to occur in the vicinity of the project site are discussed below. Special-status plant species known to occur within five miles of the project site are shown on Figure 4 and are listed in Table 3. Special-status wildlife species known to occur within five miles of the project site are shown on Figure 4 and are listed in Table 4. Below we provide the definition of what constitutes a special-status species. We also discuss those special-status species that could constrain development of the project site.

6.1 Definition of Special-Status Species

For purposes of this analysis, special-status species are plants and animals that are legally protected under the State and Federal Endangered Species Acts or other regulations, and species that are considered rare by the scientific community. Special-status species are defined as:

- plants and animals that are listed or proposed for listing as threatened or endangered under the California Endangered Species Act (Fish and Game Code §2050 *et seq.*; 14 CCR §670.1 *et seq.*) or the Federal Endangered Species Act (50 CFR 17.12 for plants; 50 CFR 17.11 for animals; various notices in the Federal Register [FR] for proposed species);
- plants and animals that are candidates for possible future listing as threatened or endangered under the Federal Endangered Species Act (50 CFR 17; FR Vol. 64, No. 205, pages 57533-57547, October 25, 1999); and under the California Endangered Species Act (California Fish and Game Code §2068);
- plants and animals that meet the definition of endangered, rare, or threatened under the California Environmental Quality Act (CEQA) (14 CCR §15380) that may include species not found on either State or Federal Endangered Species lists;
- plants occurring on Lists 1A, 1B, 2, 3, and 4 of CNPS electronic *Inventory* (CNPS 2001). The California Department of Fish and Game (CDFG) recognizes that Lists 1A, 1B, and 2 of the CNPS inventory contain plants that, in the majority of cases, would qualify for State listing, and CDFG requests their inclusion in EIRs. Plants occurring on CNPS Lists 3 and 4 are "plants about which more information is necessary," and "plants of limited distribution," respectively (CNPS 2001). Such plants may be included as special-status species on a case by case basis due to local significance or recent biological information;
- migratory nongame birds of management concern listed by U.S. Fish and Wildlife Service (Migratory Nongame Birds of Management Concern in the United States: The list 1995; Office of Migratory Bird Management; Washington D.C.; Sept. 1995);

- animals that are designated as "species of special concern" by CDFG (2010);
- animal species that are "fully protected" in California (Fish and Game Codes 3511, 4700, 5050, and 5515).

In the paragraphs below we provide further definitions of legal status as they pertain to the special-status species discussed in this report or in the attached tables.

Federal Endangered or Threatened Species. A species listed as Endangered or Threatened under the Federal Endangered Species Act is protected from unauthorized "take" (that is, harass, harm, pursue, hunt, shoot, trap) of that species. If it is necessary to take a Federal listed Endangered or Threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from the USFWS prior to initiating the take.

State Threatened Species. A species listed as Threatened under the State Endangered Species Act (§2050 of California Fish and Game Code) is protected from unauthorized "take" (that is, harass, pursue, hunt, shoot, trap) of that species. If it is necessary to "take" a state listed Threatened species as part of an otherwise lawful activity, it would be necessary to receive permission from CDFG prior to initiating the "take."

California Species of Special Concern. These are species in which their California breeding populations are seriously declining and extirpation from all or a portion of their range is possible. This designation affords no legally mandated protection; however, pursuant to the CEQA Guidelines (14 CCR §15380), some species of special concern could be considered "rare." Pursuant to its rarity status, any unmitigated impacts to rare species could be considered a "significant effect on the environment" (§15382). Thus, species of special concern must be considered in any project that will, or is currently, undergoing CEQA review, and/or that must obtain an environmental permit(s) from a public agency.

CNPS List Species. The California Native Plant Society (CNPS) maintains an inventory of special status plant species. This inventory has four lists of plants with varying rarity. These lists are: List 1, List 2, List 3, and List 4. Although plants on these lists have no formal legal protection (unless they are also state or federal listed species), the California Department of Fish and Game requests the inclusion of List 1 species in environmental documents. In addition, other state and local agencies may request the inclusion of species on other lists as well. List 1 species have the highest priority: List 1A species are thought to be extinct, and List 1B species are known to still exist but are considered "rare, threatened, and endangered in California and elsewhere." All of the plants constituting List 1B meet the definitions of Section 1901, Chapter 10 (Native Plant Protection Act) or Sections 2062 and 2067 (California Endangered Species Act) of the CDFG Code, and are eligible for state listing (CNPS 2001). List 2 species are rare in California, but more common elsewhere. Lists 3 and 4 contain species about which there is some concern, and are review and watch lists, respectively. Additionally, in 2006 CNPS updated their lists to include "threat code extensions" for each list. For example, List 1B species would now be categorized as List 1B.1, List 1B.2, or List 1B.3. These threat codes are defined as follows: .1 is considered "seriously endangered in California (over 80% of occurrences threatened/high degree

and immediacy of threat)”; .2 is “fairly endangered in California (20-80% of occurrences threatened)”; .3 is “not very endangered in California (less than 20% of occurrences threatened or no current threats known).”

Under the CEQA review process only CNPS List 1 and 2 species are considered since these are the only CNPS species that meet CEQA’s definition of “rare” or “endangered.” Impacts to List 3 and 4 species are not regarded as significant pursuant to CEQA.

Fully Protected Birds. Fully protected birds, such as the white-tailed kite and golden eagle, are protected under California Fish and Game Code (§3511). Fully protected birds may not be “taken” or possessed (i.e., kept in captivity) at any time.

Protected Amphibians. Under Title 14 of the California Code of Regulations (14 CCR 41), protected amphibians, such as the California tiger salamander, may only be taken under special permit from California Department of Fish and Game issued pursuant to Sections 650 and 670.7 of these regulations.

6.2 Potentially Occurring Special Status Plant Species

Table 3 lists special-status plant species that are known to occur within five miles of the project site. These plants occur in a variety of habitats, including foothill grassland, meadows, marshes and swamps, Chenopod scrub and other relatively undisturbed habitats. Although some of these habitats may have been present on the project site historically, most would have been eliminated by past and present anthropogenic activities which include grazing and vegetation clearing/removal. The project site is very disturbed by man’s activities. During M&A’s May 17, 2010 survey, which was appropriately timed to observe several of the special-status plants known from the area, none were observed. Thus, based on the past and current land uses and the results of our May 2010 survey, it is our expectation that no special-status plants would occur on the project site. No further surveys for special-status plants should be warranted.

6.3 Potentially Occurring Special-Status Animal Species

Table 4 presents a list of special-status animal species known from the region of the project site. Of the species considered for this project site, three special-status species, the western burrowing owl (*Athene cunicularia hypugaea*), the long-eared myotis bat (*Myotis evotis*), and the pallid bat (*Antrozous pallidus*) have potential to occur on the project site due to suitable habitat. These three species are discussed below.

6.3.1 WESTERN BURROWING OWL (*ATHENE CUNICULARIA*)

The western burrowing owl is a California “species of special concern.” Its eggs and young are also protected under California Fish and Game Code (§3503, §3503.5, and §3800). The burrowing owl is also protected from direct take under the Migratory Bird Treaty Act (50 CFR 10.13). Finally, based upon this species’ rarity status, any unmitigated impacts to rare species would be considered a “significant effect on the environment” pursuant to §21068 of the CEQA Statutes and §15382 of the CEQA Guidelines. Thus, this owl species must be considered in any project that will, or is currently, undergoing CEQA review, and/or that must obtain an environmental

permit(s) from a public agency. When these owls occur on project sites, typically, mitigation requirements are mandated in the conditions of project approval from the CEQA lead agency. Burrowing owl habitat is usually found in annual and perennial grasslands, characterized by low-growing vegetation. Often, the burrowing owl utilizes rodent burrows, typically ground squirrel burrows, for nesting and cover. They may also on occasion dig their own burrows, or use man-made objects such as concrete culverts or rip-rap piles for cover. They exhibit high site fidelity, reusing burrows year after year. Occupancy of suitable burrowing owl habitat can be verified at a site by observation of these owls during the spring and summer months or, alternatively, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement (white wash) at or near a burrow. Burrowing owls typically are not observed in grasslands with tall vegetation or wooded areas because the vegetation obscures their ability to detect avian and terrestrial predators. Since burrowing owls spend the majority of their time sitting at the entrances of their burrows, grazed grasslands seem to be their preferred habitat because it allows them to view the world at 360 degrees without obstructions.

In order to avoid potential impacts to burrowing owls, a nesting season survey (February 1 through August 31) should be conducted the year that development of the project site is proposed to commence and again within 30-days of project site grading (a preconstruction survey). The surveys should follow the survey methodology prescribed in CDFG's *Staff Report on Burrowing Owl Mitigation* (CDFG 1995). This Staff Report serves as official CDFG burrowing owl policy. If no owls were found during these surveys, no further regard for the burrowing owl would be necessary. If burrowing owls were observed during surveys, a fenced 75 meter (276-foot) buffer would be required between the nest site(s) (that is, the active burrow(s)) and any earth-moving activity or other disturbance. This buffer could be removed once it is determined by a qualified raptor biologist that the young have fledged (that is, left the nest). Typically, the young fledge by August 31. This date may be earlier than August 31, or later, and would have to be determined by a qualified raptor biologist.

If burrowing owls are found on the project site, a qualified raptor biologist would need to delineate the extent of burrowing owl habitat on the site. To mitigate impacts to burrowing owls, CDFG requires six and a half acres (6.5 acres) of replacement habitat be set-aside per pair of burrowing owls, or unpaired resident bird. These set-asides are typically made a condition of and enforceable through the CEQA review process that would need to be conducted for this project. Mitigation set-asides will off-set permanent impacts to burrowing owl habitat. To determine the extent of mitigation land necessary to offset impacts to burrowing owl we provide this example, if two pairs of burrowing owls are identified on the project site, 13 acres of mitigation land must be acquired. Or, if one pair and one resident bird are identified, 13 acres of mitigation land must be acquired. The protected lands should be adjacent to occupied burrowing owl habitat and at a location acceptable to CDFG. Land identified to off-set impacts to burrowing owls must be protected in perpetuity either by a conservation easement or via fee title acquisition. A Mitigation Plan and Mitigation Agreement must be prepared and submitted to CDFG for their approval.

The Mitigation Plan (Plan) would need to identify the mitigation site and any activities necessary to enhance the site, including the construction of artificial burrows. The Plan should also include a description of monitoring and management methods proposed at the mitigation site.

Monitoring and management of any lands identified for mitigation purposes would be the responsibility of the applicant for at least five years. An annual report must be prepared for submittal to CDFG by December 31 of each monitoring year. Contingency measures for any anticipated problems should be identified in the plan. If burrowing owls are identified on the project site, the lead agency must receive copies of the Plan and Mitigation Agreement by and between the applicant and CDFG prior to issuing a grading permit for the proposed project.

While no burrowing owls were observed on the project site during M&A's initial project site survey in May of 2010, our survey was not conducted in conformance with the stringent methods required by the CDFG for conducting presence/absence surveys. M&A did determine that there are no known records of burrowing owls in proximity to the project site (Table 4). The closest known record of burrowing owls is 2.59 miles west of the project site at a park (CNDDDB Occurrence No. 429). Burrowing owls have been seen at that location for several years and as recently as 2009. The project site is separated from this park by residential and commercial development. While the project site has a definite paucity of suitable burrows that could be used by this owl, the areas of barren ground and sparse vegetation cover in the western quarter of the project site coupled with a few California ground squirrel burrows make conditions suitable for this owl species. M&A has observed burrowing owls nesting in active horse pastures before so the presence of horses does not necessarily rule out the possibility of this owl's presence onsite. Accordingly, CDFG would certainly consider the project site as suitable habitat for this owl species. Thus, M&A recommends formal CDFG surveys be conducted the year development/grading is proposed to determine if this owl could be on the project site.

6.3.2 PALLID BAT (*ANTROZOUS PALLIDUS*)

The pallid bat is a California "species of special concern." It has no federal status. The "species of special concern" status designation does not provide any special legally mandated protection for this bat species. However, this status designation likely meets the definition of "rare" pursuant to the California Environmental Quality Act (CEQA) (14 CCR §15380(2)(A)). As such, potential impacts to this bat species should be considered during any CEQA review. Any unmitigated impacts to this species would likely be regarded by CDFG as a significant adverse impact pursuant to CEQA (§21068).

This bat is a locally common species of low elevations in California. It occurs throughout California except for the high Sierra Nevada from Shasta to Kern Counties, and the northwestern corner of the state from Del Norte and western Siskiyou counties to northern Mendocino County. It occurs in a wide variety of habitats. It is most common in open, dry habitats with rocky areas for roosting. Day roosts are in caves, crevices, mines, and occasionally in hollow trees and buildings. The roost must protect bats from high temperatures. Night roosts may be in more open sites such as porches and open buildings. A social bat, it roosts in groups of 20 or more.

The pallid bat was identified as recently as 2008 roosting in buildings less than a 0.5-mile north of the project site (CNDDDB Occurrence No. 108). The chicken coops, sheds, and outbuildings on the project site provide suitable roosting habitat for the pallid bat. Prior to any building removal or destruction these buildings should be checked by a qualified chiropteran (bat) biologist for roosting bats. If bats are found they must be evicted in a humane manner prior to building

destruction. Any pallid bats identified onsite should be reported to the CDFG's Natural Diversity Database.

6.3.3 LONG-EARED MYOTIS BAT (*MYOTIS EVOTIS*)

The long-eared myotis has no special federal status. It also does not have a special state status that protects it pursuant to CEQA. The long-eared myotis is included in the California Department of Fish and Game's RareFind database as a global ranking "G5" species. A global rank (G-rank) is a reflection of the overall condition of a species (or subspecies) throughout its global range. The ranking of "5" means that the population or stand is demonstrably secure to ineradicable due to being commonly found in the world. The purpose for discussing this bat here is that it has been found within 0.25-mile of the project site roosting in a building with pallid bats (CNDDDB Occurrence No. 108). (Pallid bats are a California species of special concern). Hence, any building demolition that takes place on the project site should not be conducted without first surveying the buildings for bat species.

7. REGULATORY FRAMEWORK FOR WILDLIFE, FISH, AND PLANTS

In the sections that follow we provide discussions on those laws and regulations that are in place to protect native wildlife, fish, and plants. These laws will have a certain affect on any proposal to develop the project site. Under each law we discuss its pertinence to the proposed development.

7.1 Federal Endangered Species Act

The primary focus of the Federal Endangered Species Act (FESA) of 1973 is that all federal agencies must seek to conserve threatened and endangered species through their actions. FESA has been amended several times in the past to correct perceived and real shortcomings. FESA contains three key sections. Section 4 (16 USCA §1533) outlines the procedure for listing endangered plants and wildlife. Section 7 (§1536) imposes limits on the actions of federal agencies that might impact listed species. Section 9 (§1538) prohibits the "taking" of a listed species by anyone, including private individuals, and State and local agencies. In the case of anadromous fish and marine mammals, the requirements of FESA are enforced by the National Marine Fisheries Service (NMFS). FESA gives regulatory authority over terrestrial species and non-anadromous fish to the USFWS. Below, Sections 7, 9, and 10 of FESA are discussed since they are the two sections most relevant to the proposed project.

Section 9 of FESA as amended, prohibits the "take" of any fish or wildlife species listed under FESA as endangered. Under federal regulation, "take" of fish or wildlife species listed as threatened is also prohibited unless otherwise specifically authorized by regulation. "Take," as defined by FESA, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Recent court cases have found "harm" includes not only the direct taking of a species itself, but the destruction or modification of the species' habitat resulting in the potential injury of the species. As such, "harm" is further defined to mean "an act which actually kills or injures wildlife; such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering" (50 CFR 17.3). Harm must be tempered against a court decision from the United States District Court for the

District of Arizona [United States Court of Appeals for the Ninth Circuit. 2001. *Arizona Cattle Growers' Association, Jeff Menges, v. United States Fish and Wildlife, Bureau of Land Management, and Southwest Center for Biological Diversity*. Filed December 17, 2001.]. This Court held, based on the legislative history, case law, prior agency representations, and the plain language of the Endangered Species Act, that an Incidental Take Statement must be predicated on a finding of an incidental take. Further, the Fish and Wildlife Service acted in an arbitrary and capricious manner by issuing Incidental Take Statements imposing terms and conditions on land use permits, where there either was no evidence that the endangered species existed on the land or no evidence that a take would occur if the permit were issued.

Section 9 applies not only to federal agencies but also to any local or State agency, and to any individual. If "take" of a listed species is necessary to complete an otherwise lawful activity, this triggers the need for consultation under Section 7 of FESA (for federal agencies), or requires preparation of a Habitat Conservation Plan (HCP) pursuant to Section 10 of FESA (for state and local agencies, or individuals).

Under Section 7 of FESA, all federal agencies must, in consultation with USFWS, ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Federal actions include permitting, funding, and entitlements for both federal projects, as well as private projects facilitated by federal actions (for example, a private landowner applying to the Corps for a permit). For example, if a federally listed endangered species is present in "waters of the United States" on a project site, prior to authorizing impacts to "waters of the United States," the Corps would be required to initiate "formal consultation" with USFWS pursuant to Section 7 of FESA. As part of the formal consultation, the USFWS would then be required to prepare a Biological Opinion based on a review and analysis of the project applicant's avoidance and mitigation plan. The Biological Opinion will either state that the project will or will not result in "take" or threaten the continued existence of the species (not just that population). If an endangered species could be harmed by a proposed project, USFWS has to be in complete concurrence with the proposed avoidance and mitigation plan. If USFWS is not in complete concurrence with the mitigation plan, they will submit a Biological Opinion to the Corps containing a "jeopardy decision" and stating that a Corps' permit should not be issued for the pending project. The applicant would then have an opportunity to submit a revised mitigation plan that provides greater protection for the species.

In the 1982 amendments to FESA, Congress established a provision in Section 10 that allows for the "incidental take" of endangered and threatened species of wildlife by non-federal entities (for example, project applicants, state and local agencies). "Incidental take" is defined by FESA as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." Under Section 10 of FESA, the applicant for an "incidental take permit" is required to submit a "conservation plan" to USFWS or NMFS that specifies, among other things, the impacts that are likely to result from the taking, and the measures the permit applicant will undertake to minimize and mitigate such impacts, and the funding that will be available to implement those steps.

Conservation plans under FESA have come to be known as "habitat conservation plans" or "HCPs" for short. The terms incidental take permit, Section 10 permit, and Section 10(a)(1)(B)

permit are used interchangeably by USFWS. Section 10(a)(2)(B) of FESA provides statutory criteria that must be satisfied before an incidental take permit can be issued.

7.1.1 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not provide habitat for any federally listed plant or animal species. Thus, no impacts to federally listed species are expected from implementation of a project on this project site.

7.2 Federal Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 makes it unlawful to "take" (kill, harm, harass, shoot, etc.) any migratory bird listed in 50 CFR 10, including their nests, eggs, or young. Migratory birds include geese, ducks, shorebirds, raptors, songbirds, wading birds, seabirds, and passerine birds (such as warblers, flycatchers, swallows, etc.).

7.2.1 APPLICABILITY TO PROPOSED PROJECT

The project site provides suitable nesting habitat for passerine birds (perching birds) and one ground-nesting raptor (bird of prey) species: the western burrowing owl. The trees onsite are too small to provide suitable nesting habitat for raptor species. In order to avoid impacts to nesting birds from the proposed project, if project site grubbing, grading, tree removal or development would take place during the nesting season (February 1 through August 1) surveys for nesting passerine birds (starting February 15) and burrowing owls (starting February 1) would need to be conducted.

7.3 State Endangered Species Act

In 1984, the State legislated the California Endangered Species Act (CESA) (Fish and Game Code §2050). The basic policy of CESA is to conserve and enhance endangered species and their habitats. State agencies will not approve private or public projects under their jurisdiction that would jeopardize threatened or endangered species if reasonable and prudent alternatives are available.

CESA requires that all state lead agencies (as defined under CEQA) conduct an endangered species consultation with CDFG if their actions could affect a state listed species. The state lead agency and/or project applicants must provide information to CDFG on the project and its likely impacts. CDFG must then prepare written findings on whether the proposed action would jeopardize a listed species would result in the direct take of a listed species. Because CESA does not have a provision for "harm" (see discussion of FESA, above), CDFG considerations pursuant to CESA are limited to those actions that would result in the direct take of a listed species.

If CDFG determines that a proposed project could impact a State listed threatened or endangered species, CDFG will provide recommendations for "reasonable and prudent" project alternatives. The CEQA lead agency can only approve a project if these alternatives are implemented, unless it finds that the project's benefits clearly outweigh the costs, reasonable mitigation measures are adopted, there has been no "irreversible or irretrievable" commitment of resources made in the interim, and the resulting project would not result in the extinction of the species. In addition, if there would be threatened or endangered species impacts, the lead agency typically requires

project applicants to demonstrate that they have acquired "incidental take" permits from CDFG and/or USFWS (if it is a federal listed species) prior to allowing/permitting impacts to such species.

If proposed projects would result in impacts to a State listed species, an "incidental take" permit pursuant to §2081 of the Fish and Game Code would be necessary (versus a federal incidental take permit for federal listed species). CDFG will issue an incidental take permit only if:

- 1) The authorized take is incidental to an otherwise lawful activity;
- 2) The impacts of the authorized take are minimized and fully mitigated;
- 3) The measures required to minimize and fully mitigate the impacts of the authorized take:
 - a) are roughly proportional in extent to the impact of the taking on the species;
 - b) maintain the project applicant's objectives to the greatest extent possible; and,
 - c) capable of successful implementation; and,
- 4) adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with, and the effectiveness of, the measures.

If an applicant is preparing a habitat conservation plan (HCP) as part of the federal 10(a) permit process, the HCP might be incorporated into the §2081 permit if it meets the substantive criteria of §2081(b). To ensure that an HCP meets the mitigation and monitoring standards in Section 2081(b), an applicant should involve CDFG staff in development of the HCP. If a final Biological Opinion (federal action) has been issued for the project pursuant to Section 7 of the Federal Endangered Species Act (FESA), it might also be incorporated into the §2081 permit if it meets the standards of §2081(b).

No §2081 permit may authorize the take of a species for which the Legislature has imposed strict prohibitions on all forms of "take." These species are listed in several statutes that identify "fully protected" species and "specified birds." See Fish and Game Code §§ 3505, 3511, 4700, 5050, 5515, and 5517. If a project is planned in an area where a "fully protected" species or a "specified bird" occurs, an applicant must design the project to avoid all take.

In September 1997, Assembly Bill 21 (now Fish and Game Code §2080.1) was passed to streamline issuance of state endangered species incidental take permits. The Section is now termed the "consistency determination." It allows an applicant who has obtained a "non-jeopardy" federal Biological Opinion pursuant to Section 7 of the FESA, or who has received a federal 10(a) permit (federal incidental take permit), to submit the federal biological opinion or permit to CDFG for a determination as to whether the federal document is "consistent" with CESA. If after 30 days CDFG determines that the federal incidental take permit is consistent with state law, no further permit or consultation is required under CESA for the project. However, if CDFG determines that the federal opinion or permit is not consistent with CESA, the applicant must apply for a state permit under section 2081(b).

The process provided in Fish and Game Code §2080.1 may be of use when the incidental take would occur to species that are listed under both the federal and state endangered species acts. §2080.1 is of no use if an affected species is state-listed, but not federally listed. Section 2080.1 will automatically be repealed if and when Congress amends Section 7 or Section 10 of the FESA. Since FESA could be amended at any time, we are recommending that project applicants who are applying for authorization for "incidental take" of a federal and state listed species, enter into a Section 2081 agreement with CDFG in addition to the federal permit so that the project is covered under both FESA and CESA in case AB21 is repealed during the life of the project.

State and federal incidental take permits are issued on a discretionary basis, and are typically only authorized if applicants are able to demonstrate that impacts to the listed species in question are unavoidable, and can be mitigated to an extent that the reviewing agency can conclude that the proposed impacts would not jeopardize the continued existence of the listed species under review. Typically, if there would be impacts to a listed species, mitigation that includes habitat avoidance, preservation, and creation of endangered species habitat is necessary to demonstrate that projects would not threaten the continued existence of a species. In addition, management endowment fees are usually collected as part of the agreement for the incidental take permit(s). The endowment is used to manage any lands set-aside to protect listed species, and for biological mitigation monitoring of these lands over (typically) a five-year period.

7.3.1 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not provide habitat for any species protected pursuant to the State Endangered Species Act; hence, impacts to state listed species are not expected from the proposed project.

7.4 Sections 3503, 3503, and 3800 of California Fish and Game Code

California Fish and Game Code §3503, 3503.5, and 3800 prohibits the "take, possession, or destruction of birds, their nests or eggs." Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take." Such a take would also violate federal law protecting migratory birds (Migratory Bird Treaty Act).

All raptors (that is, hawks, eagles, owls) their nests, eggs, and young are protected under California Fish and Game Code (§3503.5). Additionally, "fully protected" birds, such as the white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*), are protected under California Fish and Game Code (§3511). "Fully protected" birds may not be taken or possessed (that is, kept in captivity) at any time.

7.4.1 APPLICABILITY TO THE PROPOSED PROJECT

The project site provides suitable nesting habitat for passerine birds (perching birds) and one ground-nesting raptor (bird of prey) species, the western burrowing owl. The trees onsite are too small to provide suitable nesting habitat for raptor species. If project site grubbing, grading, tree removal or development would take place during the nesting season (February 1 through August 1) surveys for nesting passerine birds (starting February 15) and burrowing owls (starting February 1) would need to be conducted.

8. REGULATORY REQUIREMENTS PERTAINING TO WATERS OF THE UNITED STATES AND STATE

This section presents an overview of the criteria used by the U.S. Army Corps of Engineers, the California Regional Water Quality Control Board, the State Water Resources Control Board, and CDFG to determine those areas within a project site that would be subject to their regulation.

8.1 U.S. Army Corps of Engineers

8.1.1 SECTION 404 OF THE CLEAN WATER ACT

Pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), the U.S. Army Corps of Engineers (Corps) regulates the disposal of dredged or fill material into "waters of the United States" (33 CFR Parts 328 through 330). This requires project applicants to obtain authorization from the Corps prior to discharging dredged or fill materials into any water of the United States. In the Federal Register "waters of the United States" are defined as, "...all interstate waters including interstate wetlands...intrastate lakes, rivers, streams (including intermittent streams), wetlands, [and] natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce..." (33 CFR Section 328.3).

Limits of Corps' jurisdiction.

(a) Territorial Seas. The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)

(b) Tidal Waters of the United States. The landward limits of jurisdiction in tidal waters:

- (1) Extends to the high tide line, or
- (2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

(c) Non-Tidal Waters of the United States. The limits of jurisdiction in non-tidal waters:

- (1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or
- (2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.
- (3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

Section 404 jurisdiction in "other waters" such as lakes, ponds, and streams, extends to the upward limit of the ordinary high water mark (OHWM) or the upward extent of any adjacent wetland. The OHWM on a non-tidal water is the "line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter or debris; or other appropriate means that consider the characteristics of the surrounding areas" (33 CFR Section 328.3[e]). Wetlands are defined as "...those areas that are inundated or saturated by surface or ground water at a frequency and duration to support a prevalence of

vegetation adapted for life in saturated soil conditions" (33 CFR Section 328.8 [b]). Wetlands usually must possess hydrophytic vegetation (i.e., plants adapted to inundated or saturated conditions), wetland hydrology (e.g., topographic low areas, exposed water tables, stream channels), and hydric soils (i.e., soils that are periodically or permanently saturated, inundated or flooded) to be regulated by the Corps pursuant to Section 404 of the Clean Water Act.

It should be noted that the extent of the Corps jurisdiction pursuant to Section 404 of the Clean Water Act was recently modified. In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, the U.S. Supreme Court [148 L. Ed. 2d 576 (2001) (SWANCC)] ruled that the Corps exceeded its authority under the Clean Water Act when it regulated discharges of fill material into "isolated" waters used as habitat by migratory birds. Accordingly, waters (including wetlands) that are not connected hydrologically to navigable waters may now not be subject to regulation by the Corps.

A recent Supreme Court decision may also significantly change how the Corps defines waters of the United States. [Following text excerpted from a news letter prepared by Briscoe, Ivester, and Bazel LLP] On June 19, 2006 the United States Supreme Court, in a "four-one-four" decision, addressed the extent of Clean Water Act jurisdiction over wetlands adjacent to tributaries of navigable waters. The extent to which the decision will further restrict federal regulation of wetlands remains unclear. In two consolidated cases, *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers*, a five-Justice majority of the Court remanded the case to the Sixth circuit for further consideration. The Court was unable to produce a majority vote in favor of any one jurisdictional standard for the Sixth Circuit to apply (or for the regulated community to follow). Instead, Justice Scalia authored a plurality opinion that would significantly narrow the reach of federal wetlands jurisdiction, while Justice Kennedy, concurring in the judgment only, concluded that the appropriate test for jurisdiction over wetlands was the presence of a "significant nexus" between wetlands and "navigable waters" in the traditional sense. The remaining four Justices, in a dissenting opinion by Justice Stevens, would have upheld the Corps of Engineers' assertion of jurisdiction and would have affirmed the Sixth Circuit's decision. When no opinion garners at least five votes, lower courts follow the concurrence that reached the result on the narrowest grounds. Here, that is Justice Kennedy's opinion. Unfortunately, Justice Kennedy did not provide specific guidance about the extent of federal jurisdiction over wetlands that are adjacent to tributaries of navigable waters.

Justice Kennedy concluded that the Clean Water Act applies only to those wetlands with a "significant nexus" to "navigable waters in the traditional sense." A significant nexus exists when a wetland, "either alone or in combination with similarly situated lands in the region, significantly affect[s] the chemical, physical, and biological integrity" of factually navigable waters. Under Supreme Court precedent, wetlands adjacent to navigable waters meet this test. For wetlands located near *tributaries* of navigable waters, however, each wetland demands a case-by-case jurisdictional inquiry. We know only that a "mere hydrological connection" is not enough in all cases, and that "speculative or insubstantial" effects on water quality will not suffice to satisfy the test.

To remain in compliance with Section 404 of the Clean Water Act, project proponents and property owners (applicants) are required to be permitted by the Corps prior to discharging or

otherwise impacting “waters of the United States”. In many cases, the Corps must visit a proposed project area (to conduct a “jurisdictional determination”) to confirm the extent of area falling under their jurisdiction prior to authorizing any permit for that project area. Typically, at the time the jurisdictional determination is conducted, applicants (or their representative) will discuss the appropriate permit application that would be filed with the Corps for permitting the proposed impact(s) to “waters of the United States.”

Pursuant to Section 404 of the Clean Water Act, the Corps normally provides two alternatives for permitting impacts to the type of “waters of the United States” found in the project area. The first alternative would be to use Nationwide Permit(s) (NWP). The second alternative is to apply to the Corps for an Individual Permit (33 CFR Section 235.5(2)(b)). The application process for Individual Permits is extensive and includes public interest review procedures (i.e., public notice and receipt of public comments) and must contain an “alternatives analysis” that is prepared pursuant to Section 404(b) of the Clean Water Act (33 U.S.C. 1344(b)). The alternatives analysis is also typically reviewed by the federal Environmental Protection Agency (EPA), and thus brings another resource agency into the permitting framework. Both the Corps and EPA take the initial viewpoint that there are practical alternatives to the proposed project if there would be impacts to waters of the U.S., and the proposed permitted action is not a water dependent project (e.g. a pier or a dredging project). Alternative analyses therefore must provide convincing reasons that the proposed permitted impacts are unavoidable. Individual Permits may be available for use in the event that discharges into regulated waters fail to meet conditions of NWP(s).

NWPs are a type of general permit administered by the Corps and issued on a nationwide basis that authorize minor activities that affect Corps regulated waters. Under NWP, if certain conditions are met, the specified activities can take place without the need for an individual or regional permit from the Corps (33 CFR, Section 235.5[c][2]). In order to use NWP(s), a project must meet 27 general nationwide permit conditions, and all specific conditions pertaining to the NWP being used (as presented at 33 CFR Section 330, Appendices A and C). It is also important to note that pursuant to 33 CFR Section 330.4(e), there may be special regional conditions or modifications to NWPs that could have relevance to individual proposed projects. Finally, pursuant to 33 CFR Section 330.6(a), Nationwide permittees may, and in some cases must, request from the Corps confirmation that an activity complies with the terms and conditions of the NWP intended for use (i.e., must receive “verification” from the Corps).

Prior to finalizing design plans, the applicant needs to be aware that the Corps maintains a policy of “no net loss” of wetlands (waters of the United States) from project area development. Therefore, it is incumbent upon applicants that propose to impact Corps regulated areas to submit a mitigation plan that demonstrates that impacted regulated areas would be recreated (i.e., impacts would be mitigated). Typically, the Corps requires mitigation to be “in-kind” (i.e., if a stream channel would be filled, mitigation would include replacing it with a new stream channel), and at a minimum of a 1:1 replacement ratio (i.e., one acre or fraction thereof of recreated for each acre or fraction thereof lost). Often a 2:1 replacement ratio is required. Usually the 2:1 ratio is met by recreation or enhancement of an equivalent amount of wetland as is impacted, in addition to a requirement to preserve an equivalent amount of wetland as is impacted by the project. In some cases, the Corps allows “out-of-kind” mitigation if the compensation site has greater value than the impacted site. For example, if project designs call

for filling an intermittent drainage, mitigation should include recreating the same approximate jurisdictional area (same drainage widths) at an offsite location or on a set-aside portion of the project area. Finally, there are many Corps approved wetland mitigation banks where wetland mitigation credits can be purchased by applicants to meet permitting requirements. Mitigation banks have limited distribution and the Corps typically only allows their use when projects have minimal affects on wetlands.

8.1.2 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not support any likely areas that would be classified by the Corps as "waters of the United States." Hence, a permit from the Corps should not be necessary for the proposed project on this project site. It is M&A's understanding from our discussions with the project engineer that surface runoff will be discharged into the City of San Jose's existing storm drain system, hence, impacts to offsite waterways should not result. However, please bear in mind that if the proposed project requires discharging surface runoff into an offsite ditch, channel, or creek and/or if installation of an outfall structure into an offsite waterway is necessary for this project, prior authorization from the Corps may be necessary. The applicant would have to agree to mitigate impacts to waters of the U.S. to the satisfaction of the Corps prior to the time this resource agency would issue a permit for impacts to such features.

8.2 State Water Resources Control Board (SWRCB) / California Regional Water Quality Control Board (RWQCB)

8.2.1 SECTION 401 OF THE CLEAN WATER ACT

The SWRCB and RWQCB regulate activities in "waters of the State" (which includes wetlands) through Section 401 of the Clean Water Act. While the Corps administers permitting programs that authorize impacts to waters of the United States, including wetlands, and other waters, any Corps permit authorized for a proposed project would be invalid unless it is a NWP that has been certified for use in California by the SWRCB, or if the RWQCB has issued a project specific certification or waiver of water quality. Certification of NWPs requires a finding by the SWRCB that the activities permitted by the NWP will not violate water quality standards individually or cumulatively over the term of the issued NWP (the term is typically for five years). Certification must be consistent with the requirements of the federal Clean Water Act, the California Environmental Quality Act, the California Endangered Species Act, and the SWRCB's mandate to protect beneficial uses of waters of the State. Any denied (i.e., not certified) NWPs, and all Individual Corps permits, would require a project specific RWQCB certification or waiver of water quality.

Additionally, if a proposed project would impact waters of the State, including wetlands, and the project applicant cannot demonstrate that the project is unable to avoid these adverse impacts, water quality certification will most likely be denied. Section 401 Certification may also be denied based on significant adverse impacts to waters of the United States, including wetlands. The RWQCB has also adopted the Corps' policy that there shall be "no net loss" of wetlands. Thus, prior to certifying water quality, the RWQCB will impose avoidance mitigation requirements on project proponents that impact waters of the State. Mitigation compensation ratios are a minimum of 1:1 (impact: preservation), but usually are 2:1 and may be as high as 3:1.

8.2.2 APPLICABILITY TO THE PROPOSED PROJECT

It does not appear that a Section 404 permit from the Corps should be necessary for this project site. However, if it is necessary to discharge project site surface runoff into an offsite ditch, channel, or creek and/or if installation of an outfall structure into an offsite waterway is necessary for this project, prior authorization from the Corps may be necessary. Any Section 404 permit authorized by the Corps for the project would be inoperable without also obtaining authorization from the RWQCB pursuant to Section 401 of the Clean Water Act (i.e., without obtaining a certification of water quality).

Any impacts to waters of the State would have to be mitigated to the satisfaction of the RWQCB prior to the time this resource agency would issue a permit for impacts to such features. The RWQCB requirements for issuance of a "401 Permit" typically parallel the Corps requirements for permitting impacts to Corps regulated areas pursuant to Section 404 of the Clean Water Act. Please refer to the Corps Applicability Section above for likely mitigation requirements for impacts to RWQCB regulated wetlands. Also, please refer to the applicability section of the Porter-Cologne Water Quality Control Act below for other applicable actions that may be imposed on the project by the RWQCB prior to the time any certification of water quality is authorized for the project.

8.2.3 PORTER-COLOGNE WATER QUALITY CONTROL ACT

The Porter-Cologne Water Quality Control Act, Water Code § 13260, requires that "any person discharging waste, or proposing to discharge waste, within any region that could affect the waters of the State to file a report of discharge" with the RWQCB through an application for waste discharge (Water Code Section 13260(a)(1)). The term "waters of the State" is defined as any surface water or groundwater, including saline waters, within the boundaries of the State (Water Code § 13050(e)). It should be noted that pursuant to the Porter-Cologne Water Quality Control Act, the RWQCB also regulates "isolated wetlands," or those wetlands considered to be outside of the Corps' jurisdiction pursuant to the SWANCC decision (see Corps Section above).

The RWQCB considers any fill in waters of the State to constitute "pollution." Pollution is defined as an alteration of the quality of the waters of the state, which unreasonably affects its beneficial uses (Water Code §13050(1)). The RWQCB litmus test for determining if a project should be regulated pursuant to the Porter-Cologne Water Quality Control Act is if the action could result in any "threat" to water quality.

8.2.4 APPLICABILITY TO PROPOSED PROJECT

M&A does not believe that there are any wetlands or waters onsite that would be regulated pursuant to the Porter Cologne Water Quality Control Act. However, since any "threat" to water quality could conceivably be regulated pursuant to the Porter-Cologne Water Quality Control Act, care will required when constructing the proposed project to be sure that adequate pre- and post-construction Best Management Practices Plan (BMPs) are incorporated into the project implementation plans so that there is no impact to offsite waters.

The RWQCB will be looking for complete pre- and post-BMPs for development of any portion of the project site. This means that a water quality treatment plan for the pre- and post-developed

project site would be required. Preconstruction requirements would be consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES). That is, a *Stormwater Pollution Prevention Plan* (SWPPP) would have to be developed prior to the time the site was graded (see NPDES section below). In addition, a post construction BMPs plan, or a Stormwater Management Plan (SWMP) would have to be developed and incorporated into the site development plan.

It should also be noted that prior to issuance of any permit from the RWQCB this agency will require submittal of a Notice of Determination from the City of San Jose indicating that the proposed project has completed a review conducted pursuant to CEQA. The pertinent sections of the CEQA document (typically the biology section) are often submitted to the RWQCB for review prior to the time this agency will issue a permit for a proposed project.

The project site currently does not have a stormwater drainage system and no municipal provision for stormwater management exists on the site. Rather the property relies on natural flow and offsite roadside ditches to convey stormwater runoff. Therefore, when the property is developed, an onsite drainage system will be constructed that will connect to the existing storm drain system along Quimby Road (S. Lynch, M&A, pers. comm. with G. de Young, Ruth & Going, Project Engineers). Thus, it appears no outfall structure into offsite drainages will need to be constructed. If an outfall permit can be avoided, and there is no other permit required for impacts to offsite Corps regulated areas, the developer would still be culpable to the RWQCB for implementation of a SWMP, but there would be no formal RWQCB regulatory permitting loop that would require the provisions in a SWMP. Regardless, it should be noted that the RWQCB can simply drop by the project site at anytime to see that both a SWPPP and a SWMP are being implemented by the project.

8.2.5 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

In 1972 the Clean Water Act was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) which establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass five (5) or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit. Regulations (Phase II Rule) that became final on December 8, 1999 expand the existing NPDES program to address storm water discharges from construction sites that disturb land equal to or greater than one (1) acre. The one acre threshold was lowered to 10,000 square feet in late 2005.

While federal regulations allow two permitting options for storm water discharges (individual permits and General Permits), the SWRCB has elected to adopt only one statewide General Permit at this time that will apply to all storm water discharges associated with construction activity, except from those on Tribal Lands, in the Lake Tahoe Hydrologic Unit, and those performed by the California Department of Transportation (CalTrans). Construction on Tribal

Lands is regulated by an USEPA permit, the Lahonton Regional Water Control Board adopted a separate NPDES permit for the Lake Tahoe Hydrologic Unit, and the SWRCB adopted a separate NPDES permit for CalTrans projects. The General Permit requires all dischargers where construction activity disturbs greater than 10,000 square feet to:

1. Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.
2. Eliminate or reduce non-storm water discharges to storm sewer systems and other waters of the nation.
3. Perform inspections of all BMPs.

This General Permit is implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs).

The General Permit regulates storm water runoff from construction sites. Regulating many storm water discharges under one permit will greatly reduce the otherwise overwhelming administrative burden associated with permitting individual storm water discharges. Dischargers shall submit a Notice of Intent (NOI) to obtain coverage under this General Permit. It is expected that as the storm water program develops, the RWQCBs may issue General Permits or individual permits containing more specific permit provisions. When this occurs, those dischargers will no longer be regulated by this General Permit.

On August 19, 1999, the State Water Resources Control Board (SWRCB) reissued the General Construction Storm Water Permit (Water Quality Order 99-08-DWQ referred to as "General Permit"). The San Francisco BayKeeper, Santa Monica BayKeeper, San Diego BayKeeper, and Orange Coast Keeper filed a petition for writ of mandate challenging the General Permit in the Superior Court, County of Sacramento. The Court issued a judgment and writ of mandate on September 15, 2000. The Court directed the SWRCB to modify the provisions of the General Permit to require permittees to implement specific sampling and analytical procedures to determine whether Best Management Practices (BMPs) implemented on a construction site are: (1) preventing further impairment by sediment in storm waters discharged directly into waters listed as impaired for sediment or silt, and (2) preventing other pollutants, that are known or should be known by permittees to occur on construction sites and that are not visually detectable in storm water discharges, from causing or contributing to exceedances of water quality objectives. The monitoring provisions in the General Permit have been modified pursuant to the court order.

Types of Construction Activity Covered by the General Permit

Construction activity subject to this General Permit includes clearing, grading, and disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least 10,000 square feet or more of total land area. Construction activity that results in soil disturbances to a smaller area would still be subject to this General Permit if the construction activity is part of a

larger common plan of development that encompasses greater than 10,000 square feet of soil disturbance or if there is significant water quality impairment resulting from the activity. Construction activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety. Dischargers should confirm with the local RWQCB whether or not a particular routine maintenance activity is subject to this General Permit.

8.2.6 APPLICABILITY TO PROPOSED PROJECT

Surface grading and excavation of the project site will exceed 10,000 square feet and thus would be regulated pursuant to the NPDES program. It is the responsibility of the applicant to obtain coverage under the General Permit prior to commencement of construction activities that disturb greater than one acre of area. To obtain coverage, the project proponent (landowner) must file an NOI with a vicinity map and the appropriate fee with the SWRCB. In addition, coverage under this permit shall not occur until the applicant develops an adequate SWPPP for the project. Section A of the General Permit outlines the required contents of a SWPPP. For proposed construction activity on easements or on nearby property by agreement or permission, the entity responsible for the construction activity shall file an NOI and filing fee and shall be responsible for development of the SWPPP, all of which must occur prior to commencement of construction activities.

The NOI must be sent to the following address:

State Water Resources Control Board
Division of Water Quality
Storm Water Permit Unit
1001 I Street, 15th floor
Sacramento, CA 95814
(916) 341-5455

8.3 RWQCB Municipal Storm Water Permitting Program

The Federal Clean Water Act (CWA) requires local municipalities to implement measures to control pollution from their municipal separate storm sewer systems (MS4) to the maximum extent practicable. In addition, the State of California's Porter-Cologne Water Quality Control Act of 1969 and other State legislation require municipalities to protect water quality. On October 14, 2009, the San Francisco Bay Regional Water Quality Control Board (RWQCB) adopted the Municipal Regional Stormwater NPDES Permit (Permit Number CAS612008)* for the San Francisco Bay Region. In an effort to standardize stormwater management requirements throughout the region, this permit replaces the formerly separate countywide municipal stormwater permits with a regional permit for 76 Bay Area municipalities, including the City of San José.

The intent of these various laws and permits is to mitigate potentially detrimental effects of urban runoff through proper site design and source control early in the development review process and to provide guidance in the selection of appropriate Best Management Practices

(BMPs). BMPs are defined as methods, activities, maintenance procedures, or other management practices for reducing the amount of pollution entering a water body. The City of San José Department of Planning, Building and Code Enforcement (PBCE) reviews individual public and private projects for stormwater conformance with applicable laws, policies, and guidelines, and is the lead City agency responsible for implementing the C.3 Provision requirements of the NPDES Permit related to new development and redevelopment.

8.3.1 APPLICABILITY TO THE PROPOSED PROJECT

The C.3 Provisions of the NPDES Permit require each of the co-permittees, including the City of San José, to implement measures/BMPs to reduce stormwater pollution and to reduce increases in stormwater runoff flow, volume, and duration (“hydromodification”) from new development or redevelopment projects. The City has developed several policies that implement Provision C.3 of the NPDES Permit, requiring new development and redevelopment projects to include specific construction and post-construction measures for improving the water quality of urban runoff. The City’s Post-Construction Urban Runoff Management Policy (6-29) established general guidelines and minimum BMPs for specified land uses, and includes the requirement of regular maintenance to ensure their effectiveness.

Later, the City adopted the Post-Construction Hydromodification Management Policy (8-14) to manage development related increases in peak runoff flow, volume and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to local rivers, streams and creeks. Policy 8-14 was revised in February 2010 for consistency with the aforementioned Municipal Regional Stormwater NPDES Permit. Implementation of these policies will reduce potential water quality impacts to less than significant levels.

8.4 California Department of Fish and Game Protections

8.4.1 SECTION 1602 OF CALIFORNIA FISH AND GAME CODE

Pursuant to Section 1602 of the California Fish and Game Code, California Department of Fish and Game (CDFG) regulates activities that divert, obstruct, or alter stream flow, or substantially modify the bed, channel, or bank of a stream which CDFG typically considers to include its riparian vegetation. Any proposed activity in a natural stream channel that would substantially adversely affect an existing fish and/or wildlife resource, would require entering into a Streambed Alteration Agreement (SBAA) with CDFG prior to commencing with work in the stream. However, prior to authorizing such permits, CDFG typically reviews an analysis of the expected biological impacts, any proposed mitigation plans that would be implemented to offset biological impacts and engineering and erosion control plans.

Prior to entering into a SBAA, CDFG will verify that the proposed permitted action has been reviewed pursuant to CEQA. If the proposed permitted action has not been reviewed pursuant to CEQA, CDFG must assume a lead agency role. As lead agency, CDFG will determine either that the proposed permitted action is exempt from CEQA, or that a review must be conducted by CDFG pursuant to the CEQA. If CDFG becomes the “lead agency” reviewing a proposed action, they will charge the project applicant an hourly rate for their services conducting the CEQA review. When applicants provide evidence of a completed CEQA review by a lead agency other

than CDFG, CDFG typically will not issue a SBAA until it reviews the Notice of Determination (NOD) issued by the lead agency for the proposed project. To be found acceptable, the CEQA document should include a discussion of the proposed permitted action subject to review by the CDFG.

When reviewing proposed development plans, CDFG examines stream set-back proposals, and may require set-backs of 25 feet to 100 feet from the "top-of-bank." Setbacks can also be at the top-of-bank or edge of riparian vegetation. Setbacks are dependent upon the resources being protected. The less value the smaller the set-back requirement. When proposed projects would not result in significant adverse biological impacts, or if such impacts would be adequately mitigated to a level considered less than significant, CDFG will enter into a SBAA with project applicants. The SBAA presents conditions that the applicant must follow to remain in compliance with Fish and Game Code. These conditions often include prohibiting work in a stream channel between October 15 and June 1st.

8.4.2 APPLICABILITY TO THE PROPOSED PROJECT

The project site does not support any stream channels or riparian vegetation and no offsite stream channels are proposed to be impacted under the proposed project; hence, prior authorization from CDFG pursuant to Section 1602 of Fish and Game Code is not necessary for this project.

9. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REGULATIONS

A CEQA lead agency must determine if a proposed activity constitutes a project requiring further review pursuant to CEQA. Pursuant to CEQA, a lead agency would have to determine if there could be significant adverse impacts to the environment. Typically, if within city limits, the city would be the CEQA lead agency. If a discretionary permit would be required for a project (for example, a grading permit must be issued), the lead agency typically must determine if there could be significant environmental impacts. This is usually accomplished by an "initial study." If there could be significant environmental impacts, the lead agency must determine an appropriate level of environmental review prior to approving and/or otherwise permitting the impacts. In some cases, there are "Categorical Exemptions" that apply to the proposed activity; thus the activity is exempt from CEQA. The Categorical Exemptions are provided in CEQA. There are also Statutory Exemptions in CEQA that must be investigated for any proposed project. If the project is not exempt from CEQA, the lowest level of review typically reserved for projects with no significant affects on the environment would be for the lead agency to prepare a "Negative Declaration." If a proposed project would have only minimal impacts that can be mitigated to a level of no significance pursuant to CEQA, then a "Mitigated Negative Declaration" is typically prepared by the lead agency. Finally those projects that may have significant effects on the environment, or that have impacts that can't be mitigated to a level considered less than significant pursuant to CEQA, typically must be reviewed via an Environmental Impact Report (EIR). All CEQA review documents are subject to public circulation, and review and comment periods.

A Public Agency must conduct an Initial Study. After determining there are no significant adverse impacts, the Public Agency must circulate a "Notice of Intent" to adopt a Negative Declaration. This document goes to the State Clearing House which may or may not send it out to appropriate resource agencies and the public. There is a 30-day comment period allowed the

agencies/public at large prior to time that the Public Agency can adopt the Negative Declaration. After Adoption, there is then a 30 day challenge period in which the public and/or the resource agencies can challenge the Negative Declaration. At the end of this 30-day period, if there are no challenges, the Public Agency would then file a "Notice of Determination" with the County Clerk and the State Clearing House. This notice lets everyone know that the Negative Declaration and project was adopted by the lead agency.

Section 15380 of CEQA defines "endangered" species as those whose survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. "Rare" species are defined by CEQA as those who are in such low numbers that they could become endangered if their environment worsens; or the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in FESA. The CEQA Guidelines also state that a project will normally have a significant effect on the environment if it will "substantially affect a rare or endangered species of animal or plant or the habitat of the species." The significance of impacts to a species under CEQA, therefore, must be based on analyzing actual rarity and threat of extinction to that species despite its legal status or lack thereof.

9.1.1 APPLICABILITY TO THE PROPOSED PROJECT

This Biological Resources Constraints Analysis has been prepared to assist the City of San Jose with any CEQA review (for example, a Mitigated Negative Declaration) they may prepare for this project/project site.

10. CITY OF SAN JOSE TREE ORDINANCE

According to the City of San Jose Municipal Code, a "tree" shall mean any live or dead woody perennial plant characterized by having a main stem or trunk which measures fifty-six (56) inches or more in circumference (28 inches in diameter) at a height of twenty-four (24) inches above natural grade slope. A multi-trunk tree shall be considered a single tree and measurement of that tree shall include the sum of the circumference of the trunks of that tree at a height of twenty-four (24) inches above natural grade slope. (Per Chapter 13.32 of Title 13 of the San Jose Municipal Code.)

For single family and two-family residences, a Tree Removal Permit is required for the removal of any tree on private property which has a trunk circumference (measured two feet above grade) of 56 inches or greater. There is no fee for this permit if the tree is already dead, however, if the tree is living, then a public hearing will be required and a public noticing fee will be assessed. Two copies of a site plan, photographs, and an explanation of the reasons why the tree should be removed need to be included with your application.

For multi-family residences and for commercial and industrial properties, a Permit is required for the removal of trees of any size. For removal of trees that are fifty six (56) inches in circumference or more, a Tree Removal Permit is required. For removal of trees less than 56 inches in circumference a Permit Adjustment is required.

10.1 Applicability to the Proposed Project

The project site supports a number of trees, both native California species and non-native species, such as black walnut, Peruvian pepper tree, almond tree, cherry plum, pear tree, and a coast live oak tree. Since a multi-family residential development is proposed for the project site, removal of any of these trees would require a permit from the City of San Jose.

11. REVIEW OF PERTINENT ISSUES – OTHER RECOMMENDATIONS

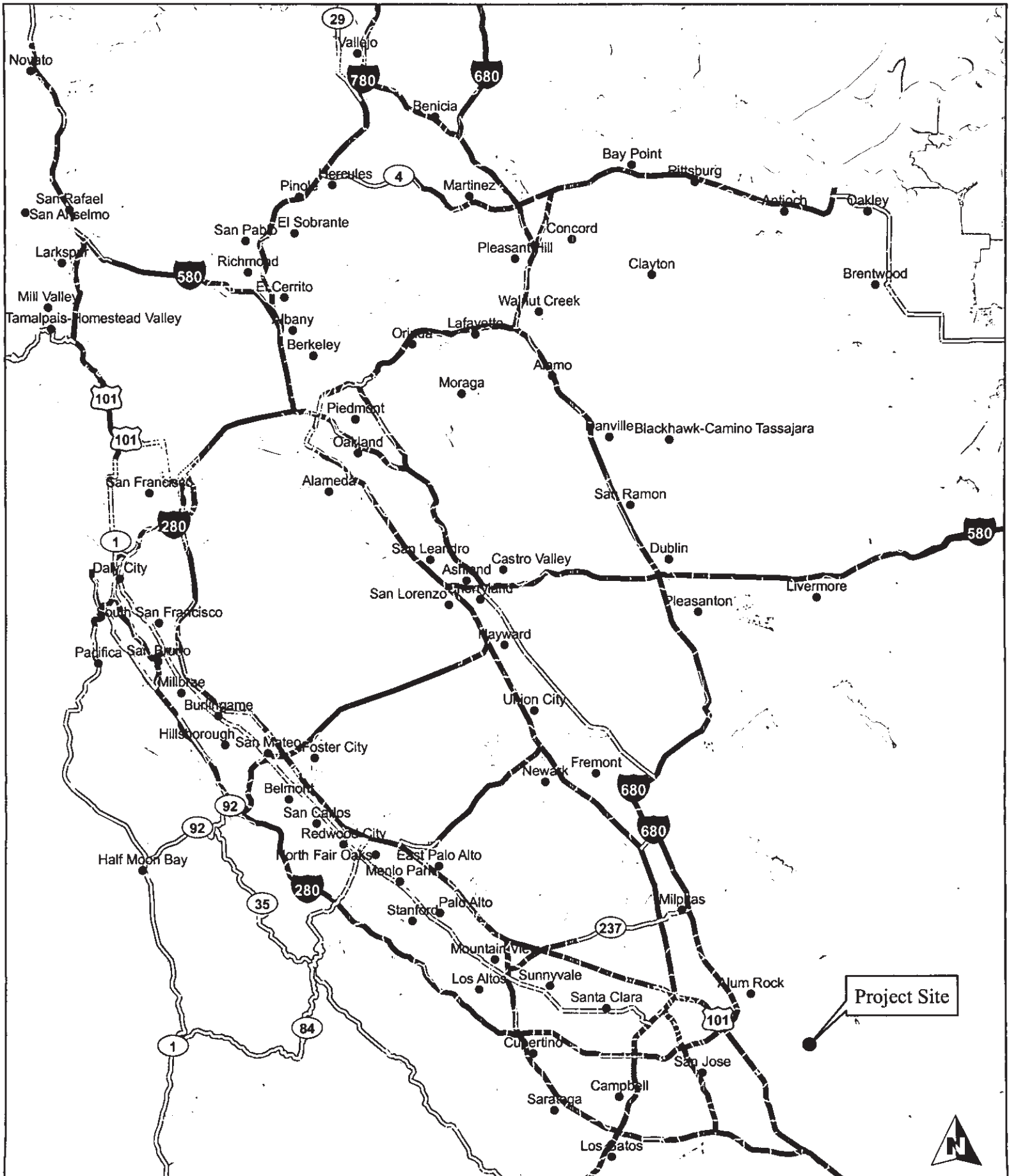
1. The project site provides suitable habitat for the western burrowing owl. None were observed onsite during M&A's May 2010 survey; however, this is a mobile species that could move onto the site in the future. Implementation of a project on this project site without first conducting focused surveys for western burrowing owl would be a *potentially significant impact pursuant to CEQA*. This impact could be mitigated to a level considered less than significant by implementing focused surveys as described in Section 6.3.1 of this report and implementing appropriate mitigation for any owls identified onsite.
2. The existing structures on the project site provide suitable habitat for the long-eared myotis bat and the pallid bat (the words "suitable habitat" do not mean that these bat species are present onsite, only that the conditions are suitable for their presence). The pallid bat is a California species of special concern. The long-eared myotis and the pallid bat have been identified roosting together within 0.25-mile of the project site. Focused surveys for these bats were not conducted during M&A's May 2010 field reconnaissance. Implementation of the proposed project on this project site without first conducting focused surveys for special-status bat species would be a *potentially significant impact pursuant to CEQA*. This impact could be mitigated to a level considered less than significant by contracting with a bat biologist and having this biologist conduct focused surveys for bats prior to building removal/demolition. If bats are found during the survey they would need to be evicted by the bat biologist in a harmless manner.
3. The trees on the project site provide suitable nesting habitat for passerine (perching) birds. California Fish and Game Code §3503, 3503.5, and 3800 prohibits the "take, possession, or destruction of birds, their nests or eggs." Disturbance that causes nest abandonment and/or loss of reproductive effort (killing or abandonment of eggs or young) is considered a "take." Such a take would also violate federal law protecting migratory birds (Migratory Bird Treaty Act). Hence, if site grubbing, grading, or tree removal would take place during the nesting season (February 15 through August 1) a survey for nesting birds should be conducted prior to such activities. Implementation of the proposed project during the nesting season without conducting a nesting bird survey would be a *potentially significant impact pursuant to CEQA*. This impact could be mitigated to a less than significant level by conducting a nesting bird survey prior to site work and establishing a non-disturbance buffer zone (fenced with orange construction fencing) around any active nest tree until a qualified biologist determines that the birds are finished nesting.

4. Surface grading and excavation of the project site will exceed 10,000 square feet and thus would be regulated pursuant to the NPDES program. Surface grading of 10,000 square feet or greater without prior coverage under the NPDES program would be a *significant adverse impact pursuant to CEQA*. To mitigate this impact to a less than significant level it is the responsibility of the applicant to obtain coverage under the General Permit prior to commencement of construction activities that disturb greater than 10,000 square feet of area. To obtain coverage, the project proponent must file an NOI with a vicinity map and the appropriate fee with the SWRCB. Please see Section 8.2.6 for further details.

5. The project site supports a number of trees, both native California species and non-native species, such as black walnut, Peruvian pepper tree, almond, cherry plum, coast live oak, and pear tree. Since a multi-family residential development is proposed for the project site, removal of any of these trees would require a permit from the City of San Jose. Tree removal without a permit from the City of San Jose would constitute a *significant adverse impact pursuant to CEQA*. This impact could be mitigated to a level considered less than significant by obtaining a tree permit from the City.

12. LITERATURE CITED

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- CNDDDB (California Natural Diversity Data Base). 2010. RareFind 3.2. Computer printout for special-status species within a 5-mile radius of the project site. California Natural Heritage Division, California Department of Fish and Game, Sacramento, CA.
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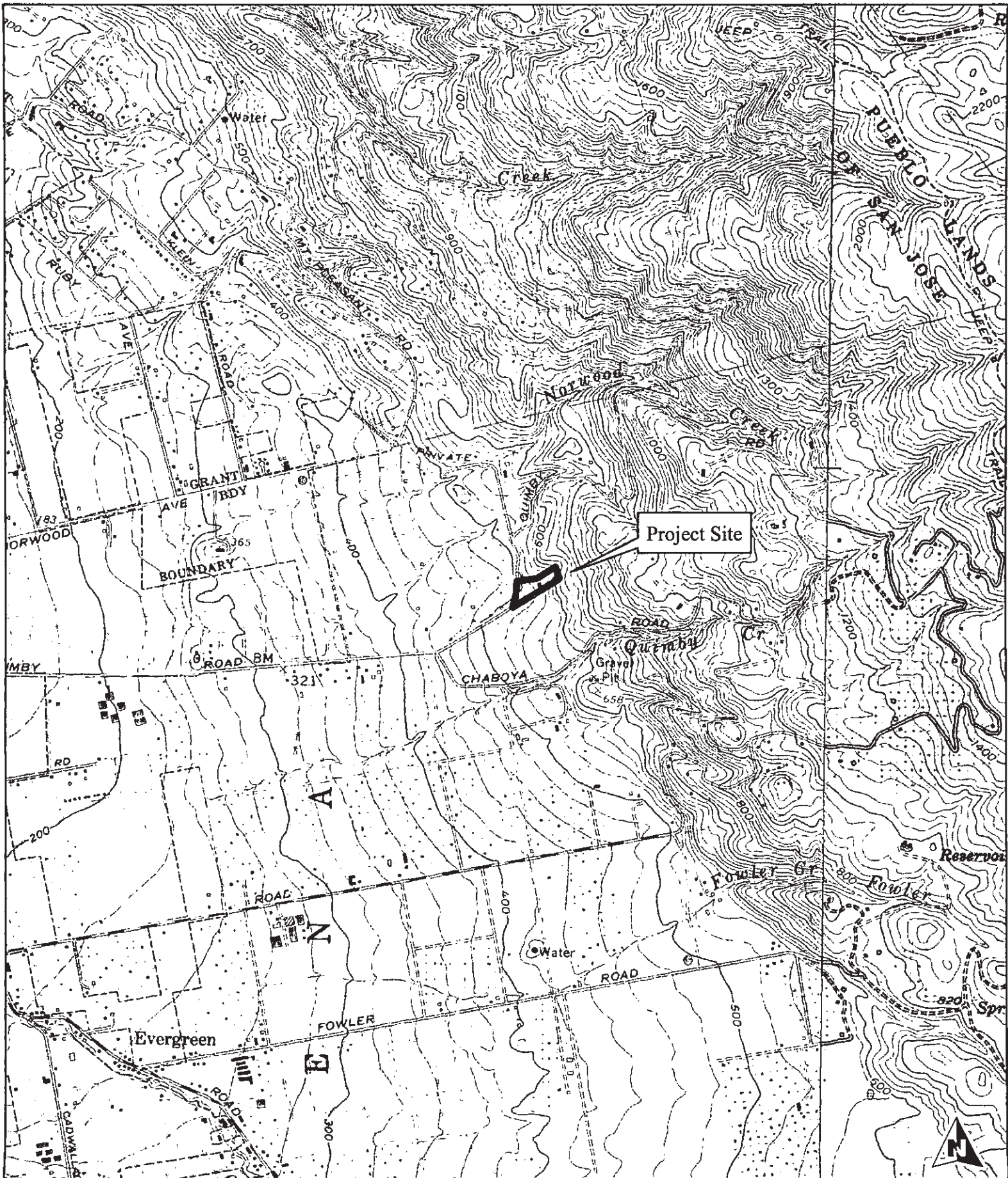


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Figure 1 Huang/Quimby Road Project Site Regional Map
 San Jose, California

County: Santa Clara
 Map Preparation Date: May 6, 2010



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Figure 2 Huang/Quimby Road Project Site Location Map
 San Jose, California

7.5-Minute San Jose East quadrangle
 Topography Source: <http://gis.ca.gov>
 Map Preparation Date: May 6, 2010



Project Site

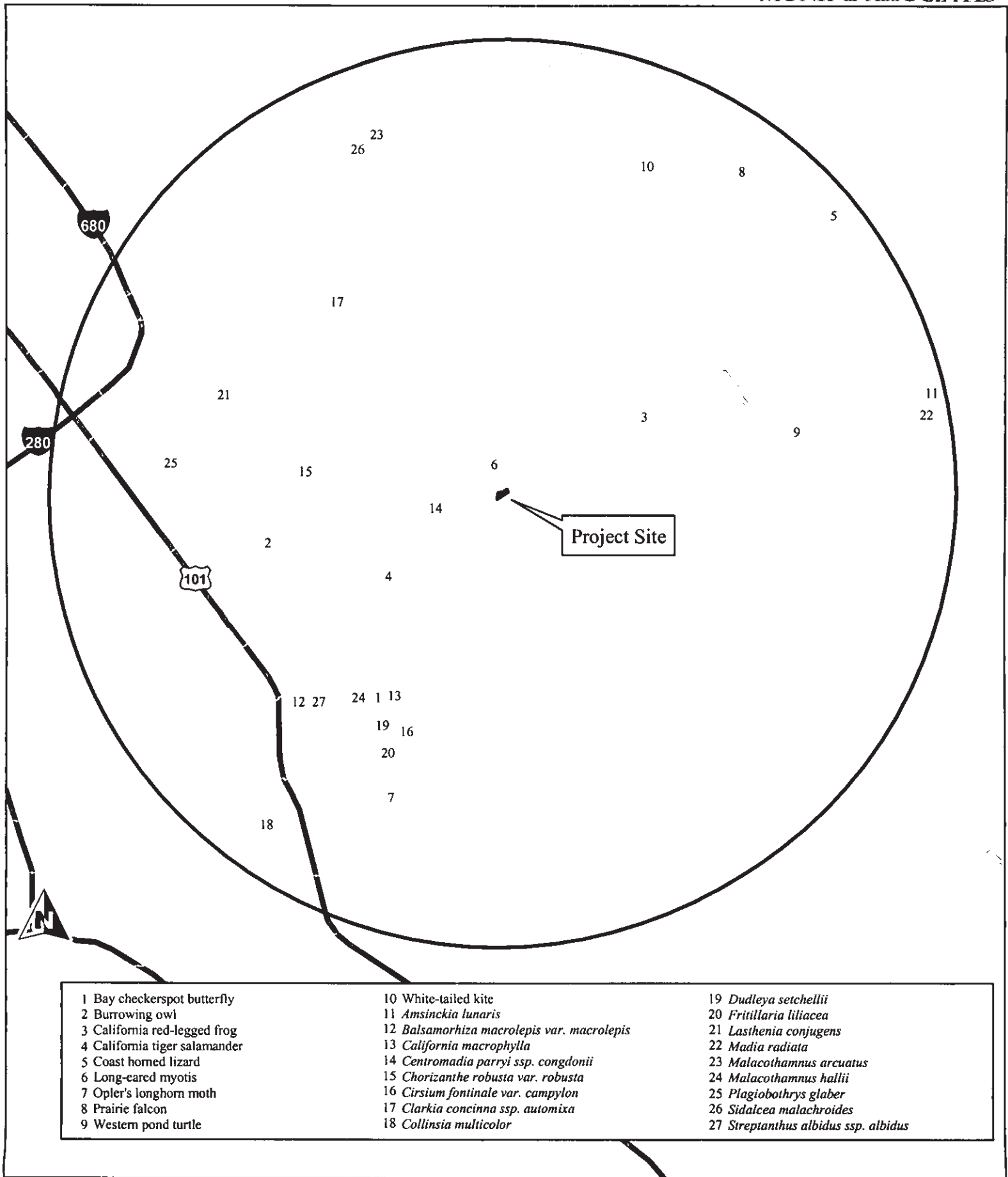


0 100 200 400 600 800 1,000 Feet

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Figure 3. Aerial Photograph of the
Huang/Quimby Road Project Site
San Jose, California

Map Preparation Date: May 6, 2010
Aerial Photograph Source: <http://www.atlas.ca.gov>



- | | | |
|-------------------------------|----------------------------------------------------------|----------------------------------------------------|
| 1 Bay checkerspot butterfly | 10 White-tailed kite | 19 <i>Dudleya setchellii</i> |
| 2 Burrowing owl | 11 <i>Amsinckia lunaris</i> | 20 <i>Fritillaria liliacea</i> |
| 3 California red-legged frog | 12 <i>Balsamorhiza macrolepis</i> var. <i>macrolepis</i> | 21 <i>Lasthenia conjugens</i> |
| 4 California tiger salamander | 13 <i>California macrophylla</i> | 22 <i>Madia radiata</i> |
| 5 Coast horned lizard | 14 <i>Centromadia parryi</i> ssp. <i>congdonii</i> | 23 <i>Malacothamnus arcuatus</i> |
| 6 Long-eared myotis | 15 <i>Chorizanthe robusta</i> var. <i>robusta</i> | 24 <i>Malacothamnus hallii</i> |
| 7 Opler's longhorn moth | 16 <i>Cirsium fontinale</i> var. <i>campylon</i> | 25 <i>Plagiobothrys glaber</i> |
| 8 Prairie falcon | 17 <i>Clarkia concinna</i> ssp. <i>automixa</i> | 26 <i>Sidalcea malachroides</i> |
| 9 Western pond turtle | 18 <i>Collinsia multicolor</i> | 27 <i>Streptanthus albidus</i> ssp. <i>albidus</i> |

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Figure 4. Closest Known Records for Special-Status Species Within 5 Miles of the Huang/Quimby Road Project Site

— 5 - Mile Radius
 Map Preparation Date: June 16, 2010
 Source: CDFG, California Natural Diversity Data Base, 2010

Table 1
Plant Species Observed on the Quimby Road Project Site

Gymnosperms**Cupressaceae***Callitropsis sp.*

Cypress

Angiosperms - Dicots**Asteraceae***Baccharis pilularis*

Coyote brush

**Carduus acanthoides*

Plumeless thistle

**Centaurea calcitrapa*

Purple star-thistle

**Centaurea solstitialis*

Yellow star-thistle

**Hypochaeris glabra*

Smooth cat's-car

**Silybum marianum*

Milk thistle

**Sonchus oleraceus*

Common sow-thistle

Brassicaceae**Hirschfeldia incana*

Short-podded mustard

Lepidium densiflorum var. densiflorum

Miner's pepper

**Sinapis arvensis*

Wild mustard

**Sisymbrium altissimum*

Tumble mustard

Caryophyllaceae**Silene gallica*

Windmill-pink

Fabaceae**Medicago polymorpha*

California burclover

**Trifolium fragiferum*

Strawberry clover

**Trifolium hirtum*

Rose clover

Fagaceae*Quercus agrifolia var. agrifolia*

Coast live oak

Geraniaceae**Erodium cicutarium*

Red-stem filaree

Lamiaceae**Marrubium vulgare*

Horehound

Myrsinaceae**Anagallis arvensis*

Scarlet pimpernel

Papaveraceae*Eschscholzia californica*

California poppy

Polygonaceae**Rumex pulcher*

Fiddle dock

Ranunculaceae**Ranunculus muricatus*

Spiny-fruit buttercup

Rubiaceae**Sherardia arvensis*

Field madder

* Indicates a non-native species

Angiosperms -Monocots

Poaceae

**Bromus diandrus*
**Bromus hordeaceus*
**Cynodon dactylon*
**Hordeum murinum*
**Poa annua*
**Vulpia bromoides*

Ripgut grass
Soft chess
Bermuda grass
Foxtail barley
Annual bluegrass
Brome fescue

Table 2
Wildlife Species Observed on the Quimby Road Project Site

Birds

Turkey vulture	<i>Cathartes aura</i>
Anna's hummingbird	<i>Calypte anna</i>
Say's phoebe	<i>Sayornis saya</i>
Western kingbird	<i>Tyrannus verticalis</i>
Oak titmouse	<i>Baeolophus inornatus</i>
House wren	<i>Troglodytes aedon</i>
Northern mockingbird	<i>Mimus polyglottos</i>
California towhee	<i>Pipilo crissalis</i>
Brewer's blackbird	<i>Euphagus cyanocephalus</i>
House finch	<i>Carpodacus mexicanus</i>
Lesser goldfinch	<i>Carduelis psaltria</i>

Mammals

California ground squirrel	<i>Spermophilus beecheyi</i>
Botta's pocket gopher	<i>Thomomys bottae</i>
Columbian black-tailed deer	<i>Odocoileus hemionus columbianus</i>
California meadow vole	<i>Microtus californicus</i>

Table 3

Special-Status Plant Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Asteraceae <i>Balsamorhiza macrolepis macrolepis</i> Big-scale balsam-root	Fed: - State: - CNPS: List 1 B.2	March-June	Chaparral; cismontane woodland; valley and foothill grassland; [sometimes serpentine]. Elevation 90-1555 meters.	Closest known occurrence is 3.31 miles SW of the project site (Occurrence No. 21).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Centromadia parryi congdonii</i> Congdon's tarplant	Fed: - State: - CNPS: List 1 B.2	May-November	Valley and foothill grassland (alkaline). Elevation 1 - 230 meters.	Closest known occurrence is 0.34 miles W of the project site (Occurrence No. 40).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Cirsium fontinale campylon</i> Mount Hamilton thistle	Fed: - State: - CNPS: List 1 B	April-October	Chaparral; cismontane woodland; valley and foothill grassland; [serpentine seeps].	Closest known occurrence is 2.76 miles SW of the project site (Occurrence No. 44).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Lasthenia conjugens</i> Contra Costa goldfields	Fed: FE State: - CNPS: List 1 B.1	March-June	Valley and foothill grassland (mesic); vernal pools; cismontane woodlands; playas. Elevation 0-470 meters.	Known to occur 3.15 miles NW of the project site (Occurrence No. 14).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Madia radiata</i> Showy madia	Fed: - State: - CNPS: List 1 B.1	March-May	Cismontane woodland; valley and foothill grassland. Elevation 25-900 meters.	Closest known occurrence is 4.98 miles E of the project site (Occurrence No. 43).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Boraginaceae <i>Amsinckia lunaris</i> Bent-flowered fiddleneck	Fed: - State: - CNPS: List 1 B.2	March-June	Coastal bluff scrub; cismontane woodland; Valley and foothill grassland. Elevation 3-500 meters.	Closest known occurrence is 4.91 miles E of the project site (Occurrence No. 34).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.

Table 3

Special-Status Plant Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Plagiobothrys glaber Hairless popcornflower	Fed: - State: - CNPS: List 1A	March-May	Meadows and seeps (alkaline); marshes and swamps (coastal salt). Elevation 15-180 meters.	Closest known occurrence is 3.58 miles W of the project site (Occurrence No. 3).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Brassicaceae <i>Sireptanthus albidus albidus</i> Metcalf Canyon jewelflower	Fed: FE State: - CNPS: List 1B	April-July	Valley and foothill grassland (serpentine).	Closest known occurrence is 3.16 miles SW of the project site (Occurrence No. 18).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Crassulaceae <i>Dudleya setchellii</i> Santa Clara Valley dudleya	Fed: FE State: - CNPS: List 1B.1	May-July	Valley and foothill grassland (serpentine).	Closest known occurrence is 2.71 miles SW of the project site (Occurrence No. 7).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Geraniaceae <i>Callifornia macrophylla</i> Large-leaf storks-bill	Fed: - State: - CNPS: List 1B.1	March-May	Cismontane woodland; valley and foothill grassland/clay. Elevation 15-1200 meters.	Closest known occurrence is 2.29 miles SW of the project site (Occurrence No. 93).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Liliaceae <i>Fritillaria liliacea</i> Fragrant fritillary	Fed: - State: - CNPS: List 1B.2	February-April	Cismontane woodland, coastal prairie; coastal scrub; valley and foothill grassland; [often serpentine]. Elevation 3-410 meters.	Closest known occurrence is 2.92 miles SW of the project site (Occurrence No. 32).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.

Table 3
Special-Status Plant Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Malvaceae <i>Malacothamnus arcuatus</i> Arcuate bush mallow	Fed: - State: - CNPS: List 1 B, 2	April-September	Chaparral, cismontane woodland. Elevation 15-355 meters.	Closest known occurrence is 3.97 miles N of the project site (Occurrence No. 8).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Malacothamnus hallii</i> Hall's bush mallow	Fed: - State: - CNPS: List 1 B, 2	May-October	Chaparral, coastal scrub. Elevation 10-760 meters.	Closest known occurrence is 2.60 miles SW of the project site (Occurrence No. 8).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
<i>Sidaicea malachroides</i> Maple-leaved checkerbloom	Fed: - State: - CNPS: List 1 B	May-August	Broad-leaved upland forest; coastal prairie; north coast coniferous forest; [often in disturbed areas].	Closest known occurrence is 3.95 miles N of the project site (Occurrence No. 5).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Onagraceae <i>Clarkia concinna autommi.xa</i> Santa Clara red ribbons	Fed: - State: - CNPS: List 4	April-July	Cismontane woodland; chaparral.	Closest known occurrence is 2.67 miles NW of the project site (Occurrence No. 10).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.
Plantaginaceae <i>Collinsia multicolor</i> San Francisco collinsia	Fed: - State: - CNPS: List 1 B, 2	March-May	Closed-cone coniferous forest; coastal scrub. Elevation 30-250 meters.	Closest known occurrence is 4.42 miles SW of the project site (Occurrence No. 2).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.

Table 3

Special-Status Plant Species Known to Occur within Five Miles of the Huang/Quimby Road Project Site

Family Taxon Common Name	Status*	Flowering Period	Habitat	Area Locations	Probability on Project Site
Polygonaceae <i>Chorizanthe robusta robusta</i> Robust spineflower	Fed: FE State: - CNPS: List 1B.1	April-September	Chaparral (maritime); sismontane woodland (openings); coastal dunes; coastal scrub/sandy or gravelly. Elevation 3-300 meters.	Closest known occurrence is 2.00 miles W of the project site (Occurrence No. 19).	None. Grazed, ruderal site; no suitable habitat onsite. Was not observed during a May 2010 survey. No impacts to this species expected from site development.

*Status

Federal:

- FE - Federal Endangered
- FT - Federal Threatened
- FPE - Federal Proposed Endangered
- FPT - Federal Proposed Threatened
- FC - Federal Candidate

State:

- CE - California Endangered
- CT - California Threatened
- CR - California Rare
- CC - California Candidate
- CSC - California Species of Special Concern

CNPS:

- List 1A - Presumed extinct in California
- List 1B - Plants rare, threatened, or endangered in California and elsewhere
- List 1B.1 - Seriously endangered in California (over 80% occurrences threatened/
high degree and immediacy of threat)
- List 1B.2 - Fairly endangered in California (20-80% occurrences threatened)
- List 1B.3 - Not very endangered in California (<20% of occurrences threatened or no
current threats known)

CNPS Continued:

- List 2 - Plants rare, threatened, or endangered in California, but more common
elsewhere
- List 2.1 - Seriously endangered in California, but more common elsewhere
- List 2.2 - Fairly endangered in California, but more common elsewhere
- List 2.3 - Not very endangered in California, but more common elsewhere
- List 3 - Plants about which we need more information (Review List)
- List 3.1 - Plants about which we need more information (Review List)
- List 3.2 - Seriously endangered in California
- List 3.3 - Plants about which we need more information (Review List)
- List 4 - Plants of limited distribution - a watch list

Table 4

Special-Status Wildlife Species Known to Occur within Five Miles of the Quimby Road Project Site

Species	*Status	Habitat	Closest Locations	Probability on Project Site
Insects				
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>	Fed: FT State: - Other:	Found in serpentine grasslands around San Francisco Bay. Dwarf plantain (<i>Plantago erecta</i>) is the larvae's host plant. Owl's-clover (<i>Castilleja spp.</i>) is a nectar source.	Closest known occurrence is 2.81 miles SE of the project site (Occurrence No. 13)	None. No serpentine soils or rock outcrops. No larval host plants. No impacts to this species expected from site development.
Amphibians				
California tiger salamander <i>Ambystoma californiense</i>	Fed: FT State: CC Other:	Found in grassland habitats of the valleys and foothills. Requires burrows for aestivation and standing water until late spring (May) for larvae to metamorphose.	Closest known occurrence is a 1970 museum record of a larva collected ~1.41 miles W of the project site (Occurrence No. 537). In 2002 this location was found to be developed with housing tracts. No habitat remains.	None. No aquatic habitat onsite. Unlikely that <i>CTS aestivate</i> onsite since the site is >1.50 miles from any potential breeding habitat. No impacts to this species expected from site development.
California red-legged frog <i>Rana draytonii</i>	Fed: FT State: CSC Other:	Occurs in lowlands and foothills in deeper pools and streams, usually with emergent wetland vegetation. Requires 11-20 weeks of permanent water for larval development.	Closest known occurrence is 1.67 miles NE of the project site (Occurrence No. 752).	None. No aquatic habitat on or adjacent to the project site. No impacts to this species expected from project site development.
Reptiles				
Western pond turtle <i>Actinemys marmorata (= Clemmys m.)</i>	Fed: -- State: CSC Other:	Inhabits ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Needs suitable basking sites and upland habitat for egg laying. Occurs in the Central Valley and Contra Costa County.	Closest known occurrence is 3.27 miles E of the project site (Occurrence No. 271).	None. No suitable habitat present onsite. No impacts to this species expected from site development.
Coast horned lizard <i>Phrynosoma blainvillii</i>	Fed: -- State: CSC Other:	The Coast Horned Lizard's range extends from northern California to the tip of Baja California. It frequents areas with a abundant, open vegetation such as chaparral or coastal sage scrub with sandy substrates.	Closest known occurrence is 4.82 miles NE of the project site (Occurrence No. 625).	None. No suitable habitat or substrates present onsite. No impact to this species expected from site development.

Table 4

Special-Status Wildlife Species Known to Occur within Five Miles of the Quimby Road Project Site

Species	*Status	Habitat	Closest Locations	Probability on Project Site
Birds				
White-tailed kite <i>Elanus leucurus</i>	Fed: - State: WL Other: *	Found in lower foothills and valley margins with scattered oaks and along river bottomlands or marshes adjacent to oak woodlands. Nests in trees with dense tops.	Closest known occurrence is 3.88 miles NE of the project site (Occurrence No. 82).	None. Trees onsite too small to provide nesting habitat. No impacts to this species expected from site development.
Prairie falcon <i>Falco mexicanus</i>	Fed: - State: WL Other: *	Inhabits dry, open terrain. Nests on cliffs and forages over wide areas.	Closest known occurrence is 3.25 miles NE of the project site (Occurrence Nos. 155, 489, 473).	None. No suitable nesting habitat onsite. No impacts to this species expected from site development.
Western burrowing owl <i>Athene cunicularia hyzargaea</i>	Fed: -- State: CSC Other: *	Found in open, dry annual or perennial grasslands, deserts and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably, the California ground squirrel.	Closest known occurrence is 2.59 miles W of the project site (Occurrence No. 429).	Moderate. Site is sparsely vegetated with a few ground squirrel burrows; hence, suitable habitat present. Surveys necessary prior to site development. See text.
Mammals				
Long-eared myotis bat <i>Myotis evotis</i>	Fed: -- State: - Other: -	Found in shrub, woodland, and forest habitats. Prefers coniferous woodlands and forests. Uses buildings, crevices, and space under bark and twigs for nurseries. Roosts in caves.	Closest known occurrence is 0.23-mile N of the project site (Occurrence No. 108).	Low to moderate. Sheds and coops onsite provide potential roosting habitat. Surveys would need to be conducted to determine presence/absence. See text.
Pallid bat <i>Antrozous pallidus</i>	Fed: - State: CSC Other: -	Occurs in deserts, grasslands, shrublands, woodlands, and forests. Most common in dry habitats with rocky areas for roosting.	Closest known occurrence is 0.23-mile N of the project site (long-eared myotis Occurrence No. 108).	Low to moderate. Sheds and coops onsite provide potential roosting habitat. Surveys would need to be conducted to determine presence/absence. See text.

Table 4
Special-Status Wildlife Species Known to Occur within Five Miles of the Quimby Road Project Site

Species	*Status	Habitat	Closest Locations	Probability on Project Site
<p>*Status</p> <p>Federal: FE - Federal Endangered FT - Federal Threatened FPE - Federal Proposed Endangered FPT - Federal Proposed Threatened FC - Federal Candidate FPD - Federally Proposed for delisting</p> <p>State: CE - California Endangered CT - California Threatened CR - California Rare CC - California Candidate CSC - California Species of Special Concern WL - Watch List Not protected pursuant to CEQA</p> <p>*Other: Most birds have protection under the Migratory Bird Treaty Act. Raptors and their nests are protected by provisions of the California Fish and Game Code. A few species, such as the monarch butterfly and "California Fully Protected Animals," may be protected by policies of the California Department of Fish and Game.</p>				

September 15, 2011

Euson Huang
c/o Ruth & Going, Inc.
P.O. Box 26460
San Jose, CA 95159-6460

Attention: Gerry De Young

Gentlemen:

SUBJECT: CERTIFICATE OF GEOLOGIC HAZARD CLEARANCE
PROPOSED SEVEN LOT SFD RESIDENTIAL DEVELOPMENT (PDC10-002)
3770 QUIMBY ROAD; APN 659-25-001 AND 002
PROJECT NO: 10-016926-GC (3-18512)

In response to your application, this serves as a Certificate of Geologic Hazard Clearance to construct a 7 lot single family detached residential subdivision development on the above site. The following reports and plans submitted in support of your application have been reviewed and accepted:

1. *"Geologic Hazards Evaluation Update and Fault Investigation Study, Proposed Subdivision, of 2.84 Acre Site (APN's 659-25-001, -002) 3770 Quimby Road, San Jose, California,"* by ES Geotechnologies, November 14, 2008.
2. *"Quantitative Slope Stability Analysis, 3770 Quimby Road, San Jose, California,"* by Earth Systems Pacific, August 12, 2011
3. *"General Development Plan – Exhibit "C", Conceptual Grading Plan, Huang/Quimby Road, San Jose, California,"* by Ruth & Going, Inc., July 22, 2011, Sheet 5.

Conditions of Clearance

Approval of this Geologic Hazard Clearance is contingent upon the following conditions:

1. All recommendations of the project geotechnical and geologic reports and geotechnical consultant must be followed. All geotechnical constraints and methods of geologic/seismic hazard mitigation identified in your reports must be implemented.
2. A soil engineering investigation must be performed for the project and the report accepted by the City Geologist prior to grading permit issuance. The report should present geotechnical engineering recommendations for residence and retaining wall foundations, grading, drainage and other geotechnical aspects of the project as recommended in Reference 2.

3. This Clearance applies only to the project specified in References 1, 2 and 3 above. Any changes in the geotechnical or civil engineering consultants, reports or plans of record or the project design, location, or concept must be reviewed by the City's Engineering Geologist. Significant changes may require a new Geologic Hazard Clearance.
4. All earthwork, foundation installation, drainage improvements, geologic hazard mitigation measures and related facilities must be inspected by project Engineering Geologist and Geotechnical Engineer during each phase of site grading and construction, and documented by submission to the City of final geotechnical and geologic reports.
5. If any unanticipated hazardous geologic or subsurface conditions are encountered during the grading, or if there are any modifications in the grading or geologic hazard mitigation measures, the City's Engineering Geologist must be immediately notified. In such an event, a supplemental geologic/ geotechnical investigation must be performed and submitted to the City for review and approval prior to progressing further with the project.

NOTE: Failure to comply with these conditions shall render this Certificate null and void. Non-compliance shall constitute a violation of the San Jose Municipal Code and may result in penalties as described in Section 1.08.101 of the Municipal Code including, but not limited to: 1) suspension or revocation of any development permits obtained with this Certificate, and 2) withholding of final acceptance and release of any surety bonds deposited for the project.

LIMITATIONS

As stated in Section 17.10.400 of the San Jose Municipal Code, this Certificate of Geologic Hazard Clearance is not a determination that the site is free of geologic hazards. This Geologic Hazard Clearance is based on the geologic information provided and the proposed geologic hazard mitigation measures. On the basis of this information, it is the opinion of the Director of Public Works that the geologic hazards can be mitigated to an acceptable degree and/or that the risk from potential geologic hazards associated with the site is acceptable for the proposed project. However, the City reserves the right to revoke this Clearance at any time, if it becomes apparent that there are geologic hazards present which have not, or cannot be adequately mitigated.

The function of the City is limited to a review of the consultants' conclusions and recommendations relative to the use of acceptable geological and geotechnical practices. The City has not directed, or in any way undertaken an independent investigation of this site. Therefore, the City of San Jose relies entirely upon the data and conclusions provided by the geological and geotechnical professionals who assume all liability for any damage resulting from their failure to obtain sufficient data, and misrepresentations or misinterpretations of the data submitted. This clearance does not pertain to assessment or mitigation of environmental hazards such as the presence of toxic substances or hazardous waste on the site.

Euson Huang
Date: September 15, 2011
Subject: 10-016926-GC
Page 3 of 3

This Certificate of Geologic Hazard Clearance is for the exclusive use of the applicant (addressee) only and is non-transferable to a second party unless it has been demonstrated to the satisfaction of the Director of Public Works that: 1) all rights to the grading plans, reports and professionals of record referenced in this Clearance have been secured/retained by the second party by contract, 2) all Conditions of Clearance will be met, and, 3) it has been established that the second party accepts full responsibility for implementing the Conditions of Clearance.

The issuance of a Geologic Hazard Clearance does not authorize the applicant to develop or begin construction. The applicant must obtain all of the necessary site development permits, such as planning, grading and building permits, before development can take place. This Clearance expires three years from the date of issuance.

If you have any questions, please contact me at (408) 535-7646.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Shimamoto", written in a cursive style.

Michael K. Shimamoto
Engineering Geologist
Development Services Division

March 18, 2011

Euson Huang
c/o Ruth & Going, Inc.
P.O. Box 26460
San Jose, CA 95159-6460

Attention: Gerry De Young

Gentlemen:

SUBJECT: REVIEW OF "RESPONSE TO PRELIMINARY GEOLOGIC/SEISMIC HAZARD REVIEW" LETTER BY EARTH SYSTEMS PACIFIC PROPOSED SEVEN LOT SFD RESIDENTIAL DEVELOPMENT (PDC10-002) 3770 QUIMBY ROAD PROJECT NO: 10-016926-GC (3-18512)

We have reviewed the following documents submitted in support of your application for a Geologic Hazard Clearance for the above project:

1. *"Response to Preliminary Geologic/Seismic Hazard Review, City of San Jose, dated October 25, 2010, CSJ Project No. 10-016926-GC (3-18512), Parcel Subdivision of 2.84 Acre Site (APN's 659-25-001, -002) 3770 Quimby Road, San Jose, California,"* by Earth Systems Pacific, December 29, 2010.
2. *"Geologic Hazards Clearance, Project No. 10-016926-GC (3-18512), 3770 Quimby Road."* Letter from Gerry De Young of Ruth and Going, Inc. on behalf of the applicant, January 27, 2011.

The above documents were submitted in response to our Preliminary Geologic/Seismic Hazard Review letter dated October 25, 2010. Reference 2 requests that we defer the supplemental geotechnical investigation requested in our preliminary review, to the PD permit stage. In response to this request, we have met with your geotechnical consultant, the project and senior civil engineers in Public Works and the project and senior planners in the Department of Planning, Building and Code Enforcement to discuss the project.

Discussion

At the request of your representative, Ruth & Going, Inc., Reference 1 presents only a preliminary response to the items requested in our Preliminary Geologic/Seismic Hazard review letter dated January 27, 2010. In Reference 1, Earth Systems Pacific (ESP) discusses the results of a preliminary parametric slope stability analysis they performed to determine the effect of elevated groundwater levels on stability of the eastern slope of the proposed development. ESP found unacceptable slope stability conditions using revised groundwater levels of 20 and 30 feet

bgs on cross section A-A' for both bedrock and landslide modeled slopes. From a feasibility standpoint, the preliminary analysis suggests that proposed Lots 1 through 4 are generally stable. However, in order to achieve acceptable slope stability conditions in the eastern two thirds of the parcel, the letter indicates a large amount of fill (14 feet thick or greater) may need to be placed on Lots 5, 6 and/or 7 to create a buttress to stabilize the slope under seismic conditions. The preliminary slope stabilization scenarios indicate a potential loss of up to 3 of the 7 proposed lots pending further subsurface exploration, laboratory shear strength testing, groundwater monitoring and seismic slope stability analysis. Reference 1 only summarizes the results of the preliminary slope stability analysis performed by ESP. No spread sheets or modeled cross sections generated from the analysis are included in the letter to substantiate the response. Therefore, we are unable to independently verify or approve the ESP findings at this time.

As discussed above, only a preliminary response to our requested items is presented in Reference 1 because Reference 2 requests that these items be deferred to the PD permit stage of the planning process. *Based on our review of Reference 1 and our meeting with the project geotechnical consultant and senior staff from Public Works and Planning, we are unable to accommodate your request to defer our previous project requirements to the PD permit stage.* Deferral of the required supplemental geologic/seismic hazard evaluation and geotechnical engineering investigation to the PD permit stage would defer the determination of whether homes can be built in the area of proposed Lots 5, 6 and 7. According to staff, this is a significant issue which must be resolved, along with the design of the buttress fill needed to stabilize the eastern slope of the parcel, prior to PDC (zoning) approval. We concur with this assessment due to the ambiguity of ESP's response, the number of potential slope mitigation scenarios that appear to exist for the site, and the complexity of the unanswered questions regarding geologic hazard mitigation that would exist, if a deferral to the PD permit stage were to be approved.

Project Requirements

Consequently, a Geologic Hazard Clearance may be issued for this project when it has been satisfactorily demonstrated that all potential geologic/seismic hazards have been adequately characterized and can be mitigated to an acceptable risk level. It must also be demonstrated that the proposed development will not create a hazardous geologic condition. In order for us to complete our review of your application, it will be necessary for you to submit the following:

1. A supplemental geologic/seismic hazard evaluation and a design level geotechnical engineering investigation report addressing discussion items 1 through 4 from our previous review letter dated October 25, 2010. The report should include supporting data, analyses, evaluation and recommendations for all geotechnical aspects of the project including mitigation of the potential slope instability discussed in our previous review. The evaluation should include, but not be limited to, supplemental subsurface exploration, laboratory testing, groundwater monitoring, quantitative slope stability analyses and slope stabilization measures including corrective grading design and details, as discussed in Items 1 through 4 of our previous review letter. The supplemental subsurface exploration should be performed for soil, foundation and buttress/retaining wall design purposes, groundwater monitoring, and to provide additional samples for laboratory testing, as necessary. Groundwater levels from the adjacent site should be used for all slope stability analyses as discussed in Item 3 of our

previous letter unless groundwater monitoring or other data demonstrates that differing groundwater conditions are present on the subject site. The investigation should address and approve the proposed building/slope setbacks on Lots 5 and 7 (see Discussion Item 4 and Project Requirement 2 from previous review). Any mitigation measures needed to allow the smaller building setback distances from slope, such as drilled pier foundations and drainage improvements, should be recommended. The investigation should include design level geotechnical recommendations for all earthwork including a slope buttress and subdrain design, retaining structures, geogrid/tiebacks, residence and retaining wall foundations, drainage and other geotechnical aspects of the project. The recommended slope stabilization measures should be analyzed for static and seismic slope stability to confirm their effectiveness. The investigation should be consistent with State guidelines for the preparation of engineering geologic and seismic hazard reports, CGS Note 44, Special Publication 117A, and ASCE/SCEC (2002). The report must be signed by both a Certified Engineering Geologist and Registered Geotechnical Civil Engineer.

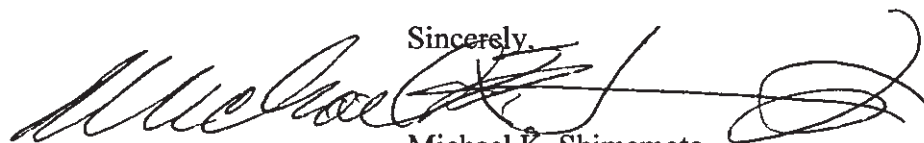
2. A revised grading and drainage plan and details for the project incorporating the recommendations of the above geotechnical report. All geotechnical recommendations for the design of slope stabilization measures presented in Project Requirement 1 above should be included on the plan. If a buttress fill or buried shear pin wall are recommended for slope stabilization, they should be shown on the plan and all details included. The plan should be consistent with the City's Grading Code, Section 17.04.410. The proposed residence should be setback a minimum distance of 15 feet from the toe of slope on Lot 7 and 8.5 feet from the top of slope on Lot 5 unless the reduced slope setbacks are recommended and approved by the project engineering geologist and/or geotechnical engineer. Any recommended drainage improvements such as a concrete drainage ditch above Lot 7 should also be shown on the plan (See our previous review letter dated October 25, 2010 for additional details). The plan must be prepared by a Registered Civil Engineer.

NOTE: *Prior to subsurface site exploration, you must obtain approval from the Department of Planning, Building and Code Enforcement that the proposed exploration will not have environmental impacts in accordance with Section 17.10.500 of the Geologic Hazard Regulations. For information, please contact Janis Moore in the Planning Division at (408) 535-7815.*

The supplemental geologic/seismic hazard evaluation and geotechnical engineering report and revised plan should be submitted to the City's Engineering Geologist for review and approval prior to issuance of a Geologic Hazard Clearance. A fee of \$2,274 for review of your documents will be due and payable upon submittal.

If you have any questions, please contact me at (408) 535-7646.

Sincerely,



Michael R. Shimamoto
Engineering Geologist
Development Services Division

October 25, 2010

Euson Huang
c/o Ruth & Going, Inc.
P.O. Box 26460
San Jose, CA 95159-6460

Attention: Gerry De Young

Gentlemen:

SUBJECT: PRELIMINARY GEOLOGIC/SEISMIC HAZARD REVIEW
PROPOSED SEVEN LOT SFD RESIDENTIAL DEVELOPMENT (PDC10-002)
3770 QUIMBY ROAD
PROJECT NO: 10-016926-GC (3-18512)

We have reviewed the following documents submitted in support of your application for a Geologic Hazard Clearance for the above project:

1. *"Geologic Hazards Evaluation Update and Fault Investigation Study, Proposed Subdivision, of 2.84 Acre Site (APN's 659-25-001, -002) 3770 Quimby Road, San Jose, California,"* by ES Geotechnologies, November 14, 2008.
2. *"Conceptual Grading Plan, Huang/Quimby Road, San Jose, California,"* by Ruth & Going, Inc., September 24, 2010, Sheet 5, Scale: 1 inch = 30 feet.

In addition, we have reviewed the City's Geotechnical, Seismic and Fault Hazard Maps, stereoscopic and high resolution 3-D orthographic aerial and street view imagery, and available geotechnical information on file in our office including three previous geotechnical studies of the site. The City's engineering geologist visited the property on October 18, 2010.

Discussion

The project site is within the City of San Jose Geologic Hazard Zone (CSJ, 2006), the State of California Seismic Hazard Zone of Required Investigation for Earthquake Induced Landslides (CGS, 2001) and the City of San Jose Fault Hazard Zone of the Quimby fault (CSJ, 1983).

The project consists of construction of seven single family detached residences and a common driveway to Lots 5, 6 and 7. The project will utilize 2 to 5 foot high retaining walls between Lots 5, 6 and 7. An approximately 15 foot high, 2:1 (H:V) cut slope is planned on the east portion of Lot 7 and another approximately 20 foot high cut slope is planned between Lot 5 and Lots 1 through 4.

Our review found four items of concern regarding geologic/seismic hazards evaluation and mitigation. These concerns will require additional investigation, analysis and/or evaluation to reasonably ensure the City that all potential geologic/seismic hazards have been satisfactorily characterized and will be mitigated to an acceptable degree. These items are as follows:

1. The quantitative seismic slope stability analysis performed on Cross Section A-A' (Reference 1, p. 18-19, Appendix B, Figure B2) resulted in an unacceptable factor of safety. The factor of safety for the Berryessa Formation bedrock slope model was 0.90 under seismic conditions. A Newmark analysis was performed on the Cross Section A-A' bedrock slope model, which resulted in a calculated seismically induced slope displacement of 3.8 inches. As noted in the report, it is anticipated that the displacement will most likely occur along the critical failure surface, "a" shown on Figure B2, Appendix B. This failure surface appears to toe out on the upper cut pad along cross section line A-A', Figure 2, Reference 1, near the base of the easternmost cut slope. The exact location where failure surface "a" toes out on the proposed grading plan (Reference 2) is uncertain but failure surface "a" and most of the other unstable, non-critical failure surfaces shown on Figure B2 appear to intersect the building pad on Lot 7 and are clearly within the Lot 7 property boundary. State guidelines for tolerable Newmark displacements beneath planned improvements such as buildings, swimming pools, etc., require that such displacements be limited to less than 5 cm or 1.97 inches (ASCE/SCEC, 2002, p. 90-91). Because the location of future improvements is difficult to predict and the location of the actual surface rupture is approximate, a slope displacement of 3.8 inches may be acceptable (without mitigation) only if the analyzed failure surfaces intersect the ground surface beyond the limits of any residential lot or street right of way. Consequently, the calculated seismic slope displacement of 3.8 inches is unacceptable to the City, and therefore, slope stabilization measures should be recommended for the site.
2. The slope stability analyses performed on Cross Section A-A' for a postulated landslide model, resulted in unacceptable factors of safety under *both* static and seismic conditions (Reference 1, p. 18-19, Appendix B, Figures B3 and B4). The static and pseudo-static factors of safety for the landslide model were 1.48 and 0.72, respectively. A Newmark analysis was performed on the landslide model which resulted in a calculated seismically induced slope displacement of 23.2 inches.

The landslide model is largely discounted in the report because: 1) the authors are of the opinion that the landslide mapped by Dibblee (1972) shown on Figure 3B, is not present at the site, and, 2) the toe of the critical failure surface "a" (Figure B4, Appendix B) is upslope of the proposed development at elevation 554 feet. Based on our review of the regional geologic map of Dibblee (1972) and unpublished geologic investigations by Upp Geotechnology (1990) and E₂C, Inc. (2005) on the adjacent parcel to the north, we agree that if Berryessa Formation bedrock was encountered in Borings B1 and B2, that the landslide composed of Monterey Formation debris mapped by Dibblee (1972) is probably not present on the slope topographically below the location of Boring B1. However, the logs of Borings B1 and B2 indicate that up to 21.5 feet of weathered regolith material overlies very dense bedrock on the slope. The regolith material was not tested for shear strength. The regolith material, however, may have shear strength characteristics that are closer to the postulated

landslide debris than the shear strength of the very dense bedrock sample (at 40 feet) used in the Berryessa Formation slope analysis model discussed in Item 1 above. Based on our evaluation, we therefore, consider the results of landslide model analyses to be applicable to both the static and seismic performance of the subject slope.

The subject slope above Lot 7 is steep, at approximately 38 percent grade. This slope inclination is sufficient to initiate soil slip/debris flow activity (Campbell, 1975). The amount of calculated seismic slope displacement (23.2 inches for the landslide model), is relatively large. According to State guidelines, slope deformations within this magnitude range may be sufficient to cause serious ground cracking and enough strength loss to result in continuing (post-seismic) slope failure (CGS Special Publication 117A, p. 33). Additionally, even the deeper, non-critical failure surfaces derived from the landslide analysis are unstable under seismic conditions. These non-critical, secondary failure surfaces toe out within the building pads on Lots 5, 6 and 7. The proposed 15 foot high cut slope and building pad excavation on Lot 7 (Reference 2) will also have an adverse effect on slope stability and will lower the factors of safety obtained from the analyses. For the above reasons, we recommend that slope stabilization measures, such as a geogrid reinforced slope buttress, shear pin wall and/or other retaining structures, be implemented on the site, and that the measures extend upslope to also mitigate a shallow potential slope failure (Failure surface "a", Figure B4, Appendix B). The recommended mitigation measures should be confirmed by supplemental slope stability analyses indicating that acceptable factors of safety for the slope under both seismic and static conditions, have been achieved.

3. The slope stability analyses utilized a design groundwater depth of 50 to 60 feet below the ground surface (bgs) for Cross Section A-A' and a depth of about 100 to 200 feet bgs for the regional Cross Section B-B' (Reference 1, p. 18). Geologic studies by Upp Geotechnology (1990) and E₂C, Inc. (2005), however, encountered a regional groundwater table at depths from 21 to 36 feet bgs and a shallow, perched groundwater table at less than 10 feet bgs on the adjacent parcel to the north (E₂C, Inc., 2005). These groundwater depths deviate substantially from the design depths used for the slope stability analyses in Reference 1. No discussion or evaluation of the adjacent groundwater depths is presented in Reference 1. The adjacent parcel appears to occupy a similar hydrogeologic and topographic setting as the subject parcel. Therefore, it would appear that groundwater depths would not vary significantly on both parcels. The use of shallower groundwater levels in the local and regional slope stability models may result in considerably lower factors of safety and potentially unstable slopes under both seismic and static conditions. Due to the above discrepancies, we recommend that: 1) the slope stability analyses be re-run to determine if significantly different results are obtained using the shallower groundwater levels observed on the adjacent parcel and, 2) all future slope stability analysis models utilize groundwater depths observed on the adjacent parcel, unless conclusive geologic data are presented which do not support the use of these groundwater levels for the subject site.
4. The proposed building footprint on Lot 7 (Reference 2) is setback from the toe of slope a distance of 7 feet. The building footprint on Lot 5 is setback from the top of slope a distance of 7 feet. The City's Grading Code, Section 17.04.410, requires minimum building setbacks from the slopes on Lots 7 and 5, to be 15 and 8.5 feet, respectively. These setbacks must be

met unless the proposed smaller setback distances are otherwise recommended in the approved geologic/seismic hazard evaluation and geotechnical engineering report for the project. If the slope northeast of Lot 7 is retained or buttressed and the house site is protected from surface water runoff and erosion, and a drilled pier foundation is recommended for the house on Lot 5, the proposed setbacks may be feasible, if recommended by the geotechnical consultant. The proposed grading plan (Reference 2) currently does not provide sufficient protection to Lot 7 from sheet flow drainage and erosion hazards from the steep 100 + foot high slope above the site to justify the smaller setback. Unless a pier and grade beam foundation is recommended in the project geotechnical report, the City must assume that a shallow spread footing foundation will be utilized and the reduced slope setback on Lot 5 will not be acceptable from a geologic hazards standpoint. The project engineering geologist and geotechnical engineer, however, must evaluate the geologic conditions and provide recommendations and mitigation measures that will allow these grading code exceptions to be approved.

Project Requirements

Consequently, a Geologic Hazard Clearance may be issued for this project when it has been satisfactorily demonstrated that all potential geologic/seismic hazards have been adequately characterized and can be feasibly mitigated. It must also be demonstrated that the proposed development will not create a hazardous geologic condition. In order for us to complete our review of your application, it will be necessary for you to submit the following:

1. A supplemental geologic/seismic hazard evaluation and a design level geotechnical engineering investigation report addressing the above concerns. The report should include supporting data, analyses, evaluation and recommendations for all geotechnical aspects of the project including mitigation of the potential slope instability discussed above. The evaluation should include, but not be limited to, supplemental subsurface exploration, laboratory testing, quantitative slope stability analyses and slope stabilization measures including corrective grading design and details, as discussed in Items 1 through 4 above. The supplemental subsurface exploration should be performed for soil, foundation and buttress/retaining wall design purposes and to provide additional samples for laboratory testing, as necessary. Groundwater levels from the adjacent site should be used for all slope stability analyses as discussed in Item 3 above. The investigation should address and approve the proposed building/slope setbacks on Lots 5 and 7 (see Discussion Item 4 and Project Requirement 2 below). Any mitigation measures needed to allow the smaller building setback distances from slope, such as drilled pier foundations and drainage improvements, should be recommended. The investigation should include design level geotechnical recommendations for all earthwork including a slope buttress and subdrain design, retaining structures, geogrid/tiebacks, residence and retaining wall foundations, drainage and other geotechnical aspects of the project. The recommended slope stabilization measures should be analyzed for static and seismic slope stability to confirm their effectiveness. The investigation should be consistent with State guidelines for the preparation of engineering geologic and seismic hazard reports, CGS Note 44, Special Publication 117A, and ASCE/SCEC (2002). The report must be signed by both a Certified Engineering Geologist and Registered Geotechnical Civil Engineer.

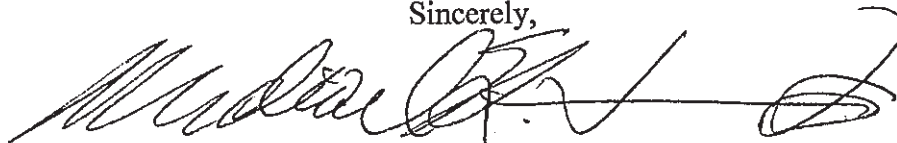
2. A revised grading and drainage plan and details for the project incorporating the recommendations of the above geotechnical report. All geotechnical recommendations for the design of slope stabilization measures presented in Project Requirement 1 above should be included on the plan. If a buttress fill or buried shear pin wall are recommended for slope stabilization, they should be shown on the plan and all details included. The plan should be consistent with the City's Grading Code, Section 17.04.410. The proposed residence should be setback a minimum distance of 15 feet from the toe of slope on Lot 7 and 8.5 feet from the top of slope on Lot 5 unless the reduced slope setbacks are recommended and approved by the project engineering geologist and/or geotechnical engineer. Any recommended drainage improvements such as a concrete drainage ditch above Lot 7 should also be shown on the plan. The plan must be prepared by a Registered Civil Engineer.

NOTE: *Prior to subsurface site exploration, you must obtain approval from the City Planning Department that the proposed exploration will not have environmental impacts in accordance with Section 17.10.500 of the Geologic Hazard Regulations (see attachment). For information contact Janis Moore in the Planning Department at (408) 535-7815.*

The supplemental geologic/seismic hazard evaluation and geotechnical engineering report and revised plan should be submitted to the City's Engineering Geologist for review and approval prior to issuance of a Geologic Hazard Clearance. A fee of \$2,274 for review of your documents will be due and payable upon submittal.

If you have any questions, please contact me at (408) 535-7646.

Sincerely,



Michael K. Shimamoto
Engineering Geologist
Development Services Division

**INFORMATION TO BE PROVIDED TO PLANNING DEPARTMENT FOR
 GEOLOGICAL TESTING**

To: John Davidson, Environmental Senior Planner, PBCE, Planning Div., Environmental Section

Detailed project location (also include site address, if available): <hr/> <hr/>
County Assessor's Parcel Number (APN): _____
Project description & location of test sites (please include a site plan showing the proposed type, location, length, width, depth & volume of material for all proposed test trenches, borings, etc.): <hr/> <hr/>
Attach a copy of a recent aerial photo (at a scale of 1"=200'), which clearly shows site features. Attach current photographs of the project site, which clearly show site features.
For Staff Use Only: 200 scale aerial photo attached yes no Site photographs attached yes no
Name/Address of Applicant/Engineer: _____ Daytime Phone Number: _____ Date Submitted to Planning: _____ Name of Property Owner: _____

ALL BLANKS MUST BE FILLED IN

Based upon this information, you may be asked to provide the City with additional documents in conformance with trenching requirements identified on the back of this form.

**QUANTITATIVE SLOPE STABILITY ANALYSIS
3770 QUIMBY ROAD
SAN JOSE, CALIFORNIA**

August 2011

Prepared for

Mr. Euson Huang

Prepared by

Earth Systems Pacific
500 Park Center Drive, Suite 1
Hollister, CA 95023

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August 12, 2011

File No.: SH-11525-SA

Mr. Euson Huang
c/o Ruth & Going, Inc.
P.O. Box 26460
San Jose, California 95159

PROJECT: Proposed 7-Lot Subdivision
3770 Quimby Road
San Jose, California

SUBJECT: **QUANTITATIVE SLOPE STABILITY ANALYSIS**

Dear Mr. Huang:

As you authorized, Earth Systems Pacific (ESP) is submitting this quantitative slope stability analysis in response to concerns raised by the City of San Jose regarding the results of slope stability modeling included in ES Geotechnologies' (ESG, 2008) Geologic Hazards Evaluation Update and Fault Investigation Study. The City of San Jose expressed concerns about the proposed lot layouts and the groundwater levels used in the modeling by ESG (2008).


The following report is intended to supplement the existing study by ESG and is not intended for use as a stand-alone geologic/seismic hazards report.

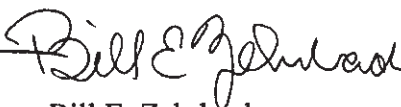
If you have any questions, or if we can be of further service, please contact our office.

Sincerely,

Earth Systems Pacific

for 
Christopher M. Cecile
Staff Geologist


Brett Faust
Senior Geologist
CEG 2386


Bill E. Zehrbach
Senior Engineer
Geotechnical Engineer 926

Distribution: Mr. Euson Huang c/o Ruth & Going (4)

Doc No. 1108-553.SER

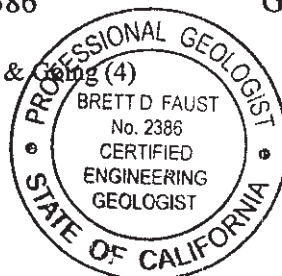




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APPENDICES

APPENDIX A

Boring Logs (2)

APPENDIX B

Laboratory Test Results

APPENDIX C

Results of Quantitative Slope Stability Analysis



QUANTITATIVE SLOPE STABILITY ANALYSIS

Introduction

The subject 2.84 acre site is located at 3770 Quimby Road in San Jose, California (Figure 1A), and is located on the U.S.G.S. San Jose East Quadrangle (Figure 1B). The site is composed of two parcels APNs 659-25-001, and -002.

ES Geotechnologies (ESG, 2008) prepared a Geologic Hazards Evaluation and Fault Investigation Study for the subject site, dated November 14, 2008, utilizing existing topographic conditions. The ESG report and current grading plans by Ruth and Going (2010) were reviewed by the City of San Jose Geologist, Mr. Michael Shimamoto. The city issued a review letter dated October 25, 2010, and requested a supplemental report to address the potential for slope instability and its effects on lot yield at the site. In the City's letter, Mr. Shimamoto suggests that the groundwater elevations used by ESG (2008) are too low and should be higher, based on data in the City's files for the adjacent property to the north. Based on the existing slope modeling, the City also requested slope mitigation measures be presented.

In consultation with our client, ESP was contracted to perform additional work in order to better characterize the site conditions given the limited shear strength data included in ESG (2008) and simplified model of the site geology used in their slope stability analysis. In order to address the concerns of the City of San Jose and those of our client, ESP performed the following scope of work:

- 1) Additional subsurface exploration and sampling to more adequately characterize the site slopes for use in slope stability modeling.
- 2) Installation of two temporary piezometers on the slope above the proposed subdivision in order to characterize groundwater conditions.
- 3) Additional laboratory shear strength testing for use in our quantitative slope stability modeling.
- 4) Development of a geologic cross section, based on our field investigation and the investigation of ESG (2008) for use in our slope stability modeling.



- 5) Quantitative slope stability analysis per California Geological Survey Special Publication 117A and ASCE/SCEC (2002) of the existing topography and proposed grading as shown on Ruth & Going (2010).
- 6) Preparation of this report presenting our findings related to the stability of the slopes at the site and the site's suitability for the proposed 7 lot subdivision.

Site Conditions

An Earth Systems Pacific (ESP) geologist visited the site on May 9, 2011, to verify that site conditions were unchanged since ESG's report. The site appears to be unchanged. A level house pad is present on the southwestern portion of the site below a cut slope. A small, abandoned house and trailer are present in the middle of the lot with plywood and sheet metal pens for horses and chickens, which form an L-shape across the lot, set into the existing slope. Above this the site is undeveloped hillside. The site is surrounded by vacant grassland except for Quimby Road and a residential subdivision to the west. No obvious signs of slope instability were noted at the time of our site visit.

Site Plan and Proposed Grading

ESP has reviewed the latest conceptual grading plan by Ruth and Going, Inc., dated 7-22-11 (Figure 2). The grading plan shows a combination of cutting and filling in order to create a 7-lot subdivision. Four lots shown across the bottom of the property (nearest to Quimby Road) remain unchanged, with pad grades that will range from 499.5 to 505 feet, stepping up to the south. The grading scheme for Lots 5 through 7 has been revised. The lots are oriented in a more east-west direction, and are now fill pads with pad grades that range from 524 to 525.

Additional Subsurface Investigation

An ESP geologist supervised the drilling of two additional soil borings (B1 and B2) on the hillside portion of the site on May 18, 2011. The borings were drilled using a track-mounted Simco drill rig equipped with a 4 inch solid flight auger. The borings were drilled, continuously sampled, or a combination thereof to depths of 39 and 40.5 feet below the ground surface.

The soils encountered in the borings were categorized and logged in general accordance with the Unified Soil Classification System and the rock was characterized with regard to type, hardness, degree of weathering and fracturing. Samples were obtained at selected intervals with 3-inch and 2.5-



inch outside diameter Modified California samplers and with a 1.5-inch diameter Standard Penetration Test sampler (ASTM D 1586-06). The samplers were driven using a 140-pound down-hole hammer with a 30-inch fall. Penetration resistance was recorded as the number of hammer blows per foot of penetration of the samplers. The samples were sealed and labeled as soon as they were collected. At the completion of drilling activities, the borings were converted to piezometers using 1 inch diameter, slotted PVC pipe. The pipe was screened to within 10 feet of the surface and solid for the remaining 10 feet. Gravel pack was placed from the bottom of the boring to approximately 5 feet below the ground surface. The remainder was sealed with clayey cuttings from the borings. The piezometers remain in place and are planned to be removed at a future date. Copies of the boring logs are included in Appendix A.

Subsurface Conditions

The materials encountered in our borings consisted of a lean to fat clay overlying bedrock materials at both of our boring locations. In Boring B1, ESP encountered reddish-brown matrix supported conglomerates to a depth of approximately 20.5 feet. The matrix was generally sandy, but became clayey around 14 feet below the ground surface (bgs). Claystone was encountered underlying the conglomerate to 39 feet bgs in Boring B1. Boring B2 consisted of siltstones and sandstones to approximately 39.5 feet bgs. The bottom of Boring B2, from 39.75 to 40.5 feet consisted of gray brown to brown claystone. No subsurface deposits consistent with landslide debris were encountered, nor did continuous sampling reveal slide features at the depth of the possible landslide plane of ESG (2008).

Groundwater was encountered in Boring B2 at a depth of 40.5 feet below the ground surface at the time of drilling. No groundwater was encountered in Boring B1. ESG (2008) did not encounter groundwater at the time of their investigation in either of their two borings to 45 feet bgs.

ESP returned to the site on the afternoon of May 24, 2011, to take groundwater depth measurements from our piezometers located at the site. No groundwater was present in Boring B1. Groundwater was measured at 34 feet below the ground surface in Boring B2.

Laboratory Testing

Eight tube samples and two standard penetration samples of the soil were tested for moisture content and bulk density (ASTM D 2216-10 and D 1188-07). Drained direct shear tests (ASTM D 3080-04)



were performed on four samples to determine the angle of internal friction and unit cohesion of the samples tested. Copies of the laboratory test results are included in Appendix B.

2010 California Building Code Seismic Design Criteria

Since ESP does not have sufficient subsurface data for the area of the proposed residences, ESP has not provided updated CBC seismic design criteria. Seismic design parameters should be developed at the time of preparation of a geotechnical engineering study for the proposed residential lots.

Quantitative Slope Stability Analysis

The stability of the site slopes was evaluated by performing a computer analysis on a two-dimensional geologic cross-section (A-A'; Figure 3). The location of the cross-section used for the stability analysis is shown on Figure 2. The geologic cross-section used in the analysis was derived from the geologic and topographic data shown on Figure 2 and published 1:24,000 scale geologic and topographic maps. The site geologic data was obtained from mapping, subsurface drilling, and laboratory testing.

The quantitative analysis was performed using Janbu's Simplified Method with the aid of the computer program PCSTABL version 6.54H (1996). Natural and cuts slopes are considered to be stable if the stability analysis results in a calculated static factor of safety of 1.5 or higher, and a seismic (dynamic) factor of safety of 1.0 or higher. If the dynamic factor of safety is less than 1.0, a Newmark displacement analysis is required to evaluate slope deformation and movement. The site slopes were modeled using the existing geometry and proposed grading.

Strength Parameters

The slopes at the site are underlain by Quaternary alluvium and colluvium (Qa, Qc) over Berryessa Formation (Kb_x). The Berryessa was broken down into facies for the purposes of this evaluation. These facies were: conglomerate (cgl), gray claystone (gry clst), gravelly claystone (gvlyclst), siltstones and sandstones (sist+ss), brown claystone (dbrnclst), and clayey sandstone (cly ss).

The strength parameters for the analysis used the results of drained laboratory strength tests on undisturbed samples collected by ESP at the site as well as those obtained by ESG (2008). The parameters are summarized in the table below. Results of laboratory testing for this study are presented in Appendix B.



Formation	Facies	c_{ult} (psf)	Φ_{ult} (deg)	Source
Qa/Qc	-	1300	26	ASMI (1980) in ESG (2008)
Kb	Cgl	450	40	Appendix B
Kb	gry clst	0	27	Appendix B
Kb	Gvlyclst	1120	17	ESG (2008)
Kb	Sist+ss	340	29	Appendix B
Kb	Dbrnclst	80	26	Appendix B
Kb	Cly ss	130	37	ESG (2008)

Groundwater

Groundwater was measured in our exploratory borings one week after drilling. Groundwater was encountered at 34 feet bgs in Boring B2, no groundwater was encountered in Boring B1. ESG (2008) did not encounter groundwater at the time of their investigation (October 7, 2008). Based on this and nearby groundwater data, ESP used a groundwater surface that varies from 25 feet bgs on the lower portion of the lot to 55 feet bgs at the top of the ridge with a depth of 34 feet at the location of Boring B2.

Seismic parameters

The seismic (dynamic) stability analysis was evaluated using a seismic coefficient of 0.312g. This value is based on a soft rock (NEHRP C) acceleration of 0.645g following the guidelines in SP 117A (CGS 2009) and the CGS website for determining probabilistic spectral acceleration (10% in 50 years).

Results

The computer program generated plots of the ten most critical failure surfaces (potential failure surfaces with lowest calculated factor of safety) for the slope model. The table below presents the calculated factors of safety under both static and dynamic conditions as well as the corresponding figure numbers in Appendix C.



Cross Section	Case	Static Factor of Safety	Dynamic Factor of Safety	Newmark Displacement (cm)	Figures
A-A'	Existing	2.05	1.00	NA	C1, C2
A-A'	Proposed	2.12	0.99	4.3	C3, C4

Discussion

In summary the existing site slopes were considered stable under both static and dynamic (earthquake-induced) conditions. The calculated static factor of safety for the proposed subdivision grading scheme is 2.21, well above the minimum required value of 1.5. The calculated dynamic factor of safety for the proposed grading scheme is 0.99, just below the required 1.0. The Newmark displacement analysis resulted in a calculated displacement of 4.3 cm. This value is below the maximum displacement of 5 cm acceptable to the city and is unlikely to correspond to serious landslide movement and damage. It should also be noted that the daylight point of the theoretical critical surface is at the toe of the slope, approximately 25 feet behind the proposed building envelope.

Conclusions

It is ESP's opinion that the proposed subdivision is feasible for the proposed 7 lots. ESP did not encounter materials consistent with landslide debris in our borings and we did not encounter a slide plane at the depth of the contacts between overlying conglomerate and underlying materials. It is ESP's opinion that the postulated slide of ESG (2008) does not exist at the site.

The property owner should be aware that development within the seismically active San Francisco Bay Area entails variable risks, including possible structural distress to residences, retaining walls and on-site pavements, plus potential disruption of local roads and utilities due to the secondary effects of strong ground shaking.

Recommendations

Prior to the development of the subdivision, a soil engineering study should be performed on the parcel, as required by the city, to develop recommendations for site grading, foundations, retaining walls, utility trench backfill, and site drainage.



Closure

This report is valid for conditions as they exist at this time for the type of project described herein. Our intent was to perform the supplemental work in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the locality of this project under similar conditions. No representation, warranty, or guarantee is either expressed or implied. This report is intended for the exclusive use by the client as discussed in the Scope of Services section. Application beyond the stated intent is strictly at the user's risk.

If changes with respect to the project type or location become necessary, if items not addressed in this report are incorporated into plans, or if any of the assumptions stated in this report are not correct, Earth Systems Pacific will be notified for modifications to this report.

The recommendations and conclusions contained in this report are based upon the geologic conditions encountered during this and previous investigations, and may be augmented by additional requirements of the architect/engineer, or by additional recommendations provided by this firm based on conditions exposed at the time of construction.

This document, the data, conclusions, and recommendations contained herein are the property of Earth Systems Pacific. This report shall be used in its entirety, with no individual sections reproduced or used out of context. Copies may be made only by Earth Systems Pacific, the client, and his authorized agents for use exclusively on the subject project. Any other use is subject to federal copyright laws and the written approval of Earth Systems Pacific.

Thank you for this opportunity to have been of service. Please feel free to contact this office at your convenience if you have any questions regarding this report.

End of Text

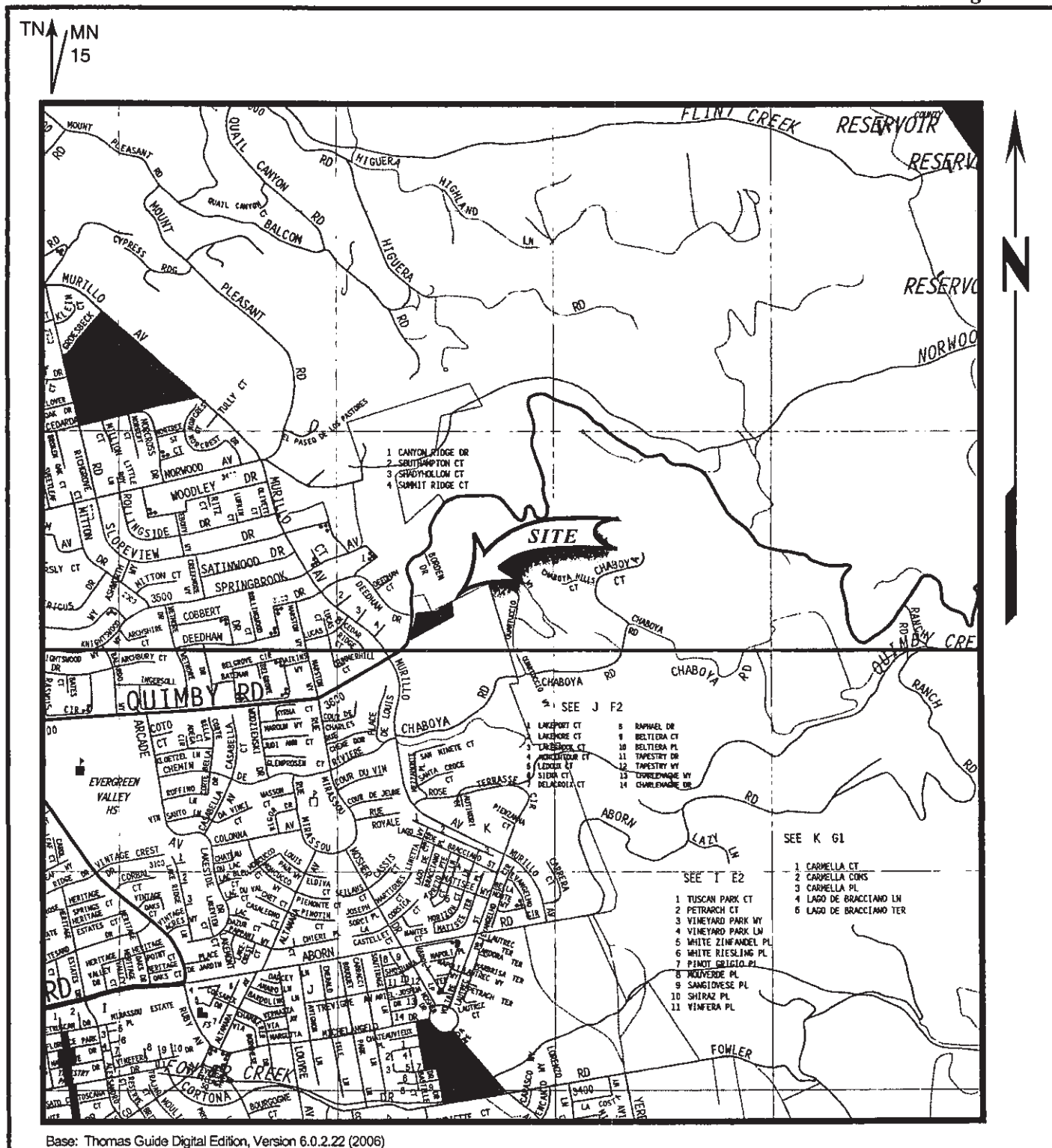


REFERENCES

- City of San Jose, 2010, PRELIMINARY GEOLOGIC/SEISMIC HAZARDS REVIEW, PROPOSED SEVEN LOT SFD RESIDENTIAL DEVELOPMENT (PDC10-002), 3770 QUIMBY ROAD; PROJECT NO. 10-016926-GC (3-18512), unpublished Department of Public Works Review letter, dated October 25, 2010, 5 p.
- ES Geotechnologies, 2008, GEOLOGIC HAZARDS EVALUATION UPDATE AND FAULT INVESTIGATION STUDY, PROPOSED SUBDIVISION OF 2.84 ACRE SITE (APN's 659-25-001, 002), 3770 QUMIBY ROAD, SAN JOSE, CALIFORNIA, unpublished consultants report for Mr. Euson Huang, dated November 14, 2008.
- Ruth & Going, Inc, 2010, CONCEPTUAL GRADING PLAN, HUANG/QUIMBY ROAD, SAN JOSE, CALIFORNIA, dated September 24, 2010.

FIGURES

Figure 1A



Base: Thomas Guide Digital Edition, Version 6.0.2.22 (2006)



Approximate Scale in Miles



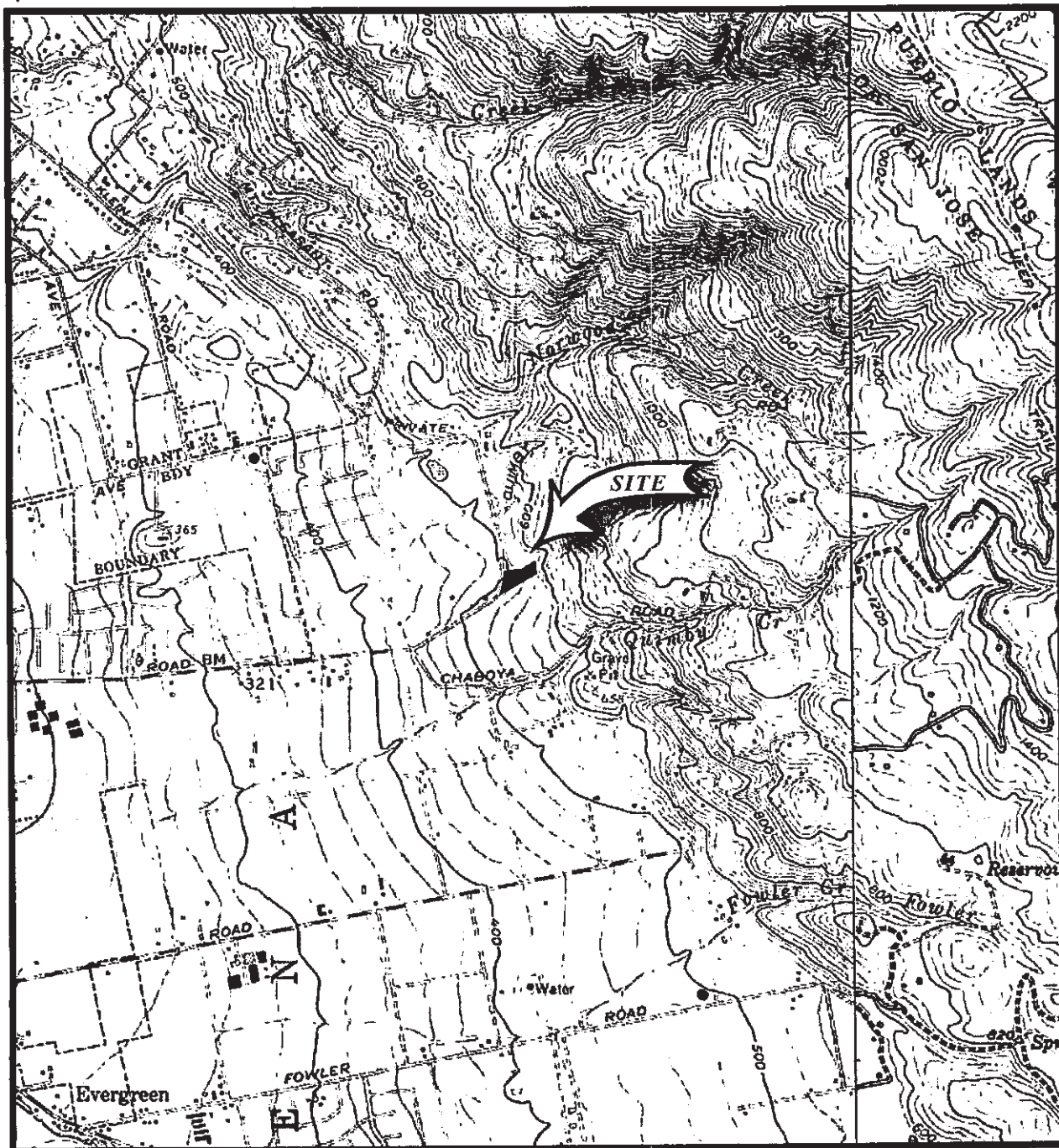
Earth Systems Pacific

Lands of Huang
3770 Quimby Road
San Jose, California

Site Location Map (Thomas Bros)
SH-11525-SA

Figure 1B

TN
MN
15



Base: National Geographic TOPOI (2002)

Approximate Scale 1: 24,000



Earth Systems Pacific

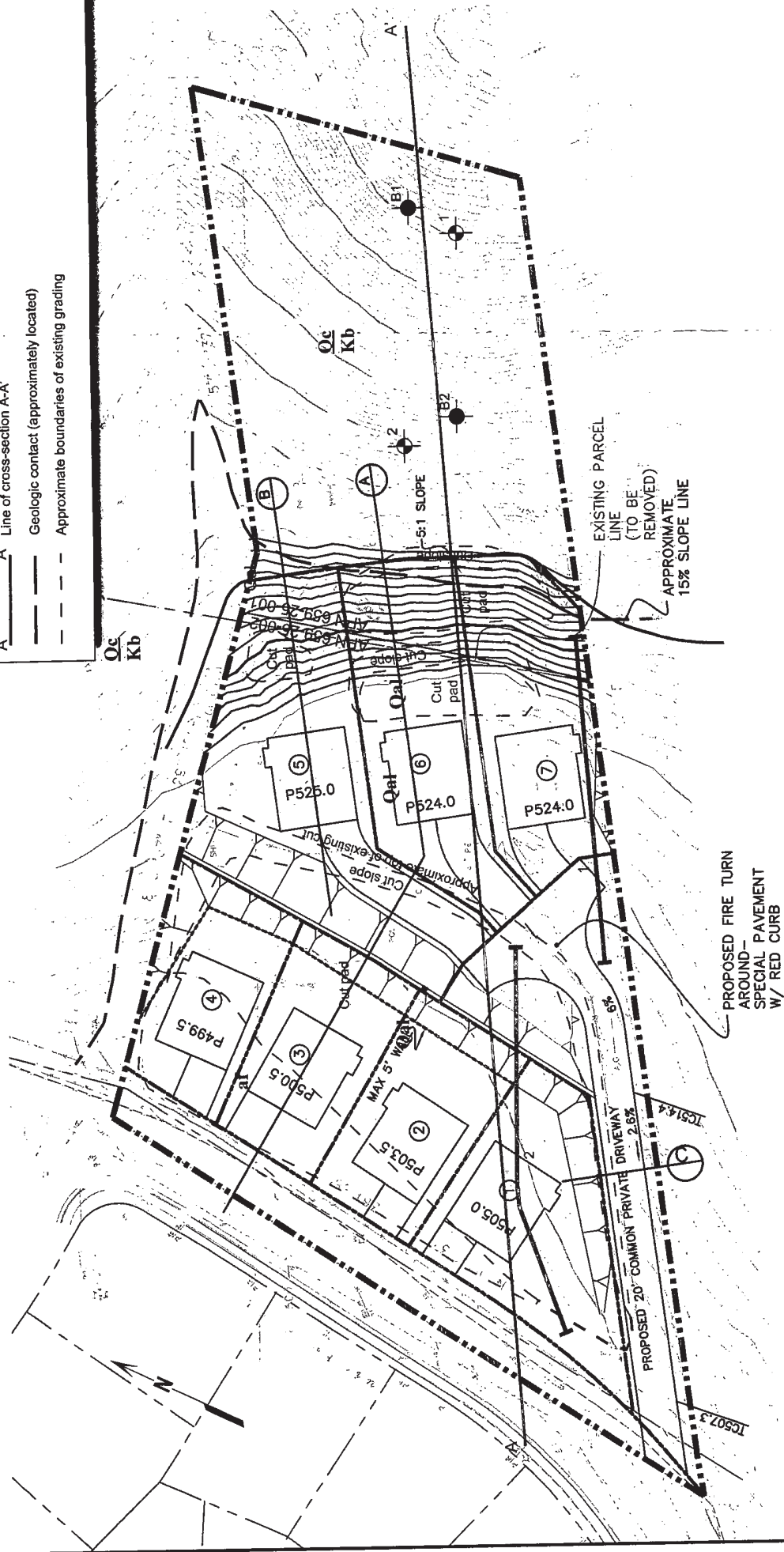
Lands of Huang
3770 Quimby Road
San Jose, California

Site Location Map (USGS)
SH-11525-SA

Figure 2

LEGEND

- Approximate boring location (this study)
- Approximate boring location (ESG, 2008)
- Approximate trench location (ESG, 2008)
- Line of cross-section A-A'
- Geologic contact (approximately located)
- Approximate boundaries of existing grading
- Artificial fill
- Quaternary alluvium
- Quaternary colluvium overlying Cretaceous Berryessa Formation



Site Plan and Geology

Lands of Huang
 3770 Quimby Road
 San Jose, California

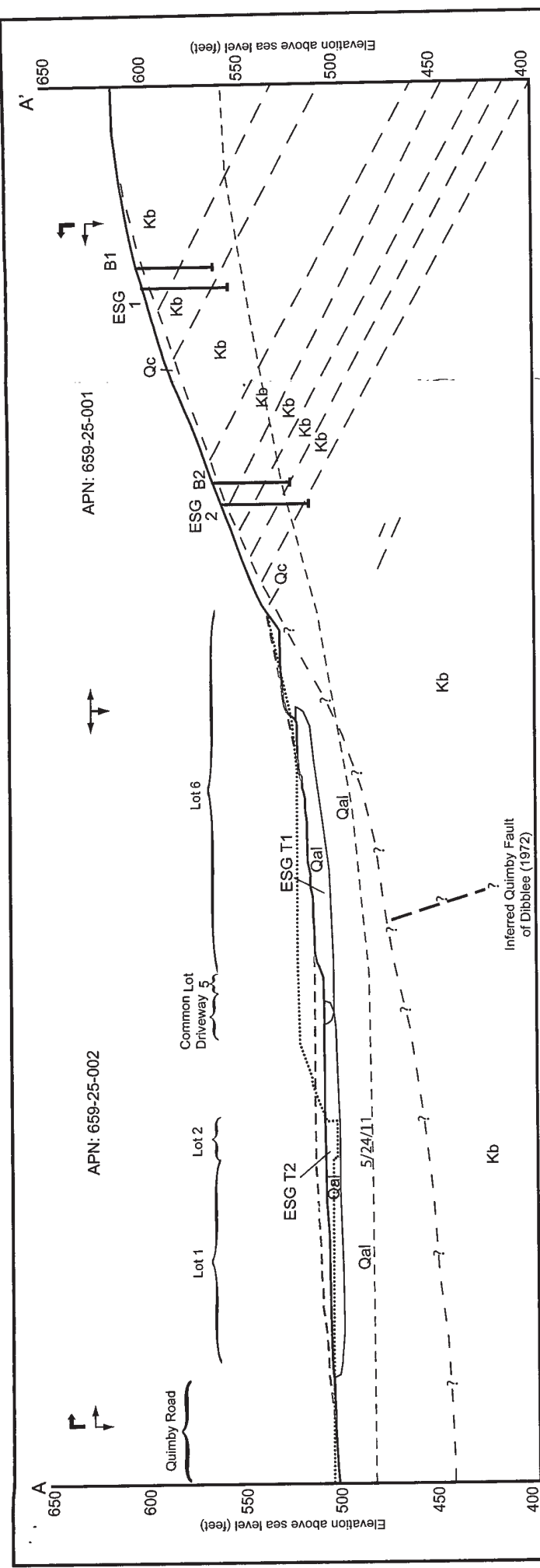
Earth Systems Pacific



August 2011

1 inch = 50 feet

SH-11525-SA



APN: 659-25-002 APN: 659-25-001

Quimby Road Common Lot Driveway 5 Lot 1 Lot 2 Lot 5 Lot 6

ESG B1 ESG B2 ESG T1 ESG T2

Qc Kb Qal Kb

Inferred Quimby Fault of Dibblee (1972)

Elevation above sea level (feet)

0 50 100

Approximate Scale in Feet

LEGEND

ESG T1 Trench location (projected); ES Geotechnologies (2008)

ESG 1 Boring location (projected); ES Geotechnologies (2008)

B2 Boring location (projected); This study

Parcel boundaries

Site boundaries

Approximate apparent dip of bedding, projected from adjacent parcel (UPP, 1990) and mapping by Dibblee (1972)

Qc colluvium

Qal alluvium, gravel, sand, and clay

Kb Berryessa Formation (shale, sandstone, and conglomerate)


Existing slope

Original slope prior to modification (approximate)

Proposed Grading

Geologic contact (dashed where approximate, queried where uncertain)

Approximate groundwater level based on site measurements



Earth Systems Pacific

Huang Slope Stability Analysis
3770 Quimby Road
San Jose, California

Geologic Cross Sections

August 2011

scale as indicated

SH-11525-SA

APPENDIX A

Boring Logs (2)



Earth Systems Pacific

B1

LOGGED BY: C. Cecile
 DRILL RIG: Track
 AUGER TYPE: 4" Solid Stem

PAGE 1 OF 2
 JOB NO.: SH-11525-SA
 DATE: 5/18/11

DEPTH (feet)	USCS CLASS	SYMBOL	HUANG SLOPE STABILITY ANALYSIS 3770 Quimby Road San Jose, California		SAMPLE DATA						
			SOIL DESCRIPTION		INTERVAL (feet)	SAMPLE NUMBER	SAMPLE TYPE	DRY DENSITY (pcf)	MOISTURE (%)	BLOWS PER 12 IN.	POCKET PEN (t.s.f)
0	CL		Dark brown lean to FAT CLAY, moist, gray brown, dry, with angular gravel								
1	GC		C-horizon, brown sandy subrounded GRAVEL, dry								
2											
3	Bdrx		Conglomerate: Light reddish brown with sandy matrix and fine to coarse subangular to subrounded gray siltstone clasts, slightly moist, moderately soft, moderately weathered, widely fractured		3.5-5.0	1-1		106.9	8.8	50	
4											
5											
6											
7											
8											
9			-fining downwards								
10			-very fine to fine gravel $\Phi_u=40^*$, $C_u=450$ psf		8.5-10.0	1-2		99.7	13.5	49	
11											
12											
13											
14			-clayey matrix		13.5-14.5	1-3		108.7	7.0	50/5"	
15											
16											
17											
18											
19											
20			-trace fine subangular gravel								
21	Bdrx		Thinly bedded orange brown and gray CLAYSTONE, moist, moderately hard, with manganese and iron staining on fracture surfaces, moderately weathered, closely fractured							60/6"	
22										94	
23					20.0-22.5	NS				50/5"	
24											
25											
26											

LEGEND: 2.5" Mod Cal Sample Bulk Sample 2.0" Mod Cal Sample SPT
 NOTE: This log of subsurface conditions is a simplification of actual conditions encountered. It applies at the location and time of drilling. Subsurface conditions may differ at other locations and times.



Earth Systems Pacific

B1

LOGGED BY: C. Cecile
 DRILL RIG: Track
 AUGER TYPE: 4" Solid Stem

PAGE 2 OF 2
 JOB NO.: SH-11525-SA
 DATE: 5/18/11

DEPTH (feet)	USCS CLASS	SYMBOL	HUANG SLOPE STABILITY ANALYSIS 3770 Quimby Road San Jose, California	SAMPLE DATA					
				INTERVAL (feet)	SAMPLE NUMBER	SAMPLE TYPE	DRY DENSITY (pcf)	MOISTURE (%)	BLOWS PER 12 IN.
SOIL DESCRIPTION									
27	Bdrx	xxxx	(See previous description)						
28		xxxx							
29		xxxx	-Bluish gray to dark gray, some iron staining on fractures	28.5-29.3	1-4	■	111.8	15.6	50/3.5"
30		xxxx	$\Phi_u=27^\circ$, $C_u=450$ psf						
31		xxxx							
32		xxxx							
33		xxxx							
34		xxxx	-Pressure faces on claystone surfaces	33.5-34.3	1-5	●	109.6	12.6	50/4"
35		xxxx							
36		xxxx							
37		xxxx							
38		xxxx							
39		xxxx		38.5-39.0	1-6	●	109.4	14.1	50/5"
40		xxxx							
41		xxxx							
42		xxxx							
43		xxxx							
44		xxxx							
45		xxxx							
46		xxxx							
47		xxxx							
48		xxxx							
49		xxxx	End of Boring @ 49.0'						
50		xxxx	No subsurface water was encountered						
51		xxxx							
52		xxxx							
53		xxxx							

LEGEND: ■ 2.5" Mod Cal Sample ○ Bulk Sample □ 2.0" Mod Cal Sample ● SPT
 NOTE: This log of subsurface conditions is a simplification of actual conditions encountered. It applies at the location and time of drilling. Subsurface conditions may differ at other locations and times.



Earth Systems Pacific

B2

LOGGED BY: C. Cecile
 DRILL RIG: Track
 AUGER TYPE: 4" Solid Stem

PAGE 1 OF 2
 JOB NO.: SH-11525-SA
 DATE: 5/18/11

DEPTH (feet)	USCS CLASS	SYMBOL	HUANG SLOPE STABILITY ANALYSIS 3770 Quimby Road San Jose, California		SAMPLE DATA						
			SOIL DESCRIPTION		INTERVAL (feet)	SAMPLE NUMBER	SAMPLE TYPE	DRY DENSITY (pcf)	MOISTURE (%)	BLOWS PER 12 IN.	POCKET PEN (t.s.f)
0 - 1 - 2 - 3 - 4	CL		Dark brown sandy lean CLAY with gravel, moist								
4 - 5 - 6 - 7 - 8 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 17	Bdrx		Gray brown SILTSTONE with iron oxide staining, close fracture spacing, soft, severely weathered		3.5-5.0	2-1		107.7	13.5	22	
10 - 11 - 12 - 13 - 14 - 15 - 16 - 17			Light gray brown with thin interbeds of very fine sandstone, poorly cemented		8.5-10.0	2-2		105.1	2.8	72	
14 - 15 - 16 - 17			Dark gray with conjugate fracture pattern, iron oxide staining on fractures $\Phi_u = 29^\circ$, $C_u = 340$ psf		13.5-14.5	2-3		116.3	8.9	50/6"	
17 - 18 - 19 - 20 - 21 - 22 - 23 - 24 - 25 - 26	Bdrx		Dark gray SANDSTONE with reddish orange staining on fractures, quartzite filled fracture (~45°) ~2mm, moderately hard, moderately weathered		20.0-21.5	NS				50/5"	
						NS				50/3"	
						NS				50/3"	
					22.5-24.0	NS				95	
					24.0-25.5	NS				68	
			-fine sandstone		25.5-26.0	NS				58/6"	

LEGEND: 2.5" Mod Cal Sample Bulk Sample 2.0" Mod Cal Sample SPT

NOTE: This log of subsurface conditions is a simplification of actual conditions encountered. It applies at the location and time of drilling. Subsurface conditions may differ at other locations and times.



Earth Systems Pacific

B2

LOGGED BY: C. Cecile
 DRILL RIG: Track
 AUGER TYPE: 4" Solid Stem

PAGE 2 OF 2
 JOB NO.: SH-11525-SA
 DATE: 5/18/11

DEPTH (feet)	USCS CLASS	SYMBOL	HUANG SLOPE STABILITY ANALYSIS 3770 Quimby Road San Jose, California		SAMPLE DATA						
			SOIL DESCRIPTION		INTERVAL (feet)	SAMPLE NUMBER	SAMPLE TYPE	DRY DENSITY (pcf)	MOISTURE (%)	BLOWS PER 12 IN.	POCKET PEN (t.s.f)
27	Bdrx		(See previous description)								
28	Bdrx		Light gray brown clayey SILTSTONE, moist, moderately hard, moderately weathered, closely fractured $\Phi_u=29'$, $C_u=80$ psf		28.5-29.3	2-4	■	110.4	10.6	50/4"	
29											
30			-Poor recovery		33.5-34.0	2-5	■	95.9	9.4	50/6"	
31											
32					39.5-40.5	2-6	■	109.6	15.3	50/5"	
33											
34			End of Boring @ 40.5' Subsurface water was encountered 40.5' Ground water rose to 34', measured one week after drilling.								
35											
36											
37											
38											
39											
40											
41											
42											
43											
44											
45											
46											
47											
48											
49											
50											
51											
52											
53											

LEGEND: ■ 2.5" Mod Cal Sample ○ Bulk Sample □ 2.0" Mod Cal Sample ● SPT

NOTE: This log of subsurface conditions is a simplification of actual conditions encountered. It applies at the location and time of drilling. Subsurface conditions may differ at other locations and times.

APPENDIX B

Laboratory Test Results



Huang Slope Stability
San Jose, CA

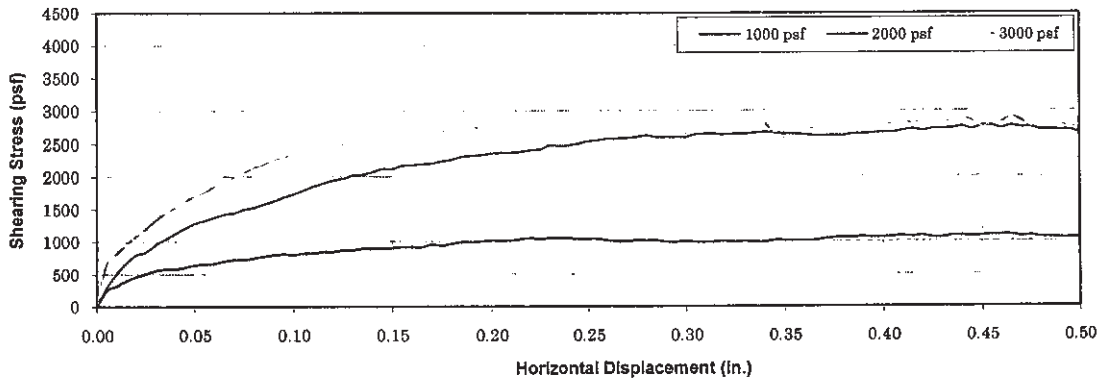
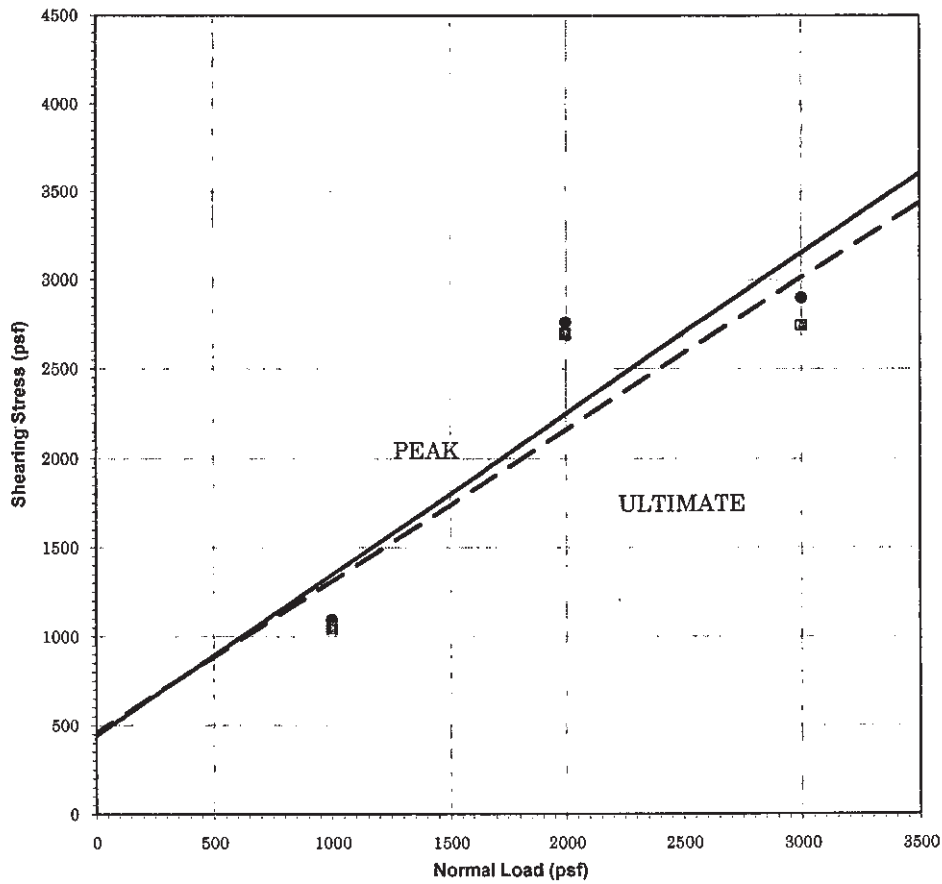
SH-11525-SA

BULK DENSITY TEST RESULTS

ASTM D 1188-07 (modified for soil)

June 15, 2011

<u>SAMPLE NO.</u>	<u>DEPTH feet</u>	<u>MOISTURE CONTENT, %</u>	<u>WET DENSITY, pcf</u>	<u>DRY DENSITY, pcf</u>
1-1	4.5 - 5.0	8.8	116.3	106.9
1-2	9.5 - 10.0	13.5	113.2	99.7
1-3	14.0 - 14.5	7.0	116.3	108.7
1-4	29.0 - 29.5	15.6	129.2	111.8
1-5	34.0 - 34.5	12.6	123.4	109.6
1-6	38.5 - 39.0	14.1	124.8	109.4
2-1	4.5 - 5.0	13.5	122.3	107.7
2-2	9.5 - 10.0	2.8	108.1	105.1
2-3	14.0 - 14.5	8.9	126.7	116.3
2-4	29.0 - 29.5	10.6	122.1	110.4
2-5	33.5 - 34.0	9.4	104.9	95.9
2-6	40.0 - 40.5	15.3	126.3	109.6




DIRECT SHEAR DATA*

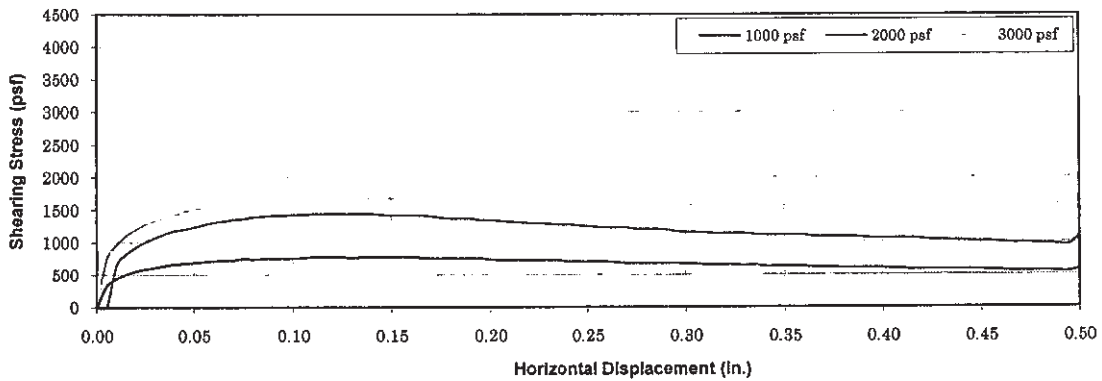
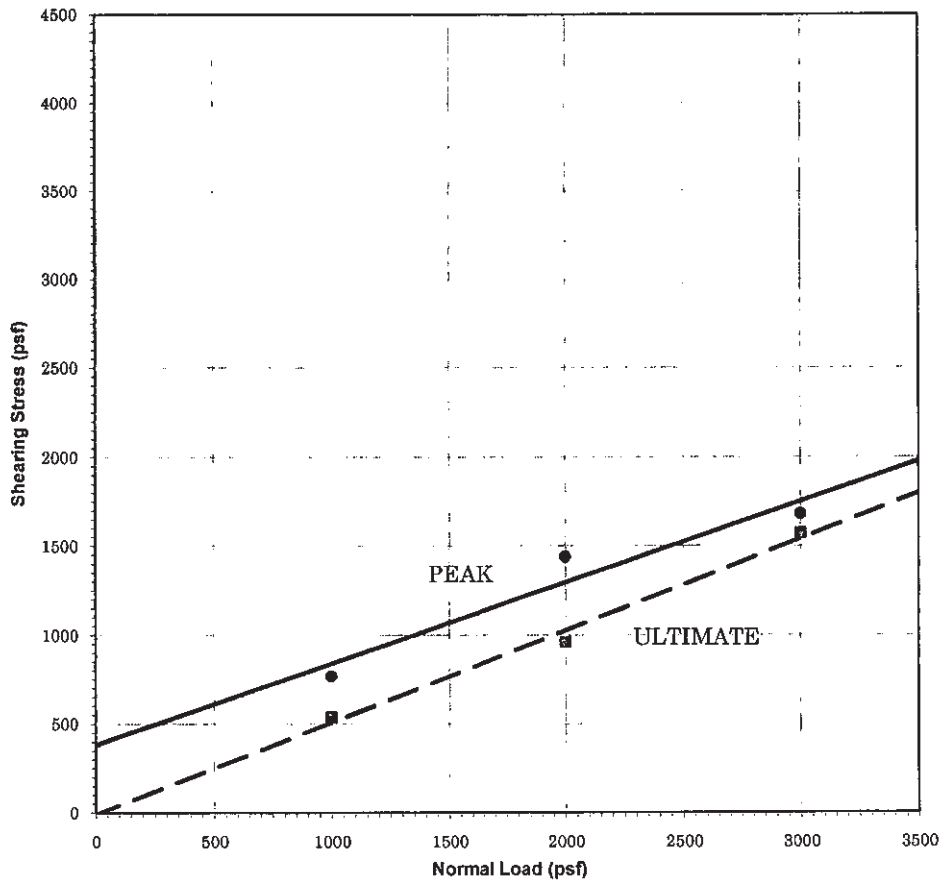
Sample Location: 1-2 @ 8.5' - 10'
 Material: Brown Silt W/ Sand & Gravel (ML)
 Dry Density (pcf): 99.7

	Initial	Final
Moisture Content (%):	13.5	24.3
Saturation (%):	54	100
	Peak	Ultimate
ϕ Angle of Friction (degrees):	42	40
c Cohesive Strength (psf):	440	450

Test Type: Peak and Ultimate
 Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

DIRECT SHEAR TEST	
Huang Slope Stability Analysis	
California	
 Earth Systems Southwest	
6/10/2011	SH-11525-SA




DIRECT SHEAR DATA*

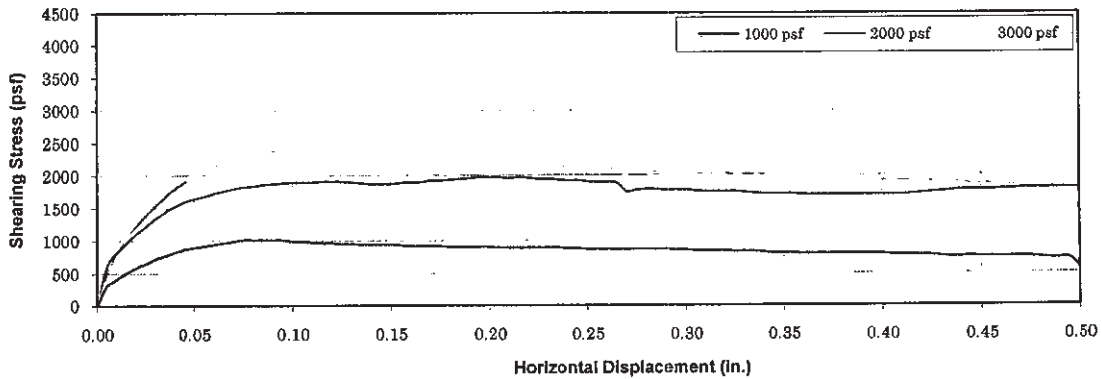
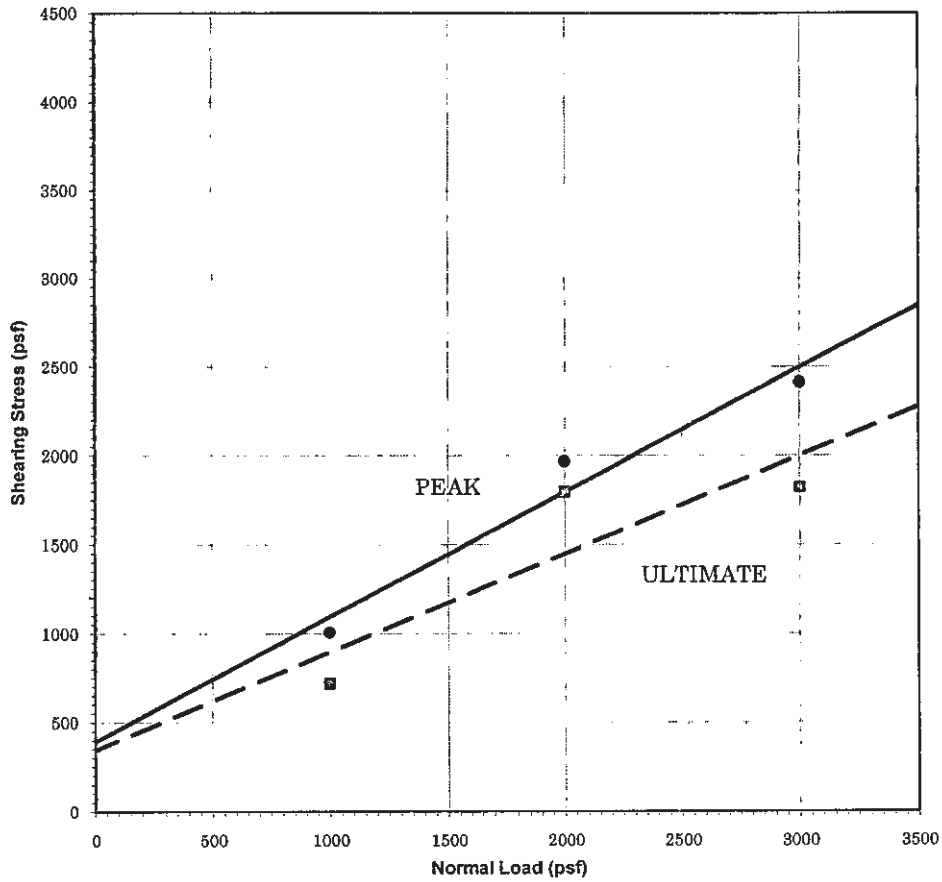
Sample Location: 1-4 @ 28.5' - 29.3'
 Material: Gray Brown Silty Clay (CL-ML)
 Dry Density (pcf): 111.8

	Initial	Final
Moisture Content (%):	15.6	20.9
Saturation (%):	85	100
	Peak	Ultimate
ϕ Angle of Friction (degrees):	25	27
c Cohesive Strength (psf):	380	0

Test Type: Peak and Ultimate
 Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

DIRECT SHEAR TEST	
Huang Slope Stability Analysis	
California	
 Earth Systems Southwest	
6/10/2011	SH-11525-SA



DIRECT SHEAR DATA*

Sample Location: 2-3 @ 13.5' - 14.5'

Material: Gray Brown Clayey Silt (ML)

Dry Density (pcf): 116.3

	<u>Initial</u>	<u>Final</u>
Moisture Content (%):	8.9	17.4
Saturation (%):	55	100
	<u>Peak</u>	<u>Ultimate</u>
ϕ Angle of Friction (degrees):	35	29
c Cohesive Strength (psf):	390	340

Test Type: Peak and Ultimate

Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

DIRECT SHEAR TEST

Huang Slope Stability Analysis

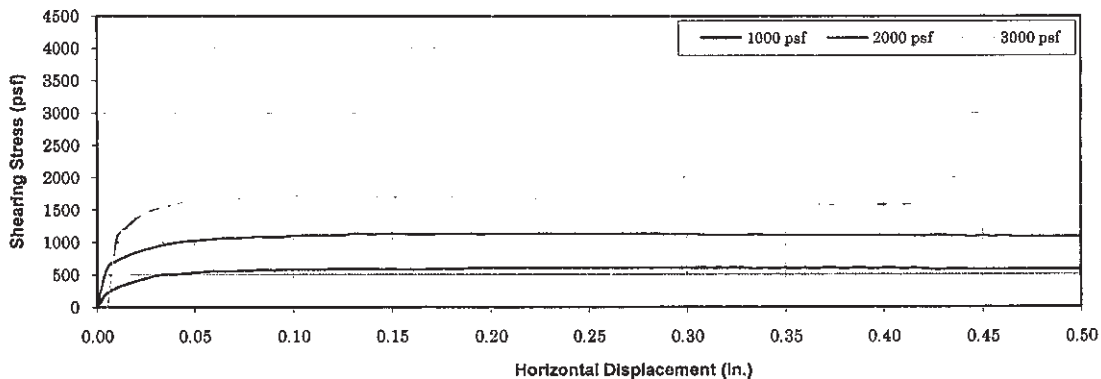
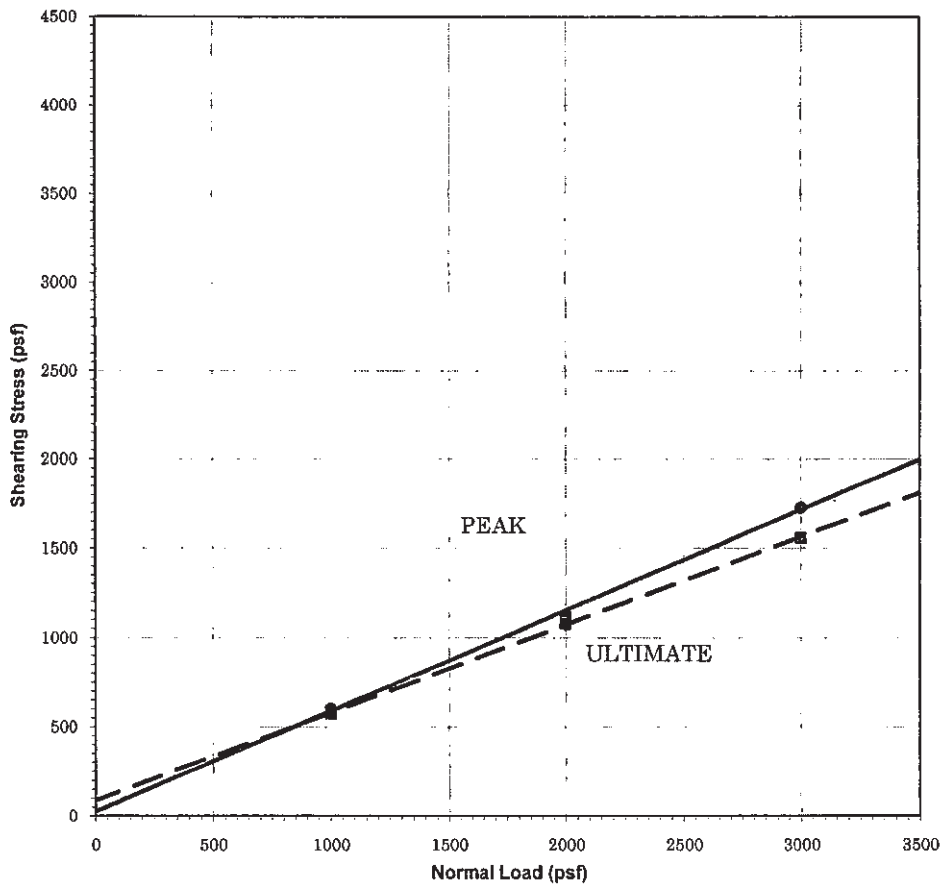
California



**Earth Systems
Southwest**

6/10/2011

SH-11525-SA




DIRECT SHEAR DATA*

Sample Location: 2-4 @ 28.5' - 29.3'
 Material: Dark Brown Silty Clay (CL-ML)
 Dry Density (pcf): 110.4

	Initial	Final
Moisture Content (%):	10.6	20.2
Saturation (%):	56	100
	Peak	Ultimate
φ Angle of Friction (degrees):	29	26
c Cohesive Strength (psf):	20	80

Test Type: Peak and Ultimate
 Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

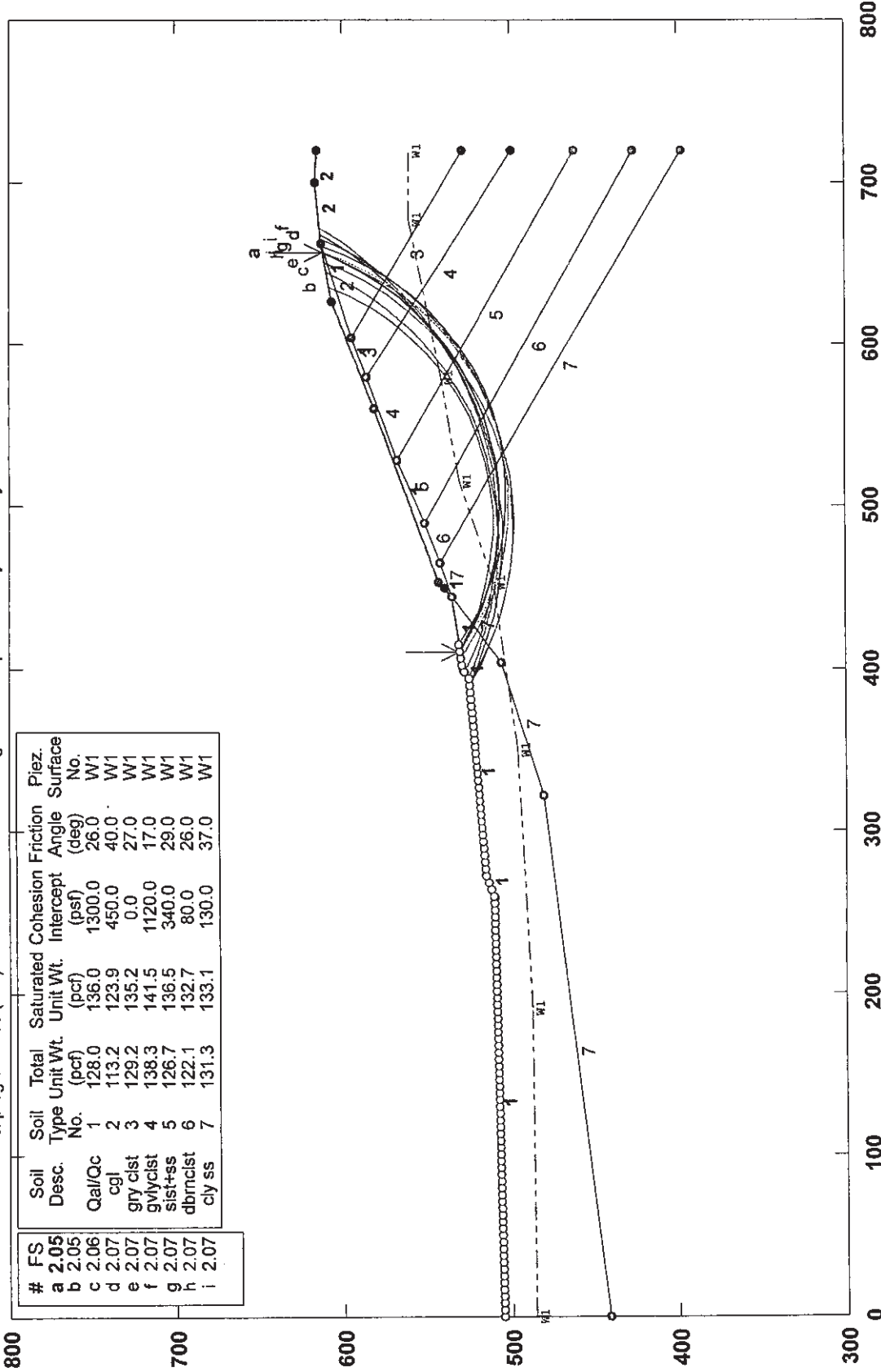
DIRECT SHEAR TEST	
Huang Slope Stability Analysis	
California	
 Earth Systems Southwest	
6/10/2011	SH-11525-SA

APPENDIX C

Results of Quantitative Slope Stability Analysis

Huang Subdivision A-A' static - Existing (Figure C1)

c:\program files (x86)\stedwin\sh-11525-sa huang\la-a' static.pl2 Run By: Earth Systems Pacific 7/11/2011 12:22PM



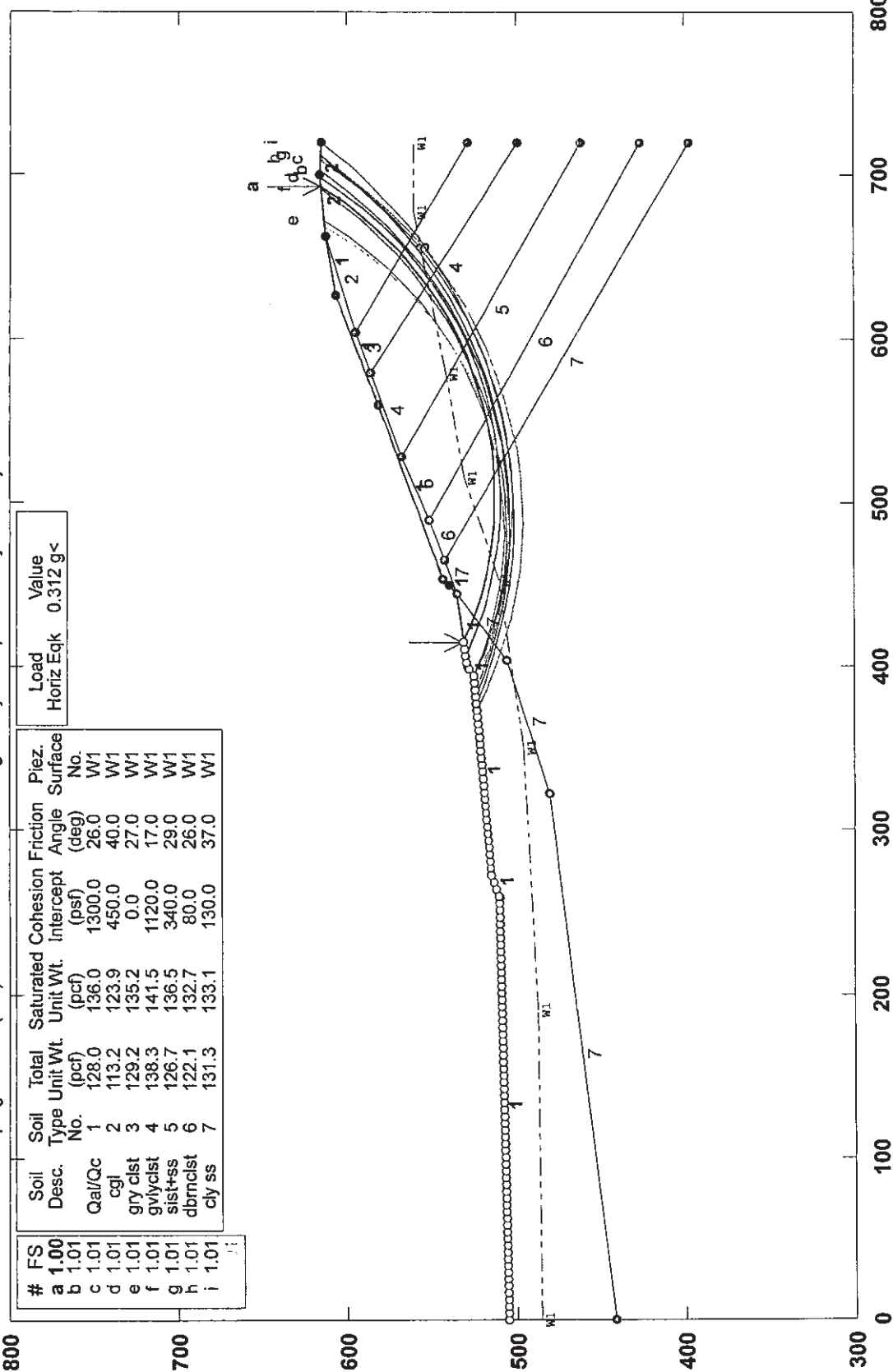
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Safety Factors Are Calculated By The Modified Janbu Method

Huang Subdivision A-A' dynamic - Existing (Figure C2)

c:\program files (x86)\stedwinsh-11525-sa huangla-a' dynamic.pl2 Run By: Earth Systems Pacific 7/11/2011 12:23PM

Load Value
Horiz Eqk 0.312 g<

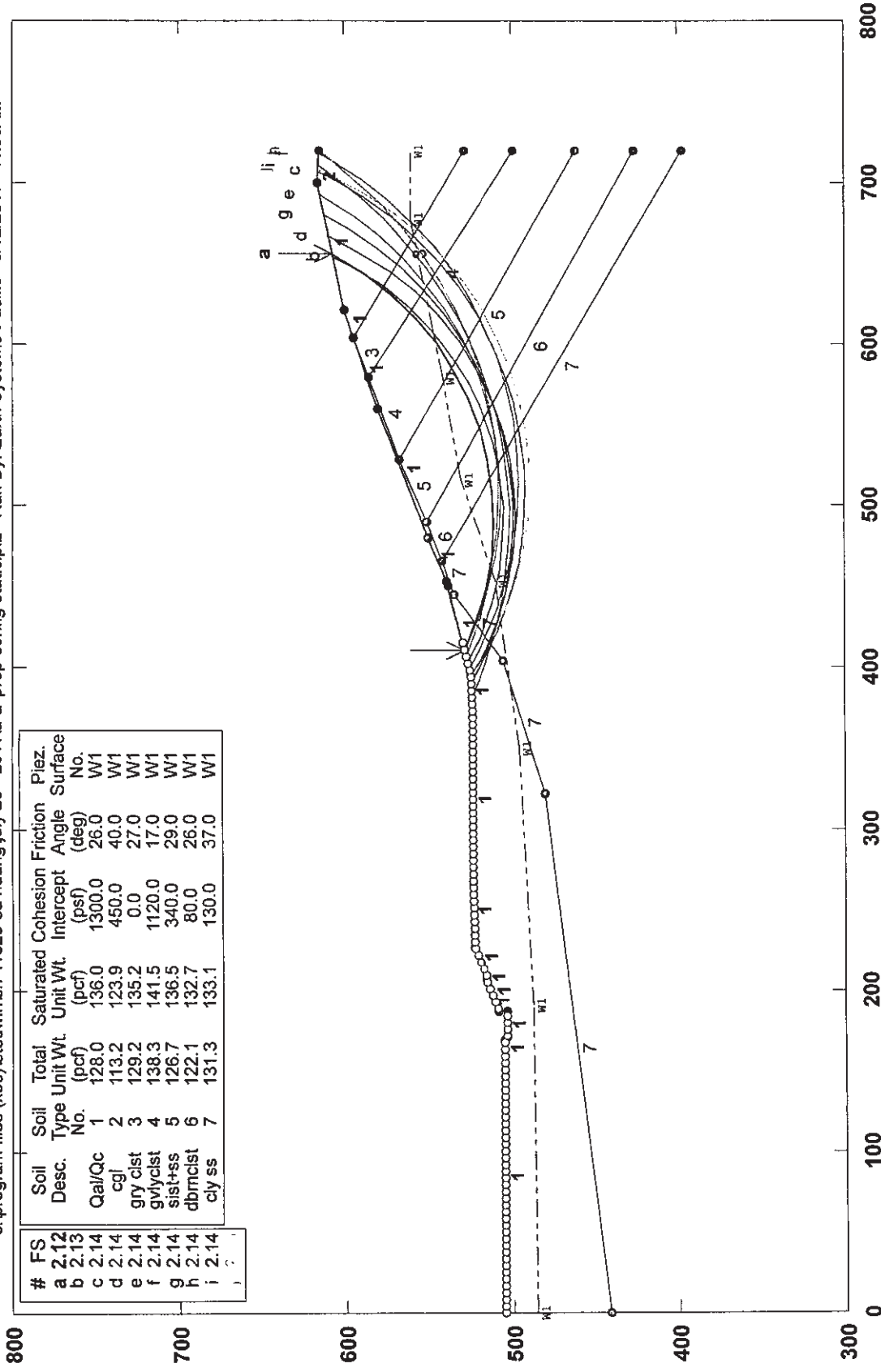
#	FS	Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion Intercept (psf)	Friction Angle (deg)	Piez. Surface No.
a	1.00							
b	1.01	Qa/Qc	1	128.0	136.0	1300.0	26.0	W1
c	1.01	cgl	2	113.2	123.9	450.0	40.0	W1
d	1.01	gry clst	3	129.2	135.2	0.0	27.0	W1
e	1.01	gvlc/clst	4	138.3	141.5	1120.0	17.0	W1
f	1.01	sist+ss	5	126.7	136.5	340.0	29.0	W1
g	1.01	dbrm/clst	6	122.1	132.7	80.0	26.0	W1
h	1.01	cl ss	7	131.3	133.1	130.0	37.0	W1
i	1.01							



STABL6H FSmin=1.00
Safety Factors Are Calculated By The Modified Janbu Method

Huang Subdivision A-A' Prop Configuration - static - Figure C3

c:\program files (x86)\stedwinsh-11525-sa huang\July 28 - 2011\1a-a' prop config static.pl2 Run By: Earth Systems Pacific 8/12/2011 11:53AM

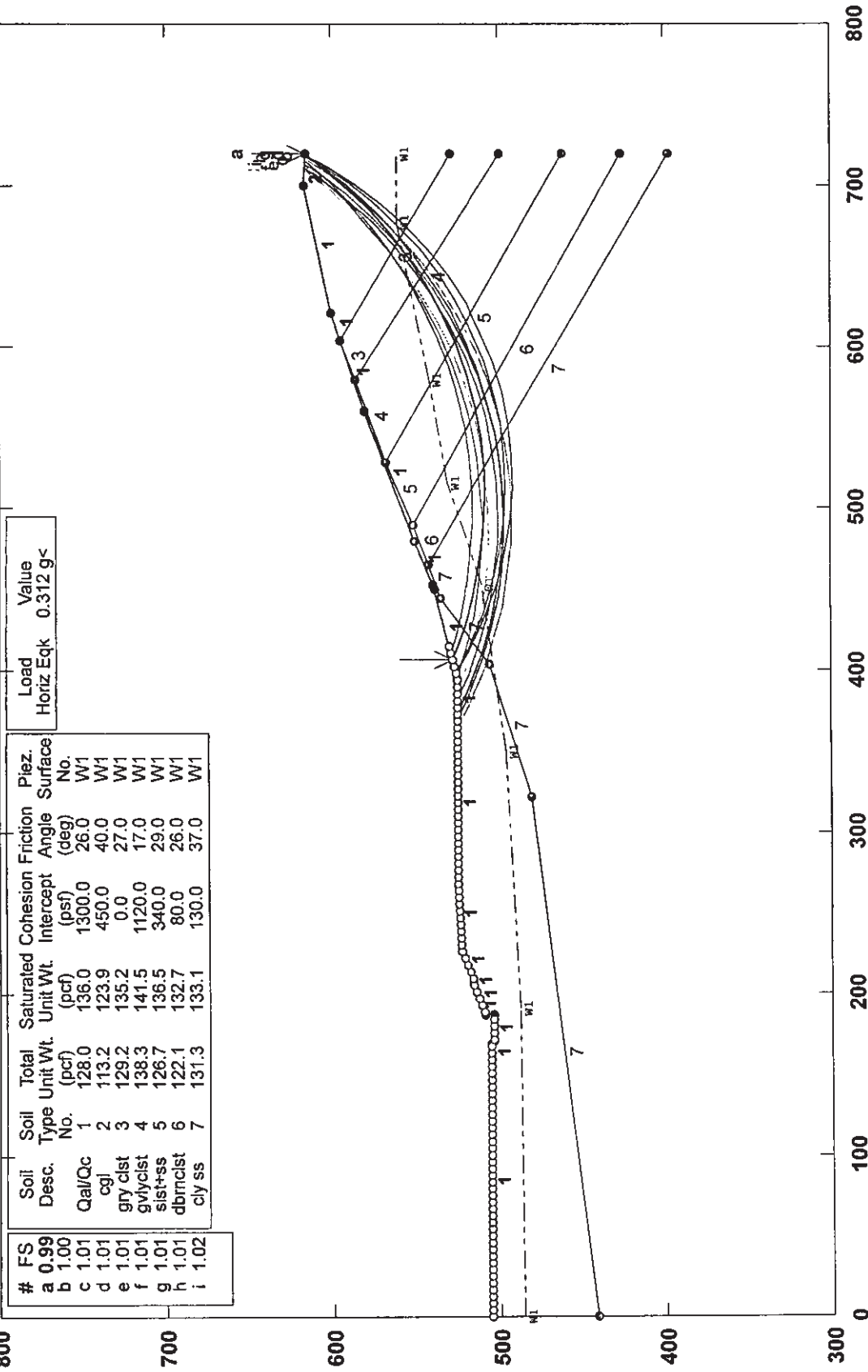


#	FS	Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion Intercept (psf)	Friction Angle (deg)	Piez. Surface No.
a	2.12	Qal/Qc	1	128.0	136.0	1300.0	26.0	W1
b	2.13	cgf	2	113.2	123.9	450.0	40.0	W1
c	2.14	gry clst	3	129.2	135.2	0.0	27.0	W1
d	2.14	gvlcst	4	138.3	141.5	1120.0	17.0	W1
e	2.14	sist+ss	5	126.7	136.5	340.0	29.0	W1
g	2.14	dbmrcst	6	122.1	132.7	80.0	26.0	W1
h	2.14	clt ss	7	131.3	133.1	130.0	37.0	W1
i	2.14							

STABL6H FSmin=2.12
Safety Factors Are Calculated By The Modified Janbu Method

Huang Subdivision A-A' Prop Configuration - dynamic - Figure C4

c:\program files (x86)\stedwin\sh-11525-sa huang\july 28 - 2011\la-a' prop config dynamic.pl2 Run By: Earth Systems Pacific 8/12/2011 11:54AM



#	FS	Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion Intercept (psf)	Friction Angle (deg)	Piez. Surface No.
a	0.99	Qal/Qc	1	128.0	136.0	1300.0	26.0	W1
b	1.00	cgl	2	113.2	123.9	450.0	40.0	W1
c	1.01	gry clst	3	129.2	135.2	0.0	27.0	W1
d	1.01	gvlcylst	4	138.3	141.5	1120.0	17.0	W1
e	1.01	sist+ss	5	126.7	136.5	340.0	29.0	W1
f	1.01	dbmclst	6	122.1	132.7	80.0	26.0	W1
g	1.01	clt ss	7	131.3	133.1	130.0	37.0	W1
i	1.02							

Load	Value
Horiz Eq	0.312 g<

STABL6H FSmin=0.99
Safety Factors Are Calculated By The Modified Janbu Method





ES Geotechnologies

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File No. BA-2559-01
November 14, 2008

Doc. No. 0811-043

Mr. Euson Huang
Cold Stone Creamery
1875 South Bascom Avenue, #160
Campbell, California 95008

Subject: Parcel Subdivision of 2.84 Acre Site (APNs 659-25-001, -002)
3770 Quimby Road
San Jose, California

**GEOLOGIC HAZARDS EVALUATION UPDATE AND FAULT
INVESTIGATION STUDY**

Dear Mr. Huang:

As you authorized, ES Geotechnologies (ESG) is submitting herein the results of our Geologic Hazards Evaluation Update and Fault Investigation Study for the proposed subdivision of the above-referenced site. This report presents ESG's evaluation of local and regional geologic conditions and the potential geologic hazards that could affect the proposed structures to be built on the site. Our study was conducted in general accordance with the requirements of the City of San Jose, California Geological Survey (CGS) Note 44, CGS Special Publications 42 and 117, and ASCE/SCEC (2002) guidelines. It is our opinion that the proposed subdivision and development of the site is viable from a geological point of view.

The site is within a City of San Jose Special Studies Zone and County of Santa Clara Fault Rupture Hazard Zone for the Quimby fault. Our fault trench work revealed that the Quimby fault is likely either buried under Pleistocene (old) alluvium at the site or is located off-site. The risk of ground rupture at the site due to displacement on the Quimby fault site is deemed low, supported by our trench work as well as nearby studies, which have collectively shown little evidence for an exact fault location or for recent activity along the fault. According to some workers, the site is also partially within or below the toe of a large mapped landslide which has apparently not been historically active. The slopes at and near the site are considered stable under static conditions according to the computer modeling performed for this study, yet some

landsliding could occur during wet conditions and/or during an earthquake. It is our understanding that the potential landslide area of the site will not be developed, and it appears from our modeling that the parcel to be developed is not likely to be impacted by landslides.

In summary, ESG considers the main foreseeable geologic hazard at the site to be moderate to strong ground shaking due to an earthquake on one of the known active faults in the Bay Area. The property owner should be aware that development in a seismically active area entails variable risks including disruption of roads and utilities, and possible structural damage to buildings.

The scope of services did not include an environmental assessment or investigation for the presence or absence of hazardous or toxic materials in the soil, surface water, groundwater or air, on, below, or around the site. Our scope also did not include soil (geotechnical) engineering recommendations for site development or foundation design.

If you have any questions, or if we can be of further service, please contact our office.

Respectfully submitted,

ES GEOTECHNOLOGIES

Bryan Kriens

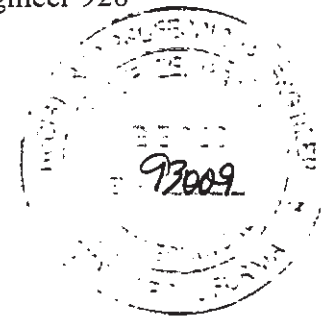
Bryan J. Kriens
Project Geologist
Certified Engineering Geologist 2476

Bill E. Zehrbach

Bill E. Zehrbach
Senior Engineer
Geotechnical Engineer 926

BJK/BEZ: rv

Distribution: 4 to Mr. Euson Huang
1 to Ruth & Going



SUMMARIZED GEOLOGIC CONCLUSIONS AND RECOMMENDATIONS

The following conclusions are based on the data acquired and analyzed during the course of this study.

1. The proposed subdivision of the subject site is considered feasible from a geologic viewpoint, provided the recommendations of this report are incorporated into the design and construction of the project. However, the property owner should be aware that development in the seismically active Bay Area entails variable risks, including possible structural distress to residences, retaining walls, and on-site pavements, plus disruption of local roads and utilities, due to the secondary effects of strong ground shaking.
2. The main identified geologic hazard at the site is strong seismic ground shaking. A moderate to major earthquake on the Hayward or Calaveras fault, or a major earthquake on the San Andreas fault, could cause severe ground shaking at the site. The foundations for the proposed residences and retaining walls (if planned) should be designed for seismic shaking, including horizontal and vertical accelerations, as required by the latest edition of the California Building Code. These values should be considered minimum design criteria.
3. The site has been shown on some geologic maps as lying at the toe of a large landslide. It is ESG's opinion that the large landslide, if it exists, is located upslope or elsewhere from the site, and is inactive (possibly Pleistocene in age). Results of our quantitative slope stability modeling suggest that the site-specific and regional slopes are stable under static conditions, and that if earthquake-induced sliding occurs, the proposed parcel to be developed will not be significantly impacted. Based on our slope modeling, borehole data, literature review, and site reconnaissance, it appears that special slope mitigation measures will not be necessary, but it may be desirable to construct a retaining wall at the existing small cut at the base of the on-site slope. The potential for localized landsliding can be exacerbated by destabilization of slopes by natural or man-made oversteepening, heavy erosion, saturation with water, or undercutting the base of slopes.

5. Based on our trench logging at the site, in light of nearby findings of other workers, the Quimby fault is apparently either buried by old (Pleistocene) alluvium under the site, or is located off-site. Graymer et al. (1995), Wentworth et al. (1999), and Dibblee (1972) all show the Quimby fault in a different inferred location. Only Dibblee (1972) shows the inferred fault crossing the site, yet nearby trench studies in the area of Dibblee's alleged fault have not confirmed its existence in the site vicinity. Taken together, the above findings suggest that the potential for surface rupture along a trace of the Quimby fault is low.

**GEOLOGIC HAZARDS EVALUATION UPDATE
AND FAULT INVESTIGATION STUDY**

**Parcel Subdivision of 2.84 Acre Site
(APNs 659-25-001, -002)
3770 Quimby Road
San Jose, California**

November 2008

Prepared for

**Mr. Euson Huang
Cold Stone Creamery
1875 South Bascom Avenue, #160
Campbell, California 95008**

Prepared by

**ES GEOTECHNOLOGIES
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File No. BA-2559-01
November 14, 2008

Doc. No. 0811-043

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3770 Quimby Road
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If you have any questions, or if we can be of further service, please contact our office.

Respectfully submitted,

ES GEOTECHNOLOGIES



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Distribution: 4 to Mr. Euson Huang
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GEOLOGIC HAZARDS EVALUATION UPDATE AND FAULT INVESTIGATION STUDY

PROJECT: Parcel Subdivision of 2.84 Acre Site (APNs 659-25-001, -002)
3770 Quimby Road
San Jose, California

CLIENT: Mr. Euson Huang

INTRODUCTION

This report presents the results of ES Geotechnologies' (ESG's) Geologic Hazards Evaluation Update and Fault Investigation Study for the proposed subdivision at the above-referenced site. This study addresses the influence of local and regional geologic conditions at the site, with emphasis on the potential for landslides and the effects of seismicity at the site. Conclusions presented in this report are based on the evaluation of data acquired from the geologic reconnaissance, subsurface exploration, literature and aerial photo review, laboratory testing, and slope stability modeling conducted during the course of this study. This report is an update of the Preliminary Geologic Feasibility Study performed for the subject property by Applied Soil Mechanics, Inc., dated September 9, 1991.

It is ESG's intent that this report be used exclusively by the client and his architect/engineer to form the geological basis of the design of the project as described herein, and in the preparation of plans and specifications. Application beyond this intent is strictly at the user's risk. Analysis of the soil for radioisotopes, asbestos, hydrocarbons, or chemical properties are beyond the scope of this investigation. Soil (geotechnical) engineering recommendations are also beyond the scope of this investigation.

Location and Description of Site

The subject site is located at approximately 37.3285° N latitude, 121.7654° W longitude at the corner of Quimby Road and Deedham Drive on the northeast quadrant of the San Jose East 7.5-

minute quadrangle (Figure 1A). The property is most readily accessed via Qumiby Road from the Capitol Expressway (Figure 1B).

The San Jose East quadrangle shows the elevation at the site to be approximately 520 feet above mean sea level (Figure 1A). The site is composed of two parcels: 1) APN 659-25-001, and 2) APN 659-25-002. Parcel -001 has a moderate slope throughout (~3H:1V), while Parcel -002 has a gently sloping to flat topography (Figure 2). Parcel -002 has been cut flat in places by grading activity, and a small fill slope is also present adjacent to Qumiby Road. The two parcels are presently being used for horse pasture. Numerous pens and storage sheds, and a few trees, occupy the middle of the site. An unpaved driveway extends along the southern property boundary to about the middle of the site. The site is surrounded by vacant grassland except for Qumiby Road and an adjacent residential neighborhood to the west.

Proposed Development

Detailed plans for the proposed subdivision were not available for review during this study. Based on a preliminary site plan created in 2004, it is our understanding that Parcel -002 of the site is to be divided into eight single-family residential parcels, with four houses along Qumiby Road and four houses along a separate private shared driveway leading toward the back. Parcel -001 will apparently remain undeveloped open space.

Scope of Work

This report summarizes the geologic data that we acquired regarding the subject site and vicinity, and presents the results of our geologic hazards evaluation for the site. Conclusions discussed herein regarding potential geologic hazards at the site are based on a synthesis of literature, site surface and subsurface observations, aerial photo interpretation, laboratory test results, and quantitative computer modeling of slope stability.

Our Geologic Hazards Evaluation Update and Fault Investigation Study encompassed the following work:

- A. Research of pertinent geotechnical and geologic literature.

- B. Interpretation of stereo aerial photographs of the site and vicinity.
- C. Geologic reconnaissance and surficial mapping of the site and vicinity.
- D. Excavation and logging of 370 lineal feet of geologic trench, to investigate the possibility that the Quimby fault crosses the site.
- E. Drilling and logging of two exploratory borings, with collection of samples at selected depths.
- F. Soil laboratory testing of samples obtained during drilling, to determine the pertinent physical and engineering characteristics of the onsite soils for use in our slope stability analysis.
- G. Quantitative computer modeling of the stability of slopes that may affect the site. The analysis was performed according to the guidelines in CGS Special Publication 117 (2008) and ASCE/SCEC (2002).
- H. Analysis of the data generated from this study, resulting in the compilation of a written report presenting our findings related to the following:
 - 1. Local and regional geology, including faults and seismicity.
 - 2. General soil and bedrock conditions.
 - 3. Estimated peak horizontal ground acceleration.
 - 4. California Building Code seismic design parameters.
 - 5. Hazards related to seismicity, including ground rupture and vibration.
 - 6. Hazards related to landslides.
 - 7. Recommendations for hazard mitigation or further evaluation, if needed.
 - 8. Project feasibility approval.

The scope of our services did not include any environmental assessment or investigation for the presence of hazardous or toxic materials in the soil, surface water, groundwater or air, on or below or around this site. Our scope also did not include soil (geotechnical) engineering recommendations for site development or foundation design.

Regional Geologic Setting

The subject site is located in the foothills of the western flank of the Mt. Hamilton-Mt. Diablo Range. The Mt. Hamilton-Mt. Diablo Range and the Santa Cruz Mountains, respectively, form the eastern and western boundaries of the Santa Clara Valley in the Coast Ranges geomorphic

province in central California. These northwest-trending mountain ranges are the result of tectonic uplift that has been interpreted to have been occurring since Pliocene-Pleistocene time (beginning approximately 3 to 5 million years before present). The regional basins now occupied by San Pablo and San Francisco Bays, and the Santa Clara Valley, were formed by related tectonic processes during Pleistocene time.

The predominant structural feature in the California Coast Ranges is the San Andreas fault zone, which is the structural boundary between two tectonic plates: the Pacific Plate to the west of the San Andreas fault zone and the North American Plate east of the fault. These two plates are moving past each other at approximately 5.1 cm/year at the mouth of the Gulf of California and 1 to 3 cm/year in the central and northern parts of California (Brown, 1990). The Hayward and Calaveras faults, located on the east side of the Santa Clara Valley, are interpreted to be part of the San Andreas fault system.

For the San Francisco Bay area in general, the oldest rocks east of the San Andreas fault are the Jurassic-Cretaceous Franciscan Complex. The Franciscan Complex is composed of a chaotic assemblage of mainly shale, sandstone, chert, limestone, greenstone, and serpentinite. These rocks are interpreted to represent components of ancient Pacific Ocean crust that have been disrupted and accreted to western California during Cretaceous to early Tertiary time and prior to development of the San Andreas fault system. The Franciscan Complex is overlain by, or in fault contact with, sedimentary rocks of upper(?) Cretaceous age in some terranes in the southern and eastern Santa Clara Valley. West of the San Andreas fault, the oldest rocks are the predominantly Mesozoic granitic Salinian Block. Mesozoic and Paleozoic metamorphic rocks are a lesser component of the Salinian Block. On both sides of the San Andreas fault, the oldest rocks are overlain by Tertiary and Quaternary marine and terrestrial sedimentary rocks and local volcanic rocks. All of the above rock units were faulted, folded, and uplifted due to plate motions and activity on the San Andreas, Hayward, Calaveras, and smaller related faults. This deformation began about 30 million years ago, but is mainly Pliocene to Pleistocene in age (~5 million to 10,000 years ago). Holocene-age (10,000 years to present-day) plate motion is expressed mainly as creep and seismicity on the various faults of the San Andreas fault system.

The Quaternary sediments in the Santa Clara Valley were deposited when older rocks in the Santa Cruz Mountains and the Mt. Hamilton-Mt. Diablo Range were exposed to erosion by tectonic uplift. Norwood Creek and Quimby Creek are the nearest drainages north and south of the site, respectively, and are significant seasonal drainages that continue to deposit sediment into San Francisco Bay at the edge of the Santa Clara Valley.

Geologic Literature Review

The site and vicinity are within a geologically complex region of landslides and active faults. The variety of geologic data and geologists' opinions reflect the complexity of the area. The geologic and geotechnical literature reviewed for this study is listed in the References Cited section. The following paragraphs summarize the general geologic information about the site and vicinity derived from the literature review.

The U.S. Department of Agriculture Soil Conservation Service (1968) has mapped the soil at the site as the San Ysidro loam (on the flatter Parcel -002) and the Altamont clay (on Parcel -001). The Altamont clay forms on moderate to very steep uplands, and is generally derived from sedimentary rocks. The Altamont clay is typically dark grayish brown fat clay (CH), well-drained, moderately to highly expansive (Plasticity Index 25 to 35), and has medium runoff, slow permeability, and a moderate erosion hazard. A liquid limit of 50 to 60 is reported for samples of this soil unit. The San Ysidro loam is typically light brownish gray loam overlying clayey (CH) subsoil that tends to form from alluvial fan and terrace deposits. This soil tends to be moderately well-drained, with very slowly permeable subsoil. Runoff is medium and erosion hazard is moderate. Plasticity Index is listed as 5 to 10 for the surficial loam and 30 to 40 for the clayey subsoil.

Crittenden's (1951) 1:62,500-scale geologic map of the San Jose-Mt. Hamilton area shows the site to be located at a contact between Pliocene(?) - Pleistocene Santa Clara Formation on the east and Quaternary alluvium on the west (Figure 3A). Older rocks in the site vicinity are mapped as Cretaceous Berryessa shale and Oakland conglomerate, and Miocene Monterey Formation. An unnamed northwest-trending fault is mapped approximately 1,000 feet northeast and southeast of

the site, but is not shown to cut the Santa Clara Formation in the site vicinity. However, to the north, this fault is in roughly the same location as the Hayward fault mapped by subsequent workers.

Dibblee (1972) mapped the geology of the San Jose East quadrangle at a scale of 1:24,000. His map shows the site to be located on a concealed trace of the Quimby fault. At the site, the fault is concealed by Quaternary alluvial fan deposits adjacent to a large landslide (composed of Monterey Formation debris) to the east (Figure 3B). Approximately 1,500 feet south of the site, the Quimby fault is shown to be concealed by the same large landslide. Cretaceous Berryessa shale and Oakland conglomerate are also mapped in the site vicinity, and the Hayward fault is shown located approximately 1,400 feet east of the site, also concealed by the large landslide. The Evergreen fault is shown as a concealed fault approximately one mile west of the site. Dibblee indicates east-side-up displacement for the Quimby and Evergreen faults, and right-lateral strike-slip displacement for the Hayward fault. Dibblee's (2005) geologic map, which contains some revisions to his earlier mapping, shows the geology at the site and vicinity to be the same as that shown in Dibblee (1972), except that the Quimby fault has been renamed the West Hayward fault, and the Berryessa shale and Oakland conglomerate are renamed the Panoche? Formation.

Graymer et al. (1995) performed a regional compilation of the bedrock geology of the Hayward fault zone. In general, their map does not depict landslide deposits. They show the site to be underlain by unnamed Cretaceous sandstone and siltstone on the east, and undivided Quaternary surficial deposits on the west (Figure 4A). In contrast to Dibblee (1972, 2005), the Quimby fault is mapped approximately 300 feet west of the site. They map the Hayward fault of Dibblee (1972, 2005) approximately 1,400 feet east of the site, in agreement with Dibblee, but have renamed it the Clayton fault in this region. The Evergreen fault is also shown in roughly the same location as Dibblee (1972, 2005). All three faults are depicted as reverse or thrust faults, and the Quimby and Evergreen faults are shown as concealed faults.

Mapping by Wentworth et al. (1999) shows the site at a contact between a large Quaternary landslide complex to the east and Quaternary older fan deposits on the west (Figure 4B). The Quimby fault is shown as an approximately located (inferred, concealed) fault in the vicinity of the southwest corner of the subject property. The Hayward (Clayton) and Evergreen faults are shown in locations similar to Dibblee (1972, 2005) and Graymer et al. (1995).

Nilsen (1975) mapped landslide and colluvial deposits in parts of Santa Clara County using aerial photo-interpretation techniques. Nilsen's map for the site area shows the eastern portion of the site (Parcel -001) to be in the toe of a large landslide. The boundaries of the slide are similar to those of Dibblee (1972) and Wentworth et al. (1999).

A portion of the subject site (mainly Parcel -001) lies within an earthquake-induced landslide hazard zone according to the 2001 California Division of Mines and Geology (CDMG) Seismic Hazard Zones map, and within a landslide hazard zone delineated by the County of Santa Clara (2002a). The potential hazard zone boundaries on both maps include the large mapped landslide at the site and vicinity (Figures 3B and 4B). However, the site is not within a liquefaction hazard zone (CDMG, 2001; County of Santa Clara, 2002b).

Rogers and Williams (1974) evaluated potential seismic hazards in Santa Clara County. Their relative seismic stability map shows the site within zone "Dr", which is defined as areas of high potential for ground displacement along fault traces. Their zone "Dr" mapping closely coincides with the 1974 map of special studies zones delineated by the CDMG following passage of the Alquist-Priolo Act. At that time, the Quimby fault mapped by Dibblee (1972) was considered a zoned fault by the state. Thus, the site is in a special studies zone (earthquake fault zone) according to the 1974 CDMG map. Subsequent fault investigations regarding the activity of the Quimby fault were evaluated by the CDMG, and revealed inconclusive evidence for Holocene (<11,000 years old) activity (CDMG, 1981). Consequently, the Quimby fault does not appear as a zoned fault on the 1982 revised official state map (CDMG, 1982), and the site is no longer in a state-defined earthquake fault zone (Figure 5A). However, the City of San Jose (1983) and

County of Santa Clara (2002c) have compiled fault hazard maps which favor the 1974 CDMG zoning designations showing the Quimby fault as a zoned fault, such that the site lies within a city-defined special studies zone and a county-defined fault rupture hazard zone (Figure 5B).

Earth Systems Consultants (ESC, 1991) attempted to locate the Quimby fault of Dibblee (1972) on a large site adjacent to the south boundary of the subject property (Figure 6). They performed a fault trench study and a seismic refraction survey, and mapped the small quarry and roadcut along Chaboya Road (road shown on Figure 1B). A trench was excavated to a depth of 10 feet at the break in slope near to the subject site. There, a subhorizontal planar feature was found near the break in slope, interpreted by them to be a slide plane. They did not find fault features in the trench. The roadcut ranged from 5 to 10 feet in height, but no fault or slide features were noted. In summary, their study did not find the Quimby fault, yet the exposed alluvial fan soils investigated by them were cited as greater than or approximately equal to 30,000 years old (reportedly dated by Dr. Roy Shlemon).

UPP Geotechnology, Inc. (1990) performed a fault trench study of the parcels adjacent to the north boundary of the subject property (Figure 6). Their trench did not expose evidence for the presence of faults, but the trench location was uphill and east of Dibblee's (1972) mapped Quimby fault. Their study, however, did find trench features which led them to interpret the large landslide of Dibblee (1972) as an ancient, now stabilized slide, possibly several hundred thousand years (Pleistocene) in age. They noted that the base of the slope was underlain by Berryessa Formation bedrock, and that the ancient landslide debris is found further uphill. The contact between the two units is shown trending uphill east of the subject site, implying that the subject site is underlain by Berryessa Formation bedrock. They describe contacts dipping approximately 26 degrees to the northeast in their trench.

JCP Geologists (1977) performed a geologic study of property approximately 700 feet north of the subject site (Figure 6). Their seismic refraction survey across the concealed Quimby fault mapped by Dibblee (1972) revealed a slight anomaly which they interpreted to be the fault.

Although they excavated a 7 foot-deep geologic trench in a proposed building area approximately 75 feet east of the anomaly, they did not trench the anomaly. Their trench exposed unfaulted alluvium.

Applied Soil Mechanics, Inc. (ASMI, 1979) investigated Dibblee's (1972) concealed Quimby fault on a large property adjacent to the west boundary of the subject site (Figure 6). They excavated several closely-spaced test pits 7 to 10 feet deep in the general location of the concealed fault, but did not find features indicative of faulting.

ASMI (1991) performed a Preliminary Geologic Feasibility Study for the subject site. Their study did not involve subsurface investigation. Their literature review mentions a 1978 report by ASMI which describes the Quimby fault as a fault that separates Santa Clara and Berryessa Formations in a roadcut on Quimby Road, about 1,000 feet west of the double hairpin turn (see Figure 1B for double hairpin location). This fault trace is located approximately 400 feet east of Dibblee's (1972) concealed Quimby fault, and is not discussed further in the ASMI (1991) study. Our review of the geologic map in ASMI (1978) shows that this fault trends northward into the location of Dibblee's Hayward fault, and southward approximately 300 feet uphill (east) from the subject site. ASMI (1991) also noted a tonal lineament on aerial photos in the vicinity of Dibblee's (1972) Quimby fault north of the site. ASMI (1991) also references a soil engineering study performed for the subject site (Frank Lee & Assoc., 1988, which ESG was unable to obtain), and interprets the boring logs therein to suggest that Berryessa Formation is encountered at depth. Based on their aerial photo and literature review, ASMI (1991) shows the concealed Quimby fault of Dibblee (1972) trending north-northwest through the middle of Parcel -002, and they show the large landslide of Dibblee (1972) above the approximate base of the slope such that Parcel -001 is within the slide mass. They recommended a detailed fault study be performed for the site to determine the potential for ground rupture along the Quimby fault. ASMI (1991) did not note evidence for a gross slope failure during their site reconnaissance and aerial photo review, but stated that the site is within an older large landslide. The potential hazard for landsliding was qualitatively assessed and suggested to be low to moderate.

Faults and Seismicity

The site is located within the seismically active San Francisco Bay area. Active faults are defined by the California Geological Survey (CGS, formerly the CDMG) as faults that are well defined and have experienced movement within the last 11,000 years (Hart and Bryant, 1997). The definition of potentially active faults varies, however. A generally accepted definition of a potentially active fault is one that shows evidence of displacement older than 11,000 years and younger than 2,000,000 years (i.e., Pleistocene in age). However, potentially active is no longer used as criteria for zoning. The terms sufficiently active and well-defined are now used by the CGS as criteria for zoning faults under the Alquist-Priolo Act (Hart and Bryant, 1997). Inactive faults are classified based upon lack of evidence of movement within the last two million years.

The major active faults in the Bay Area are the San Andreas, Hayward, and Calaveras faults. The San Andreas fault is approximately 17 miles southwest of the site (Jennings, 1994). The Hayward and Calaveras faults are mapped approximately 0.2 miles and 2.5 miles, respectively, northeast of the site (Rogers and Williams, 1974).

Several strong earthquakes have occurred on the active faults in the San Francisco Bay region within the last 200 years (Figures 7 and 8). Especially notable are the 6.8M 1868 Hayward earthquake, the 1906 8.3M San Francisco earthquake, the 1926 Monterey Bay 6.1M doublet, the 6 August 1979 5.8M Coyote Lake earthquake, the 24 April 1984 6.2M Morgan Hill (Halls Valley) earthquake, and the 17 October 1989 7.1M (6.9Mw) Loma Prieta earthquake. The Calaveras fault is considered active from San Ramon to Hollister (Hart, 1984). Three earthquakes of Richter magnitude 5.8 and larger have occurred on the Calaveras fault since 1900 (Stover, 1984). The Sargent (Castro) fault zone produced a 4.9M earthquake on 13 May 2002, which was located approximately 26 miles south of the site.

The epicenters of the 1989 Loma Prieta and 1984 Morgan Hill earthquakes were located, respectively, approximately 20 miles south-southwest and 3 miles east of the subject site. The 1989 Loma Prieta and 1984 Morgan Hill earthquakes produced ground shaking equivalent to a

modified Mercalli intensity of VI in the east San Jose area (Plafker and Galloway, 1989; Stover, 1984). Figure 9 is a reproduction of the modified Mercalli intensity scale.

The California Building Code (2001) classifies faults as Types A, B, or C. The San Andreas and Hayward (total length) faults are classified as Type A under the 2001 California Building Code. Type A faults are defined as faults that are capable of producing large magnitude events and that have a high rate of seismicity. The Hayward (southeast extension), Calaveras, Sargent, Berrocal, and Monte Vista-Shannon faults are classified as Type B faults, which are defined as all faults other than Types A and C. Type C faults are defined as faults not capable of producing large magnitude earthquakes and that have a relatively low rate of seismic activity (CBC, 2001). The classifications are based upon slip-rate along the fault, estimated maximum ground shaking potential, and postulated earthquake recurrence interval. Type A faults have generally produced the strongest earthquakes, but Type B faults such as the Calaveras fault and southeast extension of the Hayward fault are capable of producing earthquakes of significant magnitude.

The immediate effect of an earthquake is ground acceleration produced by the release of elastic strain accumulated along a fault. The highest peak vertical and horizontal ground accelerations during the 1989 Loma Prieta earthquake (0.47g and 0.64g, respectively) were measured approximately 26 miles south of the site in Corralitos (Shakal, et al, 1989; Plafker and Galloway, 1989). In downtown San Jose, the Loma Prieta earthquake produced ground acceleration of 0.10g (vertical) and 0.11g (horizontal) (Shakal, et al, 1989). The Morgan Hill earthquake generated vertical and horizontal ground accelerations, respectively, of 0.08g and 0.12g at the Highway 101-680/280 interchange (Shakal, Sherburne, and Parke, 1984). It should be expected that the subject site will be impacted by future earthquakes of comparable or greater magnitude than the 1984 Morgan Hill and 1989 Loma Prieta earthquakes.

Deterministic Seismic Hazard Evaluation

Estimated peak horizontal ground acceleration is one of the basic parameters used to characterize the ground shaking potential at a given site. Actual ground accelerations at a locality are influenced by topography, geologic structure, condition of subsurface materials, and

groundwater level. Table 1 below lists the estimated seismic parameters for known active faults in the San Francisco Bay region that could affect the site. The estimated mean peak horizontal ground accelerations presented in Table 1 are based upon the estimated upper bound earthquake (UBE) at the near point of the fault, or are based upon data recorded during known seismic events and extrapolated to the subject site. The UBE, previously referred to as the maximum credible earthquake, is the most severe earthquake that is currently thought to be potentially generated on a causative fault. Estimates of acceleration were produced by the computer program EQFAULT version 3.0 (Blake, 2004) using statistical analysis and attenuation relationships determined by Bozorgnia, Campbell, and Niazi (1999) for a site categorized as "Pleistocene Soil". This method of seismic analysis is a deterministic approach in that each active fault within the region that may be reasonably expected to generate strong ground shaking at the site is evaluated. Table 1 also lists the distance of the causative faults from the site as derived from the computer program EQFAULT, the possible earthquake magnitudes that may be generated by the faults, the recurrence interval for the faults, and the fault type classification of the 2001 California Building Code.

Based on the data presented in Table 1, it appears that the highest peak ground acceleration will result from an earthquake occurring on the Hayward or Calaveras faults. The values given are conservative in that it is assumed that the earthquake will occur at the near-point of a fault relative to the site.

TABLE 1
Deterministic Estimates of Peak Ground Acceleration for
Significant Known Faults in the Site Region ("Pleistocene Soil" Site^[2])

Fault	Closest Distance (mi/km)	Maximum Magnitude (M_w) ^[1]	Est. Peak Ground Acceleration (g) Mean ^[2]	Recurrence Interval ^[3,4]	Fault Type ^[5]
Hayward (SE extension)	0.3/0.4	6.4	0.529	220	B
Calaveras	3.7/5.9	6.2	0.333	54	B
Hayward (Total length)	8.6/13.8	7.1	0.276	155	A
Monte Vista-Shannon	11.1/17.8	6.8	0.266	2410	B
Greenville	15.8/25.5	6.9	0.143	521	B
Sargent	15.9/25.6	6.8	0.134	1200	B
San Andreas (1906)	16.7/26.8	7.9	0.254	225	A
San Andreas (Santa Cruz Mtns.)	16.7/26.8	7.0	0.145	400	A

[1] Moment magnitude from Cao et al (2003).

[2] Ground Accelerations estimated from Bozorgnia, Campbell, and Niazi (1999), for "Pleistocene Soil (corrected)" site conditions.

[3] Recurrence intervals from USGS (2003) Open File Report 03-214.

[4] Recurrence intervals from Appendix A, CDMG Open File Report 96-08.

[5] Table 16-U, Seismic Source Type, California Building Code (2001).

While the U.S. Geological Survey no longer attempts to predict the occurrence and magnitude of future earthquakes, the Working Group on California Earthquake Probabilities (CGS 2008) has estimated that there is a 63% probability that one or more major earthquakes (M_w 6.7+) will occur in the Bay Area by the year 2037 (Figure 10).

California Building Code Seismic Design Parameters

The seismic design parameters for the site per Chapter 16 of the 2007 California Building Code are listed below. The values were determined utilizing the USGS Earthquake Hazards Program Earthquake Ground Motion Parameter Java Application and the 2003 NEHRP Recommended Provisions for Seismic Regulations for New Buildings and Other Structures.

Site Class = D (Stiff Soil)
Short Term Spectral Response Parameter, $S_s = 1.500g$
1 Second Spectral Response Parameter, $S_1 = 0.600g$
Site Coefficient, $F_a = 1.0$
Site Coefficient, $F_v = 1.5$

Aerial Photo Interpretation

ESG reviewed black-and-white stereo pairs of aerial photographs for the subject property and vicinity for the years 1971, 1976, and 1977. The aerial photographs used are listed in the References Cited section of this report. The photographs were studied for the presence of geomorphic features characteristic of active faulting and active and ancient landslide processes.

Our aerial photographic review indicates that the subject site is located in an area of relatively smooth slopes, but that further uphill to the east, and to the south, hummocky terrain is evident and may indicate areas of old landslides. A possible toe of a slide is seen to the south of the site. No fresh slide scarps or areas of deep erosion were seen in the area of the site, and no springs or seeps were obvious.

A pronounced northwest-trending linear drainage and ridge are visible to the north of the site, and Dibblee (1972) mapped a trace of the Quimby fault in this drainage (Figure 3B). However, similar lineaments are not developed at the site or vicinity. A deflected stream channel northeast of the site appears to be related to the Hayward fault. We were unable to detect the tonal lineament of ASMI (1991) in the aerial photos we reviewed.

Site Reconnaissance

An ESG geologist visited the site on October 7, 2008, to drill, log, and sample two boreholes as well as to perform geologic reconnaissance of the site and vicinity (see Figure 2 for site geology). There were no rock outcrops at or near the site. Colluvial soil blankets the sloping portion of the site, whereas alluvium is found on the flatter portion. Both soils are generally brown lean clay with gravel. Dessication cracks were not noticeable. Gravelly clayey soil was also noted in nearby roadcuts along Quimby Road to the north.

No evidence of active faulting or landsliding was noticed at the site. Seeps or springs were also not evident. The slope at the site is smooth and convex outward, not hummocky. However, the site is bounded to the north by a minor drainage which is little eroded but which appears to contain an old, small (~100 feet across), shallow slump and concave bowl (old subdued scarp) at its head. This slump is in a relatively low sloping area of the drainage and appears stabilized. This drainage appears to die out at the break in slope before reaching Quimby Road, or has been obscured by grading activities at or adjacent to the site.

Exploratory Drilling

Two exploratory borings, each drilled to 45 feet in depth, were logged and sampled by an ESG geologist on October 7, 2008. The borings were drilled on the sloping portion of the site. See Figure 2 for approximate boring locations and Appendix A for boring logs. In summary, the site slope is underlain by yellowish brown to olive brown clayey gravel (weathered conglomerate), claystone, and fine sandstone. These subsurface units are overlain by approximately 2 to 3 feet of colluvium. We did not observe any obvious landslide debris in the borings. ESG considers the subsurface units to correlate with those described as Berryessa Formation by UPP (1990) in the trench and borings they logged on the adjacent property to the north. Groundwater was not encountered in either boring.

Selected samples collected during drilling were analyzed in the laboratory to determine moisture, density, and shear strength characteristics. See Appendix A for laboratory test results.

Geologic Trenches

Two geologic trenches on the subject property were excavated and logged under the supervision of ESG's Certified Engineering Geologist. The trenches were oriented perpendicular to the Quimby fault trend and spanned the area of proposed development (Parcel -002). The approximate trench locations are shown on Figure 2. Trench T1 was excavated approximately 170 feet long and 8 feet deep, and Trench T2 was excavated approximately 200 feet long and 5 feet deep. Trench T2 was excavated to a shallower depth due to its location on a flat cut pad from which apparently 2 to 5 feet of native soil had been removed (i.e. the trench depth was actually about 7 to 10 feet below the original ground surface). The two trenches had about 15 feet of overlap. The trench walls were shored and cleaned of "bucket smear", and the geology was logged by ESG geologists from October 8, to 14, 2008. Our observations of the trench exposures are graphically shown on Figure 11. After logging was completed, the trenches were loosely backfilled.

In summary, we encountered unfaulted Quaternary alluvium in the trenches. No shear fabric was detected. The alluvium generally consisted of brown to dark reddish brown lean clay with gravel (CL) to clayey gravel (GC). The upper units (Units 2 and 5) are difficult to distinguish lithologically from the lower units (Units 3 and 4), and the gradational contact between the upper and lower units appears to correspond mainly to a color change due to increasing moisture with depth, and to a lesser amount of bioturbation with depth. The gravel throughout is typically fine, rounded sandstone and siltstone clasts derived from the Monterey and Berryessa Formations. Some cobbles and rare boulders are randomly scattered throughout both trenches. Clasts greater than about 4 inches in diameter were logged and are shown on Figure 11. In a few places, thin bedded stratification was visible, but most contacts are indistinct or gradational; some appear to be roughly lenticular in geometry.

Slope Stability Analysis

Methodology

The stability of the slopes at and above the site was evaluated by performing a computer analysis in accordance with CGS (2008) Special Publication 117 and ASCE/SCEC (2002) guidelines. We constructed two cross sections, A-A' and B-B', to represent the site-specific slope and the regional slope, respectively (Figure 12). See Figures 2 and 3B for locations of the cross sections. The construction of cross sections A-A' and B-B' utilized the geologic mapping by Dibblee (1972), with modifications on A-A' based on the findings of UPP (1990) and our on-site borehole data, which suggest that the large slide mapped by Dibblee is not present at the site. However, we performed an additional computer model of section A-A' with Dibblee's slide incorporated into the model.

The computer analysis used Janbu's Simplified Method with the aid of the computer program PCSTABL version 6.54H (1996). The slopes were considered to be stable if the stability analyses resulted in a calculated static factor of safety (f.s.) of 1.5 or higher. The seismic stability screen analysis was evaluated using a seismic coefficient of 0.310g (using the site specific rock acceleration of 0.644g following the CGS Website guidelines, earthquake magnitude of 6.8, and distance from the southeast extension of the Hayward fault of 0.4 km, calculated per the recommendations of SP 117). Slopes are generally considered stable with a calculated dynamic factor of safety of 1.0 for the screen test. If the dynamic factor of safety is less than 1.0, a Newmark analysis is considered necessary to evaluate slope deformation.

Geologic Units

Three geologic units were identified at the site and vicinity for the purpose of the slope stability modeling of the cross sections. They are: 1) Quaternary alluvial fan or alluvium/colluvium (Qf or Qal/Qc), 2) Quaternary landslide deposits (Qls), and 3) Cretaceous Berryessa Formation bedrock (Kb). Based on drained direct shear tests performed on samples collected from Borings B1 and B2, ESG determined peak and ultimate strengths for the Berryessa Formation (Figures A6 and A7). We chose to use in our model the ultimate strength of the sample with the lowest

value of friction angle (ϕ). For modeling the alluvial/colluvial deposits, we obtained strength data from a nearby soil investigation in the alluvium (on Slopeview Drive approximately ¼ mile to the northwest). For the landslide unit, we obtained drained, residual shear strength data from Berryessa Formation debris in the vicinity of the Boulder Drive landslide approximately 5 miles to the north. The sources of the data, and the values of cohesion (c) and friction angle (ϕ) are tabulated below:

Formation	c (psf)	phi (deg)	Source
Qal	1300	26	Applied Soil Mechanics, Inc. (1980)
Qls	24	26	ES Geotechnologies (2007)
Kb	1120	17	Appendix A, this study
Kb	130	37	Appendix A, this study

Groundwater

Groundwater was not encountered in the borings drilled on the subject site during the course of our investigation. Thus, groundwater is at least deeper than 45 feet. For purposes of stability analyses, the depth to the groundwater table was established along the cross sections at approximately 50 to 60 feet below the ground surface (bgs) near the site and about 100 to 200 feet bgs in the region upslope. The water table was assumed to deepen gradually eastward, yet remain roughly subparallel to the topographic surface, consistent with general assumptions about the geometry of shallow, unconfined aquifers relative to topography.

Slope Stability Evaluation

The computer program generated plots of the cross-sections and the ten most critical failure surfaces (potential failure surfaces with lowest factor of safety) for each of the modeled slopes on the sections. The stability analysis for the site-specific slope (A-A') slope without the slide mapped by Dibblee (1972) resulted in a minimum static factor of safety of 1.88 and a minimum dynamic (seismic) factor of safety of 0.90 (Figures B1, B2, Appendix B). The stability analysis for section A-A' with the mapped slide of Dibblee (1927) showed a minimum static factor of safety of 1.48 and a minimum dynamic factor of safety of 0.72 (Figures B3, B4, Appendix B). The regional slope cross section B-B' showed a minimum static factor of safety of 1.50 and a

minimum dynamic factor of safety of 0.61 (Figures B5, B6, Appendix B). The static factors of safety for all slopes are close to or greater than 1.5. Section A-A' with the landslide is slightly under f.s. = 1.5 (1.48). The model predicts, however, that if such as slide mass exists, the likely failure will be as a relatively shallow (10 deep or so) slump located away from the base of the slope and proposed development. More importantly, all three modeled slopes failed the factor of safety criteria for seismic stability, and Newmark analyses were performed. Estimated displacement for an earthquake of M6.8 at 0.4 km from the site (Hayward fault) was determined to be: 1) 3.8 inches for section A-A' without the slide, 2) 23.2 inches for A-A' with the slide, and 3) 0.05 inches for regional slope B-B'. Except for section A-A' with the slide, the displacements are considered acceptable risk by current standard of practice (<10 cm; CGS, 2008). We note that if the slide in A-A' does exist, the predicted failure and displacement are shown to be approximately 40 feet uphill from the base of the slope and away from the proposed development.

Discussion

This geologic study was conducted to determine the geologic conditions at the site and to evaluate potential geologic hazards that may impact the proposed site improvements. Due to the site's location in an area of active and potentially active faults and landslides, this Geologic Hazards Evaluation Update and Fault Investigation Study focused on potential landsliding, fault rupture, and seismic shaking at the site.

In general, potential geologic hazards include landsliding, debris flows, soil creep, and the hazards concomitant with earthquakes. Earthquake-related hazards include ground rupture along the trace of a fault, ground shaking, ridge-top cracking, and earthquake-induced landsliding.

Landslides

Some of the geologic maps examined for this study show that the site is at the toe of a large landslide. State and county hazard maps also identify potential landslide hazards at the site. Trench and borehole data documented by UPP (1990) for the adjacent site to the north, our on-site borehole and reconnaissance data, and our review of aerial photographs suggest that this

slide, if it exists, lies upslope from the site and is likely an old, inactive (Pleistocene) feature. There is, however, a small, dormant slump in the head of the drainage adjacent to the site to the northeast, and some hummocky areas further upslope to the east. These areas are not expected to impact the site due to their distance and location.

Although we are of the opinion that the large slide of Dibblee (1972) and Wentworth et al. (1999) is not present at or near the site, we nevertheless incorporated it into two of our slope stability models. We found that with or without the slide, the slopes were stable under static conditions (factor of safety approximately equal to or greater than 1.5). Assuming a M6.8 rupture at the near-point of the Hayward fault (0.4 km), we found that the slopes failed, but that Newmark displacements were either very low (< 4 inches) or were predicted to occur sufficiently far enough away from the proposed development so as not to require special on-site mitigation measures.

It is our opinion that the hazard posed by large, deep-seated landsliding is low. The presence of Berryessa Formation bedrock at shallow depth in our boreholes and lack of scarps or hummocky terrain at the site suggest that the potential for shallow landsliding is also low. Localized landsliding can, however, be exacerbated by destabilization of slopes by natural or made-made oversteepening, heavy erosion, earthquakes, saturation with water, or undercutting the base of slopes.

Ground Rupture

Dibblee (1972) inferred that the Quimby fault crossed the site yet was buried by alluvium. Graymer et al. (1995) and Wentworth et al. (1999) show the Quimby fault to be west of the site. Geologic and geotechnical studies on nearby properties have not been able to locate the fault. City and county hazard maps show the site in a fault rupture hazard zone for the Quimby fault, but the state no longer considers the Quimby fault to be an Alquist-Priolo zoned fault.

We attempted to locate the Quimby fault in trenches across the site, but could find no evidence of faulting during our logging of the exposed alluvium. Similar alluvial soils were described by

ESC (1991) approximately ¼ mile south of the site in roadcuts along Chaboya Road (Figure 1B). According to ESC (1991), the Chaboya Road alluvial soils were dated by Mr. Roy Shlemon to be greater than or approximately equal to 30,000 years (late Pleistocene). We therefore interpret our trench observations as indicating that either the Quimby fault lies west of our trench locations, or is buried underneath the site by late Pleistocene alluvium. Thus, the Quimby fault is either off-site or not recently (<11,000 years) active. Accordingly, we are of the opinion that the potential for ground rupture along a trace of the Quimby fault at the site during an earthquake is low.

Ground Shaking

Ground vibration is a potential hazard accompanying all earthquakes to a varying degree and can damage or destroy inadequately designed or constructed structures. Future earthquakes on the San Andreas, Hayward, and Calaveras faults will probably produce ground shaking at the site comparable to at least that produced by the 1989 Loma Prieta and 1984 Morgan Hill earthquakes. It should be expected that the site will experience that type of seismic event during the life of any structures and related improvements constructed at the site.

Ridge-top Cracking

The effects of topography on relative ground shaking intensity and resultant ground surface disturbance and structural damage were noted in the Santa Cruz Mountains after the 1906 San Francisco Earthquake (Lawson, 1908) and the 1989 Loma Prieta earthquake (Plafker and Galloway, 1989). Ridge-top cracking during the 1989 Loma Prieta earthquake damaged roadways and structures approximately 10 km from the epicenter in the Summit Road area of the Santa Cruz Mountains. The origin of the cracks is complex, and may have been caused in part by large-scale lateral spreading in the relatively soft Tertiary sedimentary rocks that form the northwest-trending ridges in the region (Plafker and Galloway, 1989). The topographic effects of ground shaking and high level of ground cracking and structural damage after the Loma Prieta earthquake have been studied at Robinwood Ridge, approximately 7.5 km north-northwest of the epicenter (Hartzell et al., 1994). The study by Hartzell et al. (1994) concluded that the apparent amplification of ground shaking is a complex interaction of seismic and topographic conditions

that cannot be quantified with existing data. The site is not located in terrain comparable to that affected by ridge-top cracking during the 1989 Loma Prieta earthquake. Therefore, the potential for this type of ground failure is considered low at the site.

Liquefaction

Liquefaction is generally associated with saturated, well-sorted, fine to medium-grained sands and is expressed as a sudden loss of cohesion and resultant flow and/or settlement of soil during an earthquake. Lurching and lateral spreading may accompany liquefaction, as was observed in areas underlain by relatively loose, unconsolidated sediments following the 1906 San Francisco earthquake (Lawson, 1908) and the 1989 Loma Prieta earthquake (Plafker and Galloway, 1989). The subject site has groundwater below at least 45 feet and is underlain mainly by hard gravelly clay, clayey gravel, and bedrock, conditions generally not conducive to liquefaction. In addition, the site is not identified on liquefaction hazard maps. The potential for liquefaction, lurching, and lateral spreading are considered to be low at the subject site.

SUMMARIZED GEOLOGIC CONCLUSIONS AND RECOMMENDATIONS

The following conclusions are based on the data acquired and analyzed during the course of this study.

1. The proposed subdivision of the subject site is considered feasible from a geologic viewpoint, provided the recommendations of this report are incorporated into the design and construction of the project. However, the property owner should be aware that development in the seismically active Bay Area entails variable risks, including possible structural distress to residences, retaining walls, and on-site pavements, plus disruption of local roads and utilities, due to the secondary effects of strong ground shaking.
2. The main identified geologic hazard at the site is strong seismic ground shaking. A moderate to major earthquake on the Hayward or Calaveras fault, or a major earthquake on the San Andreas fault, could cause severe ground shaking at the site. The foundations for the proposed residences and retaining walls (if planned) should be designed for seismic shaking, including horizontal and vertical accelerations, as required by the latest edition of the California Building Code. These values should be considered minimum design criteria.
3. The site has been shown on some geologic maps as lying at the toe of a large landslide. It is ESG's opinion that the large landslide, if it exists, is located upslope or elsewhere from the site, and is inactive (possibly Pleistocene in age). Results of our quantitative slope stability modeling suggest that the site-specific and regional slopes are stable under static conditions, and that if earthquake-induced sliding occurs, the proposed parcel to be developed will not be significantly impacted. Based on our slope modeling, borehole data, literature review, and site reconnaissance, it appears that special slope mitigation measures will not be necessary, but it may be desirable to construct a retaining wall at the existing small cut at the base of the on-site slope. The potential for localized landsliding can be exacerbated by destabilization of slopes by natural or man-made oversteepening, heavy erosion, saturation with water, or undercutting the base of slopes.

5. Based on our trench logging at the site, in light of nearby findings of other workers, the Quimby fault is apparently either buried by old (Pleistocene) alluvium under the site, or is located off-site. Graymer et al. (1995), Wentworth et al. (1999), and Dibblee (1972) all show the Quimby fault in a different inferred location. Only Dibblee (1972) shows the inferred fault crossing the site, yet nearby trench studies in the area of Dibblee's alleged fault have not confirmed its existence in the site vicinity. Taken together, the above findings suggest that the potential for surface rupture along a trace of the Quimby fault is low.

LIMITATIONS AND UNIFORMITY OF CONDITIONS

1. The recommendations of this report are based upon the assumption that the soil/bedrock conditions do not deviate from those disclosed in the subsurface explorations. If any variations or undesirable conditions are encountered during construction, ES Geotechnologies (ESG) should be notified so that supplemental recommendations can be given.
2. This report is issued with the understanding that it is the responsibility of the owner or his representatives to see that the information and recommendations contained herein are called to the attention of the other members of the design team (engineer and architect) for the project and are incorporated into the plans, and that the necessary steps are taken to see that the contractors and subcontractors carry out such recommendations.
3. The findings of this report are valid as of the present date. However, changes in the conditions of a property can occur with the passage of time, whether due to natural processes or to the works of man, on this or adjacent properties. In addition, changes in applicable or appropriate standards may occur, whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may be invalidated, wholly or in part, by changes outside of our control. Therefore this report is subject to review by ESG after a period of three (3) years has elapsed from date of issuance of this report.
4. The body of the report specifically recommends that ESG be provided the opportunity for a general review of the structure plans and specifications for this project, and that ESG be retained to provide observation and testing services during construction. The validity of the recommendations of this report assumes that ESG will be retained to provide these services.
5. This report was prepared upon your request for our services, and in accordance with currently accepted geotechnical engineering practice. No warranty based on the contents of this report is intended, and none shall be inferred from the statements or opinions expressed herein.
6. The scope of ESG's services did not include any environmental assessment or investigation for the presence or absence of wetlands or hazardous or toxic materials in the soil, surface water, groundwater or air, on or below or around this site. Any statements in this report or on the soil boring (test pit) logs regarding odors noted or unusual or suspicious items or condition observed, are strictly for the information of our client.

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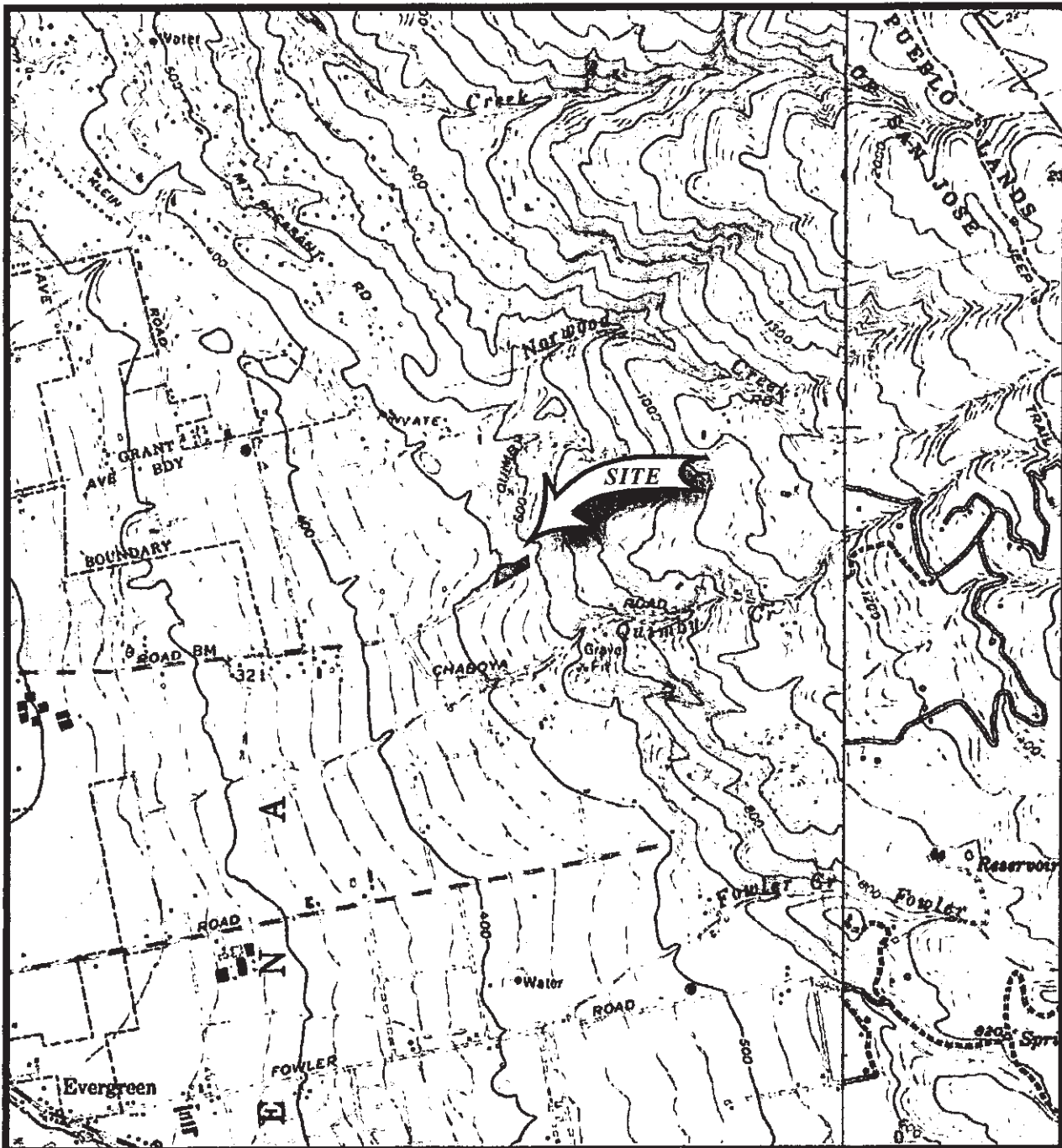
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Stereo Aerial Photographs

<u>Date</u>	<u>Scale</u>	<u>Type</u>	<u>Source</u>	<u>Ref. No.</u>
10/12/71	1:12,000	B&W	Pacific Aerial Surveys	AV-1006-20-09
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5/21/76	1:3,600	B&W	ESG files	7651 1-3
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5/21/76	1:3,600	B&W	ESG files	7651 2-1
5/21/76	1:3,600	B&W	ESG files	7651 2-2
6/20/77	1:6,000	B&W	Pacific Aerial Surveys	AV-1365-01-02
6/20/77	1:6,000	B&W	Pacific Aerial Surveys	AV-1365-01-03

FIGURES

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Base: National Geographic TOPOI (2002)

Approximate Scale 1: 24,000



ES Geotechnologies

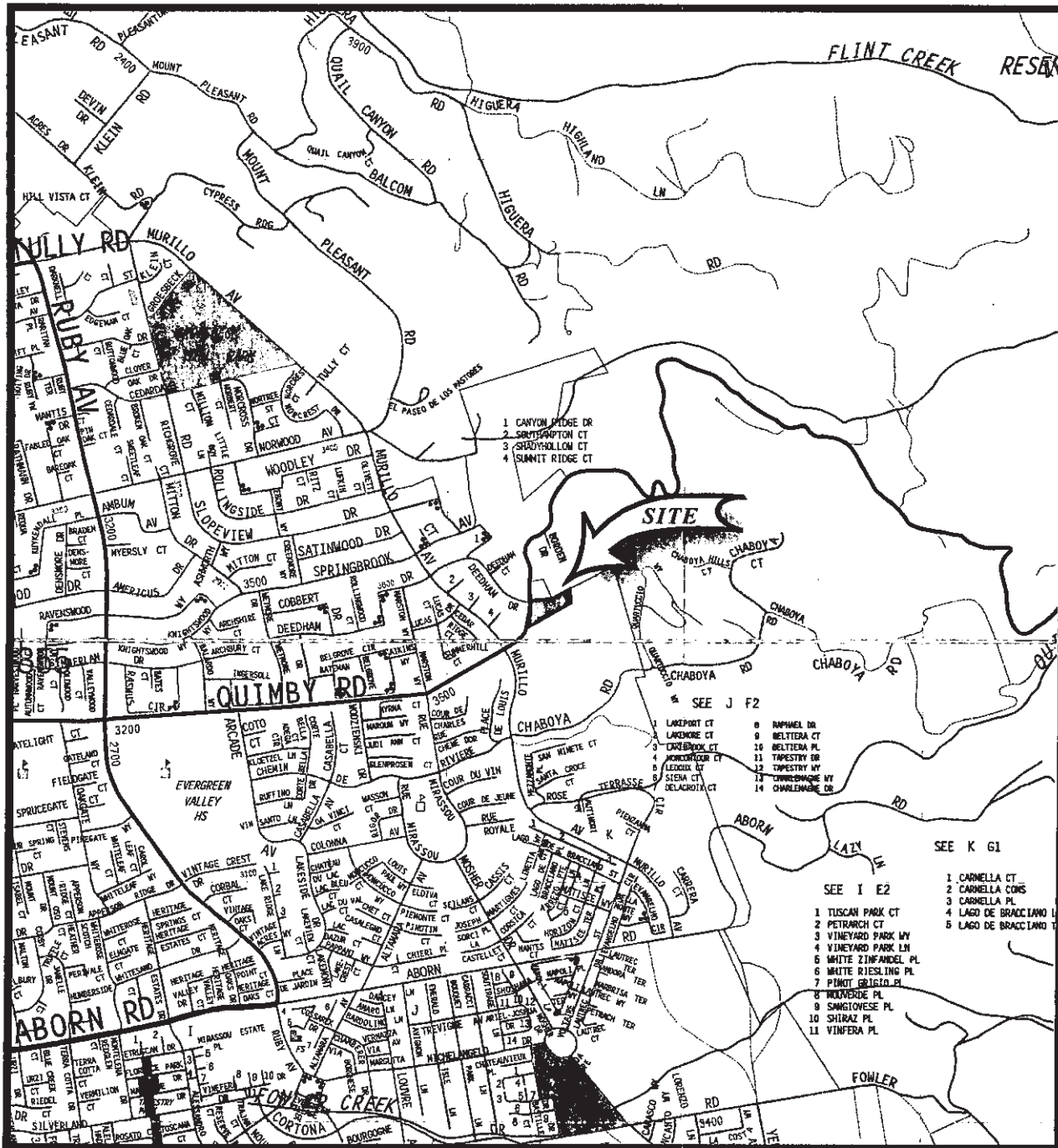
Proposed Subdivision
3770 Quimby Road
San Jose, California

SITE LOCATION

Figure 1A

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Base: Thomas Guide Digital Edition, Version 6.0.2.22 (2006)



Approximate Scale in Miles



ES Geotechnologies

Proposed Subdivision
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San Jose, California

SITE LOCATION

Figure 1B



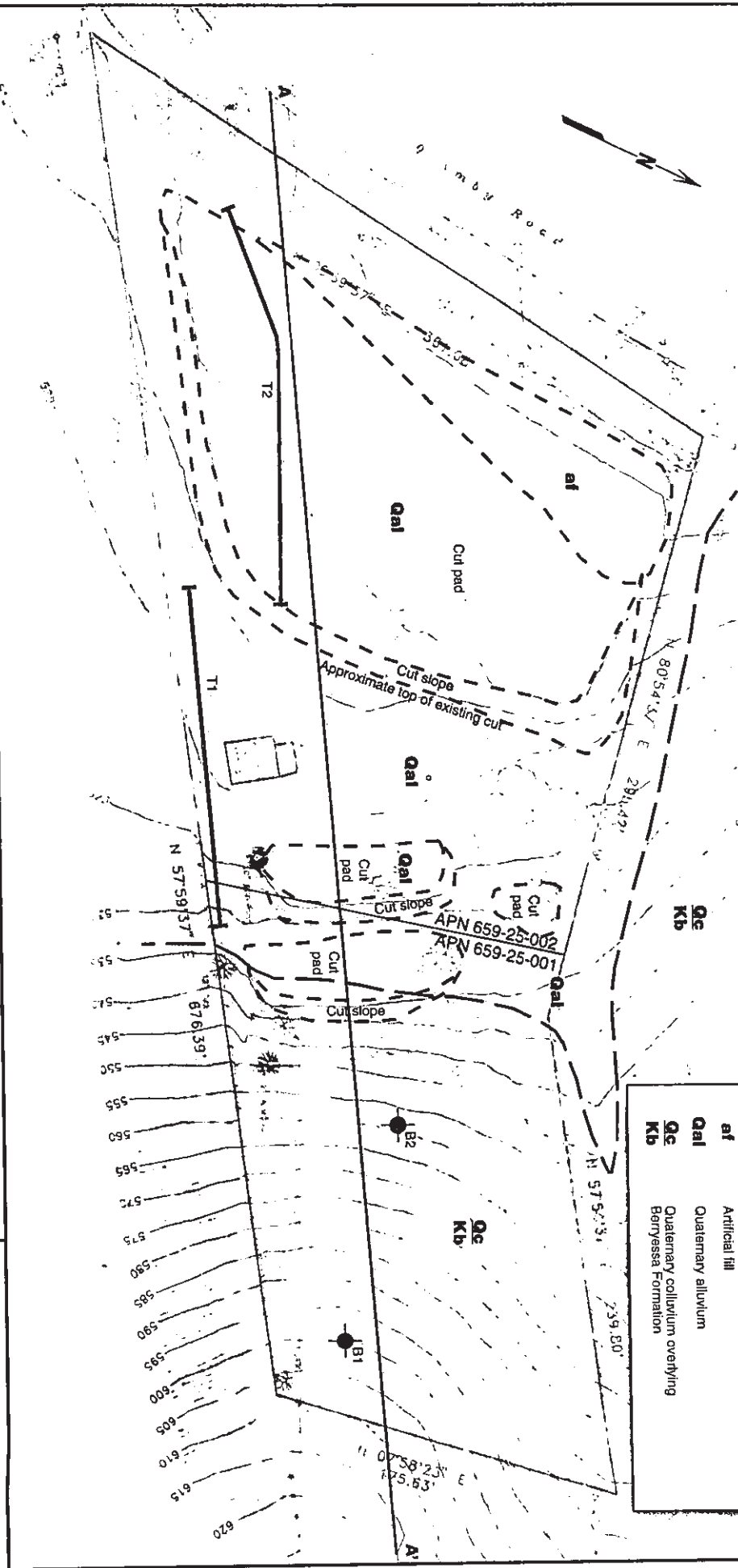
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Date: November 2008
File No: BA-2559-01

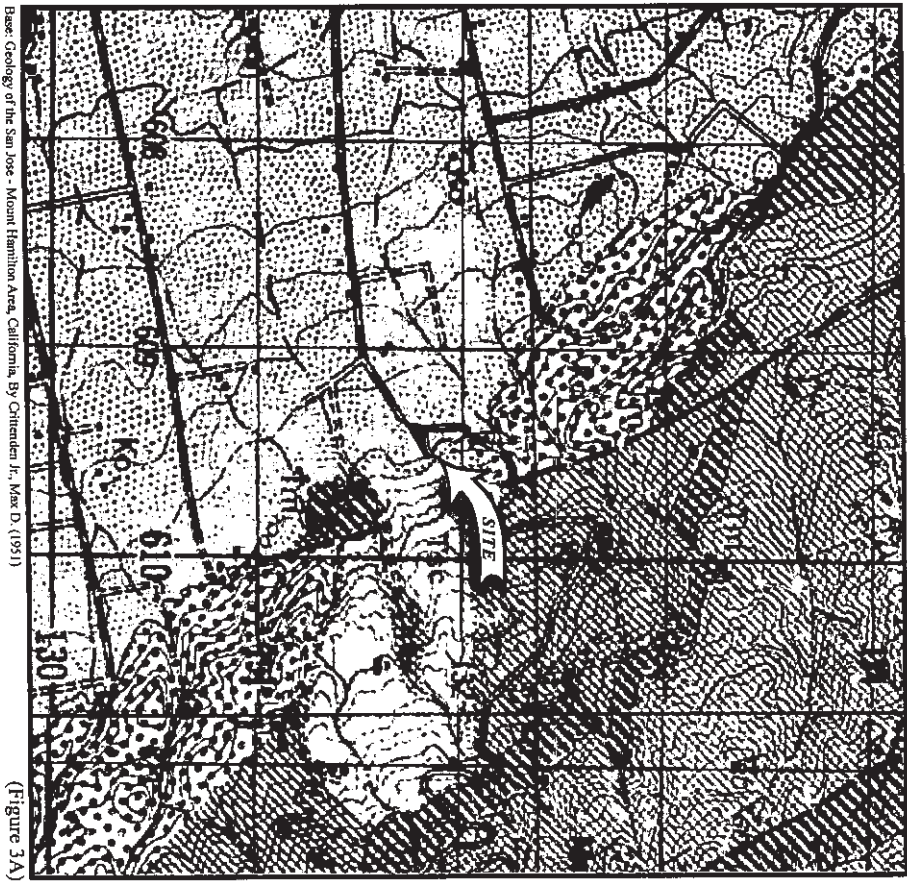
SITE PLAN & GEOLOGY

Figure 2



LEGEND

	B1	Approximate boring location
	T1	Approximate trench location
	A-A'	Line of cross-section A-A'
		Geologic contact (approximately located)
		Approximate boundaries of grading features
	af	Artificial fill
	Qal	Quaternary alluvium
	Qc Kb	Quaternary colluvium overlying Berryessa Formation

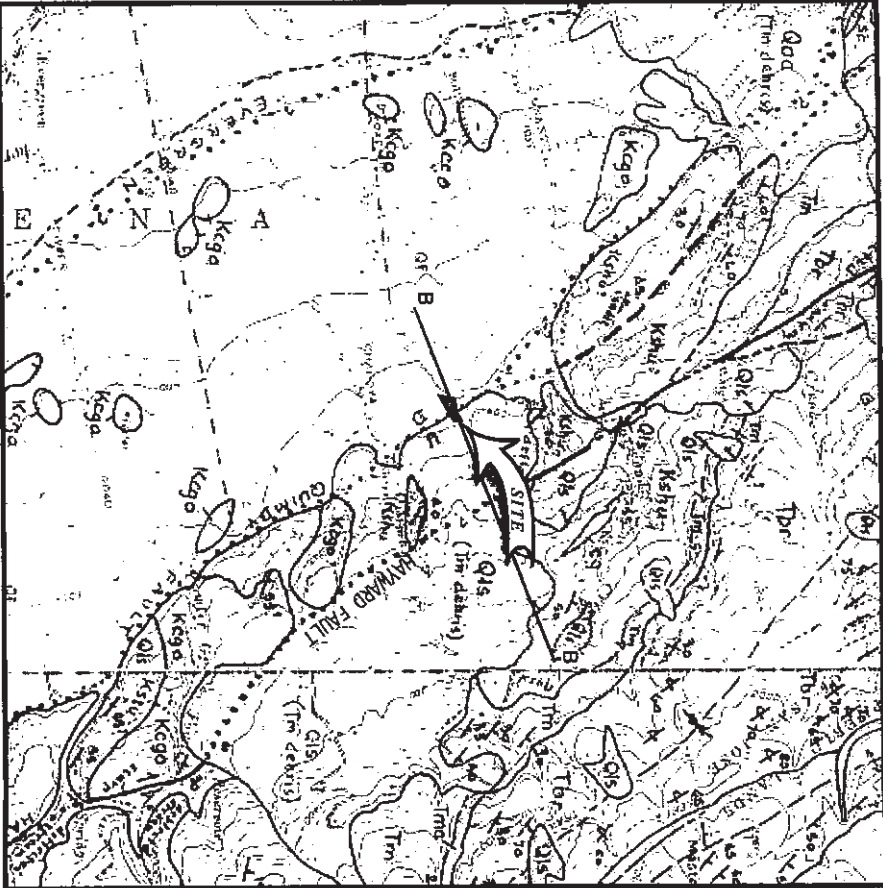


Base: Geology of the San Jose - Mount Hamilton Area, California, by Chertman, Jr., Max D. (1951)

(Figure 3A)

- Alluvium
- Santa Clara Formation
- Briones sandstone
- Monterey Formation
- Berryessa shale
- Oakland conglomerate
- Silica-carbonate rock
- Bedding orientation
- Geologic contact, dashed where approximate, dotted where concealed
- Fault, dashed where approximate, dotted where concealed

Approximate Scale 1:24,000



Base: Preliminary Geologic Map of the San Jose East Quadrangle, Santa Clara County, California by Dibbles (1972) and Preliminary Geologic Map of the Lick Observatory Quadrangle, Santa Clara County, California, by Dibbles (1972)

(Figure 3B)

- Alluvium (undivided)
- Fan gravels
- Landslide debris
- Older alluvium
- Briones sandstone
- Monterey shale
- Berryessa Formation
- Oakland conglomerate
- Bedding orientation
- Geologic contact
- Fault (arrows indicate relative motion)
- Fault, dashed where approximate, dotted where concealed and inferred



ES Geotechnologies

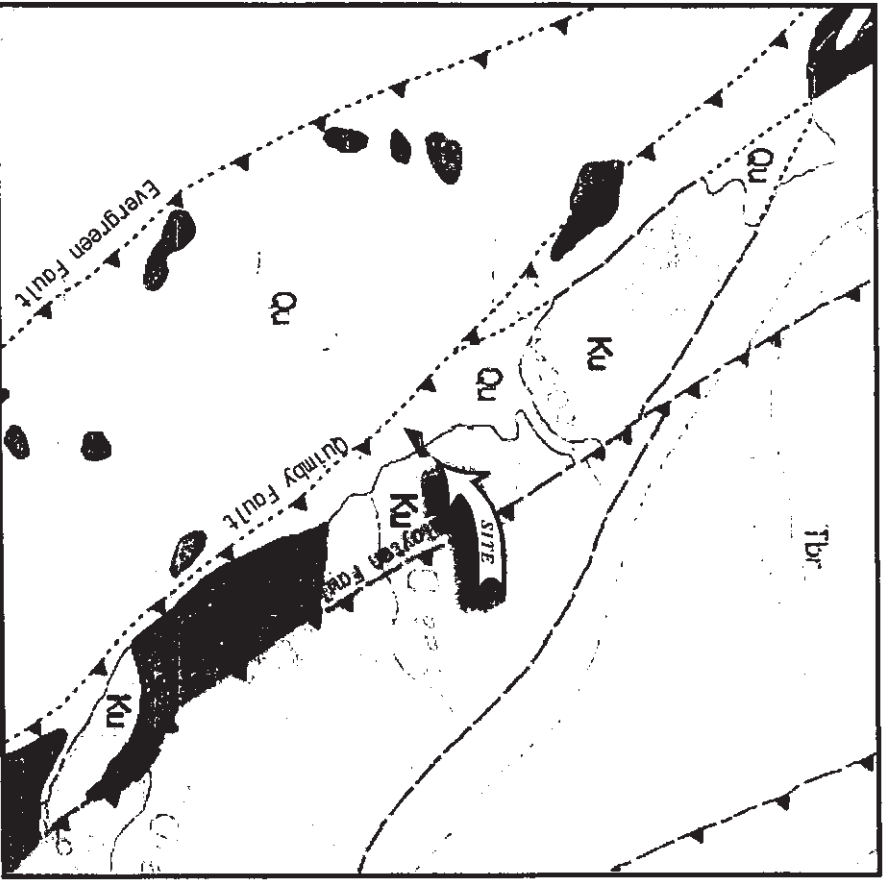
Proposed Subdivision
3770 Quimby Road
San Jose, California

REGIONAL GEOLOGIC MAPS

Date: November 2008

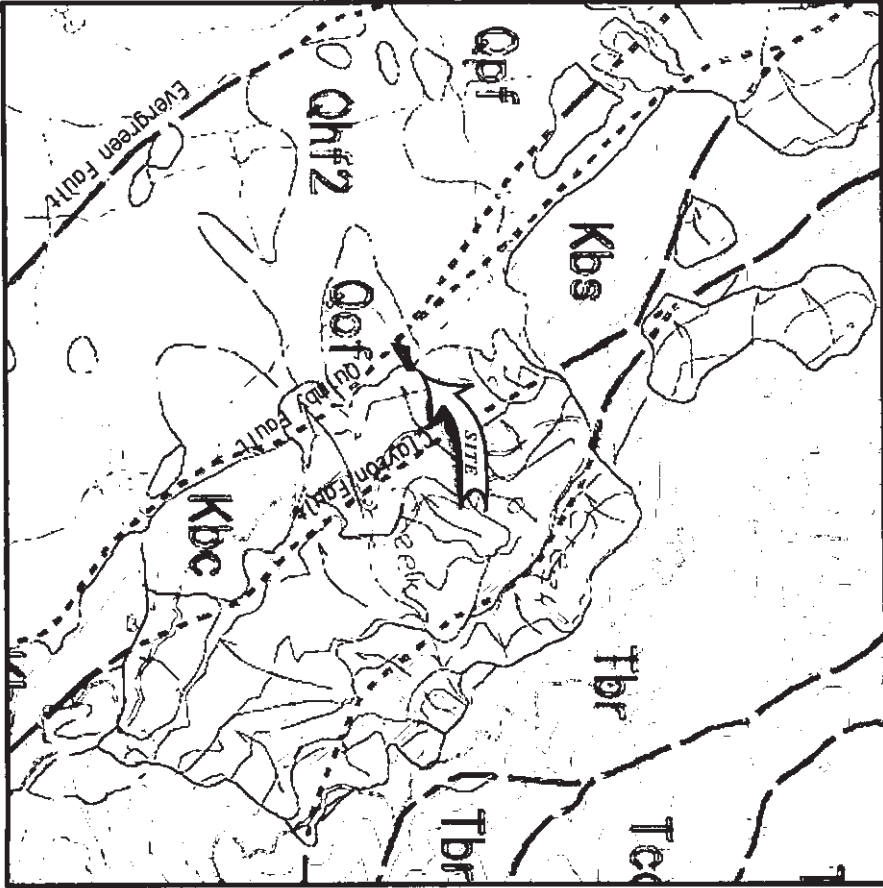
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Figure 3



Base: Geology of the Hayward Fault Zone: A digital database USGS OFR 95-517, by Grammer, Jones, and Brooks, 1995 (Figure 4A)

- Qu** Undivided Quaternary surficial deposits
- Tbr** Briones sandstone
- Tcc** Claremont formation
- Ku** Undivided, unnamed sandstone and siltstone (Cretaceous)
- Undivided, unnamed conglomerate (Cretaceous)
- Fault, dashed where approximate, dotted where concealed



Base: Geologic Map of the San Jose 30x60 Minute Quadrangle, California, by Wentworth et al., 1999 (Figure 4B)

- Qh12** Holocene alluvium
- Qof** Pleistocene alluvium
- Qof2** Older alluvium
- Tbr** Briones sandstone
- Tcc** Claremont Formation
- Kbs** Berryessa sandstone
- Kbc** Berryessa conglomerate
- Serpentinized harzburgite and dunite
- ~** Bedding orientation
- Geologic contact
- dashed where approximate
- queried where uncertain

Approximate Scale 1:24,000



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REGIONAL GEOLOGIC MAPS

Date: November 2008
File No: BA-2559

Figure 4

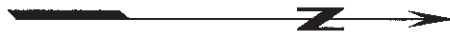


Base: State of California Special Studies Zones, San Jose East Quadrangle, Revised Official Map, CDMG 1982

(Figure 5A)

Special studies zone
 Fault, dashed where approximate, queried where uncertain

Approximate Scale 1:24,000



Base: Santa Clara County Geologic Hazards Zones, Fault Rupture Hazard Zones, Pages 21 & 29, (2002)

(Figure 5B)

Fault Rupture Hazard Zones



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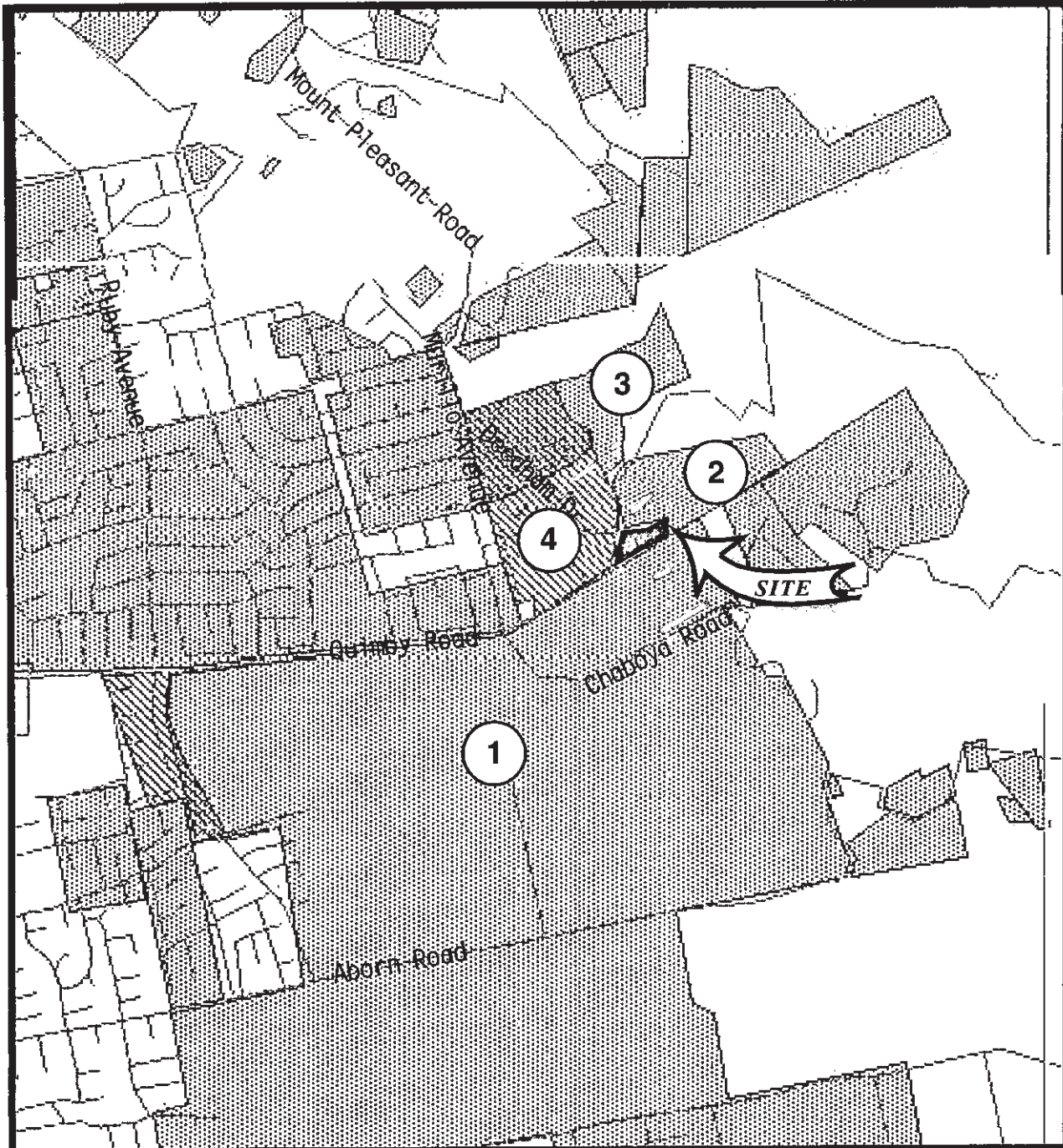
FAULT HAZARD MAPS

Date: November 2008
 File No: BA-2559 -1

Figure 5

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Base: CGS Fault Investigation Report Map on CD-ROM



Approximate Scale in Miles

- 1 Earth Systems Consultants Northern California (1991)
- 2 UPP Geotechnology (1990)
- 3 JCP Geologists (1977)
- 4 Applied Soil Mechanics, Inc. (1979)

--- Approximate location of trench, roadcut, or test pit exposures

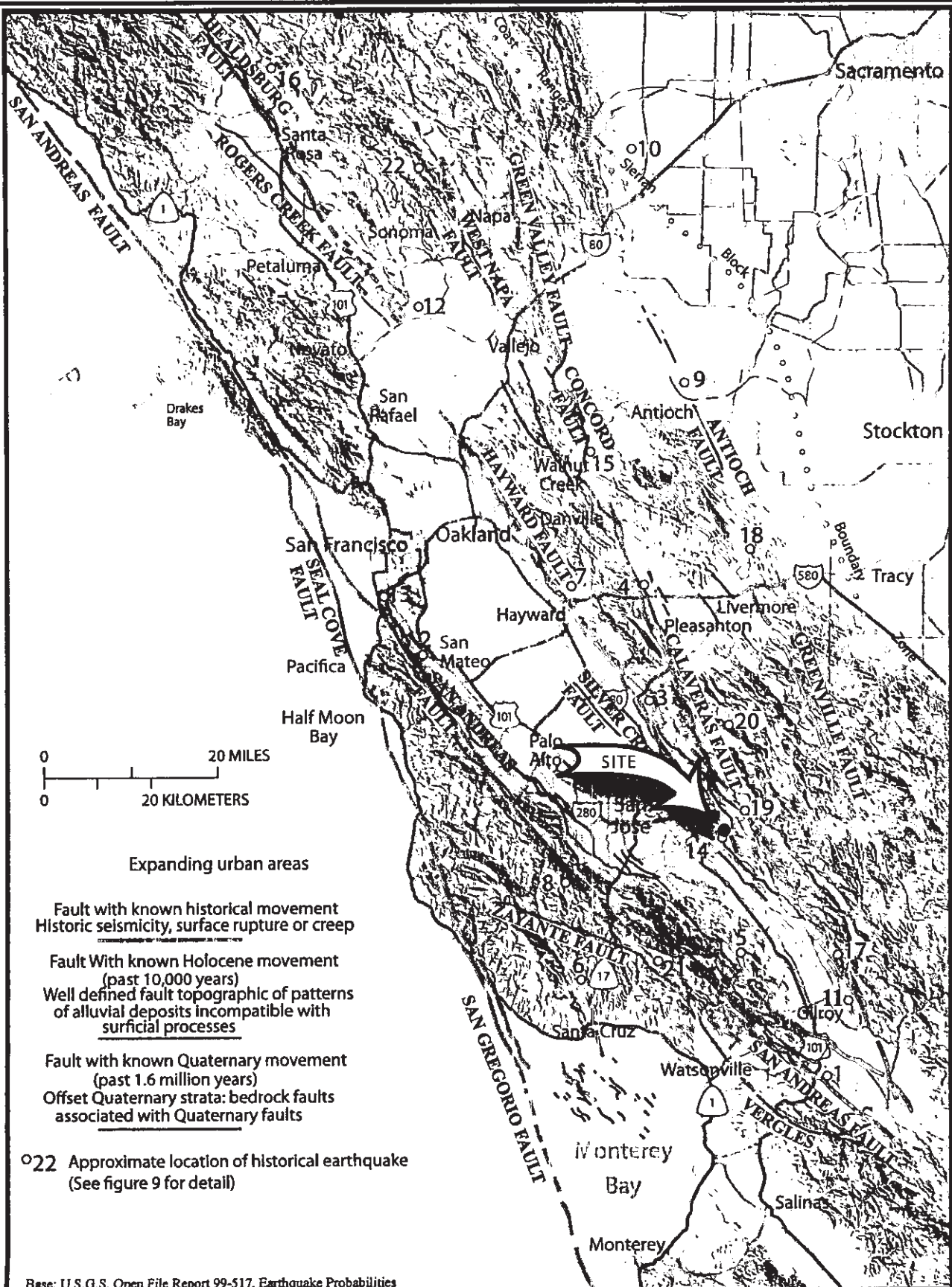


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**MAP SHOWING AREAS OF
 PREVIOUS STUDY**

Figure 6



0 20 MILES
 0 20 KILOMETERS

Expanding urban areas

Fault with known historical movement
 Historic seismicity, surface rupture or creep

Fault With known Holocene movement
 (past 10,000 years)
 Well defined fault topographic of patterns
 of alluvial deposits incompatible with
 surficial processes

Fault with known Quaternary movement
 (past 1.6 million years)
 Offset Quaternary strata: bedrock faults
 associated with Quaternary faults

022 Approximate location of historical earthquake
 (See figure 9 for detail)

Base: U.S.G.S. Open File Report 99-517, Earthquake Probabilities

Selected San Francisco Bay Area Earthquakes

Location Number (Refer to Figure 8)	Earthquake and Year	Magnitude Reported	Reference
1	Monterey Bay Area, 1836	M 6.8	Toppozada, 1998
2	San Francisco, 1838	M 7.0	Toppozada, 1981
3	Hayward, 1858	M 6.1	Toppozada, 1981
4	Calaveras-Dublin, 1861	M 5.9	Toppozada, 1981
5	Santa Clara Valley, 1864	M 5.9	Toppozada, 1981
6	Santa Cruz, 1865	M 6.3	Toppozada, 1981
7	Hayward, 1868	M 6.8	Toppozada, 1981
8	San Andreas, 1870	M 5.8	Toppozada, 1981
9	Antioch-Collinsville 1889	M 6.0	Toppozada, 1981
	1965	M 4.9	Toppozada, 1981
10	Vacaville-Winters, 1892	M 6.4	Toppozada, 1981
11	Calaveras, 1897	M 6.2	Toppozada, 1981
12	Mare Island, 1898	M 6.5	Goter, 1988
13	San Francisco, 1906	M 8.3	{ Toppozada, 1982 Goter, 1988 Abe and Noguchi, 1983b
		M 8.3	
		M 7.8	
14	San Jose, 1911	M 6.5	Toppozada and Parke, 1982
15	Concord, 1955	M 5.4	Tocher, 1959
16	Santa Rosa, 1969	M 5.6	Cloud, 1970
17	Coyote Lake, 1979	M 5.9	Hart, 1988
18	Greenville, 1980	M 5.8	Oppenheimer, 1990
19	Morgan Hill, 1984	M 6.2	Oppenheimer, 1990
20	Mount Lewis, 1986	M 5.7	U.S. Geological Survey, 1989
21	Loma Prieta, 1989	M 7.1	U.S. Geological Survey, 1989
22	Napa, 2000	M 5.2	U.S. Geological Survey, 2000

NOTE: Modified After Geomatrix, (1992)
Update, USGS, 2001



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SELECTED EARTHQUAKES

Figure 8

MODIFIED MERCALLI INTENSITY SCALE

MMI Value	Summary Damage Description Used on Maps	Full Description
I		Not felt. Marginal and long period effects of large earthquakes.
II		Felt by persons at rest, on upper floors, or favorably placed.
III		Felt indoors. Hanging objects swing. Vibration like passing of light trucks. Duration estimated. May not be recognized as an earthquake.
IV		Hanging objects swing. Vibration like passing of heavy trucks; or sensation of a jolt like a heavy ball striking the walls. Standing motor cars rock. Windows, dishes, doors rattle. Glasses clink. Crockery clashes. In the upper range of IV wooden walls and frame creak.
V	Pictures Move	Felt outdoors: direction estimated. Sleepers wakened. Liquids disturbed, some spilled. Small unstable objects displaced or upset. Doors swing close, open. shutters, pictures move. Pendulum clocks stop, start, change rate.
VI	Objects Fall	Felt by all. Many frightened and run outdoors. Persons walk unsteadily. Windows, dishes, glassware broken. Knickknacks, books, etc., off shelves. Pictures off walls. Furniture moved or overturned. Weak plaster and masonry D cracked. Small bells ring (church, school). Trees, bushes shaken (visibly, or heard to rustle).
VII	Nonstructural Damage	Difficult to stand. Noticed by drivers of motor cars. Hanging objects quiver. Furniture broken. Damage to masonry D including cracks. Weak chimneys broken at roof line. Fall of plaster, loose bricks, stones, tiles, cornices (also unbraced parapets and architectural ornaments). Some cracks in masonry C. Waves on ponds: water turbid with mud. Small slides and caving in along sand or gravel banks. Large bells ring. Concrete irrigation ditches damaged.
VIII	Moderate Damage	Steering of motor cars affected. Damage to masonry C: partial collapse. Some damage to masonry B: none to masonry A. Fall of stucco and some masonry walls. Twisting, Fall of chimneys, factory stacks, monuments, towers, elevated tanks. Frame houses moved on foundations if not bolted down: loose panel walls thrown out. Decayed piling broken off. Branches broken from trees. Changes in flow or temperature of springs and wells. Cracks in wet ground and on steep slopes.
IX	Heavy Damage	General panic. Masonry D destroyed: masonry C heavily damaged, sometimes with complete collapse; masonry B seriously damaged. (General damage to foundations.) Frame structures, if not bolted, shifted off foundations. Frames racked. Serious damage to reservoirs. Underground pipes broken. Conspicuous cracks in ground. In alluvial areas sand and mud ejected, earthquake fountains, sand craters.
X	Extreme Damage	Most masonry and frame structures destroyed with their foundations. Some well-built wooden structures and bridges destroyed. Serious damage to dams, dikes, embankments. Large landslides. Water thrown on banks of canals, rivers, lakes, etc. Sand and mud shifted horizontally on beaches and flat land. Rails bent slightly.
XI		Rails bent greatly. Underground pipelines completely out of service.
XII		Damage nearly total. Large rock masses displaced. Lines of sight and level distorted. Objects thrown into the air.
Masonry A:		Good workmanship, mortar, and design; reinforced, especially laterally, and bound together by using steel, concrete, etc.; designed to resist lateral forces.
Masonry B:		Good workmanship and mortar; reinforced, but not designed in detail to resist lateral forces.
Masonry C:		Ordinary workmanship and mortar, no extreme weaknesses like failing to tie at corners, but neither reinforced nor designed against horizontal forces.
Masonry D:		Weak materials, such as adobe; poor mortar; low standards of workmanship; weak horizontally.

Source: Association of Bay Area Governments (1995)

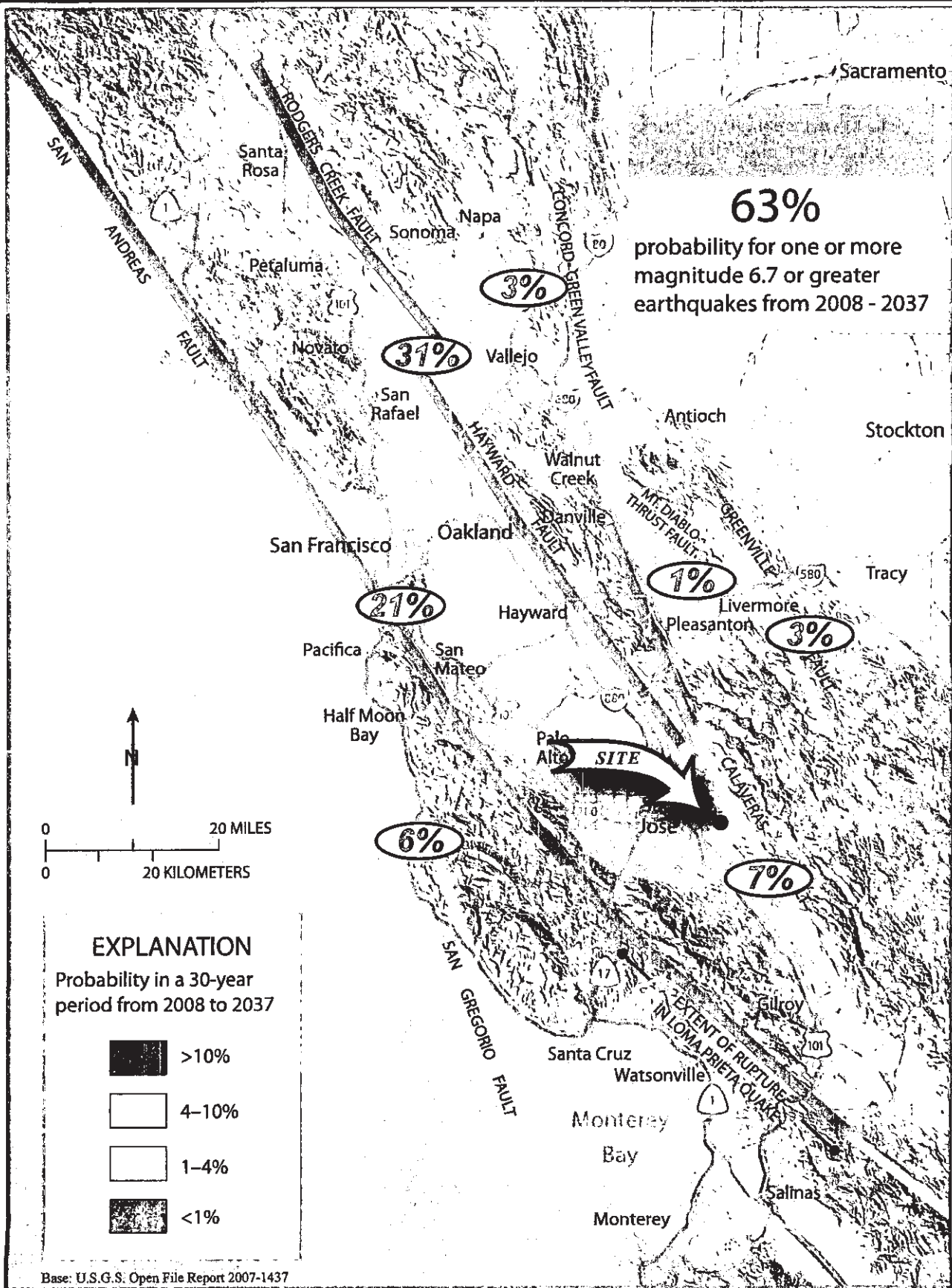


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MODIFIED MERCALLI INTENSITY SCALE

Figure 9

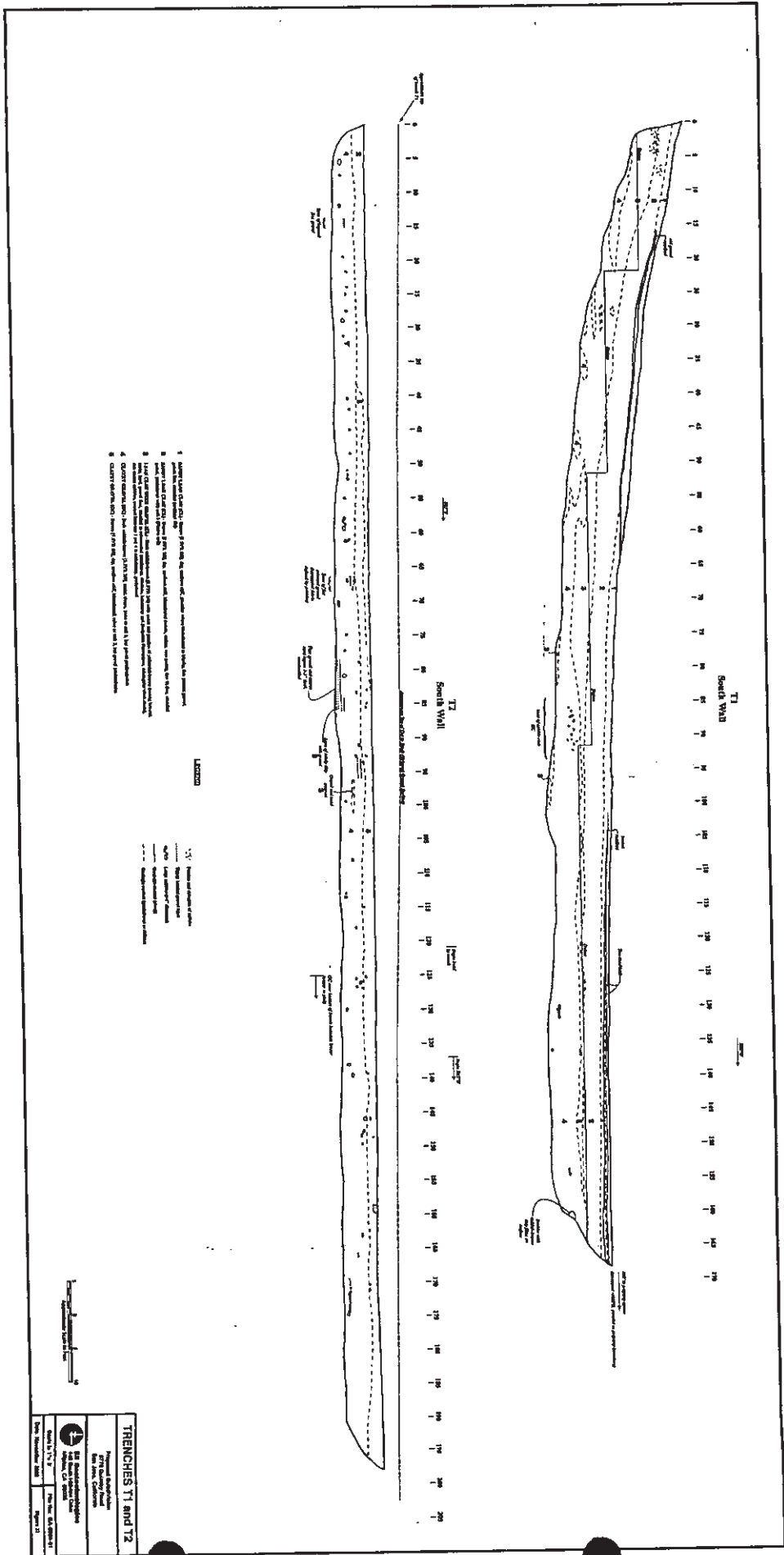


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EARTHQUAKE PROBABILITY

Figure 10



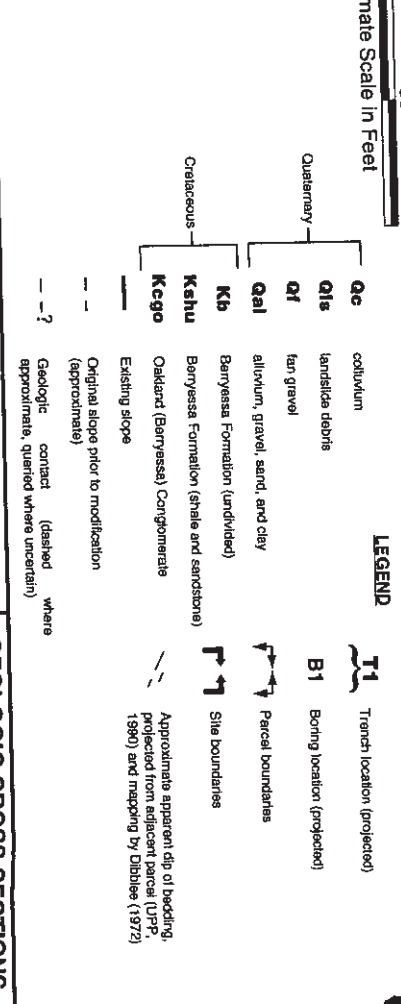
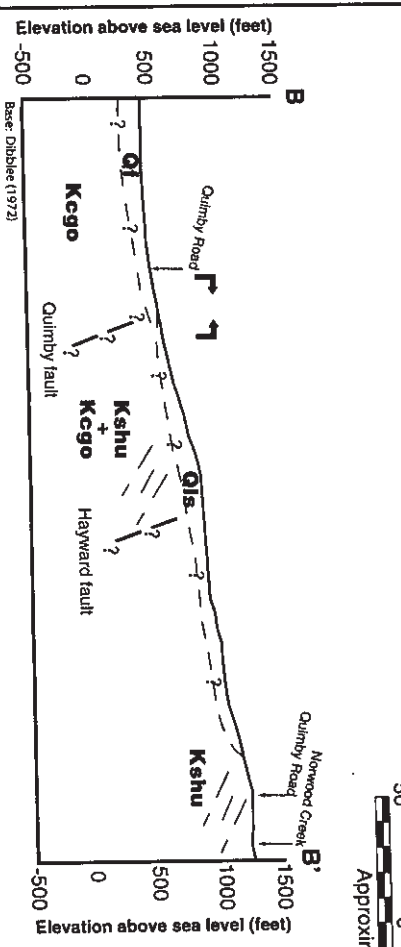
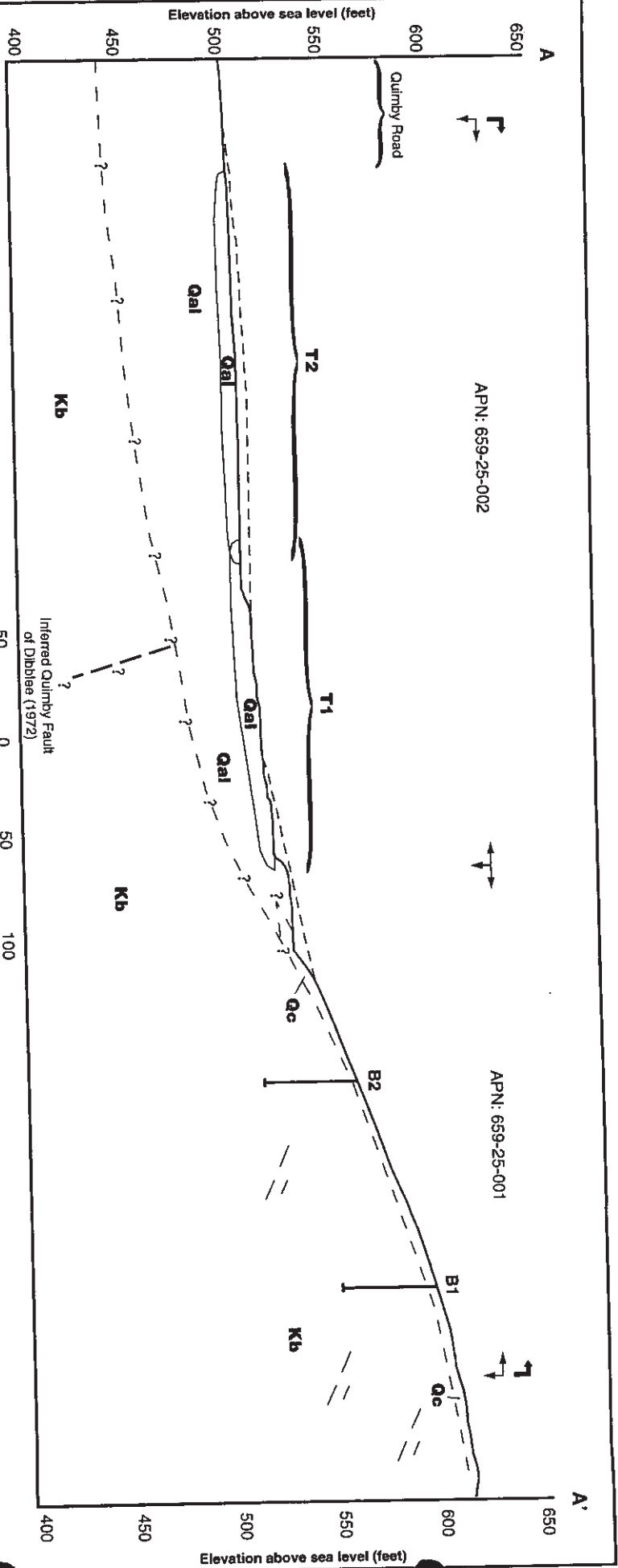
TRENCHES T1 and T2

Project: [Blank]

Scale: 1:100

Date: [Blank]

Sheet: [Blank]



LEGEND

Qc	colluvium	T1	Trench location (projected)
Qs	landslide debris	B1	Boring location (projected)
Ql	fan gravel	↔	Parcel boundaries
Qal	alluvium, gravel, sand, and clay	↔	Site boundaries
Kb	Banyessa Formation (undivided)	↔	Approximate apparent dip of bedding, projected from adjacent parcel (URP, 1980) and mapping by Dibblee (1972)
Kshu	Banyessa Formation (shale and sandstone)		
Kcgo	Oakland (Banyessa) Conglomerate		
	Existing slope		
	Original slope prior to modification (approximate)		
	Geologic contact (dashed where approximate, queried where uncertain)		

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GEOLOGIC CROSS-SECTIONS
A-A' & B-B'

Date: November 2008
File No: BA-2559-01
Figure 12

APPENDIX A

Boring Logs and Laboratory Test Results

Figure A1 - Soil Classification System

Figure A2 - Soil Terminology

Figure A3 - Key to Logs of Borings

Figure A4 - Log of Exploratory Boring B1

Figure A5 - Log of Exploratory Boring B2

Figures A6 and A7 - Direct Shear Test Data

Table A1 - Summary of Moisture, Density, and Direct Shear Testing

MAJOR DIVISIONS			GRAPHIC SYMBOL	LETTER SYMBOL	TYPICAL DESCRIPTIONS	
<p>COARSE GRAINED SOILS</p> <p>More than 50% of material is larger than No. 200 sieve size</p>	<p>GRAVEL AND GRAVELLY SOILS</p> <p>More than 50% of coarse fraction <u>retained</u> on No. 4 sieve</p>	CLEAN GRAVELS		GW	Well-graded gravels, gravel-sand mixtures, little or no fines	
		GRAVELS WITH FINES		GP	Poorly-graded gravels, gravel-sand mixtures, little or no fines	
				GM	Silty gravels, gravel-sand-silt mixtures	
		<p>SAND AND SANDY SOILS</p> <p>More than 50% of coarse fraction <u>passing</u> No. 4 Sieve</p>	CLEAN SAND (Little or no fines)		SW	Well-graded sands, gravelly sands, little or no fines
				SP	Poorly-graded sands, gravelly sands, little or no fines	
	SAND WITH FINES (appreciable amount of fines)			SM	Silty sands, sand-silt mixtures	
				SC	Clayey sands, sand-clay mixtures	
	<p>FINE-GRAINED SOILS</p> <p>More than 50% of material is <u>smaller</u> than No. 200 sieve Size</p>	<p>SILTS AND CLAYS</p>	LIQUID LIMIT <u>LESS</u> THAN 50		ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity
				CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays	
				OL	Organic silts and organic silty clays of low plasticity	
LIQUID LIMIT <u>GREATER</u> THAN 50				MH	Inorganic silty, micaceous, or diatomaceous fine sand or silty soils	
				CH	Inorganic clays of high plasticity, fat clays	
				OH	Organic clays of medium to high plasticity, organic silts	
HIGHLY ORGANIC SOILS				PT	Peat, humus, swamp soils with high organic contents	
VARIOUS SOILS AND MAN MADE MATERIALS					Fill Materials	
MAN MADE MATERIALS					Asphalt and Concrete	
<p>TYPES OF BEDROCK (SEE TEXT OF LOG FOR CHARACTERISTICS)</p>					Sandstone	
					Siltstone	
					Mudstone - Claystone	
					Breccia / Conglomerate	
					Greenstone - Serpentinite	
					Shale	
					Chert	
					Franciscan Melange	



SOIL TYPES (Ref. 1)

- Boulders:** Particles of rock that will not pass a 12 - inch screen.
- Cobbles:** Particles of rock that will pass a 12 - inch screen, but not a 3 - inch sieve.
- Gravel:** Particles of rock that will pass a 3 - inch sieve, but not a #4 sieve.
- Sand:** Particles of rock that will pass a #4 sieve, but not a #200 sieve.
- Silt:** Soil that will pass a #200 sieve, that is non-plastic or very slightly plastic, and that exhibits little or no strength when dry.
- Clay:** Soil that will pass a #200 sieve, that can be made to exhibit plasticity (putty-like properties) within a range of water contents, and that exhibits considerable strength when dry.

MOISTURE AND DENSITY

- Moisture Condition:** An observational term; dry, moist, wet.
- Moisture Content:** The weight of water in a sample divided by the weight of dry soil in the soil sample, expressed as a percentage.
- Dry Density:** The pounds of dry soil in a cubic foot of soil.

DESCRIPTORS OF CONSISTENCY (Ref. 3)

- Liquid Limit:** The water content at which a - #40 soil is on the boundary between exhibiting liquid and plastic characteristics. The consistency feels like soft butter.
- Plastic Limit:** The water content at which a -#40 soil is on the boundary between exhibiting plastic and semi-solid characteristics. The consistency feels like stiff putty.
- Plasticity Index:** The difference between the liquid limit and the plastic limit, i.e. the range in water contents over which the soil is in a plastic state.

MEASURES OF CONSISTENCY OF COHESIVE SOILS (CLAYS) (Ref's 2 & 3)

Very Soft	N=0-1*	C=0-250 psf	Squeezes between fingers
Soft	N=2-4	C=250-500 psf	Easily molded by finger pressure
Medium Stiff	N=5-8	C=500-1000 psf	Molded by strong finger pressure
Stiff	N=9-15	C=1000-2000 psf	Dented by strong finger pressure
Very Stiff	N=16-30	C=2000-4000 psf	Dented slightly by finger pressure
Hard	N>30	C>4000 psf	Dented slightly by a pencil point

*N= Blows per foot in the Standard Penetration Test. In cohesive soils, with the 3-inch-diameter sampler, 140-pound weight, divide the blow count by 1.2 to get N (Ref. 4).

MEASURES OF RELATIVE DENSITY OF GRANULAR SOILS (GRAVELS, SANDS, AND SILTS) (Ref's 2 & 3)

Very Loose	N=0-4**	RD=0-30	Easily push a 1/2-inch reinforcing rod by hand
Loose	N=5-10	RD=30-50	Push a 1/2-inch reinforcing rod by hand
Medium Dense	N=11-30	RD=50-70	Easily drive a 1/2-inch reinforcing rod
Dense	N=31-50	RD=70-90	Drive a 1/2-inch reinforcing rod 1 foot
Very Dense	N>50	RD=90-100	Drive a 1/2-inch reinforcing rod a few inches

**N= Blows per foot in the Standard Penetration Test. In granular soils, with the 3-inch-diameter sampler, 140-pound weight, divide the blow count by 2 to get N (Ref 4). RD = Relative Density

Ref. 1: ASTM Designation: D 2487-93, Standard Classification of Soils for Engineering Purposes (Unified Soil Classification System).

Ref. 2: Terzaghi, Karl, and Peck, Ralph B., Soil Mechanics in Engineering Practice, John Wiley & Sons, New York, 2nd Ed., 1967, pp. 30, 341, 347.

Ref. 3: Sowers, George F., Introductory Soil Mechanics and Foundations: Geotechnical Engineering , Macmillan Publishing Company, New York, 4th Ed., 1979, pp. 80, 81, and 312.

Ref. 4: Lowe, John III, and Zaccheo, Phillip F., Subsurface Explorations and Sampling Chapter 1 in " Foundation Engineering Handbook," Hsai-Yang Fang, Editor, Van Nostrand Reinhold Company, New York, 2nd Ed, 1991, p. 39



Key to Log of Borings

Depth (ft)	Sample No.	Graphic Log	Blows Per Foot	Pocket Pen (t.s.f.)	SOIL DESCRIPTION	U.S.C.S. Soil - Group	In-Place	
							Moisture (% dry weight)	Dry Density (pcf)
0					Shelby Sampler Thin walled, 3 in. diameter, 3 ft. long, hydraulically advanced			
					Modified California sampler (3 in. O.D. split-barrel sampler with brass liners) driven by a 140 lb. hammer with a drop of 30 in.			
					Bulk sample Loose soil removed for testing			
5					Standard Penetration test (SPT) sampler (2 in. O.D. split-barrel sampler) driven by a 140 lb. hammer with a drop of 30 in.			
					California Sampler (2.5 in. O.D. split-barrel sampler with brass liners) driven by a 140 lb. hammer with a drop of 30 in.			
					Hand Sampler (2.5 inch O.D. driven by hand)			
10					Continuous Core Sampler 94 mm Christianson Sampler			
			47		Approximate blows per foot.			
15					Solid line denotes soil or lithologic change			
					Dashed line denotes gradational or approximate soil or lithologic change			
					Heavy line denotes termination of boring			
20								
25								

NSR = No sample recovered
D.S. = Disturbed sample

Date Drilled: 10/7/08
Elevation:
Backfill Method: Cuttings
Boring Depth: 45-feet
Logged By: BK

Driller: Britton Exploration
Drilling Method: Solid Flight
Diameter of Boring: 4-inch
Rig Type: CME Track Rig
Depth to Groundwater: NGWE

Depth (ft)	Sample No.	Graphic Log	Blows Per Foot	Pocket Pen (t.s.f)	Description	U.S.C.S. Soil Group	In-Place	
							Moisture (% dry weight)	Dry Density (pcf)
0				Surface	horse corral with exposed native soil (gravelly sandy clay), 2' diameter boulder of Oakland (Berryessa) conglomerate at SE corner of property	CL		
1								
2								
3					WEATHERED BEDROCK			
4	1-1		48		CLAYEY GRAVEL , orange brown, dry to moist, dense, gravel fine, rounded	GC	6.6	106.7
5								
6								
7								
8								
9	1-2		47		same as above, with intervals of coarse sandy clay, brown to orange brown, moist, dense, hard, gravel fine to coarse, rounded to subrounded (with cobbles of Oakland conglomerate)	CL/GC	6.5	107.7
10								
11								
12								
13								
14	1-3		48		CLAYEY GRAVEL , orange brown, moist, dense, gravel fine to coarse, rounded (weathered Oakland conglomerate)	GC		
15								
16								
17								
18	1-4		50/4.5"					
19								
20								
21								
22					BEDROCK			
23								
24	1-5		50/5.5"		CLAYSTONE , yellow brown and gray, moist, moderately weathered, very close fracture spacing, moderately hard, no laminations noted (Berryessa Formation)		12.5	102.8
25								



Date Drilled: 10/6/08
Elevation:
Backfill Method: Cuttings
Boring Depth: 45-feet
Logged By: CC







Driller: Britton Exploration
Drilling Method: Solid Flight
Diameter of Boring: 4-inch
Rig Type: CME Track Rig
Depth to Groundwater: NGWE

Depth (ft)	Sample No.	Graphic Log	Blows Per Foot	Pocket Pen (t.s.f)	Description	U.S.C.S. Soil Group	In-Place	
							Moisture (% dry weight)	Dry Density (pcf)
25								
26								
27								
28	1-6		50/4"		CLAYSTONE and SANDY CLAYSTONE , yellow-brown and gray, as above			
29								
30								
31								
32								
33	1-7		50/5"		as above			
34								
35								
36								
37								
38								
39	1-8		49 50/5.5"		CLAYSTONE , with few percent fine subrounded gravel (siltstone, claystone clasts) - olive brown to orange brown, moist, moderately weathered, very close fracture spacing, moderately hard, no laminations noted (drained peak: $\Phi = 24^\circ$, $c = 1330$ psf; drained ultimate: $\Phi = 17^\circ$, $c = 1120$ psf)		12.5	122.9
40								
41								
42								
43								
44	1-9		64 50/3"		as above		14.3	116.1
45								
56					Notes: No groundwater encountered Boring terminated at 45 feet bgs			
57								
48								
49								
50								



Date Drilled: 10/7/08
Elevation:
Backfill Method: Cuttings
Boring Depth: 45-feet
Logged By: BK

Driller: Britton Exploration
Drilling Method: Solid Flight
Diameter of Boring: 4-inch
Rig Type: CME Track Rig
Depth to Groundwater: NGWE

Depth (ft)	Sample No.	Graphic Log	Blows Per Foot	Pocket Pen (t.s.f)	Description	U.S.C.S. Soil Group	In-Place	
							Moisture (% dry weight)	Dry Density (pcf)
0					Surface			
1					horse corral with exposed native soil (gravelly sandy clay)	CL		
2								
3					BEDROCK			
4	2-1		45		FINE SANDSTONE , olive brown, dry to moist, moderately weathered, close fracture spacing, moderately hard, with caliche on some fractures (Berryessa Formation)		6.4	109.8
5								
6								
7								
8								
9	2-2		37		same as above, with some orange brown clayey fine sandstone			
10								
11								
12								
13								
14	2-3		67		same as above, with some sandy claystone, few percent caliche patches		9.4	117.2
15								
16								
17								
18	2-4		30 50/6"		SILTSTONE , pebbly to cobbly, light brown to gray brown, moist, moderately weathered, close to very close fracture spacing, caliche absent, gravel coarse, rounded (including dark gray hard sandstone clasts)		7.2	123.2
19								
20								
21								
22								
23	2-5		33 50/5.5"		CLAYSTONE , olive brown to orange brown, moist, moderately weathered, very close fracture spacing moderately hard		13.0	112.4
24								
25								

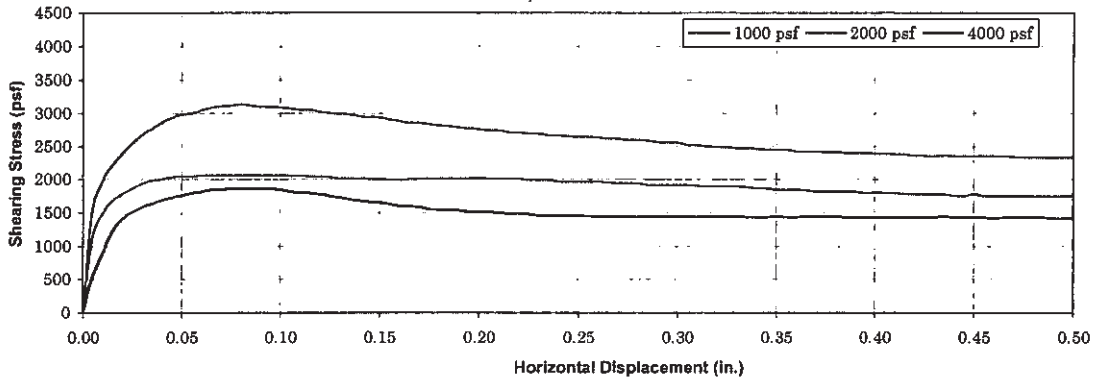
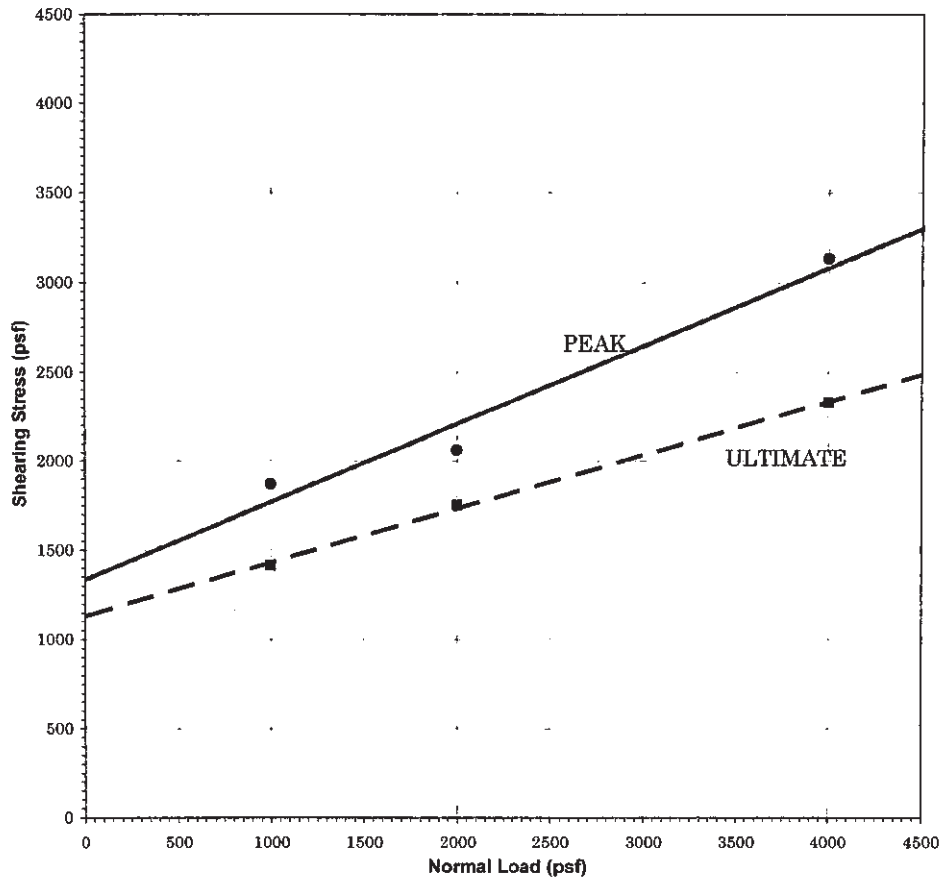


Date Drilled: 10/6/08
Elevation:
Backfill Method: Cuttings
Boring Depth: 45-feet
Logged By: CC

Driller: Britton Exploration
Drilling Method: Solid Flight
Diameter of Boring: 4-inch
Rig Type: CME Track Rig
Depth to Groundwater: NGWE

Depth (ft)	Sample No.	Graphic Log	Blows Per Foot	Pocket Pen (t.s.f)	Description	U.S.C.S. Soil Group	In-Place	
							Moisture (% dry weight)	Dry Density (pcf)
25								
26								
27								
28								
29	2-6		17 50/5.5"		same as above, but with few percent caliche specks, with trace to few percent pebbles (including gray, hard, sandstone fragments)			
30								
31								
32								
33	2-7		17 50/4"		FINE SANDSTONE , olive brown to orange brown, moist, moderately weathered, close fracture spacing, hard (cemented)		11.7	103.4
34								
35								
36								
37								
38								
39	2-8		65		CLAYSTONE , olive brown with orange brown and gray along fractures, moist, moderately weathered, very close fracture spacing, moderately hard		14.1	118.4
40								
41								
42								
43								
44	2-9		43		CLAYEY SANDSTONE , orange brown, moist, moderately weathered, massive, with few percent coarse sand (grit), trace fine gravel, moderately hard (drained peak: $\Phi = 40^\circ$, $c = 630$ psf; drained ultimate: $\Phi = 37^\circ$, $c = 130$ psf)		15.5	113.7
45								
56					Notes: No groundwater encountered Boring terminated at 45 feet bgs			
57								
48								
49								
50								





DIRECT SHEAR DATA*

Sample Location: 1-8
Material: Brown Silty Clay (CL)
Dry Density (pcf): 122.9

	Initial	Final
Moisture Content (%):	12.5	15.1
Saturation (%):	94	100
	Peak	Ultimate
ϕ Angle of Friction (degrees):	24	17
c Cohesive Strength (psf):	1330	1120

Test Type: Peak and Ultimate
Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

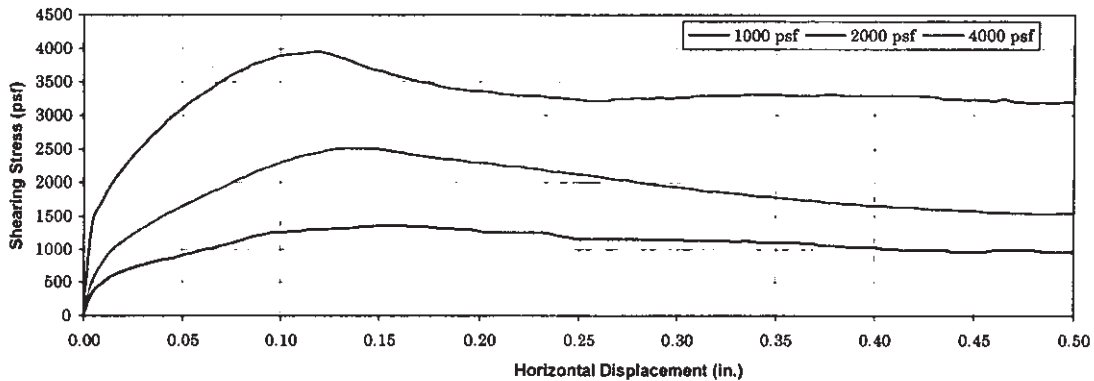
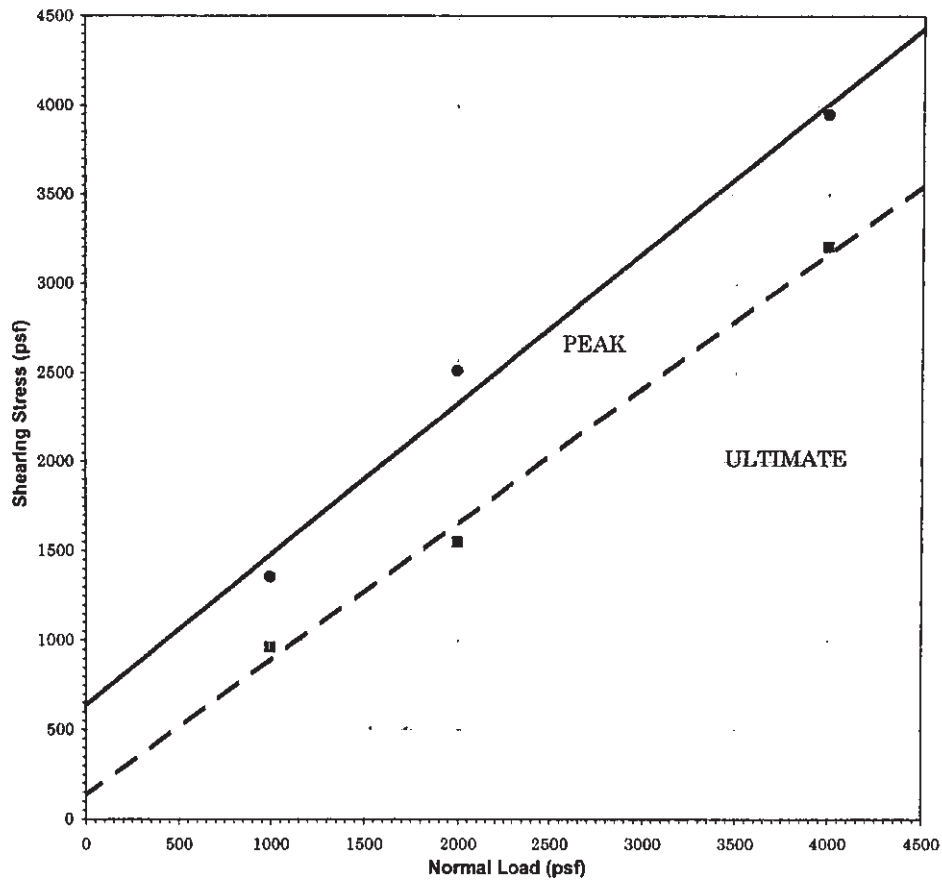
DIRECT SHEAR TEST

Proposed Subdivision
3770 Quimby Road
San Jose, California



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Figure A6



DIRECT SHEAR DATA*

Sample Location: 2-9
Material: Sandy Clay (CL)
Dry Density (pcf): 113.7

	<u>Initial</u>	<u>Final</u>
Moisture Content (%):	15.5	17.1
Saturation (%):	89	100
	<u>Peak</u>	<u>Ultimate</u>
ϕ Angle of Friction (degrees):	40	37
c Cohesive Strength (psf):	630	130

Test Type: Peak and Ultimate
Shear Rate (in/min): 0.005

* Test Method: ASTM D-3080

DIRECT SHEAR TEST

Proposed Subdivision
3770 Quimby Road
San Jose, California



ES Geotechnologies

Figure A7

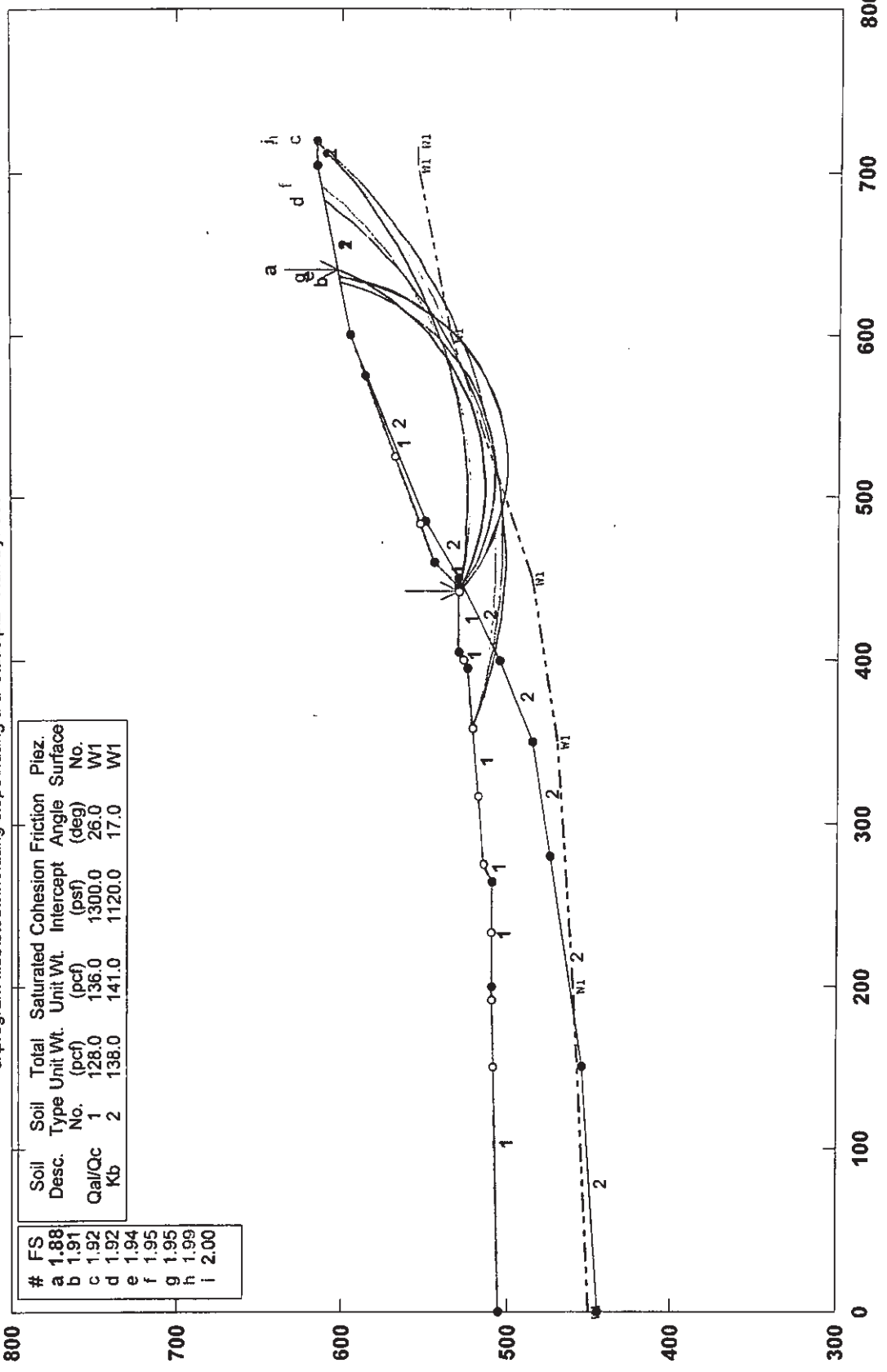
TABLE A1

Summary of Moisture, Density, and Shear Testing

<u>Sample No.</u>	<u>Depth feet</u>	<u>In-Place Conditions</u>		<u>Shear Testing</u>	
		<u>Moisture Content</u>	<u>Dry Density</u>	<u>Angle of Internal Friction</u>	<u>Unit Cohesion</u>
		<u>(% dry wt)</u>	<u>p.c.f.</u>		<u>p.s.f.</u>
1-1	4.5-5.0	6.6	106.7		
1-2	9.5-10.0	6.5	107.7		
1-5	23.5-24.0	12.5	102.8		
1-8	39.5-40.0	12.5	122.9	Drained Peak, Ultimate:	24, 17 1330, 1120
1-9	18.9-19.4	9.0	121.0		
2-1	4.5-5.0	6.4	109.8		
2-3	14.5-15.0	9.4	117.2		
2-4	19.0-19.5	7.2	123.2		
2-5	24.0-24.5	13.0	112.4		
2-7	33.5-34.0	11.7	103.4		
2-8	39.5-40.0	14.1	118.4		
2-9	44.5-45.0	15.5	113.7	Drained Peak, Ultimate:	40, 37 630, 130

Huang BA-2559-01 A-A' Static

c:\program files\stedwin\huang slopethuang a-a' static.pl2 Run By: Username 11/18/2008 03:01PM



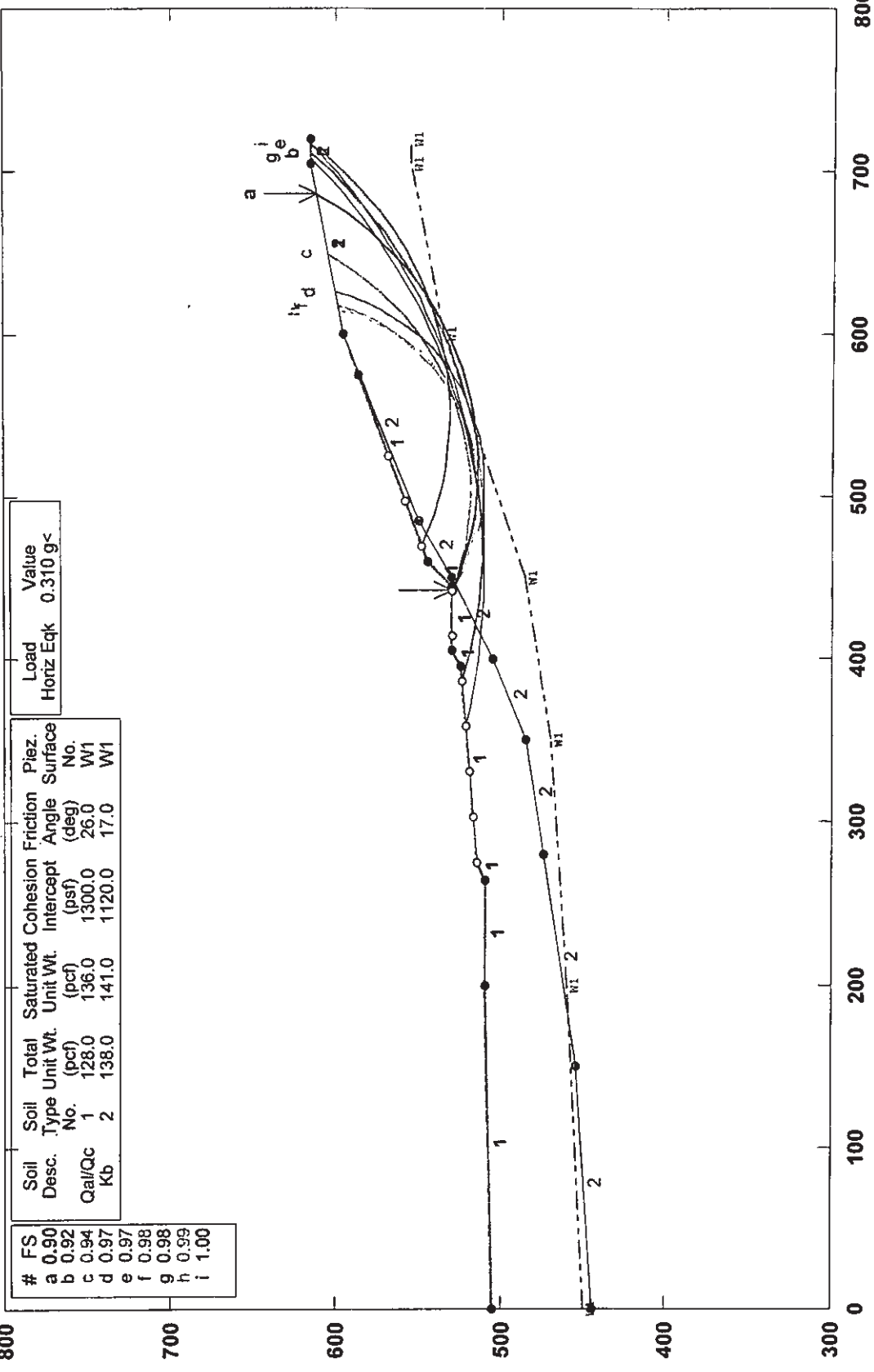
STED
 STABL6H FSmin=1.88
 Safety Factors Are Calculated By The Modified Janbu Method



Figure E-1

Huang BA-2559-01 A-A' Dynamic

c:\program files\stedwinhuang slopethuang a-a' dynamic.pl2 Run By: Username 11/18/2008 03:06PM



#	FS
a	0.90
b	0.92
c	0.94
d	0.97
e	0.97
f	0.98
g	0.98
h	0.99
i	1.00

Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion (psf)	Friction Intercept (deg)	Piez. Surface No.
	1	128.0	136.0	1300.0	26.0	W1
	2	138.0	141.0	1120.0	17.0	W1

Load Horiz Eqk	Value
	0.310 g<

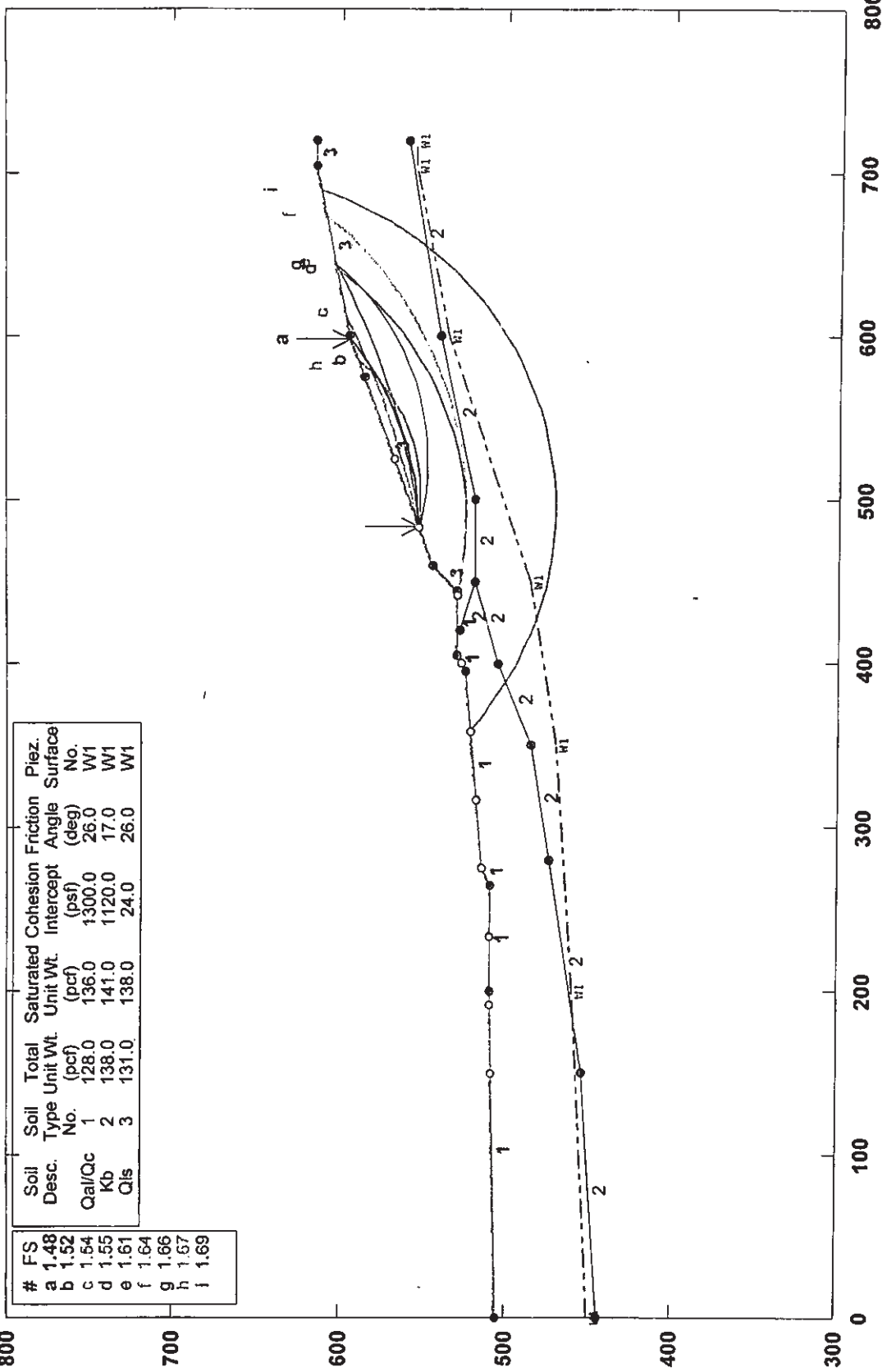
STABLGH FSmin=0.90
Safety Factors Are Calculated By The Modified Janbu Method



Figure B2

Huang BA-2559-01 A-A' Static w QIs

c:\program files\stedwin\huang slope\huang a-a' static w qls.pl2 Run By: Username 11/18/2008 03:07PM



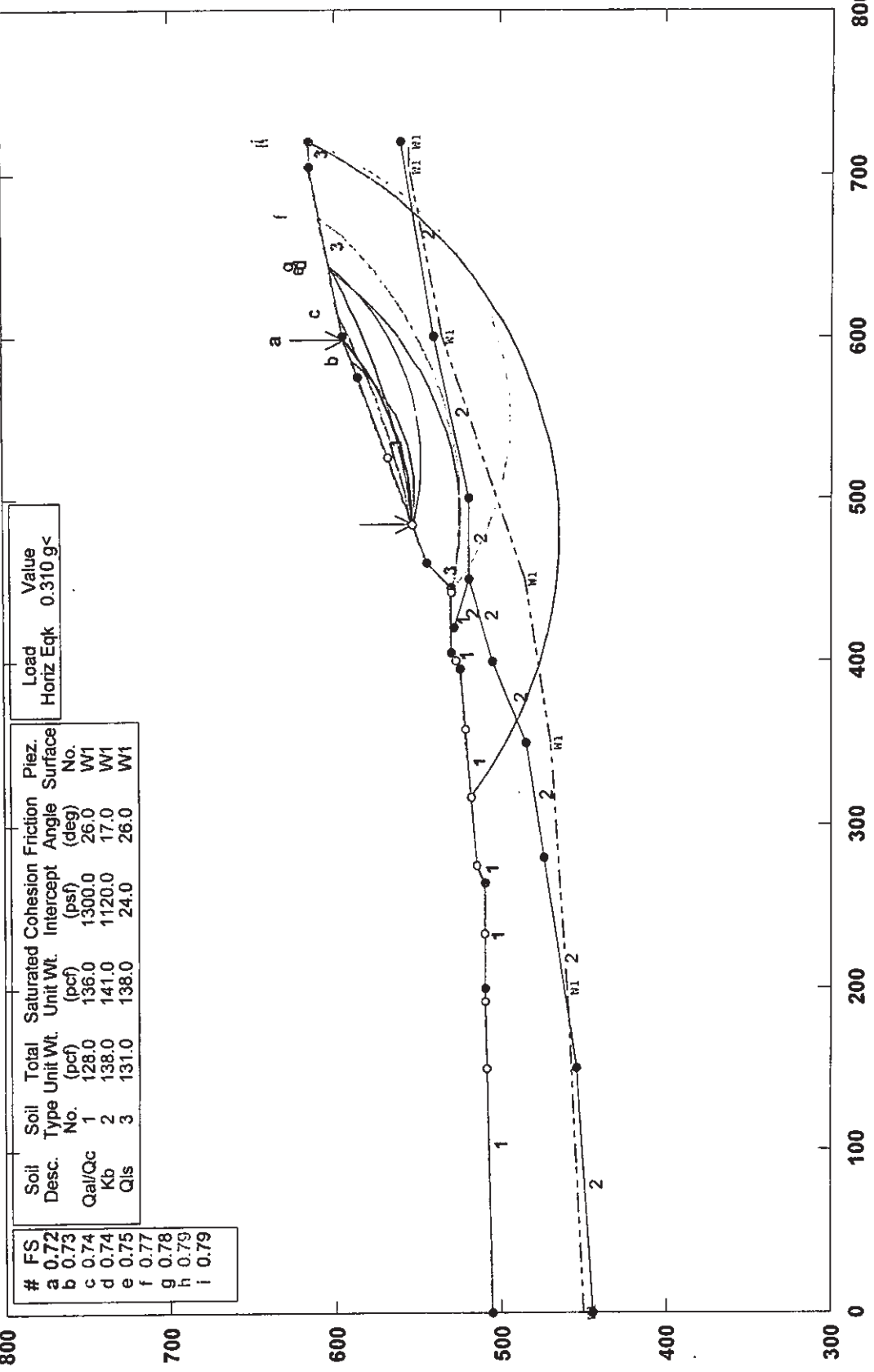
STED
 STABL6H FSmin=1.48
 Safety Factors Are Calculated By The Modified Janbu Method



Figure B3

Huang BA-2559-01 A-A' Dynamic w QIs

c:\program files\stedwin\huang slope\huang a-a' dynamic w qis.pl2 Run By: Useaname 11/18/2008 03:08PM



Load	Value
Horiz Eqk	0.310 g<

Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion Intercept (psf)	Friction Angle (deg)	Piez. Surface No.
Qa1/Qc	1	128.0	136.0	1300.0	26.0	W1
Kb	2	138.0	141.0	1120.0	17.0	W1
QIs	3	131.0	138.0	24.0	26.0	W1

#	FS
a	0.72
b	0.73
c	0.74
d	0.74
e	0.75
f	0.77
g	0.78
h	0.79
i	0.79

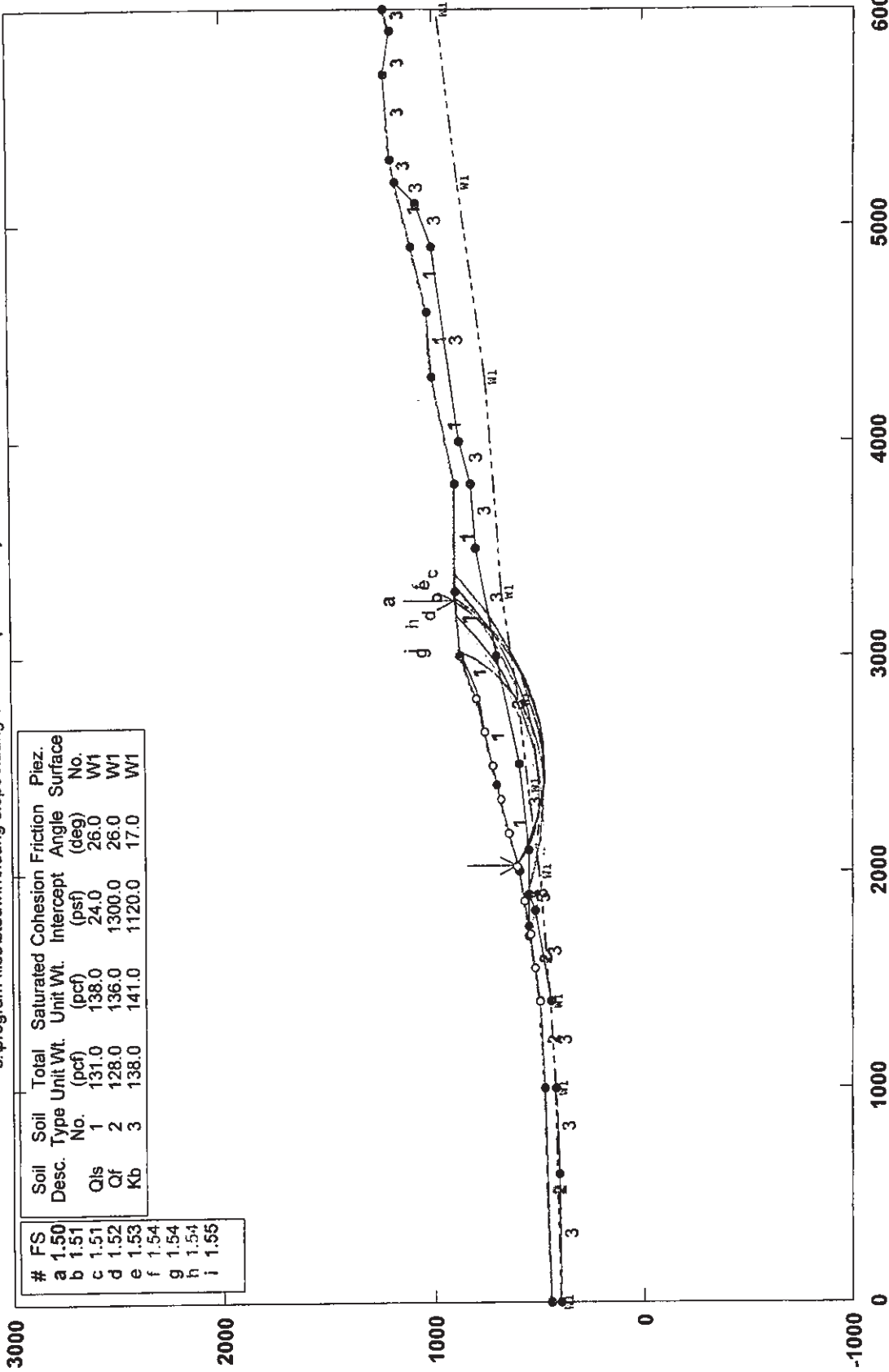
STABL6H FSmin=0.72
Safety Factors Are Calculated By The Modified Janbu Method



Figure B4

Huang BA-2559-01 B-B' Static

c:\program files\stedwin\huang slope\huang b-b' static.pl2 Run By: Username 11/18/2008 03:09PM



STABL6H FSmin=1.50
Safety Factors Are Calculated By The Modified Janbu Method



Figure B5

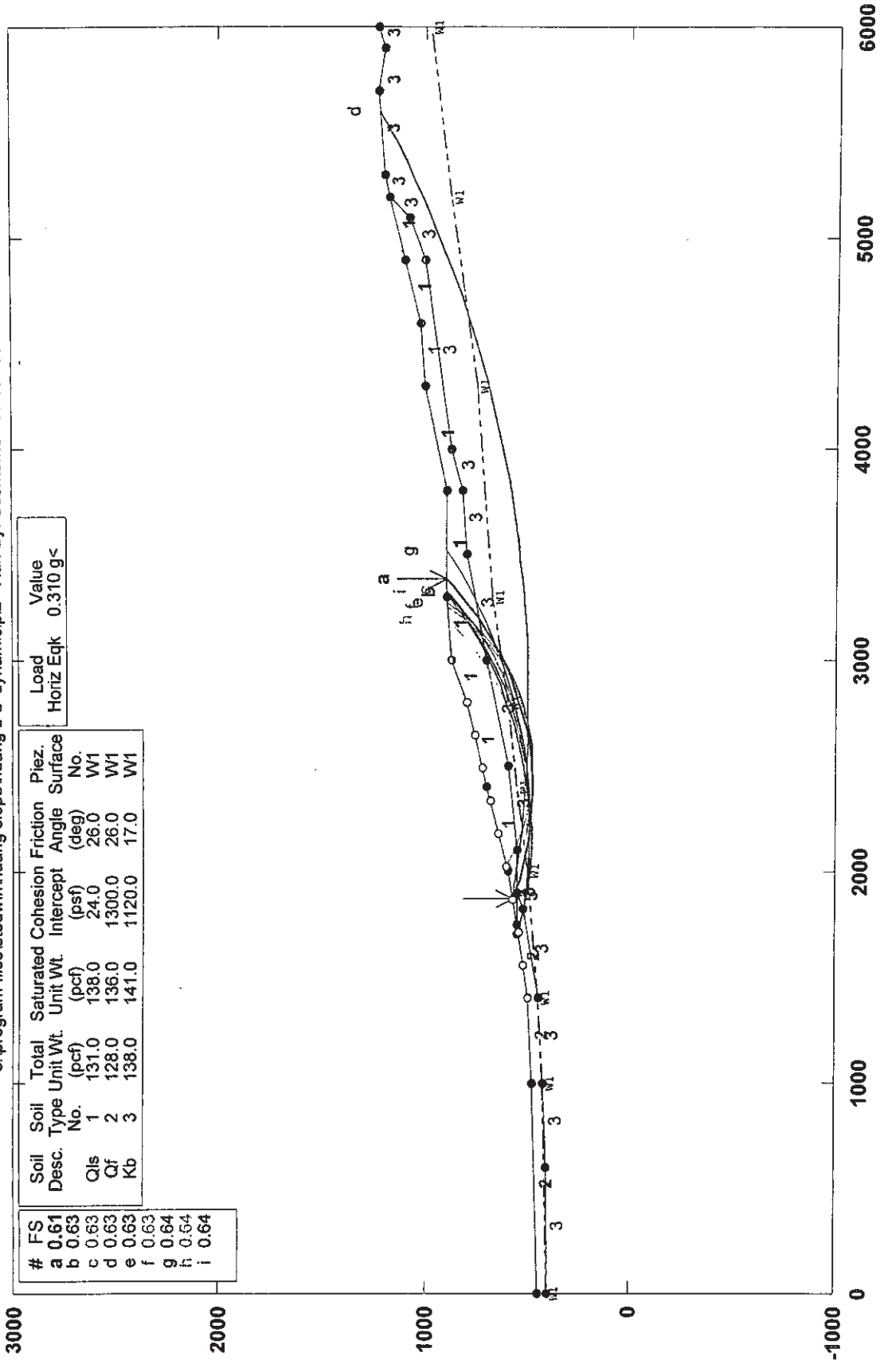
Huang BA-2559-01 B-B' Dynamic

c:\program files\stedwinhuang s\pethuang b-b' dynamic.pl2 Run By: Username 11/18/2008 03:10PM

#	FS
a	0.61
b	0.63
c	0.63
d	0.63
e	0.63
f	0.63
g	0.64
h	0.64
i	0.64

Soil Desc.	Soil Type No.	Total Unit Wt. (pcf)	Saturated Unit Wt. (pcf)	Cohesion (psf)	Friction Angle (deg)	Piez. Surface No.
Q1s	1	131.0	138.0	24.0	26.0	W1
Qf	2	128.0	136.0	1300.0	26.0	W1
Kb	3	138.0	141.0	1120.0	17.0	W1

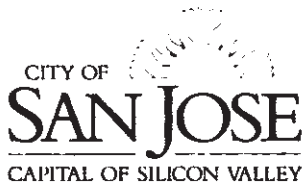
Load	Value
Horiz Eqk	0.310 g<



STABL6H FSmin=0.61
Safety Factors Are Calculated By The Modified Janbu Method



Figure B6



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

ENVIRONMENTAL CLEARANCE APPLICATION

TO BE COMPLETED BY PLANNING DIVISION STAFF		
FILE NUMBER:		RECEIPT #: _____
ND GRANTED:	EIR REQUIRED:	AMOUNT: _____
PROJECT MANAGER:	ENVIRONMENTAL COORDINATOR:	DATE: _____
		BY: _____
NOTES:		

TO BE COMPLETED BY APPLICANT (PLEASE TYPE OR PRINT IN INK)		
I. GENERAL INFORMATION		
NAME OF APPLICANT Euson Huang		DATE 3-5-10
ADDRESS 1862 Hunt Drive, Burlingame, CA 94010		
E-MAIL ADDRESS euson1588@sbcflglobal.net	DAYTIME PHONE NUMBER (408) 705-8848	FAX NUMBER ()
NAME OF PROPERTY OWNER Euson Huang / Tammy T. Huang		DATE 3-5-10
ADDRESS 1862 Hunt Drive, Burlingame, CA 94010		DAYTIME PHONE NUMBER (408) 705-8848
NAME OF DOCUMENT PREPARER (IF DIFFERENT FROM ABOVE) OR ENVIRONMENTAL CONSULTANT Ruth and Going, Inc		DATE 3-5-10
ADDRESS PO Box 26460, San Jose, CA 95159-6460	DAYTIME PHONE NUMBER (408) 236-2400	FAX NUMBER (408) 236-2410
NAME OF PROJECT Quimby Road		
PROJECT LOCATION East Side of Quimby Road, East of Murillo Ave.		
STREET ADDRESS 3770 Quimby Road, San Jose, CA 95148		
ASSESSOR'S PARCEL NUMBER(S) 659-25-001 and 002		
<i>Note: Information regarding the Assessor's Parcel Number can be obtained from the County Assessor's Office, County of Santa Clara 70 West Hedding Street, 5th Floor, San Jose, CA 95110, Phone (408) 299-5500.</i>		

ENVIRONMENTAL CLEARANCE APPLICATION

PROVIDE THE FOLLOWING PLANNING INFORMATION BELOW:

Note: Information regarding General Plan, Specific Plan, and Zoning information can be obtained at the City of San Jose Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-3555.

ZONING DISTRICT: RR -County to A (PD)	GENERAL PLAN DESIGNATION: Medium Low Density Residential (5du/ac)
-------------------------------------------------	--------------------------------------------------------------------------

IS THE PROJECT CONSISTENT WITH THE ZONING AND GENERAL PLAN? (STAFF)

LIST ANY PERMITS THAT ARE REQUIRED FOR THE PROJECT FROM THE CITY OF SAN JOSE AND OTHER LOCAL, STATE, OR FEDERAL AGENCIES (SITE DEVELOPMENT PERMIT, PLANNED DEVELOPMENT PERMIT, DEPARTMENT OF FISH AND GAME PERMIT, ETC.):

PD Rezoning, Annexation, and PD Permit

LIST ANY PROFESSIONAL REPORTS PREPARED FOR THE PROJECT SITE KNOWN TO THE APPLICANT (I.E., GEOLOGIC, HAZARDOUS MATERIALS, ARCHAEOLOGICAL, ENVIRONMENTAL IMPACT REPORTS, ETC.):

Biological Constraints Analysis (6-17-2010) and Geological Hazards Report (11-08)

DOES THE PROJECT INVOLVE HUD FEDERAL FUNDING? NO YES

PLEASE INDICATE WHETHER USE OF HUD FUNDING IS ANTICIPATED, FOR THE PROPOSED PROJECT.

NO YES

If yes, indicate type of funding (i.e. CDBG Grant, HOME Investment Partnership Program, Section 108 Loan Guarantee, etc.), funding amount, whether awarded (if known) or application is pending, and fiscal year of award or application request.

PLEASE NOTE: Projects involving 1) acquisition of real property involving a change of use, or 2) new construction may require an Environmental Assessment (EA). Concurrent environmental review per the California Environmental Quality Act (CEQA) is also required. The obtainment of a qualified environmental consultant to provide documentation services (i.e. a combined Initial Study/EA) is strongly recommended.

II. DESCRIPTION OF THE PROJECT

WRITTEN DESCRIPTION OF THE PROJECT:

A Planned Development Rezoning to allow up to 7 SF Detached homes

SIZE OF THE SITE: <u>1.7</u> gross acres	BUILDING SQUARE FOOTAGE: <u>N.A.</u> square feet
NUMBER OF FLOORS: <u>2</u>	BUILDING HEIGHT: <u>35</u> feet
FLOOR AREA RATIO: <u>N.A.</u>	AMOUNT OF OFF-STREET PARKING PROVIDED: <u>2</u> spaces

WHAT PERCENTAGE OF THE SITE WILL BE OCCUPIED BY BUILDINGS, PARKING/DRIVEWAYS, AND LANDSCAPING/ OPEN SPACE:

Project Site Uses	Amount of Area	Percentage of Total Project Area
Building (footprint)	18,000 +/-	18,000 +/-
Parking/Driveways	unknown	unknown
Landscaping/Open Space	unknown	unknown
Total		100 %

DOES THE PROJECT PROPOSE THE DEMOLITION OR ALTERATION OF ANY EXISTING STRUCTURES ON THE PROJECT SITE? NO YES

If yes, describe below: Numerous wooden outbuildings will be removed.

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION

IS THE PROJECT A LAND USE PRESENTLY EXISTING IN THE SURROUNDING NEIGHBORHOOD (<i>within 500 feet of the project site</i>)? <p style="text-align: center;">NO <input checked="" type="checkbox"/> YES</p>
HAS A COMMUNITY MEETING BEEN HELD TO DISCUSS THE PROJECT WITH NEIGHBORS? <p>NO YES <input checked="" type="checkbox"/> When: <u>Nov 2009</u> # attending: <u>20</u> Notification Process: <u>mailing</u> <i>District 8 Roundtable</i> <i>(mailing, newspaper, etc.)</i></p> If yes, indicate what issues were discussed with neighbors: <p style="padding-left: 20px;">number of units, size of lots</p>
IF THE PROJECT IS RESIDENTIAL PROVIDE THE INFORMATION BELOW: <p>Type of units: (i.e., single-family detached, multi-family, etc.) <u>SF Detached</u> Number of each type of unit: <u>up to 7 units</u> Density per net acre: _____ Bedroom count: <u>up to 18</u> Estimated population*: <u>20 +/-</u> <small>*Units x Persons per Household: SFDetached = 3.43; SFAttached = 2.88; 2-4 units = 3.12; 5+ units = 2.29; Mobile Homes = 2.23</small></p>
IF THE PROJECT IS COMMERCIAL PROVIDE THE INFORMATION BELOW: <p>Neighborhood or Regionally oriented: _____ Number and type of establishments: (i.e., restaurant, department store, etc.) _____ Square footage of each: _____ Number of shifts per workday: _____ Number of employees per shift: _____ Hours of Operation: _____ Drive-through uses: _____</p>
IF THE PROJECT IS INDUSTRIAL PROVIDE THE INFORMATION BELOW: <p>Number and type of establishments: _____ Square footage of each: _____ Number of shifts per workday: _____ Number of employees per shift: _____ Hours of Operation: _____</p>
IF THE PROJECT IS INSTITUTIONAL PROVIDE THE INFORMATION BELOW: <p>Major functions: _____ Square footage and other relevant characteristics: _____ Number of shifts per workday: _____ Number of employees per shift: _____ Service area: _____ Hours of Operation: _____</p>
IF THE PROJECT IS MIXED USE , INCLUDE INFORMATION FROM ABOVE WHICH IS RELEVANT:
WILL HAZARDOUS MATERIALS BE USED AS A PART OF THE OPERATION OF ANY OF THE ESTABLISHMENTS ON THE PROJECT SITE? <p style="text-align: center;">x NO YES</p> If yes, discuss below:
IF REQUIRED, HAS A HAZARDOUS MATERIALS STORAGE PERMIT BEEN OBTAINED FOR THE OPERATION OF THE PROJECT? <p style="text-align: center;">x NO YES</p>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION

IF REQUIRED, LIST THE APPROPRIATE STATE AND FEDERAL PERMITS THAT HAVE BEEN OBTAINED FOR THE USE, HANDLING, AND STORAGE OF HAZARDOUS MATERIALS ON THE SITE:

DISCUSS BRIEFLY THE PHYSICAL AND ENGINEERING ASPECTS OF THE PROJECT, INCLUDING THE FOLLOWING:

Is grading or excavation contemplated? NO x YES

If Yes: Cut: Unknown volume in cubic yards; depth in unknown feet max
 Fill: Unknown volume in cubic yards; depth in unknown feet max

DESCRIBE EXTERIOR LIGHTING PROPOSED FOR SECURITY, PARKING LOTS, AND PEDESTRIAN PATHS, INCLUDING TYPE OF LIGHTING, PROPOSED HEIGHT, AVERAGE FOOTCANDLE, AND PROXIMITY TO SENSITIVE RECEPTORS:

none

DISCUSS ANY CHANGES IN THE DRAINAGE PATTERNS, ABSORPTION RATES, AND AMOUNT OF SURFACE RUNOFF RESULTING FROM THE PROJECT:

The site will be converted from a vacant site to a developed site. As such, existing surface runoff will be collect in an underground drainage system connected to the existing system in Quimby Road

UTILITIES

Indicate the availability of the utilities for the project and name the utility provider below:

Utility	Availability	Name of Provider:
Water	Yes	SJ Muni Water
Sanitary Sewer	Yes	City of San Jose
Storm Sewer	Yes	City of San Jose
Solid Waste/Recycling	Yes	Green Waste
Natural Gas/Electric	Yes	PG&E

PUBLIC IMPROVEMENTS: INDICATE ANY PUBLIC IMPROVEMENTS NECESSARY FOR THE PROJECT (DEDICATIONS, HALF-STREETS, STOP LIGHTS, ETC.):

Half street improvements to Quimby Road

RESERVATION OF LAND FOR PUBLIC FACILITIES: INDICATE ANY RESERVATION OF LAND FOR PUBLIC FACILITIES NECESSARY FOR THE PROJECT (SCHOOLS, PARKS, TRANSIT FACILITIES, ETC.):

None

PROJECT OBJECTIVES: INDICATE THE COMMUNITY BENEFITS DERIVED FROM THE PROJECT:

In-Fill housing

**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
 THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.**

ENVIRONMENTAL CLEARANCE APPLICATION

III. ENVIRONMENTAL SETTING

- LIST THE CURRENT LAND USES ADJACENT TO THE PROJECT SITE (undeveloped, commercial, residential, etc.)

North: Large lot residential in the County

East: Hillside

South: Church, Future SF Residential

West: Single Family Residential subdivision

LAND USE

- LIST THE CURRENT LAND USES ON THE PROJECT SITE (UNDEVELOPED, COMMERCIAL, RESIDENTIAL USES, ETC.)

One SF residence with associated out-buildings

- DOES THE PROJECT SITE CONSIST OF AGRICULTURAL LAND? NO YES

If yes, describe below the type of use (orchards, row crops, greenhouses, etc.):

- LIST SPECIFIC LAND USES THAT WERE PREVIOUSLY ON THE SITE FOR THE LAST 5 YEARS.

Same as existing use

GEOLOGIC HAZARDS

Note: A Geologic Report may be required for the project if it is located in a Geologic Hazards Zone. Information regarding geologic hazards may be obtained from the City of San Jose Public Works Department, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7646.

- DESCRIBE THE GEOLOGICAL CHARACTERISTICS OF THE SITE INCLUDING TOPOGRAPHY AND ANY UNIQUE GEOLOGIC FEATURES (I.E. ROCK OUTCROPS, ETC.)

See attached Geotechnical Report

- LIST KNOWN FAULT(S) CLOSEST TO THE PROJECT SITE AND DISTANCE AND LOCATION IN RELATION TO THE PROJECT SITE (E.G., SILVERCREEK FAULT LOCATED ONE MILE TO THE NORTHEAST OF THE PROJECT SITE):

See attached Geotechnical Report

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION

- IS ANY PART OF THE PROJECT SITE SUBJECT TO GEOLOGIC HAZARDS INCLUDING EROSION, LANDSLIDE, LIQUEFACTION, EXPANSIVE SOILS, SUBSIDENCE OF THE LAND? NO YES

Please describe below:

See attached Geotechnical Report

- DESCRIBE THE SOIL TYPES ON THE PROJECT SITE (I.E., CLASS I, CLASS II).

See attached Geotechnical Report

WATER RESOURCES

Note: Information regarding waterways and flooding conditions can be obtained from the City of San Jose Public Works Department, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7803.

- ARE THERE ANY NATURAL WATERWAYS OCCURRING ON THE PROJECT SITE OR WITHIN 300 FEET OF THE PROJECT SITE? x NO YES

If yes, discuss below the name, type of waterway and the distance to the project site:

- LIST THE FLOOD ZONE AND PANEL NUMBER WITHIN WHICH THE PROJECT SITE IS LOCATED.

Flood Zone: Unknown Panel Number: _____

- IS THE PROJECT SITE LOCATED WITHIN AN AREA SUBJECT TO FLOODING (I.E., WITHIN THE 100-YEAR FLOOD PLAIN): x NO YES

BIOLOGICAL RESOURCES

Note: The biological resources section may require an arborists or biotics report prepared by a qualified consultant. Information regarding biological resources may be obtained at City of San Jose Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7800.

- DESCRIBE THE BIOTIC FEATURES OF THE SITE, INCLUDING OPEN SPACES, LANDSCAPING ON THE SITE AND ANY UNIQUE BIOLOGICAL FEATURES.

See attached Biological Report

- DOES THE SITE CONTAIN ANY KNOWN ENDANGERED THREATENED, SPECIAL STATUS ANIMAL OR PLANT SPECIES? x NO YES

If yes, list below:

See attached Biologica Report

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION

- DOES THE SITE CONTAIN ANY KNOWN IMPORTANT WILDLIFE BREEDING, NESTING OR FEEDING AREAS?
If yes, list below: x NO YES

See attached Biological Report

- IS THERE RIPARIAN CORRIDOR HABITAT OCCURRING ON OR WITHIN 300 FEET TO THE SITE (I.E. VEGETATION OCCURRING ALONG THE BANKS OF A WATERWAY)?
If yes, discuss below: x NO YES

- WILL THE PROJECT BE CONSTRUCTED WITHIN 100 FEET OF THE TOP OF BANK OR EDGE OF RIPARIAN VEGETATION OF ANY WATER WAY?
If yes, discuss below: x NO YES

- ARE SERPENTINE SOILS LOCATED ON THE PROJECT SITE? x NO YES

- CIRCLE ALL THE LANDCOVER TYPES FOUND ON AND ADJACENT TO THE PROJECT SITE:

- | | |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• Barren• Shrubland• Orchard/Cultivated• Riparian | <ul style="list-style-type: none">• Forest Upland• Herbaceous Upland/Grassland• Wetlands• Urban/Developed |
|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION

- In the table below, list any existing trees on the project site including their species, size, condition, and disposition. Indicate if any of the trees are ordinance-size trees. In addition, indicate trees to be removed and trees to be retained as part of the project. If additional space is required, attach supplemental pages.

(Note: Trees size is determined by measuring the circumference of the tree trunk at 24 inches above natural grade - Ordinance-size trees are defined as trees measuring 56 inches in circumference at 24 inches above natural grade).

Photos of each ordinance-size tree must be submitted. The location of all trees on the site must be specified on a site plan.

Number	Tree Species	Size (circumference)	Ordinance- Size Trees	Condition of Tree	Tree to be Removed	Tree to be Retained
<i>Example</i>	<i>Coast Live Oak</i>	<i>62 inches</i>	<i>Yes</i>	<i>Good</i>	<i>No</i>	<i>Yes</i>
1.	Pepper	38		Good	No	
2.	Pepper	25		Good	No	
3.	Pepper	32		Good	No	
4.	Cherry	25		Dying	By Mother	Nature
5.	Pepper	32		Good	No	
6.	Pepper	32		Good	No	
7.	Pepper	56	Yes	Good	No	
8.	Pepper	25		Good	No	
9.	Pepper	44		Good	No	
10.	Walnut	38		Good	Potentially	
11.	Pepper	38		Good	Potentially	
12.	Almond	32		Dying	By Mother	Nature
13.	Almond	44		Good	No	
14.	Oak	56	Yes	Good	No	
15.	Redwood	75	Yes	Good	No	
16.	Pepper	113	Yes	Good	Potentially	
17.						
18.						
19.						
20.						

- ARE THERE HERITAGE TREES ON THE PROJECT SITE? (STAFF) NO YES

If yes, list the number of trees, size of trees and species below:

Heritage Tree List Number:	Address/Location:	Location of Tree on Project Site:	Species

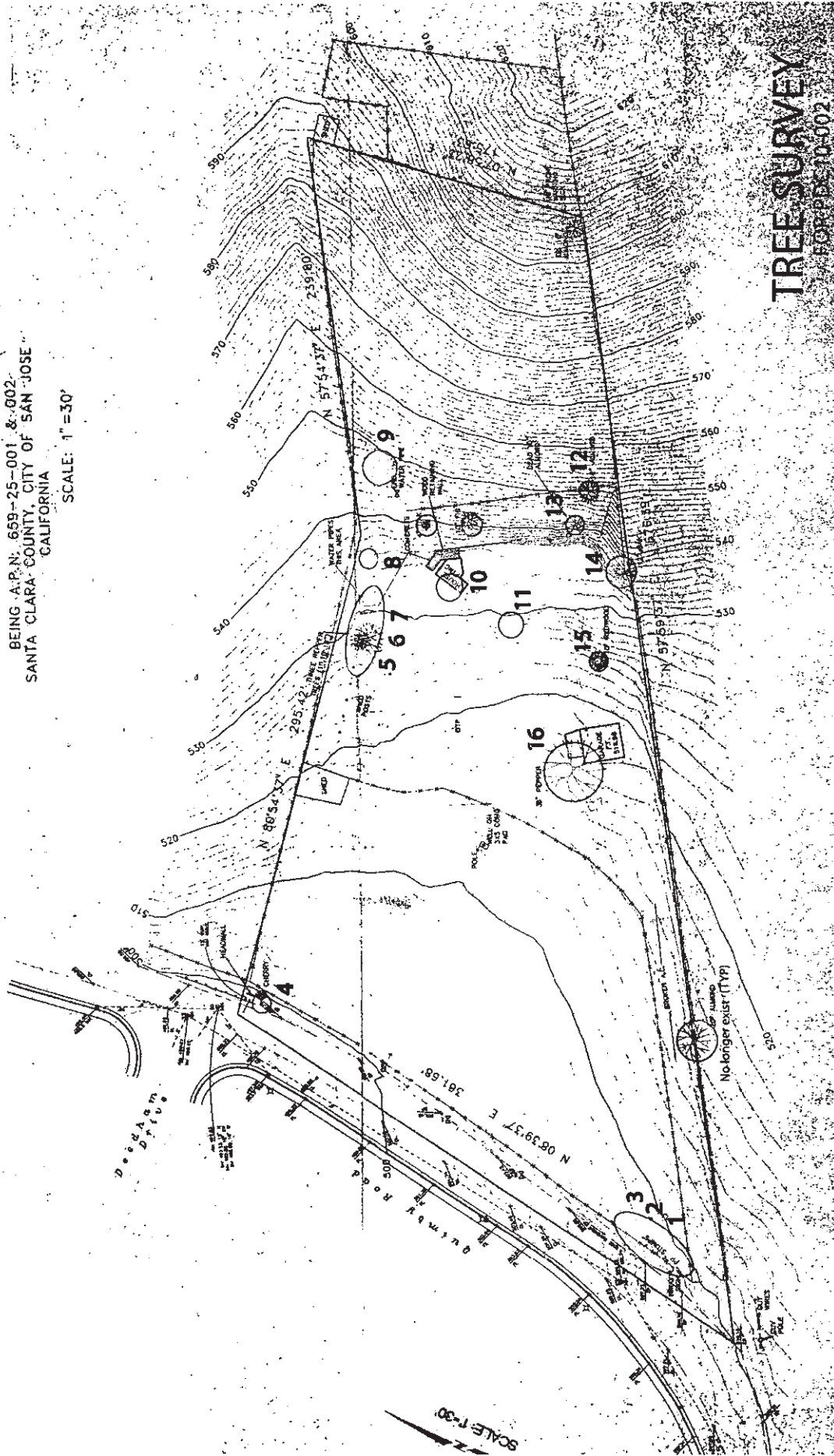
**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.**

TOPOGRAPHIC SURVEY

TAMMY AND EUSON HUANG

BEING A.P.N. 659-25-001 & 002
SANTA CLARA COUNTY, CITY OF SAN JOSE
CALIFORNIA

SCALE: 1" = 30'



TREE SURVEY
FOR 659-25-001-002



Google

© 2009 Tele Atlas

elev 541 ft

37°19'42.73" N - 121°45'53.942W

Jul 2007

Eye alt 320 ft

ENVIRONMENTAL CLEARANCE APPLICATION

TRANSPORTATION/CIRCULATION

Note: Information regarding transportation and circulation issues can be obtained from the, City of San Jose Public Works Department, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7802.

- NAME AND DESCRIBE THE ROADWAYS PROVIDING ACCESS TO THE PROJECT SITE (E.G., FOUR-LANE ROADWAY WITH MEDIAN, ETC.):

Quimby Road

- IS THE PROJECT SITE CURRENTLY SERVED BY MASS TRANSIT (I.E., BUS SERVICE, LIGHT-RAIL, ETC.):

If yes, list routes below: NO YES

- IS THE PROJECT SITE WITHIN 2,000 FEET BY PUBLIC RIGHTS-OF-WAY OF A LIGHT RAIL STATION?

If yes, list which station: NO YES

MINERAL RESOURCES

- DOES THE PROJECT SITE CONTAIN ANY KNOWN IMPORTANT MINERAL RESOURCES? NO YES

If yes, list below:

AIR QUALITY

Note: An air quality analysis prepared by a qualified consultant is required for any project that proposes diesel generators. Information can be obtained from the City of San Jose Planning, Building and Code Enforcement Department, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7801.

- IS THE PROJECT SITE LOCATED ADJACENT TO A USE THAT GENERATES ODORS (I.E. LANDFILLS, COMPOSTING, ETC.)? NO YES

If yes, discuss below:

HAZARDOUS MATERIALS

Note: Information regarding hazardous materials issues can be obtained from the City of San Jose Environmental Services Department, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7801.

- ARE PESTICIDES CURRENTLY USED ON THE SITE FOR EITHER AGRICULTURAL PRODUCTION OR LANDSCAPE MAINTENANCE OPERATION? NO YES

If yes, discuss below:

- ARE THERE ACTIVE OR ABANDONED WELLS ON THE PROJECT SITE? NO YES

If yes, discuss below:

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ENVIRONMENTAL CLEARANCE APPLICATION

- ARE HAZARDOUS MATERIALS CURRENTLY BEING USED AS A PART OF THE PRESENT BUSINESS OPERATING ON THE SITE? x NO YES

If yes, discuss below:

- IF REQUIRED, DOES THE CURRENT OWNER/OPERATOR HAVE A HAZARDOUS MATERIALS STORAGE PERMIT? NO YES

• IF REQUIRED, LIST THE APPROPRIATE STATE AND FEDERAL PERMITS THAT HAVE BEEN OBTAINED FOR THE USE, HANDLING, AND STORAGE OF HAZARDOUS MATERIALS FOR PREVIOUS OPERATIONS ON THE PROJECT SITE:

- HAS THE PROJECT SITE EVER BEEN OCCUPIED BY A GAS STATION OR AUTO REPAIR FACILITY? x NO YES

- DOES THE SITE HAVE UNDERGROUND STORAGE OF CHEMICALS OR UNDERGROUND STORAGE TANKS? x NO YES

If yes, describe below the type of storage use (i.e., gasoline, diesel, etc.):

- IS THE PROJECT SITE LISTED ON ANY LOCAL, STATE AND/OR FEDERAL REGULATORY DATABASE DUE TO HAZARDOUS MATERIALS CONTAMINATION (STAFF):

If yes, discuss below: x NO YES

- HAVE ANY SOILS/GROUNDWATER TESTS EVER BEEN CONDUCTED ON THIS PROPERTY IN RELATION TO POTENTIAL HAZARDOUS MATERIALS CONTAMINATION? x NO YES

If yes, discuss below:

- HAS THE REMEDIATION OF HAZARDOUS MATERIALS EVER BEEN PERFORMED ON THE PROJECT SITE? x NO YES

If yes, discuss below:

- DOES THE PROJECT PROPOSE THE DEMOLITION OF ANY STRUCTURE THAT MAY CONTAIN HAZARDS SUCH AS ASBESTOS OR LEAD PAINT? x NO YES

if yes, discuss below:

- HAVE BUILDINGS ON THE SITE BEEN TESTED FOR PRESENCE OF ASBESTOS AND LEAD BASED PAINT? x NO YES

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION**NOISE**

Note: An acoustical analysis is required for any project that exposes people to noise in excess of established City or State standards. Information regarding noise issues can be obtained from City of San Jose Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7801.

- IS THE PROJECT SITE LOCATED WITHIN THE AIRPORT LAND USE COMMISSION PLAN NOISE ZONE (65 CNEL)?
x NO YES

 - IS THE PROJECT LOCATED ADJACENT TO A MAJOR NOISE/VIBRATION SOURCE (I.E., RAILWAY, MAJOR ROADWAY, ETC.)?
x NO YES
- If yes, list below:

PUBLIC SERVICES

- LIST THE NAME, ADDRESS AND APPROXIMATE DISTANCE OF THE NEAREST FIRE STATION:

Station No. 31, at Aborn and Quimby approximately 2 miles from site

- IF THE PROJECT IS RESIDENTIAL PROVIDE THE INFORMATION BELOW:

LIST THE NAME, ADDRESS AND APPROXIMATE DISTANCE OF THE NEAREST ELEMENTARY, MIDDLE AND HIGH SCHOOL:

Carloyn Clara Elementary School; 1 mile

Quimby Oak Intermediate School; 2 miles

Evergreen Valley High School; 1 mile

- LIST NAME OF NEAREST LOCAL AND REGIONAL PARKS AND RECREATIONAL FACILITIES:

Grossbeck Hill Park

Lake Cunningham Regional Park

AESTHETICS

Note: Information regarding aesthetics can be obtained from the San Jose 2020 General Plan available for review at City of San Jose Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7801.

- IS THE PROJECT SITE LOCATED ADJACENT TO A SCENIC HIGHWAY?
x NO YES
- If yes, list below:

**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
 THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.**

ENVIRONMENTAL CLEARANCE APPLICATION

CULTURAL RESOURCES

Note: Information regarding historical and archaeological resources can be obtained from the San Jose Historic Resources Inventory available for review at City of San Jose Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San Jose, CA 95113 Phone (408) 535-7801.

- LIST THE NUMBER AND APPROXIMATE AGE OF ANY STRUCTURES ON THE PROJECT SITE (USE ASSESSOR'S INFORMATION TO IDENTIFY THE DATE OF CONSTRUCTION):

SF home constructed c 1946

- DESCRIBE THE ARCHITECTURAL STYLE OF ANY STRUCTURES ON THE PROJECT SITE (I.E., VICTORIAN, MEDITERRANEAN, COLONIAL, RANCH, SAN JOSE PROVINCIAL, ETC.):

Ranch

- ARE ANY STRUCTURES ON THE PROJECT SITE LISTED AS CITY LANDMARKS, CANDIDATE CITY LANDMARKS, STRUCTURES OF MERIT, OR LISTED OR DETERMINED ELIGIBLE FOR LISTING ON THE NATIONAL OR CALIFORNIA REGISTER OF HISTORIC PLACES? x NO YES

If yes, describe below:

- IS THE PROJECT SITE LOCATED WITHIN AN AREA OF KNOWN ARCHAEOLOGICAL SENSITIVITY? (STAFF) x NO YES

IV. CERTIFICATION AND DISCLOSURE STATEMENT FOR THE APPLICATION FOR ENVIRONMENTAL CLEARANCE

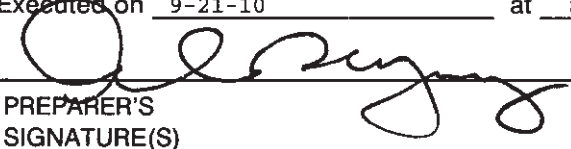
The attached Application for Environmental Clearance has been prepared by Ruth and Going, Inc doing business as (indicate the legal name for dba designation, such as individual, "a partnership", "a corporation", etc.) a California Corporation

The above-named, now has or will have the following direct or indirect economic interest in the development of, or, after its completion, the operation of the project for which the Application for Environmental Clearance has been submitted.

I/We declare, under penalty of perjury, that the statements furnished above, and in the attached exhibits, pertaining to the environmental information of the proposed project and to my/our economic interest or interests in that project are complete, true and correct to the best of my/our knowledge and belief.

If any of the facts represented here change it is my responsibility to inform the City of San Jose.

Executed on 9-21-10 at San Jose, California



PREPARER'S SIGNATURE(S)

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT. THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

ENVIRONMENTAL CLEARANCE APPLICATION CHECK SHEET

TO BE COMPLETED BY PLANNING DIVISION STAFF		
FILE NUMBER	STAFF	DATE RECEIVED
Required Copies	DOCUMENTS	
1	APPLICATION FORM correctly filled out <input checked="" type="checkbox"/> Aerial Photo (8 1/2' x 11' or 11' x 17') <input checked="" type="checkbox"/> Site Plan (8 1/2' x 11' or 11' x 17') <input checked="" type="checkbox"/> Vicinity Map (8 1/2' x 11' or 11' x 17') <input checked="" type="checkbox"/> Photographs of site and surrounding properties <input checked="" type="checkbox"/> Certification and Disclosure Statements signed by preparer	
2	<input checked="" type="checkbox"/> COUNTY ASSESSOR'S PARCEL MAP	
	FEES <input type="checkbox"/> Application Fees <input type="checkbox"/> Environmental Fees <input type="checkbox"/> Public Noticing Fee <input type="checkbox"/> Additional Charges <input type="checkbox"/> Record Retention Fees	

**PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.**

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
SUBJECT: PROPOSED LAFCO BUDGET FOR FISCAL YEAR 2015

STAFF RECOMMENDATION

1. Adopt the Proposed LAFCO Budget for Fiscal Year 2014-2015.
2. Find that the Proposed LAFCO Budget for Fiscal Year 2015 is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorize staff to transmit the Proposed LAFCO Budget adopted by the Commission including the estimated agency costs as well as the LAFCO public hearing notice on the adoption of the Fiscal Year 2015 Final Budget to the cities, the special districts, the County, the Cities Association and the Special Districts Association.

BACKGROUND

LAFCO Budget Process Requirements

The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) which became effective on January 1, 2001, requires LAFCO, as an independent agency, to annually adopt a draft budget by May 1 and a final budget by June 15 at noticed public hearings. Both the draft and the final budgets are required to be transmitted to the cities, the special districts and the County. Government Code §56381(a) establishes that at a minimum, the budget must be equal to that of the previous year unless the Commission finds that reduced staffing or program costs will nevertheless allow it to fulfill its statutory responsibilities. Any unspent funds at the end of the year may be rolled over into the next fiscal year budget. After adoption of the final budget by LAFCO, the County Auditor is required to apportion the net operating expenses of the Commission to the agencies represented on LAFCO.

LAFCO and the County of Santa Clara entered into a Memorandum of Understanding (in effect since July 2001), under which the County provides staffing and services to LAFCO, the cost of which is included in the proposed LAFCO budget. LAFCO is a

stand-alone, separate fund within the County's accounting/budget system and the LAFCO budget information is formatted using the County's account descriptions/codes.

Fiscal Year 2014-2015 Budget Timeline

Dates	Staff Tasks / LAFCO Action
March 12 - April 2	Notice period, Draft Budget posted on LAFCO web site and available for review and comment
April 2	LAFCO public hearing on adoption of Draft Budget
April 3	Draft Budget, draft apportionments and LAFCO public hearing notice on Final Budget transmitted to agencies
June 4	Public hearing and adoption of Final Budget
June 4 - July 1	Final Budget transmitted to agencies; Auditor requests payment from agencies

STATUS OF CURRENT YEAR (FISCAL YEAR 2014) WORK PLAN AND BUDGET

Attachment A depicts the current status of the work items/projects in the Fiscal Year 2014 Work Program, which indicates that substantial progress has been made on each of the work plan items. The LAFCO Annual Report which will be published at the end of the current fiscal year will document all the applications processed by LAFCO and the various activities/projects that LAFCO has completed in Fiscal Year 2014.

Attachment B depicts the current FY budget status. The adopted LAFCO budget for FY 2014 is \$745,517. Based on information through the end of February 2014, total year-end projected actual expenditures for FY 2014 should be approximately \$100,000 (13%) less than the adopted budget for FY 2014. Actual revenue for FY 2014 is projected to be approximately \$20,000 (80%) more than reflected in the adopted budget for FY 2014. The County, the cities and the independent special districts paid their respective shares of LAFCO's FY 2014 costs as apportioned by the County Controller. The actual fund balance rolled over at the end of FY 2013 was \$160,052, which is approximately \$53,000 (\$160,052 - \$106,620) more than projected in the adopted FY 2014 budget.

As a result, it is projected that there will be a savings or fund balance of approximately \$171,979 at the end of Fiscal Year 2014, which will be carried over to reduce the proposed Fiscal Year 2015 costs for the funding agencies (cities, independent special districts and the County).

$$\begin{aligned}
 \text{Proj. Year-End FY 2014 Fund Balance} &= (\text{Projected Year-End Revenue} + \text{Funds from Local} \\
 &\quad \text{Agencies}) - (\text{Projected Year-End Expenses}) \\
 &\quad (\$208,052 + \$608,897) - \$644,970 \\
 &\quad \$171,979
 \end{aligned}$$

Please note that the fund balance excludes the \$150,000 set aside as a reserve, which is expected to be unused at the end of FY 2014 and will be rolled over to the next year as-is and maintained as the reserve.

PROPOSED WORK PROGRAM FOR FISCAL YEAR 2014-2015

LAFCO is mandated by the state to process jurisdictional boundary change applications in accordance with provisions of the Cortese Knox Hertzberg Act. Associated with this mandate, LAFCO has several responsibilities/requirements including but not limited to adopting written policies and procedures, maintaining a web site, serving as a conducting authority for protest proceedings and conducting public hearings and providing adequate public notice. Other state mandates for LAFCO include preparation of service reviews and the corresponding sphere of influence review and update for each city and special district within the County.

The LAFCO work program for FY 2014- 2015 is presented in **Attachment C**. The proposed work program for FY 2015 will focus on service reviews and sphere of influence updates for the 15 cities; continued monitoring of implementation of recommendations from previous service reviews; and a review and update of LAFCO policies to strengthen and clarify them. In other areas of work, including island annexations, application processing, public outreach/communication and administration, it is similar to the work plan for the current year. The timely implementation of the work plan is greatly dependent on the number and complexity of applications filed with LAFCO.

PROPOSED BUDGET: FISCAL YEAR 2014-2015

At its February 5, 2014 LAFCO meeting, the Commission appointed Commissioners Khamis, Abe-Koga and Hall, to the LAFCO Finance Committee. The Commission directed the Committee to develop a draft budget for Commission consideration. The Finance Committee held a meeting on March 7, 2014, to discuss issues related to the budget and to formulate the budget for FY 2015. The Finance Committee discussed current and future budget related issues including the status of the current year budget, the highlights and progress on the current year work plan, need for review and revisions to the LAFCO fee schedule, the proposed work plan for the upcoming fiscal year and the proposed budget for FY 2015. The Finance Committee deferred the review of the LAFCO fee schedule to a later time during the fiscal year in order to account for any potential changes in staffing costs.

The Committee discussed and recommended the proposed budget for FY 2014-2015 (**see Attachment D**). While the proposed total expenditure for FY 2015 is \$767,543 which is approximately 3% higher than the FY 2014 adopted budget, the proposed net operating expense is \$562,564, which is approximately 7% less than the FY 2014 costs resulting in lower costs to LAFCO's funding agencies (cities, County, independent special districts).

The following is a detailed itemization of the proposed budget, as recommended by the Finance Committee.

EXPENDITURES

The expenditures are divided into two main sections: Staff Salary and Benefits (Object 1), and Services and Supplies (Object 2).

OBJECT 1. SALARIES AND BENEFITS \$465,700

This includes salary and benefits for the three LAFCO staff members including Executive Officer, Analyst and Clerk, who are all staffed through the County Executive's Office. The LAFCO Executive Officer and LAFCO Analyst, represented by the CEMA bargaining unit, received a pro-rated 4% salary increase from December 23, 2013 to June 24, 2014 which becomes an ongoing 2% salary increase on June 25, 2014. Additionally, effective August 19, 2013, in return for a higher employee contribution towards County PERS share, the County has provided an equivalent self-funded wage increase of approximately 4.581% which does not change the net pay for the employees or result in a direct cost increase.

The LAFCO Clerk, represented by SEIU 521 bargaining unit, also received a pro-rated 4% salary increase from December 23, 2013 to June 24, 2014 which becomes an ongoing 2% salary increase on June 25, 2014. Additionally, SEIU represented employees will receive a general wage increase of 3% beginning June 23, 2014.

The proposed amount reflects the above described general salary increases. The cost of salary/benefits is based on the current information available from the County. Any changes made to this item by the County in the next few months will be reflected in the Final LAFCO budget.

OBJECT 2. SERVICES AND SUPPLIES

5258200 INTRA-COUNTY PROFESSIONAL \$45,000

This amount includes costs for services from the County Surveyor's Office and the County Assessors' Office.

LAFCO Surveyor \$40,000

The County Surveyor assists with map review and approval for boundary change proposals. In addition, the Surveyor's Office also assists with research to resolve boundary discrepancies. It is estimated that 250 to 300 hours of service will be required in the next fiscal year. The County Surveyor's Office estimates a rate of \$133 per hour for FY 2015.

Miscellaneous Staffing \$5,000

This amount pays for the cost of reports prepared by the County Assessor's Office for LAFCO proposals. Additionally, it allows LAFCO to seek technical assistance from the County Planning Office on GIS/ mapping issues. LAFCO accesses data in the County Planning Office's GIS server. This item includes maintenance and technical assistance for GIS, if necessary.

5255800 LEGAL COUNSEL \$58,000

This item covers the cost for general legal services for the fiscal year. In February 2009, the Commission retained the firm of Best Best & Krieger for legal services on a monthly retainer. The contract was amended in 2010 to reduce the number of total hours required to 240 hours per year. The contract sets the hourly rate and allows for an annual automatic adjustment in the rates based on the Consumer Price Index (CPI). The monthly retainer for FY 2015 increases to \$4,772, based on a 2.2% increase in the Consumer Price Index for the prior calendar year 2013.

5255500 CONSULTANT SERVICES \$100,000

This item is allocated for hiring consultants to assist LAFCO with special projects. This year, the amount is allocated for hiring consultants to conduct service reviews and sphere of influence updates for cities within the county and for any follow-up special studies that maybe required.

5285700 MEAL CLAIMS \$750

This item is being maintained at \$750.

5220200 INSURANCE \$5,600

This item is for the purpose of purchasing general liability insurance and workers' compensation coverage for LAFCO. In 2010, LAFCO switched from the County's coverage to the Special District Risk Management Authority (SDRMA), for the provision of general liability insurance. Additionally, LAFCO also obtains workers' compensation coverage for its commissioners from SDRMA. Workers' compensation for LAFCO staff is currently covered by the County and is part of the payroll charge. Rates will remain unchanged in Fiscal Year 2015.

5250100 OFFICE EXPENSES \$2,000

This item is being maintained at \$2,000 and provides for purchase of books, periodicals, small equipment and supplies throughout the year.

5255650 DATA PROCESSING SERVICES \$4,000

This item includes costs associated with County Information Services Department providing IT services to the LAFCO program including for support on Claranet – the County network; Enterprise Content Management; and Helpdesk. Additionally, this item also includes costs associated with hosting the LAFCO website by an outside provider.

5225500 COMMISSIONER'S FEES \$10,000

This item covers the \$100 per diem amount for LAFCO commissioners and alternate commissioners to attend LAFCO meetings and committee meetings in the Fiscal Year 2015.

5260100 PUBLICATIONS AND LEGAL NOTICES \$2,500

This is being maintained at \$2,500 and includes costs associated with publication of hearing notices for LAFCO applications and other projects/ studies, as required by state law.

5245100 MEMBERSHIP DUES \$7,428

This amount includes funding for membership dues to CALAFCO - the California Association of LAFCOs. The CALAFCO Board voted to apply the CPI increase this year. As a result, the 2015 CALAFCO dues will increase slightly to \$7,428.

5250750 PRINTING AND REPRODUCTION \$1,500

This covers printing expenses for reports such as service reviews or other studies.

5285800 BUSINESS TRAVEL \$15,000

This item includes costs incurred by staff and commissioners to attend conferences and workshops. It would cover air travel, accommodation, conference registration and other expenses at the conferences. CALAFCO annually holds a Staff Workshop and an Annual Conference that is attended by commissioners as well as staff. In addition, this item covers expenses for travel to the CALAFCO Legislative Committee meetings. The Executive Officer serves on the CALAFCO Legislative Committee.

5285300 PRIVATE AUTOMOBILE MILEAGE \$2,000

This item provides for mileage reimbursement when staff travels by private car to conduct site visits, attend meetings and training sessions.

5285200 TRANSPORTATION AND TRAVEL (for use of County car) \$1,000

This item would cover costs associated with the use of a County vehicle for travel to conferences, workshops and meetings.

5281600 OVERHEAD \$36,065

This is an amount established by the County Controller's Office, for service rendered by various County departments that do not directly bill LAFCO. The overhead includes LAFCO's share of the County's FY 2015 Cost Allocation Plan which is based on actual overhead costs from FY 2013 – the most recent year for which actual costs are available. This amount totals to \$36,065 and includes the following charges from:

County Executive's Office:	\$26,385
Controller-Treasurer:	\$3,869
Employee Services Agency:	\$2,527
OBA:	\$1,093
Other Central Services:	\$124
ISD Intergovernmental Service:	\$4,344
ISD	\$2,086
Procurement	\$58

Secondly, a “roll forward” is applied which is calculated by comparing FY 2013 Cost Plan estimates with FY 2013 actuals. Since the FY 2013 cost estimates exceeded the actuals by \$4,421, this amount is reduced from the FY 2015 Cost Plan. This is a state requirement.

5275200 COMPUTER HARDWARE \$3,000

This item is designated for any required hardware upgrades / purchases.

5250800 COMPUTER SOFTWARE \$4,000

This amount is designated for computer software purchases, and annual licenses for GIS software and records management (LaserFische) hardware/software annual maintenance agreement.

5250250 POSTAGE \$2,000

This amount covers postage costs associated with mailing notices, agendas, agenda packets and other correspondence and is being maintained at \$2,000.

5252100 TRAINING PROGRAMS \$2,000

This item covers the costs associated with attendance at staff development courses and seminars. CALAFCO conducts CALAFCO University Courses throughout the year on topics of relevance to LAFCO.

5701000 RESERVES \$0

No additional funds are budgeted for reserves in FY 2015.

REVENUES

4103400 APPLICATION FEES \$30,000

It is anticipated that LAFCO will receive approximately \$30,000 in fees from processing applications. The actual amount earned from fees is not within LAFCO control and depends entirely on the level of application activity.

4301100 INTEREST \$3,000

It is estimated that LAFCO will receive an amount of approximately \$3,000 from interest earned on LAFCO funds.

RESERVES

3400800 RESERVES \$150,000

This item includes reserves for two purposes: litigation reserve – for use if LAFCO is involved with any litigation and contingency reserve - to be used for unexpected expenses. If used during the year, this account will be replenished in the following year. Since 2012, the reserves have been retained in a separate Reserves account, thus eliminating the need for LAFCO to budget each year for this purpose. LAFCO currently retains \$150,000 in reserves separate from operating expenses. No additional funds are budgeted for this purpose in FY 2015.

COST APPORTIONMENT TO CITIES, INDEPENDENT SPECIAL DISTRICTS AND COUNTY

In January 2013, independent special districts were seated on LAFCO. Government Code §56381(b)(1)(A) provides that when independent special districts are represented on LAFCO, the county, cities and independent special districts must each provide a one-third share of LAFCO's operational budget.

The City of San Jose has permanent membership on LAFCO pursuant to Government Code Section 56327. As required by Government Code §56381.6(b), the City of San Jose's share of LAFCO costs must be in the same proportion as its member bears to the total membership on the commission, excluding the public member. The remaining cities' share must be apportioned in proportion to each city's total revenues, as reported in the most recent edition of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county.

Government Code Section 56381 provides that the independent special districts' share shall be apportioned in proportion to each district's total revenues as a percentage of the combined total district revenues within a county. The Santa Clara County Special Districts Association (SDA), at its August 13, 2012 meeting, adopted an alternative formula for distributing the independent special districts' share to individual districts. The SDA's agreement requires each district's cost to be based on a fixed percentage of the total independent special districts' share.

Therefore in Santa Clara County, the County pays a third of LAFCO's operational costs, the independent special districts pay a third, the City of San Jose pays one sixth and the remaining cities pay one sixth. Government Code §56381(c) requires the County Auditor to request payment from the cities, independent special districts and the County no later than July 1 of each year for the amount each agency owes based on the net operating expenses of the Commission and the actual administrative costs incurred by the Auditor in apportioning costs and requesting payment.

Calculation of Net Operating Expenses

$$\begin{aligned} \text{FY 2015 Net Operating Expenses} &= (\text{Proposed FY 2015 Expenditures}) - (\text{Proposed FY} \\ &\quad \text{2015 Fee \& Interest Revenues} + \text{Projected FY 2014} \\ &\quad \text{Fund Balance}) \\ &= \$767,543 - (\$33,000 + \$171,979) \\ &= \$562,564 \end{aligned}$$

The proposed net operating expense for FY 2015 is approximately 7% lower than that of the current year.

Please note that the projected operating expenses for FY 2015 are based on projected savings and expenses for the current year and are not actual figures. It is therefore to be expected that there may be revisions to the budget as we get a better indication of current year expenses towards the end of this fiscal year. Additionally, a more accurate

projection of costs for the upcoming fiscal year could be made available by the County, particularly as they relate to employee salary/benefits. This could result in changes to the proposed net operating expenses for FY 2015 which could in turn impact the costs for each of the agencies.

The following is a draft apportionment to the agencies based on the proposed net operating expenses for FY 2015 (\$562,564).

Cost to Agencies

County of Santa Clara	\$187,521
<hr/>	
City of San Jose	\$93,761
<hr/>	
Remaining 14 Cities in the County	\$93,761
<hr/>	
17 Independent Special Districts	\$187,521

Apportionment of the costs among the 14 cities and among the 17 independent special districts will be calculated by the County Controller’s Office after LAFCO adopts the final budget in June. In order to provide each of the cities and districts with a general indication of their costs in advance, **Attachment E** includes draft estimated apportionments based on the Proposed Budget.

ATTACHMENTS

- Attachment A: Status of FY 2014 Work Plan
- Attachment B: Status of FY 2014 Budget
- Attachment C: Proposed Work Program for Fiscal Year 2015
- Attachment D: Proposed LAFCO Budget for Fiscal Year 2015
- Attachment E: Estimated Costs to Agencies Based on the Proposed Budget

Status of Current Year (FY 2014) WORK PLAN

AGENDA ITEM # 6
Attachment A

	PROJECTS	Status
SERVICE REVIEWS & SPHERE OF INFLUENCE UPDATES	Special Districts Service Review: Phase II	Completed in December 2013
	Follow up on implementation of recommendations for Phase I and Phase II districts	Ongoing: Working with SSCVMD, RRRPD, BSD
	Follow up on implementation of recommendations from ECHD Audit / Service Review report	Completed in August 2013
	Saratoga Fire District Special Study:	In process, LAFCO public hearing April 2, 2014
	Follow up on Fire Service Review Report Recommendations: Review issues re. Los Altos Hills Fire District reserves	TBD
	Prepare RFP for Cities Service Review and Spheres of Influence Update	June 2014
ISLAND ANNEXATIONS	Follow up on responses: review/research of city limits/ USA boundaries, assist with annexations and USA amendments	Ongoing, as needed
	Finalizing island annexations	Ongoing, as needed
LAFCO APPLICATIONS	Process applicant initiated LAFCO proposals	Ongoing, as needed
	Comment on potential LAFCO applications and/ or related environmental documents	Ongoing, as needed
	Respond to public enquiries re. policies, procedures and filing requirements for LAFCO applications	Ongoing, as needed
PUBLIC OUTREACH / COMMUNICATION	Maintain and update maps of cities and special districts in GIS	Ongoing, as needed
	Publish updated wall map of cities	TBD
	Participate in CALAFCO conferences / workshops	Ongoing, as needed
	Recognize 40 th anniversary of LAFCO-County-Cities Joint Urban Development Policies & LAFCO's 50 th Year	Completed, August 2013 LAFCO, San Jose, County resolutions, CALAFCO Sphere Article
	Conduct workshops and make presentations re. LAFCO program, policies	Ongoing, as needed
	Participate in local, regional, statewide organizations SDA, SCCAPO, CA Forward, CALAFCO, GIS Working Group	Ongoing, as needed
ADMINISTRATION	Track LAFCO related legislation (CALAFCO Legislative Committee)	Ongoing, as needed
	Maintain and redesign LAFCO Website (with new content)	Completed, testing
	Maintain LAFCO database	Ongoing, as needed
	Maintain LAFCO's electronic document management system (archiving LAFCO records)	Ongoing, as needed
	Implement electronic agenda packets	In transition
	Prepare Annual Report	Complete
	Staff training and development	Ongoing
	Staff performance evaluation	April 2014
	Prepare budget, work plan, fee schedule revisions	Ongoing, as needed
OTHER	Review and update policies and procedures	In process
	Mapping Mutual Water Companies	In process

AGENDA ITEM # 6
Attachment B

FY 2014 LAFCO BUDGET STATUS

ITEM #	TITLE	ACTUALS FY 2008	ACTUALS FY 2009	ACTUALS FY 2010	ACTUALS FY 2011	ACTUALS FY 2012	ACTUALS FY 2013	APPROVED 2014	YEAR TO DATE 2/26/2014	YEAR END DATE PROJECTIONS 2014
EXPENDITURES										
Object 1: Salary and Benefits		\$356,009	\$400,259	\$406,650	\$413,966	\$393,194	\$411,929	\$432,087	\$284,028	\$448,437
Object 2: Services and Supplies										
5258200	Intra-County Professional	\$66,085	\$57,347	\$13,572	\$4,532	\$6,118	\$5,260	\$45,000	\$1,872	\$10,000
5255800	Legal Counsel	\$0	\$9,158	\$67,074	\$52,440	\$48,741	\$56,791	\$57,000	\$30,205	\$56,500
5255500	Consultant Services	\$19,372	\$75,000	\$76,101	\$58,060	\$102,349	\$59,563	\$100,000	\$33,592	\$50,000
5285700	Meal Claims	\$0	\$368	\$277	\$288	\$379	\$91	\$750	\$131	\$500
5220200	Insurance	\$491	\$559	\$550	\$4,582	\$4,384	\$4,378	\$5,600	\$4,047	\$5,600
5250100	Office Expenses	\$1,056	\$354	\$716	\$639	\$1,212	\$536	\$2,000	\$486	\$2,000
5255650	Data Processing Services	\$8,361	\$3,692	\$3,505	\$1,633	\$3,384	\$1,663	\$2,700	\$2,269	\$2,700
5225500	Commissioners' Fee	\$5,700	\$5,400	\$3,500	\$3,400	\$4,000	\$4,900	\$10,000	\$3,700	\$7,000
5260100	Publications and Legal Notices	\$1,151	\$563	\$1,526	\$363	\$916	\$222	\$2,500	\$288	\$1,000
5245100	Membership Dues	\$5,500	\$7,000	\$7,000	\$7,000	\$7,000	\$14,473	\$7,319	\$0	\$0
5250750	Printing and Reproduction	\$5	\$0	\$0	\$0	\$0	\$0	\$1,500	\$9	\$100
5285800	Business Travel	\$7,238	\$8,415	\$4,133	\$8,309	\$3,095	\$4,777	\$15,000	\$3,488	\$8,000
5285300	Private Automobile Mileage	\$1,016	\$704	\$832	\$1,185	\$615	\$424	\$2,000	\$378	\$1,000
5285200	Transportation&Travel (County Ca	\$894	\$948	\$629	\$0	\$384	\$250	\$1,088	\$329	\$1,000
5281600	Overhead	\$42,492	\$62,391	\$49,077	\$46,626	\$60,647	\$43,133	\$43,473	\$21,096	\$43,133
5275200	Computer Hardware	\$0	\$451	\$0	\$83	\$2,934	\$1,791	\$11,000	\$2,492	\$2,500
5250800	Computer Software	\$0	\$0	\$626	\$314	\$579	\$3,124	\$2,500	\$854	\$3,500
5250250	Postage	\$1,160	\$416	\$219	\$568	\$309	\$589	\$2,000	\$23	\$1,000
5252100	Staff Training Programs	\$0	\$665	\$491	\$250	\$300	\$0	\$2,000	\$0	\$1,000
5701000	Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES		\$516,530	\$633,691	\$636,478	\$604,238	\$640,540	\$613,895	\$745,517	\$389,288	\$644,970
REVENUES										
4103400	Application Fees	\$46,559	\$41,680	\$35,576	\$48,697	\$37,426	\$45,458	\$25,000	\$44,809	\$45,000
4301100	Interest: Deposits and Investments	\$24,456	\$16,230	\$6,688	\$4,721	\$4,248	\$3,416	\$5,000	\$1,612	\$3,000
Savings/Fund Balance from previous FY		\$271,033	\$368,800	\$334,567	\$275,605	\$209,987	\$208,219	\$106,620	\$160,052	\$160,052
TOTAL REVENUE		\$342,048	\$426,711	\$376,831	\$329,023	\$251,661	\$257,092	\$136,620	\$206,474	\$208,052
NET LAFCO OPERATING EXPENSES		\$174,482	\$206,980	\$259,648	\$275,215	\$388,879	\$356,802	\$608,897	\$182,815	\$436,918
3400800 RESERVES										
COSTS TO AGENCIES										
5402000	County	\$271,641	\$270,896	\$267,657	\$292,601	\$298,597	\$281,780	\$202,966	\$156,002	\$156,002
4600100	Cities (San Jose 50% +other cities 50	\$271,641	\$270,896	\$267,657	\$292,601	\$298,597	\$282,625	\$202,966	\$156,002	\$156,002
Special Districts								\$202,966	\$296,892	\$296,892

AGENDA ITEM # 6
Attachment C

PROPOSED WORK PLAN FOR FISCAL YEAR 2015

	PROJECTS	TIME FRAME	RESOURCES
SERVICE REVIEWS & SPHERE OF INFLUENCE UPDATES	Cities Service Review	July 2013	Consultant
	Follow up on implementation of recommendations for Phase 2 districts: BSD	Ongoing	Staff
	Follow up on implementation of recommendations for Phase 1 districts: RRRPD, SSCVMD	Ongoing	Staff
	Follow up on Water Service Review Report recommendations:	Ongoing	Staff
	Saratoga Fire District Special Study	As directed by Commission	Staff
	Follow up on Fire Service Review Report recommendations: Los Altos Hills Fire District reserves	TBD	Staff
ISLAND ANNEXATIONS	Conduct outreach to cities with islands, follow up on responses including review/research of city limits/ USA boundaries, provide assistance with potential annexations and potential USA amendments	Ongoing, as needed	Staff
	Review and finalize city-conducted island annexations	Ongoing, as needed	Staff
LAFCO APPLICATIONS	Process applicant initiated LAFCO proposals	Ongoing, as needed	Staff
	Comment on potential LAFCO applications, City General Plan updates and/ or related environmental documents	Ongoing, as needed	Staff
	Respond to public enquiries re. LAFCO policies, procedures and filing requirements for LAFCO applications	Ongoing, as needed	Staff
PUBLIC OUTREACH / COMMUNICATION	Maintain boundaries of cities and special districts in GIS	Ongoing, as needed	Staff
	Publish updated wall map of cities	TBD	Staff
	Participate in CALAFCO conferences / workshops	Ongoing, as needed	Staff
	Conduct workshops and/or make presentations re. LAFCO program, policies and procedures to local agencies, organizations, commissioners, community groups, staff	Ongoing, as needed	Staff
	Participate in local, regional, statewide organizations: SDA, SCCAPO, CALAFCO, GIS Working Group	Ongoing, as needed	Staff
ADMINISTRATION	Track LAFCO related legislation (CALAFCO Legislative Committee)	Ongoing, as needed	Staff
	Maintain and enhance LAFCO Website	Ongoing, as needed	Staff
	Maintain LAFCO database	Ongoing, as needed	Staff
	Maintain LAFCO's electronic document management system (archiving LAFCO records)	Ongoing, as needed	Staff
	Prepare Annual Report	August 2014	Staff
	Staff training and development	Ongoing	Staff
	Staff performance evaluation	February 2015	Staff, LAFCO
	Prepare budget, work plan, fee schedule revisions	Ongoing, as needed	Staff
OTHER	Review and update policies and procedures	Ongoing	Staff
	Mapping Mutual Water Companies	Ongoing	Staff

**PROPOSED LAFCO BUDGET
FISCAL YEAR 2014 - 2015**

**AGENDA ITEM # 6
Attachment D**

ITEM # TITLE	APPROVED FY 2014 BUDGET	ACTUALS Year to Date 2/26/2014	YEAR END PROJECTIONS 2014	PROPOSED FY 2015 BUDGET
EXPENDITURES				
Object 1: Salary and Benefits	\$432,087	\$284,028	\$448,437	\$465,700
Object 2: Services and Supplies				
5258200 Intra-County Professional	\$45,000	\$1,872	\$10,000	\$45,000
5255800 Legal Counsel	\$57,000	\$30,205	\$56,500	\$58,000
5255500 Consultant Services	\$100,000	\$33,592	\$50,000	\$100,000
5285700 Meal Claims	\$750	\$131	\$500	\$750
5220200 Insurance	\$5,600	\$4,047	\$5,600	\$5,600
5250100 Office Expenses	\$2,000	\$486	\$2,000	\$2,000
5255650 Data Processing Services	\$2,700	\$2,269	\$2,700	\$4,000
5225500 Commissioners' Fee	\$10,000	\$3,700	\$7,000	\$10,000
5260100 Publications and Legal Notices	\$2,500	\$288	\$1,000	\$2,500
5245100 Membership Dues	\$7,319	\$0	\$0	\$7,428
5250750 Printing and Reproduction	\$1,500	\$9	\$100	\$1,500
5285800 Business Travel	\$15,000	\$3,488	\$8,000	\$15,000
5285300 Private Automobile Mileage	\$2,000	\$378	\$1,000	\$2,000
5285200 Transportation&Travel (County Car Usage)	\$1,088	\$329	\$1,000	\$1,000
5281600 Overhead	\$43,473	\$21,096	\$43,133	\$36,065
5275200 Computer Hardware	\$11,000	\$2,500	\$2,500	\$3,000
5250800 Computer Software	\$2,500	\$854	\$3,500	\$4,000
5250250 Postage	\$2,000	\$23	\$1,000	\$2,000
5252100 Staff/Commissioner Training Programs	\$2,000	\$0	\$1,000	\$2,000
5701000 Reserves	\$0	\$0	\$0	\$0
TOTAL EXPENDITURES	\$745,517	\$389,296	\$644,970	\$767,543
REVENUES				
4103400 Application Fees	\$25,000	\$44,809	\$45,000	\$30,000
4301100 Interest: Deposits and Investments	\$5,000	\$1,612	\$3,000	\$3,000
3400150 Savings/Fund Balance from previous FY	\$106,620	\$160,052	\$160,052	\$171,979
TOTAL REVENUE	\$136,620	\$206,474	\$208,052	\$204,979
NET LAFCO OPERATING EXPENSES	\$608,897	\$182,822	\$436,918	\$562,564
3400800 RESERVES	\$150,000	\$150,000	\$150,000	\$150,000
COSTS TO AGENCIES				
5440200 County	\$202,966	\$156,002	\$156,002	\$187,521
4600100 Cities (San Jose 50% + Other Cities 50%)	\$202,966	\$156,002	\$156,002	\$187,521
Special Districts	\$202,966	\$296,892	\$296,892	\$187,521

LAFCO COST APPORTIONMENT: County, Cities, Special Districts
Estimated Costs to Agencies Based on the Proposed 2015 LAFCO Budget

Proposed LAFCO Net Operating Expenses for 2015				\$562,564
Jurisdictions	Revenue per 2010/2011 Report *	Percentage of Total Revenue	Allocation Percentages	Allocated Costs
County	N/A	N/A	33.3333333%	\$187,521.34
Cities Total Share			33.3333333%	\$187,521.33
San Jose	N/A	N/A	50.0000000%	\$93,760.67
Other cities share			50.0000000%	\$93,760.66
Campbell	\$40,087,404	2.1493629%		\$2,015.26
Cupertino	\$54,124,686	2.9019987%		\$2,720.93
Gilroy	\$130,123,837	6.9768386%		\$6,541.53
Los Altos	\$36,959,656	1.9816627%		\$1,858.02
Los Altos Hills	\$9,460,965	0.5072677%		\$475.62
Los Gatos	\$35,312,778	1.8933622%		\$1,775.23
Milpitas	\$94,169,561	5.0490813%		\$4,734.05
Monte Sereno	\$2,527,948	0.1355408%		\$127.08
Morgan Hill	\$47,971,760	2.5720977%		\$2,411.62
Mountain View	\$162,285,614	8.7012539%		\$8,158.35
Palo Alto	\$412,252,000	22.1036802%		\$20,724.56
Santa Clara	\$535,623,958	28.7185039%		\$26,926.65
Saratoga	\$20,280,804	1.0873941%		\$1,019.55
Sunnyvale	\$283,902,115	15.2219554%		\$14,272.21
Total Cities (excluding San Jose)	\$1,865,083,086	100.0000000%		\$93,760.66
Total Cities (including San Jose)				\$187,521.33
Special Districts Total Share**			33.3333333%	\$187,521.33
Aldercroft Heights County Water District		0.06233%		\$116.88
Burbank Sanitary District		0.15593%		\$292.40
Cupertino Sanitary District		2.64110%		\$4,952.63
El Camino Hospital District		4.90738%		\$9,202.38
Guadalupe Coyote Resource Cons. District		0.04860%		\$91.14
Lake Canyon Community Services District		0.02206%		\$41.37
Lion's Gate Community Services District		0.22053%		\$413.54
Loma Prieta Resource Cons. District		0.02020%		\$37.88
Midpeninsula Regional Open Space District		5.76378%		\$10,808.32
Purissima Hills County Water District		1.35427%		\$2,539.55
Rancho Rinconada Rec. and Park District		0.15988%		\$299.81
San Martin County Water District		0.04431%		\$83.09
Santa Clara County Open Space District		1.27051%		\$2,382.48
Santa Clara Valley Water District		81.44126%		\$152,719.72
Saratoga Cemetery District		0.32078%		\$601.53
Saratoga Fire Protection District		1.52956%		\$2,868.25
South Santa Clara Valley Memorial District		0.03752%		\$70.36
Total Special Districts		100.00000%		\$187,521.33
Total Allocated Costs				\$562,564.00

*As of March 25, 2014, the FY2011-12 Cities Annual Report is not available on the SCO website.

**Individual district's share is based on fixed percentages per Special District Association's Aug. 13, 2012 Agreement

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
Emmanuel Abello, Clerk
SUBJECT: PROPOSED LAFCO BYLAWS

STAFF RECOMMENDATION

Adopt the proposed LAFCO Bylaws.

BACKGROUND

LAFCO's work plan for Fiscal Year 2014 includes the review and update of LAFCO's policies and procedures, as necessary. Staff, in consultation with LAFCO's Legal Counsel, has conducted a review of LAFCO's *Rules and Procedures* and determined that this document is no longer applicable due to changes in State law and changes in Santa Clara LAFCO operations. Staff has drafted a set of proposed bylaws to replace the outdated *Rules and Procedures*. The proposed bylaws (See Attachment A) contain five sections including, General Information on LAFCO, The Commission, Conduct of Commission Meetings, and Travel and Expense Reimbursement.

The proposed bylaws were developed by (1.) updating applicable sections of the *Rules of Procedure* to reflect current State Law and local conditions; and (2.) incorporating two previously adopted LAFCO policies namely, "*Role of Commissioners*" (adopted by LAFCO on October 14, 2009) and "*Travel and Expense Reimbursement*" (adopted by LAFCO on May 31, 2006) into the bylaws.

The proposed bylaws include only one major substantive change – staff is recommending that the Commission adopt *Rosenberg's Rules of Order* (See Attachment B) instead of *Robert's Rules of Order* to provide guidance on parliamentary issues or questions. While comprehensive, many local agencies have found *Robert's Rules of Order* to be overly complicated and difficult to interpret in practice. Judge Dave Rosenberg of the Yolo County Superior Court has developed *Rosenberg's Rules of Order*, which are a modernized and simplified version of parliamentary rules that generally follow *Robert's Rules*. Approximately 40 California agencies have adopted *Rosenberg's Rules of Order*,

including the cities of Belmont, Calistoga, Fresno, Redwood City, Richmond, San Mateo, and Sonoma.

Staff will continue its review of LAFCO's policies and will propose revisions to clarify and strengthen existing policies and procedures, as necessary. Staff will bring any proposed revisions to the Commission for their consideration and potential adoption.

ATTACHMENTS

Attachment A: Proposed LAFCO Bylaws

Attachment B: Rosenberg's Rules of Order

BYLAWS

GENERAL

1. NAME AND ADDRESS OF COMMISSION

The Local Agency Formation Commission, established in Santa Clara County pursuant to Chapter 1 (commencing with Section 56000) of Part 1, Division 3, Title 5, fo the Government Code, shall be known as the Local Agency Formation Commission of Santa Clara County (“LAFCO of Santa Clara County”), and hereinafter referred to as the “Commission.” The address of the Commission shall be 70 West Hedding Street, 11th Floor, East Wing, San Jose, CA 95110.

2. AUTHORITY

LAFCO of Santa Clara County is governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Sections 56000 et seq. of the California Government Code, as amended, and hereinafter referred to as the “CKH Act.” The provisions of these bylaws are not intended to preempt State law. In the event of a conflict between the provisions set forth in these bylaws and those set forth in the CKH Act, the provisions of the CKH Act shall prevail.

3. MISSION

The mission of LAFCO of Santa Clara County is to promote sustainable growth and good governance in Santa Clara County by preserving agricultural lands and open space, curbing urban sprawl, encouraging efficient delivery of services, exploring and facilitating regional opportunities for fiscal sustainability, and promoting accountability and transparency of local agencies.

LAFCO of Santa Clara County will be proactive in raising awareness and building partnerships to accomplish this through its special studies, programs and actions.

THE COMMISSION

4. COMPOSITION

The Commission shall consist of seven (7) regular commissioners and five (5) alternate commissioners.

5. SELECTION / APPOINTMENT OF COMMISSIONERS

- 5.1 County. The Board of Supervisors shall appoint two regular commissioners and one alternate commissioner from the Board’s membership to serve on the commission. GC §56327(a)

- 5.2 San Jose. The City of San Jose shall appoint one regular commissioner and one alternate commissioner to serve on the commission. Each appointee shall be the mayor or city council member. GC §56327(b)
- 5.3 Cities. The City Selection Committee shall appoint one regular commissioner and one alternate commissioner to serve on the commission. Each appointee shall be a mayor or city council member from one of the County's other 14 cities. Such appointments shall be made in accordance with the procedure established by the City Selection Committee and described in the rules and regulations of that body. GC §56327(c)
- 5.4 Special Districts. The Independent Special Districts Selection committee shall appoint two regular commissioners and one alternate commissioner to serve on the commission. Each appointee shall be elected or appointed members of the legislative body of an independent special district residing in the county but shall not be members of the legislative body of a city or county. Such appointments shall be made in accordance with the procedure established by the Independent Special Districts Selection Committee. GC §56327.3 and §56332
- 5.5 Public Member. The other six commissioners shall appoint one public member and one alternate public member to serve on the commission. Each appointee shall not be a resident of a city which is already represented on the commission. GC §56327(d)

6. TERMS OF OFFICE OF COMMISSIONERS

The term of office of each commissioner shall be four (4) years, expiring on May 31 in the year in which the term of the member expires. Any vacancy in the membership of the Commission shall be filled for the unexpired term by appointment by the body that originally appointed the member whose office has become vacant.

7. ROLE OF COMMISSIONERS

- 7.1 While serving on the Commission, all commissioners shall exercise their independent judgment on behalf of the interests of the public as a whole in furthering the purposes of the CKH Act and not solely the interests of the appointing authority. GC §56325.1
- 7.2 In each member category, the alternate member shall serve and vote in place of a regular member who is absent or who disqualifies herself or himself from participating on a specific matter before the Commission at a regular/special commission meeting or in closed session.
- 7.3 All alternate members are expected and encouraged to attend and participate in all Commission meetings, even if the regular member(s) is (are) present.

Alternate members may attend and participate in closed session meetings of the Commission. However, alternate members may not vote or make a motion when the regular member is present.

- 7.4 The Brown Act allows an exception from its requirements for the attendance of a majority of the members of the Board of Supervisors at noticed meetings of the Commission, provided that a majority of the members of the Board of Supervisors do not discuss among themselves, other than as part of the Commission's scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the Board of Supervisors.
- 7.5 No person may disclose confidential information that has been acquired by being present in a closed session meeting authorized pursuant to the Brown Act to a person not entitled to receive it, unless the Commission authorizes disclosure of that confidential information.

8. APPOINTMENT OF OFFICERS

8.1 The Commission shall annually appoint a Chairperson and Vice Chairperson for the next calendar year at the December meeting. The Chairperson and Vice Chairperson shall be appointed based on the following rotation schedule unless otherwise determined by the Commission:

- Cities member
- County member
- San Jose member
- Special Districts member
- County member
- Public member
- Special Districts member

8.2 The Chairperson shall preside at all meetings of the Commission and the Vice-Chairperson shall preside at meetings in the absence of the Chairperson.

9. EXECUTIVE OFFICER

9.1 The LAFCO Executive Officer shall be designated in accordance with the terms of the Memorandum of Understanding between the Commission and the County of Santa Clara.

9.2 The Executive Officer shall carry out all orders as instructed by the Commission. The Executive Officer shall prepare or cause to be prepared an agenda for each meeting and maintain a record of all proceedings as required by law and these bylaws, and as instructed by the Commission. The Executive Officer shall set all hearing dates, publish notices and shall oversee

the performance of all other clerical and administrative services required by the Commission. In addition, the Executive Officer shall by direction of the Commission and in accordance with the terms of the Memorandum of Understanding between the Commission and the County of Santa Clara, hire other staff of the Commission.

10. LEGAL COUNSEL

- 10.1 LAFCO Counsel shall be appointed by the Commission and shall serve at the pleasure of the Commission.
- 10.2 LAFCO Counsel shall attend all meetings of the Commission, give all requested advice on legal matters and represent the Commission in legal actions unless the Commission specifically makes other arrangements.

CONDUCT OF MEETINGS

11. MEETINGS

- 11.1 Regular Commission meetings are held on the first Wednesday of February, April, June, August, October, and December at 1:15 P.M., in the Board Meeting Chambers at 70 West Hedding Street, San Jose, California, or in another designated location.
- 11.2 The Commission shall establish a schedule of meetings for the following calendar year at its regular meeting in December.

12. QUORUM AND ACTION OF COMMISSION

- 12.1 Four commissioners entitled to vote shall constitute a quorum.
- 12.2 The Commission shall act by resolution or Commission order. All final determinations of the Commission on change of organization or reorganization proposals shall be taken by resolution. The Commission minutes shall reflect the vote on all resolutions. The records and minutes of the Commission shall be signed by the Chairperson and LAFCO Clerk.

13. ORDER OF BUSINESS

The order of business at Commission meetings shall typically include the following items, unless otherwise directed by the Commission.

- Roll Call
- Public Comment – An opportunity for members of the public to address the Commission on matters not on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No action may be taken on off-agenda items unless authorized by law. Speakers are limited to three minutes. All statements that require a response will be referred to staff for reply in writing.

- Consideration of Minutes
- Consent Calendar – Consent calendar consists of those items recommended for approval, not requiring public hearing, and in the opinion of the staff, not involving major issues or problems. A commissioner, staff or member of the public, may request that an item be removed from the Consent Calendar for public discussion.
- Public Hearings
- Items for Action/Discussion
- Executive Officer’s report
- Pending Applications/Upcoming Projects
- Commissioner Reports – An opportunity for commissioners to comment on items not listed on the agenda, provided that the subject is within the jurisdiction of the Commission. No action or discussion by a quorum of the Commission may be taken on off-agenda items unless authorized by law.
- Newspaper Articles/Newsletters
- Written Correspondence
- Adjournment

14. MEETING MINUTES

The Executive Officer shall cause a member of his/her staff to prepare the draft minutes of each meeting which will be included on the agenda of the following meeting, for approval by the Commission.

15. DEADLINES FOR SUBMISSION OF APPLICATIONS

- 15.1 Deadlines for submitting proposals/applications will be no later than 5:00 P.M. on the Thursday immediately following a LAFCO meeting in order to be considered at the next LAFCO meeting. Applications shall be submitted with correct fees on the appropriate forms and in the quantities required,
- 15.2 The Commission will not consider proposals/applications which have been submitted in violation of the deadline unless an emergency situation exists within the territory relating to the proposal which would affect the health and safety of citizens.
- 15.3 The Commission shall establish a schedule of application deadlines for the following calendar year at its regular meeting in December.

16. CLARIFICATION OF MOTIONS

Commissioners shall state motions in such a manner as to assure understanding of all parties as to the content of any terms and conditions to be placed on the Commission’s action. It shall be the responsibility of the Chairperson to verify the wording of any motion with staff.

17. ROSENBERG'S RULES OF ORDER

Except as herein otherwise provided, the proceedings of the Commission shall be governed by "Rosenberg's Rules of Order" on all matters pertaining to parliamentary law. No resolution, proceeding, or other action of the Commission shall be invalid or the legality thereof otherwise affected by the failure of the Commission to observe or follow such rules.

TRAVEL AND EXPENSE REIMBURSEMENT

18. AUTHORIZED EXPENSES

18.1 LAFCO funds, equipment, supplies (including letterhead), titles, and staff time must only be used for authorized LAFCO business. In addition to the day to day business activities of LAFCO, expenses incurred in connection with the following types of activities generally constitute authorized expenses (LAFCO Policy adopted on June 1, 2006):

- A. Communicating with representatives of local, regional, state and national government on LAFCO business
- B. Attending educational seminars designed to improve skills and information levels
- C. Participating in local, regional, state and national organizations whose activities affect LAFCO's interests
- D. Recognizing service to LAFCO (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost)
- E. Attending LAFCO or CALAFCO events

18.2 All other expenditures incurred will require prior approval by the Commission.

18.3 Any questions regarding the propriety of a particular type of expense should be resolved before the expense is incurred.

19. MEETING PER DIEM / STIPEND

Consistent with LAFCO Resolution # 2006-06, LAFCO commissioners including alternate commissioners will receive a \$100 per diem for attendance at LAFCO meetings. This compensation is in lieu of reimbursement for travel and other expenses incurred in attending the LAFCO meetings.

20. LAFCO COMMISSIONER ATTENDANCE AT CALAFCO CONFERENCE

Regular LAFCO commissioners will be given first priority for attending the CALAFCO Annual Conference. If a regular commissioner is unable to attend, the alternate for that commissioner may attend.

21. TRANSPORTATION, LODGING, MEALS, AND OTHER INCIDENTAL/ PERSONAL EXPENSES

21.1 Reimbursement for authorized transportation, lodging, meals and other incidental expenses shall be provided in conformance with the current Travel Policy of the County of Santa Clara.

21.2 Registration and travel arrangements including airline reservations must be coordinated through the LAFCO Office.

22. EXPENSE REPORTING

Within 14 calendar days of return from a LAFCO business trip or event, a final accounting of all expenses must be submitted to the LAFCO office. Original receipts are required for processing reimbursement. LAFCO staff will then fill out the necessary forms and submit to the appropriate County department in compliance with the County Travel Policy.

23. AUDITS OF EXPENSE REPORTS

All expenses are subject to verification that they comply with this policy.

24. REPORTS TO LAFCO

At the following LAFCO meeting, a report shall be presented on meetings attended at LAFCO expense.

25. COMPLIANCE WITH LAWS

Some expenditures may be subject to reporting under the Political Reform Act and other laws. LAFCO expenditures, expense report forms and supporting documentation are public records subject to disclosure under the Public Records Act.

26. ETHICS TRAINING

LAFCO is not a local agency whose officials are required to comply with the requirement of ethics training pursuant to Government Code Section 53235. Since LAFCO provides reimbursement for expenses, LAFCO commissioners, Executive Officer and Analyst are encouraged to receive ethics training. LAFCO commissioners who are County supervisors, city council members or special districts board members will receive this training in their respective roles as county, city or special district officials. LAFCO staff will advise the public members of opportunities to receive the training.



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.


The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be

as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.


Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in



California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.



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LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: SARATOGA FIRE PROTECTION DISTRICT SPECIAL STUDY
DRAFT REPORT

STAFF RECOMMENDATION

For information only.

PURPOSE OF MEETING

The purpose of this meeting is for LAFCO to receive a presentation from Economic Planning System (EPS), LAFCO's consultant, on the Draft Report for the Saratoga Fire Protection District Special Study and to receive any comments on the Report. No final action on the Report will be taken at this meeting. Affected agencies, interested parties and the public may continue to provide comments on the Draft Report. All comments received by Friday, April 18, 2014 will be considered in the preparation of the Final Report which will be available for public review and comment in early May.

DRAFT REPORT

Release of Draft Report for Public Review and Comment

The Saratoga Fire Protection District Special Study Draft Report was made available on the LAFCO website (www.santaclara.lafco.ca.gov) on March 28, 2014, and as part of the LAFCO packet for the April 2, 2014 meeting. Staff sent a Notice of Availability (Attachment A) to all affected agencies, LAFCO Commissioners, and other interested parties announcing the release of the Draft Report (Attachment B) for public review and comment.

On February 25, 2014, an administrative draft of the report (excluding the Findings Chapter) was provided to the Saratoga Fire Protection District (SFD) and the Santa Clara County Central Fire Protection District (CCFD), for their internal review and comment prior to the public release of the Draft Report. The purpose of this step was to ensure that the two fire districts had an opportunity to review the report and identify any factual inaccuracies prior to the release of the report for public review and comment. The

SFD provided written comments on March 20, 2014, which were considered and addressed in the Draft Report as appropriate. The CCFD did not provide any comments.

BACKGROUND

The Saratoga Fire Protection District (SFD) is an independent special district governed by a three-member elected board. The District covers a portion of the City of Saratoga and the adjacent unincorporated area. The Santa Clara County Central Fire Protection District (CCFD) completely surrounds the SFD. In 2008, following the success of a management agreement between CCFD and SFD, the two agencies entered into a full-service contract, whereby SFD employees were transferred to CCFD.

On December 15, 2010, LAFCO adopted the 2010 Countywide Fire Service Review and sphere of influence (SOI) updates for four fire districts, including the SFD. The Service Review indicated that approximately \$118,000 in annual administrative costs could be reduced by dissolving the SFD and annexing its territory to CCFD.

The 2010-2011 Civil Grand Jury Report recommended that LAFCO be proactive about implementing the recommendations in its service review reports including those related to dissolution, when warranted. Previously, LAFCO's 2004 Countywide Fire Service Review also included a discussion of potential regional fire protection alternatives for the City of Saratoga and surrounding area.

At the December 15, 2010 meeting, LAFCO directed staff to pursue further research / analysis of this option and to report back to the Commission. In spring of 2011, staff began researching and developing materials on the dissolution process. In June 2011, staff met with the chairperson of the SFD to discuss this issue. As directed by LAFCO, staff provided a presentation to the Saratoga City Council in November 2011, regarding the potential dissolution of the SFD in order to solicit input on the issue.

In December 2011, LAFCO authorized staff to seek a professional service firm to conduct a special study on the impacts of the potential dissolution of SFD and annexation to CCFD, including a detailed analysis of the cost savings and fiscal impacts. The study will be used to inform LAFCO's decision on whether or not to initiate dissolution of the SFD and annex its territory to CCFD.

On June 4, 2012, LAFCO issued a Request for Proposals (RFP) for a professional services firm to prepare a special study on the impacts of the potential dissolution of the Saratoga Fire Protection District and annexation of its territory to the Santa Clara County Central Fire Protection District. LAFCO staff received a single proposal, from Economic & Planning Systems (EPS), in response to the RFP. However, due to the LAFCO Office's workload and priorities, this project was placed on hold until 2013.

In March 2013, LAFCO contracted with Economic & Planning Systems (EPS) to conduct the Saratoga Fire Protection District Special Study.

In mid-July 2013, LAFCO staff contacted SFD in order to arrange a meeting between EPS and SFD regarding the study. However, due to scheduling issues, a meeting could not be immediately arranged. On July 26, 2013, LAFCO staff forwarded a data request from

EPS to SFD and requested that the District respond by August 14, 2013. In response, SFD's Legal Counsel stated that the District would begin working on a draft response and that this draft would be considered by the entire District Board at its meeting on August 20, 2013 and then the response would be finalized and furnished to EPS and LAFCO shortly thereafter. SFD's Legal Counsel also suggested that EPS meet with SFD on the study as part of the District's September 24, 2013 meeting. On September 11, 2013, EPS received data from SFD in response to its initial data request.

EPS attended SFD's September 24, 2013 Board meeting and also met with representatives of CCFD on the same day in order to collect additional information from each district for the study. LAFCO staff attended both of these meetings. EPS continued to request and receive additional information from both districts over the next few months in order to prepare their report.

NEXT STEPS

Release of Final Report for Public Hearing

Based on the comments received by April 18, 2014, the Draft Report will be revised as necessary. A Final Report with tracked changes will be available on the LAFCO website in early May, for additional public review and comment. A Notice of Availability will be sent to all affected agencies, LAFCO Commissioners, and other interested parties in order to announce the availability of the Final Report. LAFCO will hold a Public Hearing on June 4, 2014 to consider LAFCO staff recommendation and action on the Report.

ATTACHMENTS

Attachment A: Notice of Availability of the "Draft Report for the Saratoga Fire Protection District Special Study"

Attachment B: Saratoga Fire Protection District Special Study Draft Report dated March 27, 2014



DATE: March 28, 2014
TO: Special District Board Members and Managers
City Managers and County Executive
City Council Members and County Board of Supervisors
LAFCO Members
Interested Parties
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **SARATOGA FIRE PROTECTION DISTRICT SPECIAL STUDY DRAFT REPORT**
Notice of Availability & LAFCO Meeting

The Report for the Saratoga Fire Protection District Special Study is now available for public review and comment on the LAFCO website at www.santaclara.lafco.ca.gov.

LAFCO will hold a meeting in order to receive a presentation from Economic Planning Systems (EPS), LAFCO's consultant, on the Draft Report for the Saratoga Fire Protection District Special Study and to receive any comments on the Draft Report. You may continue to provide comments on the Draft Report until April 18, 2014. No final action on the Report will be taken at this meeting.

LAFCO Meeting: April 2, 2014
Time: 1:15 P.M. or soon thereafter
Location: Isaac Newton Senter Auditorium
70 W. Hedding Street, San Jose, CA 95110

You may provide written comments on the Draft Report by mail to: LAFCO of Santa Clara County, 70 West Hedding Street, 11th Floor, East Wing, San Jose, CA 95110 OR you may email your comments to: dunia.noel@ceo.sccgov.org.

Written comments received by Friday, April 18, 2014 will be considered in the preparation of the Final Report that will be available on the LAFCO website in early May for additional public review and comment. A Notice of Availability will be sent to all affected agencies, LAFCO commissioners and other interested parties in order to announce the availability of the Final Report. A LAFCO public hearing to consider staff recommendation and action on the Report is scheduled for June 4, 2014.

Please contact me at (408) 299-5127 or Dunia Noel, LAFCO Analyst, at (408) 299-5148 if you have any questions. Thank you.

Draft Report

Special Study: Saratoga Fire Protection District

The Economics of Land Use



Prepared for:

Santa Clara County LAFCO

Prepared by:

Economic & Planning Systems, Inc.

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March 27, 2014

EPS #121080

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APPENDIX A:

Fire and Emergency Medical Services Agreement, Saratoga Fire Protection District and Santa Clara County Central Fire Protection District, effective July 1, 2008

First Addendum to Fire and Emergency Medical Services Agreement, Saratoga Fire Protection District and Santa Clara County Central Fire Protection District, effective December 17, 2009

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1. INTRODUCTION

Purpose of the Study

LAFCO initiated this Special Study in response to service review determinations for the Saratoga Fire Protection District (SFD) contained in the 2010 Countywide Fire Service Review adopted by LAFCO. The service review determination stated that "*Administrative costs could be reduced by dissolving the district and consolidating with CCFD.*"¹ LAFCO directed staff to further research and analyze this governance option, and in December 2011 authorized staff to seek a professional service firm to conduct a special study on whether or not to initiate a reorganization.²

Under Government Code (GC) §56375 (a)(2), a commission may initiate proposals for consolidation of a district, dissolution of a district, a merger, establishment of a subsidiary district, formation of a new district or a reorganization that includes any of those changes.

For LAFCO-initiated actions pursuant to GC §56375, GC §56881(b) requires that the commission make both of the following determinations:

- a. Public service costs of a proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service.
- b. A change or organization or reorganization that is authorized by the commission promotes public access and accountability for community service needs and financial resources.

The purpose of this study is to assist the Commission in evaluating whether or not it can make the required determinations.

¹ 2010 Countywide Fire Service Review, LAFCO of Santa Clara County, pg. 171.

² Request for Proposals for a Special Study, LAFCO of Santa Clara County.

2. SARATOGA FIRE DISTRICT

Formation and Statutory Authority

The Saratoga Fire Protection District (“SFD”) was organized on February 18, 1924.³ The SFD operates under the provisions of Part 2.7 of Division 12 of the Health and Safety Code.⁴

Boundaries

Figure 1 shows the current boundaries of the District, which encompass approximately 7,775 acres and a population of 13,067 including 8,319 registered voters,⁵ and serves a portion of the City of Saratoga and unincorporated areas outside of the City of Saratoga as shown in **TABLE 1**. The SFD is completely surrounded by the Santa Clara County Central Fire District (“CCFD”) service area, whose boundary includes the remaining portion of the City of Saratoga and other nearby cities (Monte Sereno, Los Gatos, and Cupertino) and all unincorporated lands in the Santa Cruz Mountains up to the County border. In addition, CCFD also provides service by contract to the cities of Campbell and Los Altos, and to the Los Altos Hills County Fire District.

Following reorganization, the SFD service area would be added to the CCFD service area to provide one continuous service boundary.

³ Saratoga Fire Protection District Audit Report, Year Ended June 30, 2013, Vargas and Company

⁴ Part 2.7 is the Fire Protection District Law of 1987.

⁵ County of Santa Clara Registrar of Voters, UDEL-6 - 0 Saratoga Fire Protection District, 11/1/13.

Figure 1 District Boundaries—SFD Special Study

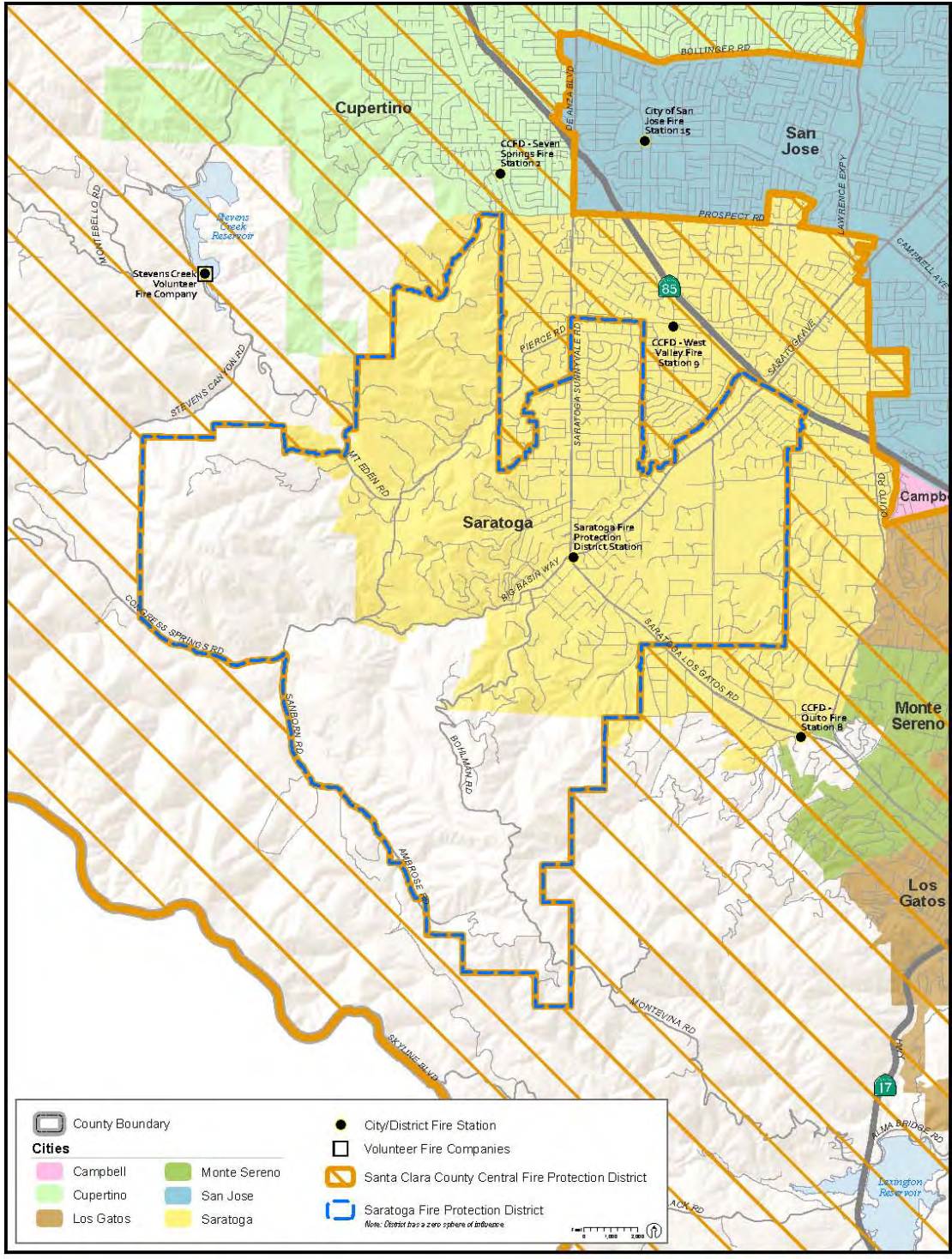


Table 1 SFD Assessed Value, Housing Units and Population by Jurisdiction

Item	City of Saratoga	Unincorporated	TOTAL
Saratoga Fire District			
Assessed Value	\$5.485 bill.	\$0.161 bill.	\$5.646 bill.
Acres	4,286	3,489	7,775
Housing Units	4,849	113	4,962
Population	12,788	279	13,067
CCFD			
Assessed Value	\$6.026 bill.	na	\$36.227 bill.
Acres	3,681	na	78,495
Housing Units	6,288	na	55,936
Population	17,188	na	149,866

Source: Santa Clara Cnty Planning Dept. (2010 census, 2013 assessor data)

2/17/14

Services Provided

The SFD provided fire protection services through its own staff until 2006 when it contracted with Santa Clara County Central Fire Protection District (CCFD). A copy of the 2008 agreement and the 2009 amendment (“Agreement”), which superseded a prior management agreement dated July 1, 2005, is included in **APPENDIX A**.⁶ At that time, SFD shifted employees to the CCFD, along with its pension liability totaling \$5,478,798 and OPEB liability of \$9,869,100.⁷ Consequently, SFD has no pension liabilities.

The CCFD operates the SFD-owned fire station at 14380 Saratoga Avenue in the City of Saratoga with two daily-staffed apparatus, Engine 17 and Rescue 17. The station handled 1,256 incidents in calendar year 2012.⁸ **TABLE 2** summarizes incidents by category.

⁶ Fire and Emergency Medical Services Agreement, Saratoga Fire Protection District and Santa Clara County Central Fire Protection District, effective July 1, 2008. The 2008 agreement superseded a prior management agreement dated July 1, 2005.

⁷ CCFD, December 9, 2013, response to data request from EPS. The CCFD has since established an irrevocable trust for the OPEB, reducing the liability to about \$4-\$5 million.

⁸ Fire Report for Calendar Year 2012, Santa Clara County Fire Department

Table 2 Saratoga FPD Incident Report (2012)

Incident Type	TOTAL	%
Fire	16	1.3%
Overpressure Rupture, Explosion, Overheat (no fire)	3	0.2%
Rescue & Emergency Medical Service Incident	739	58.8%
Hazardous Condition (no fire)	42	3.3%
Service Call	89	7.1%
Good Intent Call	170	13.5%
False Alarm & False Call	196	15.6%
Special Incident Type	1	0.1%
Total	<u>1,256</u>	<u>100.0%</u>

Source: Santa Clara County Fire Department

In addition to fire suppression services and fire cause investigation, the CCFD also provides dispatch communication and fire marshal services to the District. The CCFD boundaries completely surround the SFD boundaries, and include the remaining areas of the City of Saratoga. The CCFD owns and operates one other station in Saratoga as well as other stations in adjoining communities.

The CCFD is a dependent Fire Protection District governed by the Santa Clara County Board of Supervisors. The district provides fire protection and emergency service to a district population of approximately 149,866 within 123 square miles.⁹

Following the transfer of fire protection services to the CCFD, the SFD has continued to review activity reports provided by CCFD, produce a budget, negotiate the contract and method of payment with the CCFD, manage debt (including refinancings) for fire station improvements, and handle maintenance of the fire station. All operational implementation of SFD policies regarding the provision of fire protection (except EWAS, described below) is handled by the CCFD,

⁹ Santa Clara County Planning Dept. based on 2010 census, per correspondence from Dunia Noel, Santa Clara LAFCO, 10/17/13.

pursuant to terms established in the Agreement between the SFD and CCFD.¹⁰ The amount paid by SFD to CCFD for fire protection is established by the Agreement as equal to 90 percent of property tax revenues received by SFD.

The Agreement requires that the CCFD staff the SFD station with “at least two three-person companies, on a twenty-four hour, seven day a week schedule”.¹¹ The CCFD currently staffs the station with one three-person company and one four-person company; however, unless the current FEMA grant which funds the fourth firefighter position is renewed, the level will revert to two three-person companies late in 2015.¹² The Agreement also specifies that the SFD station shall be a “core” station, and shall be staffed similarly to other CCFD core stations. According to the CCFD, there is no standard staffing model for core stations, and staffing levels for core stations vary.¹³ Core stations are strategically important to meeting response time goals, and are always staffed; engines may be moved to core stations during periods of high activity in order to maintain response times within areas where calls are most likely to occur.¹⁴

Post-reorganization, the CCFD intends to continue to staff at least two three-person companies at the SFD station because those companies are critical to meeting response time goals, and the second company provides a necessary concentration of resources necessary to respond to events requiring more than a single unit in the larger general area.¹⁵ The CCFD would continue to provide the same level of services as currently provided, funded by the SFD property taxes transferred from the SFD to the CCFD.

Currently a portion of SFD property taxes is allocated to the State’s Education Revenue Augmentation Fund (ERAF). It is likely that upon transfer of SFD property tax to CCFD, the ERAF portion will continue to be allocated to ERAF, based upon opinions rendered by the State Controller’s Office in a similar situation involving the proposed annexation of Morgan Hill to CCFD in 2009. Even if the ERAF revenues were not retained by the State, the costs of fire protection would be unaffected by the amount of property tax revenues transferred to the CCFD.

Early Warning Alarm System (EWAS)

The SFD manages the EWAS. The system provides early detection of fires and immediately alerts a monitoring service which automatically notifies the CCFD fire dispatch system. The

¹⁰ Fire and Emergency Medical Services Agreement, Saratoga Fire Protection District and Santa Clara County Central Fire Protection District, effective July 1, 2008. The 2008 agreement superseded a prior management agreement dated July 1, 2005 (see Appendix A).

¹¹ Fire and Emergency Medical Services Agreement, effective July 1, 2008, Section 2.01 B (see Appendix A).

¹² Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

¹³ Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

¹⁴ Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

¹⁵ Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

EWAS is mandated by a City of Saratoga ordinance¹⁶ adopted in 1984 requiring a fire detection system in newly constructed homes over 5,000 square feet, remodeled homes expanded over 50 percent of the original square footage, any new construction in the Hazardous Hillside Area, new commercial construction, and certain other land uses. Installed EWAS units must comply with standards and requirements established by the SFD. No agreement exists between the City of Saratoga and the SFD regarding terms of the arrangement whereby SFD provides EWAS services to City residents, including residents who reside outside of the SFD boundaries.

When the SFD began contracting for fire services with the CCFD in 2006, the monitoring responsibilities were contracted out to a privately-owned monitoring service. The EWAS units are tested daily by California Security Alarms Inc. (CSAI), and a monthly report is provided to the SFD of any detected malfunctions. CSAI is also required under their contract to immediately attempt to contact the EWAS owner to alert them of the problem. Alarms are transmitted from the EWAS unit to CSAI, and from CSAI to the County dispatch.

Management and operation of the EWAS is budgeted to spend \$168,300 for operations in FY 2013-14, including a share of office overhead and employee costs, and payments to a monitoring service. Currently EWAS revenues cover EWAS costs and allocations to EWAS of SFD staff and overhead costs.

The SFD pays for the monitoring of the EWAS alarm units, which was budgeted at \$50,000 for FY 2013-14, handles all billing and service records, and facilitates identification of service problems and their repair. In addition, it pays for some service calls and system repairs, although it is not required to do so. For example, in FY 2012-13, the SFD paid for re-programming older units when a new area code overlay was implemented in the area. The SFD anticipates that "...as the systems continue to age, the cost of service will increase".¹⁷ The SFD "will be considering alternative alarm equipment and methods of monitoring the system"¹⁸; this potentially could reduce EWAS costs; however, the potential savings are not known at this time.

Reorganization assumes that EWAS services would continue to be required by the City of Saratoga; however, responsibility for monitoring, billing and administration would be shifted from the SFD to the CCFD. The CCFD may choose to provide EWAS services in the same manner as currently provided by SFD. It is likely that CCFD could handle EWAS functions utilizing a 20-hour/week Office Assistant II position at a cost of \$60,000/year for 50% of a full-time equivalent position including employer-paid taxes and benefits.¹⁹

¹⁶ City of Saratoga Code of Ordinances, Chapter 16 Building Regulation, Article 16-60 – Early Warning Fire Alarm System.

¹⁷ SFD, September 10, 2013, response to data request from EPS.

¹⁸ Letter from Harold S. Toppel to Santa Clara County LAFCO, 3/20/2014.

¹⁹ Email from CCFD, 1/29/14. Note: if the position is filled by a part-time employee the benefit costs could be less, and the cost to CCFD would be less than \$60,000/year.

Alternatively, the CCFD may explore outsourcing elements of the service, e.g., billing, to a private service provider (in addition to the current SFD outsourcing of monitoring to a private provider) as a means to reduce costs.

Facilities and Equipment

The SFD contracts with the CCFD to staff the SFD-owned station. All equipment, with the exception of Engine 30 used by volunteer firefighters, and the 1928 Model AA fire engine, is owned by the CCFD. It is assumed that all SFD facilities and equipment would transfer to CCFD upon reorganization.

Building Repairs and Maintenance

The SFD is responsible for painting and carpeting the SFD headquarters, and for maintaining the roof in good repair. The SFD is also responsible for the repair of any item where the repair cost exceeds \$5,000 and exceeds 50 percent of the replacement cost for the item. While the CCFD is required to maintain the property in good condition and repair, the SFD is responsible for any costs that exceed \$25,000 in a fiscal year.

Governance and Other Activities

The SFD is governed by a three-member Board of Fire Commissioners, elected by residents of the SFD to a four-year term. The three Board commissioners receive dental and vision benefits totaling approximately \$7,000²⁰ annually. The last contested election for one of the current commissioners was in 2001;²¹ one of the other two commissioners was elected in 2005, and the third was appointed to fill a 2006 vacancy then confirmed by election in 2008.²²

The SFD Board meets monthly to manage the affairs of the District. Activities of the SFD, as reported in minutes of the SFD, include:

- **Approval of minutes.**
- **Receipt and review of oral communications and comments** – From July 2010 through August 20, 2013, only two oral communications were received from the public; one was related to a financial award to the Boy Scout Explorer Troop affiliated with the SFD, and one was a financial award to be applied towards the restoration of the Model AA fire engine that the SFD was restoring.
- **Preparation, review and approval of operating and capital budget and other financial and policy documents** – Topics include review of expenditures for station improvements, equipment disposition, insurance, security issues, etc.
- **Chief's Reports** – The Fire Chief's reports include response reports (incident statistics), support services report (documents repairs or maintenance necessary for the fire station), and Deputy Fire Marshal's reports (any significant building projects in the prior month).

²⁰ Trina Whitley, 11/25/13. The FY13-14 budget estimates an increase to \$7,500.

²¹ SFD Workshop, 9/24/13

²² Email from Trina Whitley, SFD, to EPS 2/11/14.

- **Restoration of Model AA fire engine** – This project, according to the SFD, was undertaken “...to preserve an important heritage resource of the District”.²³ The project was substantially completed in FY2012-13 at an SFD General Fund expense of \$116,760. The Model AA fire engine was expected to incur additional costs in FY 2013-14 and beyond, including insurance, gold leaf lettering, housing, engine and radiator work;²⁴ however, recent information from SFD indicates that “the fire engine is now fully restored and there will not be any further restoration costs”.²⁵
- **Scheduling of Public Use of Facilities** – The SFD handles scheduling of the public’s use of its meeting facilities by the public.

Staff

Currently the only SFD employee is a part-time business manager who works 30 hours per week.²⁶ It appears that her duties include preparation of agenda, minutes, office operations, budget preparation, response to public inquiries and public records requests, and EWAS functions, but there is no contract or job description. The cost of her salary, \$111,777²⁷ (approximately \$71/hour²⁸), is allocated between the SFD General Fund and the EWAS Fund; the amount of the allocation between the General Fund and EWAS Fund varies year-to-year depending on available revenues and other required expenditures. The SFD does not provide dental, vision, and long-term care benefits, which are paid by the employee. SFD pays the employer’s portion of Medicare and social security, which is approximately \$10,000.

The equivalent salary for a 40 hour per week employee, if paid on the same hourly basis of approximately \$71/hour, would equal about \$148,000. The SFD does not provide any pension or other post-employment benefits (OPEB) for the business manager.

The current employee’s salary for a 30-hour week budgeted at \$111,777 is equal to a full-time employee paid about \$148,000 annually, although the SFD employee receives no benefits (as noted above, the SFD also pays the employer’s portion of Medicare and social security, about \$10,000). This rate appears high; for example, salaries for positions with similar functions at

²³ SFD Response to EPS’s Follow-up Question 10/9/13.

²⁴ SFD Minutes, Board of Commissioners meetings, July 16, 2013 and August 20, 2013, although SFD’s response to questions states that they won’t incur new charges.

²⁵ Letter from Harold S. Toppel to Santa Clara County LAFCO, 3/20/2014.

²⁶ SFD Workshop, 9/24/13.

²⁷ Salary (per Trina Whitley, 11/25/13).

²⁸ Calculated by EPS based on 52 weeks, 30 hours per week.

CCFD are approximately \$132,000 annually for a full-time position including employer-paid taxes and benefits.²⁹

The SFD budget allocates \$72,000 of its employee costs to EWAS. In the event of reorganization, the CCFD estimates that this position could be filled by the addition of a 20-hour/week Office Assistant II position³⁰ at a cost of \$60,000/year for 50% of a full-time equivalent position including employer-paid taxes and benefits; other functions of the current SFD employee would be handled by existing CCFD staff. If the position is filled by a part-time employee the benefit costs could be less, and the cost to CCFD would be less than \$60,000/year.

Public Access and Accountability

Website

The SFD has a website which was recently revamped to eliminate outdated information and to add previously missing information.

Accountability for Financial Resources

As noted previously, the SFD reviews and adopts its annual budget at its scheduled and publicly-noticed meetings. An annual audit is conducted and documented by an independent firm. These documents are posted on the SFD website.

Contracts, agreements and ordinances were readily available upon request during the course of the current study. However, certain expected documents do not exist; no agreement exists with the City of Saratoga related to the SFD provision of EWAS services to City areas within and outside the SFD boundaries, no ordinance or resolution exist adopting current EWAS rates, and there is no contract or agreement with SFD's employee. A review of SFD minutes for the period from July 20, 2010 by EPS found no discussion regarding the terms of the SFD employee's employment, payment amount, or required services.

Accountability for Community Service Needs

Currently, operational implementation of all fire protection and emergency medical services are provided by the CCFD, with the exception of EWAS and the maintenance and financing of the fire station owned by the SFD. The SFD negotiates minimum fire service levels and the formula for repayment to the CCFD.

As noted previously, the fire service contract amount is determined by formula as a percent of SFD property taxes, and operational decisions regarding staffing and allocation of fire protection resources are made by the CCFD, subject to the contract negotiated with the SFD. Ultimately, operational issues regarding fire protection are the responsibility of the CCFD, as long as the CCFD meets the minimum requirements of the Agreement.

²⁹ Annual cost for CCFD Administrative Support Officer I (including 73 percent of salary for employer-paid taxes and benefits), midpoint of salary range. The ASO II and III positions include supervisory responsibilities.

³⁰ CCFD, 1/29/14

The SFD has one part-time staff person to respond to inquiries, and to place items on the SFD agenda for their monthly meeting. Responses to inquiries may require additional time for Board follow-up with CCFD staff. A recorded message on the SFD line also directs the caller to CCFD Headquarters, where the receptionist routes the call to the appropriate person. Currently, if members of the public are aware that the CCFD provides fire protection and emergency medical services, they may inquire directly to the full-time staff of the CCFD if they have questions or issues.

A review of SFD minutes for a three-year period from July 20, 2010 found no public oral comments (other than limited comments by current or former SFD staff) with the exception of two presentations of financial grants.

Financial Review

TABLE 3 provides a summary of the SFD budget for FY 2013-14. The following sections describe the history and composition of these items.

Table 3 Summary of SFD Revenues and Expenditures, FY 2013-14

Item	General Fund		EWAS		TOTAL
Revenues					
Property Tax	\$5,540,000		\$0		\$5,540,000
EWAS Charges	0		175,000		175,000
Other (interest, rent)	<u>20,200</u>		<u>500</u>		<u>20,700</u>
Subtotal, Revenues	\$5,560,200		\$175,500		\$5,735,700
Expenditures					
Employees (1)	\$60,000	1%	\$72,000	42%	\$132,000 2%
OPEB (retiree health care)	110,500	2%	1,500	1%	112,000 2%
EWAS Monitoring Service	-	0%	50,000	29%	50,000 1%
Tax Collection Fee	67,000	1%	-	0%	67,000 1%
Fire Protection Contract w/CCFD	4,986,000	91%	-	0%	4,986,000 88%
Overhead & Admin	<u>51,000</u>	<u>1%</u>	<u>44,800</u>	<u>26%</u>	<u>95,800</u> <u>2%</u>
Subtotal, Operations	\$5,274,500	96%	\$168,300	97%	\$5,442,800 96%
Capital Improvements	\$40,000	1%	\$0	0%	\$40,000 1%
Debt Service	163,341	3%	5,052	3%	\$168,393 3%
Total Expenditures	\$5,477,841	100%	\$173,352	100%	\$5,651,193 100%
Net	\$82,359		\$2,148		\$84,507

(1) Office manager salary (30 hours/week) and employer's share of social security and medicare (approx. \$10,000), plus commissioners' benefits (approx. \$7,500). 2/17/14

Source: Saratoga Fire District Budget

Revenues

TABLE 4 shows annual revenues to the SFD, consisting primarily of property taxes and charges for EWAS services.

Table 4 Summary of SFD Revenues

Year	General Fund Operations			EWAS		
	Property Tax	Other Revenues	TOTAL	Charges for Services	Other Revenues	TOTAL
2008-09	\$5,114,780	\$233,349	\$5,348,129	\$184,440	\$304	\$184,744
2009-10	4,744,737	51,260	4,795,997	172,280	104	172,384
2010-11	4,997,507	54,290	5,051,797	178,785	110	178,895
2011-12	5,136,185	41,393	5,177,578	180,575	53	180,628
2012-13	5,845,317	69,262	5,914,579	175,935	34	175,969
2013-14	5,540,000	20,200	5,560,200	175,000	500	175,500

Source: Saratoga Fire District Audit Reports through 2012-13; 2013-14 from budget.

2/16/14

Property Taxes

As shown in **TABLE 4**, property tax represents nearly all of SFD General Fund revenues. Revenues over the past six years reflect recessionary impacts in FY 2009-10, and subsequent growth. The SFD received a payment from the State in FY 2012-13 of \$410,551 as repayment for the State's borrowing in prior years. Recent growth in property taxes is the result of improving real estate values and increased sales activity, which triggers an upward re-assessment of property value.

Upon reorganization, these property tax revenues would accrue to the CCFD to fund fire protection services and other costs transferred from the SFD.

General Fund Property Tax

Property tax revenues provide over 99 percent of the SFD's General Fund revenues. The SFD anticipates \$5.5 million of property taxes in FY 2013-14. As assessed values in the SFD change, approximately 11 percent of the increase (or decrease) in property taxes accrue to the SFD. After deductions for ERAF³¹, the net amount is about 10 percent.

Debt Service Property Tax

Debt service property tax revenues are tracked in a separate Debt Service Fund. In 2000, property owners within the SFD approved issuance of General Obligation bonds to fund fire station improvements. An ad valorem property tax rate is charged on assessed value to repay the bonds; this rate is in addition to the Prop. 13 mandated one percent of assessed value.

³¹ Educational Revenue Augmentation Fund (ERAF), which is a State account that funds schools.

The tax rate needed to repay the debt varies annually depending on the total assessed value over which the debt service obligation can be distributed. In FY 2013-14, a rate of .007 was applied to assessed value in the SFD.³² This is equivalent to an additional 7/10 of 1 cent added to each property tax dollar paid by taxpayers in the District.

EWAS Charges for Services

The SFD bills EWAS customers the following amounts:

- Residential: \$60 quarterly (\$20/month)
- Commercial: \$75 quarterly (\$25/month)

According to the SFD, the rates have not changed since EWAS was implemented in 1984.³³

Other Revenues

The SFD received other revenues, including \$13,200 for ambulance space rental. In addition, interest earnings accrue from cash and investments.

Expenditures

TABLE 5 summarizes SFD expenditures over a six-year period. The table shows operating expenditures, and does not include debt service. Total employee costs include office manager salary (\$112,000) and taxes (\$10,000), and Commissioner benefits (\$10,000 including dental).

Table 5 Summary of SFD Expenditures

Year	General Fund Operations					EWAS		
	Employees (1)	Retiree Medical	County Fire Services	Other Operating	TOTAL	Employees	Services/Supplies	TOTAL
2008-09	\$146,780	\$40,000	\$4,484,700	\$97,750	\$4,769,230	\$154,920	\$15,050	\$169,970
2009-10	101,342	42,000	4,352,781	82,650	4,578,773	100,000	70,350	170,350
2010-11	70,000	63,000	4,683,600	48,600	4,865,200	89,000	86,000	175,000
2011-12	52,000	101,000	4,429,800	53,600	4,636,400	94,000	79,500	173,500
2012-13	42,000	106,000	4,765,500	138,300	5,051,800	94,000	80,000	174,000
2013-14	60,000	110,500	4,986,000	118,000	5,274,500	72,000	94,800	166,800

(1) Salary and benefits, plus commissioners' benefits.

1/30/14

Source: Saratoga Fire District Budgets

³² County of Santa Clara General Obligation Bonds Debt Service Requirements, Tax Year 2013/2014, approved by Trina Whitely 8/5/13.

³³ No rate resolution was available, according to the SFD (SFD Workshop, 9/24/13).

TABLE 6 illustrates the potential transfer of costs from SFD to CCFD as a result of reorganization. The exact magnitude of cost shifts depends on specific reorganization details, for example, whether the CCFD would need to retain certain office equipment and related maintenance costs. Both the "High" and the "Low" estimates assume that existing office manager and Board services would be handled by existing CCFD staff with no transferred costs³⁴. The "High" range assumes that the CCFD will need to continue to maintain office equipment and phones at the SFD fire station, as well as a range of other overhead functions as shown.

EWAS cost transfers are estimated in **TABLE 7**; staff costs to CCFD are estimated at \$60,000,³⁵ a savings of \$12,000 compared to the \$72,000 cost allocated by SFD to EWAS. This cost assumes a CCFD 20-hour/week Office Assistant II position³⁶ at a cost of \$60,000/year for 50% of a full-time equivalent position including employer-paid taxes and benefits. If the position is filled by a part-time employee the benefit costs could be less, and the cost to CCFD would be less than \$60,000/year.

As noted above, the range of savings could depend on the extent to which the CCFD has a continuing need for a range of equipment and other overhead expenses associated with operation of the fire station. To the extent that actual FY2013-14 expenditures differ from the budget estimates, the cost transfers shown below will also change accordingly.

³⁴ CCFD, 1/29/14

³⁵ Assumes a CCFD 20-hour/week Office Assistant II position (per CCFD, 1/29/14), at a cost of \$60,000/year for 50% of a full-time equivalent position including employer-paid taxes and benefits. If the position is filled by a part-time employee the benefit costs could be less, and the cost to CCFD would be less than \$60,000/year.

³⁶ CCFD, 1/29/14

Table 6 Potential General Fund Service & Cost Transfers from SFD to CCFD

Item	2013-14 SFD Budget	Potential Range of Cost Transfers	
		Low	High
Employee Related			
Employees	\$60,000	\$0	\$0
Benefits (OPEB)	<u>110,500</u>	<u>110,500</u>	<u>110,500</u>
Subtotal	\$170,500	\$110,500	\$110,500
Services/Supplies			
Tax Collection Fee	\$67,000	\$67,000	\$67,000
Telephone	7,000	0	7,000
Insurance	8,000	0	8,000
Office Expense	3,000	0	3,000
Prof/Special Services	15,000	0	15,000
Fire Protection Services	4,986,000	4,986,000	4,986,000
Rents/Leases	500	0	500
Dues/Licenses	10,000	0	0
Printing & Reproduction	3,000	0	3,000
Advertising/Promotion	600	0	0
Supplies-Household	200	0	200
Office Machine Maintenance	2,000	0	2,000
Software	1,500	0	1,500
Postage	<u>200</u>	<u>0</u>	<u>200</u>
Subtotal	\$5,104,000	\$5,053,000	\$5,093,400
Total Operating Expenses	\$5,274,500	\$5,163,500	\$5,203,900
Capital Improvements	\$40,000	\$40,000	\$40,000
Loan Principal and Interest	\$163,341	\$163,341	\$163,341
TOTAL	\$5,477,841	\$5,366,841	\$5,407,241
vs. SFD Budget		(\$111,000)	(\$70,600)

Source: Saratoga Fire District budget 2013-14; EPS

3/26/14

Table 7 Potential EWAS Service & Cost Transfers from SFD to CCFD

Item	2013-14 SFD Budget	Potential Range of Cost Transfers	
		Low	High
Employee Related			
Employees	\$72,000	\$60,000	\$60,000
Benefits (OPEB)	<u>1,500</u>	<u>1,500</u>	<u>1,500</u>
Subtotal	\$73,500	\$61,500	\$61,500
Services/Supplies			
Monitoring Service	\$50,000	\$50,000	\$50,000
Tax Collection Fee	0	0	0
Telephone	8,000	8,000	8,000
Insurance	1,000	0	1,000
Office Expense	1,000	0	1,000
Prof/Special Services	20,000	0	20,000
Fire Protection Services	0	0	0
Rents/Leases	1,000	0	1,000
Dues/Licenses	0	0	0
Printing & Reproduction	2,000	0	2,000
Advertising/Promotion	0	0	0
Supplies-Household	0	0	0
Office Machine Maintenance	2,000	0	2,000
Software	1,800	0	1,800
Postage	<u>8,000</u>	<u>8,000</u>	<u>8,000</u>
Subtotal	\$94,800	\$66,000	\$94,800
Total Operating Expenses	\$168,300	\$127,500	\$156,300
Capital Improvements	\$0	\$0	\$0
Loan Principal and Interest	\$5,052	\$5,052	\$5,052
TOTAL	\$173,352	\$132,552	\$161,352
vs. SFD Budget		(\$40,800)	(\$12,000)

Source: Saratoga Fire District budget 2013-14; EPS

3/26/14

The following sections describe SFD services and costs in greater detail.

Fire Protection Services

Beginning in FY 2008-09, the SFD and CCFD entered into an Agreement whereby the CCFD would provide fire and emergency services to SFD. The Agreement provides for payment equal to 90 percent of property taxes apportioned to SFD. The FY 2013-14 SFD budget projects a

payment of \$4,986,000. This contract represents approximately 95 percent of the SFD's General Fund budget.

The CCFD indicated that the payments approximately cover the cost of providing services to the SFD, with the exception of PERS obligations that the CCFD acquired from the SFD.³⁷ When CCFD contracted to provide services in FY 2008-09, SFD firefighters transferred to CCFD. The SFD firefighters benefitted from a better CCFD pension plan. However, the CCFD took on responsibility for an additional annual cost to fund those increased benefits; those costs are not covered by the current payment from SFD to CCFD, and must be paid from other CCFD revenues.³⁸ Consequently, the SFD does not have any pension liabilities that would transfer to the CCFD in the event of a reorganization.

EWAS

EWAS Monitoring

SFD contracted with CSAI beginning in 2002 for monitoring services. Before the contract, EWAS alerts were sent from alarm units directly to the SFD fire station. The monitoring service automatically tests the systems and provides information monthly to SFD about any apparent failures. When an alarm is received by the monitoring service, it is sent to the County dispatch. The SFD pays for the monitoring service, budgeting \$50,000 in FY 2013-14.

EWAS Repair

While the SFD does not pay for regular maintenance, it does pay for some service calls and system repairs. For example, costs were incurred by the implementation of the "408" area code overlay, which required re-programming of 250 systems. SFD staff time for EWAS services is required to coordinate service calls with the homeowner, review signals at the monitoring station to identify problems, contact a service appointment and approve charges, and follow-up to assure the repair has been made. The SFD anticipates that "... as the systems continue to age, the cost of service will increase."³⁹

EWAS Billing

The SFD handles all billing related to the EWAS systems and maintains billing/service records. There are approximately 950 EWAS accounts⁴⁰; however, not all of those accounts are currently active.⁴¹

³⁷ EPS meeting with CCFD, 9/24/13.

³⁸ EPS meeting with CCFD, 9/24/13.

³⁹ Response to Information Request, Saratoga Fire District, September 10, 2013

⁴⁰ Response to Information Request, Saratoga Fire District, September 10, 2013

⁴¹ The SFD indicated that the number of accounts is probably high because old account numbers, which have been replaced, are not deleted from the system. The Audit Report, Year Ended June 30, 2012, indicated approximately 750 alarm account on-line (pg. 23.). The lower number is generally consistent with budget revenue from EWAS charges.

OPEB

The SFD offers continuing medical, dental, vision and long-term care coverage after retirement, but is only responsible for the cost of the medical coverage. Currently SFD is paying for nine retirees currently receiving benefits in the SFD's healthcare plan.⁴² The Board does not receive any benefits after they leave office.⁴³

The SFD is under a "pay-as-you-go" funding policy as it has not established an irrevocable OPEB trust. In FY 2012-13 SFD contributed \$92,639 which equaled the cost of the medical coverage premiums. The calculated annual required contribution was \$114,906 as of June 30, 2013, and the actuarial accrued liability was \$1,951,427.⁴⁴

Pension Liability

Currently, SFD has no pension liability. The SFD provided fire protection services through its own staff until it 2006 when it contracted with CCFD. At that time, SFD shifted employees to the CCFD, along with its pension liability totaling \$5,478,798 and OPEB liability of \$9,869,100.⁴⁵

Assets

Cash, Investments and Other Assets

As of June 30, 2013, governmental fund assets (excluding EWAS) totaled \$3,275,318⁴⁶ as summarized in **TABLE 8**. Cash and investments comprise about 96 percent of those assets, and the balance includes funds due from the County (interest), due from other SFD funds, and prepaid expenses and deposits. Ending fund balances net of \$863,873 in liabilities equaled \$2,411,445. Of these fund balances, \$1,851,769 was unassigned and available to meet the SFD's needs; the balance consisted of funds reserved for debt service and for facility repair and maintenance. These funds would be transferred to CCFD upon reorganization.

Included in total assets are \$176,640 of "special revenue" funds, which are intended for equipment maintenance and reserves.⁴⁷

EWAS unrestricted funds totaled \$77,174 after deducting accounts payable, and moneys due to other funds. ⁴⁸

⁴² Audit Report Year Ended June 30, 2013, pg. 36

⁴³ Trina Whitley, 11/25/13.

⁴⁴ Saratoga Fire District Actuarial Valuation of the Other Post-Employment Benefit Programs as of June 30, 2013, Bickmore, submitted August 2013.

⁴⁵ CCFD, December 9, 2013, response to data request from EPS. The CCFD has since established an irrevocable trust for the OPEB, reducing the liability to about \$4-\$5 million.

⁴⁶ Audit Report Year Ended June 30, 2013, pg. 16

⁴⁷ SFD Workshop, 9/24/13

⁴⁸ Audit Report Year Ended June 30, 2013, pg. 20

Table 8 Summary of Balance Sheet - Governmental Funds

Item	General Fund	Debt Service	Special Revenue	Total
Assets				
Cash and Investments	\$2,604,073	\$373,715	\$176,466	\$3,154,254
Due from County funds - interest	1,798	218	174	2,190
Due from other Funds	109,771	-	-	109,771
Prepaid expenses and deposits	9,103	-	-	9,103
Total Assets	\$2,724,745	\$373,933	\$176,640	\$3,275,318
Liabilities				
	\$863,873	-	-	\$863,873
Fund Balances				
Nonspendable (prepaids)	\$9,103	-	-	\$9,103
Assigned				
Special Revenue Fund	-	-	176,640	176,640
Debt Service Fund	-	373,933	-	373,933
Unassigned				
General Fund	1,851,769	-	-	1,851,769
Total Fund Balances	\$1,860,872	\$373,933	\$176,640	\$2,411,445
Total Liabilities and Fund Balances	\$2,724,745	\$373,933	\$176,640	\$3,275,318

Source: Saratoga Fire District Audit Report, year ended June 30, 2013.

1/06/14

Capital Assets

The SFD's investment in capital assets for its governmental activities as of June 30, 2013, amounted to \$6,090,559 (net of accumulated depreciation).⁴⁹ This investment in capital assets includes land, buildings, vehicles, equipment, and furniture and fixtures.

CCFD owns all of the first-line apparatus and equipment (Engine 17, Engine 317, and Rescue 17) and the reserve engine (Engine 117) housed at the Saratoga Fire Station. SFD owns Engine 30, which is held for use by volunteer firefighters. SFD also owns the restored 1928 Model A fire engine, used for community events and public relations.

It is assumed that all SFD capital assets would transfer to CCFD upon reorganization.

⁴⁹ Audit Report Year Ended June 30, 2013, pg. 12

Liabilities

The General Fund showed liabilities totaling \$863,873.⁵⁰ These liabilities, or “Accounts and warrants payable” largely include payments owed to CCFD for services to be paid in the following month. In addition, the SFD has additional long-term debt and OPEB obligations as described in the following sections. SFD has no pension liabilities.

Upon reorganization, the “Accounts and warrants payable” could be retired by the CCFD using net assets transferred from the SFD.

Long-Term Debt

Bonds Payable

On September 12, 2000 the SFD issued the Election of 2000 General Obligation Bonds to finance the renovation, construction and acquisition of SFD facilities and property. As of June 30, 2013, the outstanding principal balance amounted to \$4,253,737.⁵¹ The bonds will be paid off by 2031. The annual debt service is paid by an ad valorem property tax rate applied to assessed value in the SFD.

This Special Study assumes that the General Obligation bond payments would not be affected by reorganization, and would continue to be paid from an ad valorem tax on properties within the former SFD boundaries. GC §56886(c)

Mortgage Payable and Lease Refunding

On September 23, 2004, the SFD issued a promissory note to supplement bond proceeds to complete the fire station improvements. The mortgage was recently refinanced to obtain a better interest rate. The outstanding principal balance as of June 30, 2013, was \$2,097,148 and will be fully retired by 2031. The debt service payments are funded by General Fund revenues.

Upon reorganization, SFD General Fund property tax revenues shifted to the CCFD would be sufficient to continue to pay the mortgage, in addition to fire service costs and OPEB obligations.

OPEB

As described previously, the SFD offers continuing medical, dental, vision and long-term care coverage after retirement, but is only responsible for the cost of the medical coverage. Currently SFD is paying for 9 retirees currently receiving benefits in the SFD’s healthcare plan.⁵² The SFD is under a “pay-as-you-go” funding policy as it has not established an irrevocable OPEB trust. In FY 2012-13 SFD contributed \$92,639 which equaled the cost of the medical coverage premiums.

⁵⁰ Audit Report Year Ended June 30, 2013, pg. 16

⁵¹ Audit Report Year Ended June 30, 2013, pg. 34

⁵² Audit Report Year Ended June 30, 2012, pg. 37

The calculated annual required contribution was \$114,906 as of June 30, 2013, and the actuarial unfunded accrued liability was calculated to be \$1,951,427.⁵³

Upon reorganization with CCFD, SFD General Fund property tax revenues shifted to the CCFD would continue to pay the annual OPEB costs, in addition to the costs for fire protection services, unless CCFD chooses to fund the OPEB obligation, which would reduce future interest costs.

⁵³ Saratoga Fire District Actuarial Valuation of the Other Post-Employment Benefit Programs as of June 30, 2013, Bickmore, submitted August 2013.

3. FINDINGS

a. Public service costs of a proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service.

The public service costs resulting from the reorganization of SFD would be less than the costs of existing service, and current levels of service would be retained. The total General Fund and EWAS savings, as described in this report and summarized below, could total \$82,600 to \$151,800 annually. Cost savings could be utilized for the improvement of existing facilities, increases in levels of service, and upgrades/repairs to the EWAS system.

There would be no change in the current provision of fire protection services to the former SFD service area according to the CCFD, because the station's current contractually-required minimum staffing level of at least two three-person companies is critical to meeting response time goals, and the second company provides a necessary concentration of resources necessary to respond to events requiring more than a single unit in the larger general area.⁵⁴

In essence, reorganization creates the opportunity to eliminate redundant costs and take advantage of the economy of scale offered by the CCFD. Following reorganization, approximately \$60,000 of SFD General Fund employee expenses (the SFD Office Manager and commissioners) and \$51,000 in General Fund overhead expenditure could be eliminated as management of fire protection service is shifted entirely to existing staff of the CCFD, for a total potential savings of \$111,000 annually. Existing CCFD staff would be adequate to handle overhead and administrative functions currently performed by SFD, and any overhead created by absorbing the SFPD "...would most likely be transitional and of a very minor nature".⁵⁵ Therefore, it is expected that cost savings would result from the elimination of current SFD staff, directors and overhead.

TABLE 6 summarizes the range of potential transfer of General Fund costs from SFD to CCFD upon reorganization, depending on specific reorganization details, for example, whether the CCFD would need to retain certain office equipment and its related maintenance costs. If the only savings are due to the elimination of the SFD office manager and commissioners, and elimination of a portion of overhead costs, the savings would be a minimum of \$70,600 annually. General Fund cost savings could be greater, up to \$111,000, if SFD overhead costs are entirely eliminated (except OPEB, tax collection fees, debt service, and fire protection services).

In addition, the CCFD is likely to realize EWAS savings to the extent that staff management of the system costs less than the currently budgeted \$72,000 allocation of SFD staff costs, as shown in **TABLE 7**. The savings from the use of a 20-hour per week Office Assistant II for EWAS services is estimated at \$12,000 annually. The total potential EWAS cost savings is estimated to range from \$12,000 to \$40,800. The range depends on the extent to which existing EWAS overhead costs continue to be required, and potential funding of upgrades to EWAS units.

⁵⁴ Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

⁵⁵ Draft Responses to Questions, CCFD, 12/9/13.

Over time, certain EWAS responsibilities could be shifted to a private provider. This shift may result in cost savings and service fee reductions, since staff costs required by EWAS will be eliminated. There may be opportunities for the private provider to offer fee reductions to some homeowners who currently may pay for multiple services. A more detailed analysis will be necessary to determine potential savings.

b. A change of organization or reorganization that is authorized by the commission promotes public access and accountability for community service needs and financial resources.

Reorganization would promote public access and accountability for community service needs and financial resources in a number of ways:

- The SFD is completely surrounded by the Santa Clara CCFD service area. The CCFD is a much larger jurisdiction, and is the service provider to the SFD through the CCFD's service agreement with the SFD. The CCFD also serves the remainder of the City of Saratoga not covered by the SFD. Reorganization would eliminate redundancy from two fire service agencies serving the same city.
- Reorganization would eliminate an unnecessary additional layer of governance. The SFD effectively functions as an intermediary between a portion of City of Saratoga residents and the CCFD, the actual provider of fire protection services. The SFD does not determine levels of fire protection service other than the minimum levels specified by the agreement between the SFD and the CCFD.
- Reorganization under the CCFD would assure that all contracts, employee salaries and responsibilities, and rates would be subject to public review, discussion and documentation. Currently, the SFD does not have a contract with its office manager nor any discussion or documentation about the office manager's role, responsibilities and appropriate salary range. No resolution exists adopting current EWAS rates.
- While the SFD offers a local public forum for its constituents concerned about fire services, a review of SFD minutes for a three-year period from July 20, 2010, found no public oral comments (other than limited comments by current or former SFD staff) with the exception of two presentations of financial grants.
- SFD commissioners are locally elected, however, there is a lack of contested elections which indicates lack of community concern and involvement in SFD affairs (the last contested election for one of the current commissioners was in 2001); one of the other two commissioners was elected in 2005, and the third was appointed to fill a 2006 vacancy then confirmed by election in 2008.⁵⁶
- Reorganization would clarify that inquiries be directed to the CCFD, thereby promoting public access. Because the SFD has one part-time employee, inquiries by telephone may not be answered immediately; responses may require re-direction to the CCFD, or addition to the agenda of the next SFD meeting. Issues regarding service provision would need to be

⁵⁶ Email from Trina Whitley, SFD, to EPS 2/11/14.

addressed by the CCFD, in any case. Currently, if members of the public are aware that the CCFD provides fire protection and emergency medical services to the SFD, they may inquire directly to the full-time staff of the CCFD if they have questions or issues and receive immediate attention and redirection of their inquiry as appropriate.

There would be no change in the current provision of fire protection services to the former SFD service area according to the CCFD, because the station's current contractually-required minimum staffing level of at least two three-person companies is critical to meeting response time goals, and the second company provides a necessary concentration of resources necessary to respond to events requiring more than a single unit in the larger general area.⁵⁷

⁵⁷ Email from Don Jarvis, CCFD, to Richard Berkson, EPS, January 14, 2014.

APPENDIX A

Fire and Emergency Medical Services Agreement,
Saratoga Fire Protection District and Santa Clara County Central Fire
Protection District, effective July 1, 2008

First Addendum to Fire and Emergency Medical Services Agreement,
Saratoga Fire Protection District and Santa Clara County Central Fire
Protection District, effective December 17, 2009



FIRE AND EMERGENCY MEDICAL SERVICES AGREEMENT

**SARATOGA FIRE PROTECTION DISTRICT
AND
SANTA CLARA COUNTY
CENTRAL FIRE PROTECTION DISTRICT**

THIS AGREEMENT, effective as of 12:00:01 o'clock a.m. on July 1, 2008, is by and between the SARATOGA FIRE PROTECTION DISTRICT, an independent fire district organized and operating pursuant to the Fire Protection District Law of 1987 of the California Health and Safety Code ("SFD"), and the SANTA CLARA COUNTY CENTRAL FIRE PROTECTION DISTRICT, a fire protection district, organized and operating under the Fire Protection District Law of 1987 of the California Health and Safety Code, ("CFPD").

**BASED ON MUTUAL CONSIDERATION AND PROMISES
THE PARTIES AGREE AS FOLLOWS:**

SECTION 1

Purpose

1.01 Purpose. The purpose of this Agreement is to set forth the rights and responsibilities of the parties regarding the fire and emergency medical services to be provided by CFPD to SFD. For purposes of this Agreement, the term "SFD" is defined as: the geographical area within the boundaries of SFD as of the effective date of this Agreement, and all other geographical areas which are thereafter annexed to SFD.

SECTION 2

Scope of Services Provided

2.01 Fire Suppression and Fire Cause Investigation Services. CFPD shall provide the following fire suppression and prevention services to SFD:

- A. CFPD shall provide fire suppression services within SFD, twenty-four hours a day, seven days a week.
- B. CFPD shall operate and maintain the SFD fire station located at 14380 Saratoga Avenue, Saratoga, California 95070 ("SFD HQ"). CFPD shall staff the station with at least two three-person companies, on a twenty-four hour, seven day a week schedule. A typical first alarm response to a structure fire shall be the four closest fire apparatuses and an incident commander.

- C. In addition to the above, CFPD shall dispatch any available companies or units that are necessary, or reallocate resources to meet workload demands during the course of service calls or training sessions for short periods of time.
- D. CFPD is responsible for fire cause investigations.
- E. CFPD shall retain a volunteer driver-operator program within SFD boundaries. The volunteer firefighters who were authorized to drive the volunteer fire engine prior to July 1, 2008 shall retain their authority to drive the volunteer fire engine at SFD HQ assuming all certificates, licenses, including licenses required by the state of California, and training requirements are satisfied. CFPD shall use reasonable efforts to ensure the assignment of a sufficient number of volunteer firefighters authorized to drive the volunteer fire engine, subject to maintaining in effect all required certificates and licenses, including licenses required by the state of California, and satisfying all training requirements. Assignment of individual volunteer firefighters to the driver-operator program shall be at the discretion of the Fire Chief or his/her designee.

2.02 Other Services to Be Provided by CFPD.

- A. CFPD shall keep accurate records on all SFD fire matters that, except as otherwise required by law, shall be available for review by SFD officers and staff during regular office hours.
- B. CFPD shall notify the Saratoga City Building Official of all structural fires in SFD.
- C. CFPD shall review all requests for street closures.
- D. CFPD is responsible for public education and citizen emergency response training in SFD.

2.03 Services Not to Be Provided by CFPD.

- A. CFPD is not responsible for administering hazardous material programs in SFD.
- B. SFD shall continue to employ Harold Netter as a full-time fire marshal to provide services within SFD, until such time as Mr. Netter retires or otherwise separates from service with SFD. During the period of Mr. Netter's employment, SFD shall be responsible for providing its own fire prevention services and other fire marshal related code enforcement duties, including the following:

1. Plan checks and inspections for construction projects within SFD.
2. Enforcement of the fire services related to nuisance abatement and other related codes, including but not limited to preparing reports, inspection, testifying and interviewing.
3. Review all applicable business license requests and sign-off immediately in the event that a license request is in full compliance with all fire codes.
4. Review all fire access on new streets and all water main sizing and location of fire hydrants throughout SFD.
5. Enforcing fire lane and building exit requirements in cooperation with the Santa Clara County Sheriff.

So long as Mr. Netter provides the foregoing fire marshal duties, SFD shall take an annual credit (during each fiscal year from July 1 through June 30) in the amount of \$200,000.00 against the property tax amount described in Section 10.01. One half of such credit shall be applied during the month of December of each year and the remaining half shall be applied during the month of June of each year. This credit shall cease when CFPD assumes the responsibilities of fire marshal for SFD. CFPD shall assume such responsibilities when Mr. Netter ceases to be employed as SFD's fire marshal. If such assumption occurs as of a date other than the close of a fiscal year, the credit shall be pro-rated based upon the portion of the fiscal year prior to the effective date of the assumption.

- C. SFD shall retain responsibility for management including staffing, financing and enforcement of the Early Warning Alarm System program adopted by SFD and the City of Saratoga.

2.04 Dispatch Communications. CFPD shall, without charge to SFD, establish, operate and maintain a communications system to receive emergency requests from Public Safety Answering Points. The system shall be provided by, or under the authority of, CFPD and shall be maintained on a twenty-four (24) hour basis by an appropriate number of qualified personnel.

2.05 Communications System. CFPD may, without charge, use any SFD owned FCC Communications frequency licensed for fire and emergency vehicle services to operate and maintain the communications system required by this Agreement while SFD retains any and all rights of ownership to the license.

2.06 Community Services. CFPD shall cooperate with SFD in promoting civic betterment and improvement by providing its staff and equipment for community events and activities, to the extent consistent with the provision of fire prevention and suppression services.

2.07 Cooperative Training. CFPD shall make available to SFD employees mutually beneficial training classes presented by CFPD, such as classes in incident command overview.

2.08 Maps. CFPD shall provide copies of updated run maps to SFD. SFD shall provide copies of map changes to CFPD.

2.09 Law Enforcement Support. CFPD shall provide support to law enforcement including, but not limited to, emergency scene stand-by and laddering of buildings.

2.10 Existing Programs. SFD shall encourage the use of residential sprinklers in new construction and agrees to administer a brush abatement program in cooperation with the City of Saratoga.

SECTION 3

Service Levels, Standards of Performance

3.01 Identifying Problems in Service. In the event SFD determines that CFPD has failed to comply with the duties described in this Agreement, SFD shall notify CFPD, in writing, sufficiently detailing the specific compliance issue. Upon receipt of the written notice, CFPD shall respond within ten (10) working days in writing, setting forth a detailed plan as to how CFPD shall come into compliance. If CFPD disagrees with SFD's determination, CFPD shall inform SFD in writing, setting forth the factual and/or legal basis for CFPD's disagreement.

3.02 Standard of Performance. CFPD shall perform all services required under this Agreement in a manner and according to the standards observed by competent fire personnel providing equivalent services. All products of whatever nature and all services shall be prepared and provided in a professional manner. All work products, engine company inspections and other services provided pursuant to this Agreement shall be in conformance with the related fire statutes, laws, regulations and guidelines.

3.03 Closure of Quito or West Valley Fire Station. If CFPD suspends operations from its Quito or West Valley sites for longer than one month CFPD shall provide replacement coverage to SFD from another location at no additional cost to SFD.

3.04 SFD HQ is a core station. CFPD shall define the SFD HQ station as a core station for purposes of staffing. The staffing at the SFD HQ station shall be staffed similarly to other CFPD core stations.

SECTION 4

Emergency Medical Services and Operations

4.01 Emergency Medical Services. CFPD shall provide fire engine-based advanced life

support first responder services on two of the fire engines (or truck or rescue units) assigned to SFD HQ.

4.02 Emergency Operations Services

- A. CFPD has primary responsibility for emergency services coordination for emergency events that are under the jurisdiction of a fire agency.
- B. CFPD shall cooperate with SFD in the preparation, maintenance, and execution of civil defense and disaster plans for emergency operations.

SECTION 5

Real Property

5.01 Real Property Defined. As used in this section, the term "Real Property" means the land and improvements situated at 14380 Saratoga Avenue, Saratoga, California 95070 consisting of the fire station and appurtenances attached thereto and as identified in Exhibit A, attached hereto and incorporated by this reference.

5.02 Use of Real Property. During the term of this Agreement, CFPD shall be entitled to use and occupy the Real Property rent-free. SFD shall continue to use one office within the Real Property for its business office and a second office for Harold Netter for so long as he is employed by SFD as its fire marshal. The conference room shall continue to be used by the SFD Board of Fire Commissioners for its regular and special meetings and shall also be used from time to time for meetings of community groups in accordance with the established policies and procedures of the SFD.

5.03 Real Property Maintained.

- A. CFPD agrees that it shall not allow nuisances to exist or be maintained at any of the Real Property in SFD.
- B. CFPD shall keep the Real Property in a safe, neat and clean condition.
- C. CFPD shall maintain the Real Property in good condition and repair, including all interior and exterior surfaces, structural components, heating, cooling, plumbing and electrical systems, clarification systems and landscaping subject, however, to the following limitations:
 - 1. CFPD's total obligation for payment of maintenance and repair expenses during any single fiscal year shall not exceed the sum of \$25,000. Should maintenance and repair expenses during any single year exceed such amount, SFD shall be responsible for payment of the excess; provided, CFPD first gives prior notice of such excess expense to SFD and obtains

authorization from SFD for performance of the work. Notwithstanding the foregoing, prior notice to SFD shall not be required for emergency repairs that are necessary in order to protect the Real Property or to abate an immediate health or safety hazard. In such event, notice of the emergency repair shall be given to SFD as soon as reasonably practical. The annual allowance for maintenance and repair expenses provided herein shall be non-cumulative.

2. CFPD shall not be responsible to repair any item where the cost of repair (including labor) exceeds the sum of \$5,000 and such repair cost also exceeds fifty percent (50%) of the replacement cost (including labor) for that item. In such case, the repair or replacement of that item shall be the responsibility of SFD.
3. SFD shall be responsible for painting and carpeting SFD HQ, and shall be responsible for keeping the roof in good repair.

Repairs shall be performed promptly according to the controlling building code. SFD has the right to inspect the property upon reasonable notice to CFPD.

- D. CFPD may at its own expense expand, remodel or otherwise improve or add fixtures to the Real Property in order to enable it to better meet its needs, subject to the approval of SFD.
- E. SFD shall share with CFPD all construction plans, specifications, drawings and documentation it has regarding construction of SFD HQ, manufacturer's warranties, invoices, service records, owner's manuals and maintenance records of the Real Property.

5.04 Underground Storage Tanks.

- A. SFD is responsible for any underground storage tank or tanks on any of the Real Property including any and all repairs and/or replacement of underground storage tanks. SFD shall retain any and all rights of ownership in said tanks and shall be fully responsible for any and all clean-up costs associated with any tank or tanks installed at any time on the premises.
- B. SFD shall defend, indemnify and hold harmless CFPD its officers, directors, agents and employees from and against any and all claims, liabilities, loss, injury or damage arising out of or in connection with actions, including claims and administrative processes, by government agencies or third parties, for investigation, response, removal, clean-up and/or remediation (collectively "claims") arising from or related in any way to any contamination, including contamination by oil or hazardous substances of the Real Property, the

buildings or the surrounding area unless such contamination was caused by the acts or omissions of CFPD or its agents or contractors.

5.05 Replacement of Facilities. In the event that any of the Real Property is for any cause destroyed or damaged beyond repair, SFD at its sole expense shall within a reasonable time replace facilities with improvements and facilities of the same kind and purpose, and minimally to the same quality, size and capacity as those damaged or destroyed at the same location or an alternative location which shall comply with the required response times set forth in this Agreement, or if such facilities are not provided by SFD, SFD shall relieve CFPD of performance goals.

5.06 Identity of Fire Stations. SFD HQ shall be identified as both a SFD and CFPD facility, and the apparatus stationed therein shall bear the name of Saratoga and County Fire. SFD's name shall appear on the station while CFPD's logo shall appear on the front door and/or front office window. In addition to display of the American flag, CFPD may display the flag of the state of California and the County Fire flag.

5.07 New Fire Stations.

- A. In the event an additional fire station or stations are needed to serve SFD exclusively, SFD shall be responsible for construction thereof. The contractor hired to construct the station(s) shall cooperate with CFPD regarding the design and construction of the new facilities.
- B. All construction shall be undertaken in conformance with all applicable California laws including, but not limited to, the Civil Code, Code of Civil Procedure, Health and Safety Code, and the California Public Contracts Code, including laws relating to competitive bidding.

SECTION 6

Vehicles and Equipment

6.01 Equipment Defined. As used in this section, the term "Equipment" is defined as that equipment, tools, furnishings, supplies and other materials not consisting of Real Property or Vehicles.

6.02 New Equipment and Vehicles. In the event new equipment needs to be purchased or needs to be replaced, CFPD shall have the sole responsibility for purchasing new equipment and replacing existing equipment. If CFPD purchases, leases or otherwise acquires ownership of new equipment, CFPD shall retain ownership of such equipment during and after the term of this Agreement.

6.03 Records for Equipment and Vehicles. SFD shall share with CFPD all plans, drawings and documentation it has regarding manufacturer's warranties, invoices, service records, owner's manuals and maintenance records of equipment and vehicles.

6.04 Purchase and Rental of Vehicles.

- A. CFPD shall rent Engine 30, Rescue 30 and Patrol 30 for a minimum of one year effective July 1, 2008 for amounts as described in Exhibit C. CFPD shall provide routine maintenance to Engine 30, Rescue 30 and Patrol 30 and shall add these vehicles to CFPD's liability insurance policy. One half of the annual rental shall be due on December 15th of each year and the remaining half shall be due on June 15th of each year. In the event any rented vehicle is temporarily taken out of service for maintenance or repair and such work cannot reasonably be completed within 30 days, the rental payment for such vehicle shall be abated during the period from the 31st day until the date on which the vehicle is returned to active service. At any time from and after July 1, 2009, CFPD may elect to permanently discontinue using any or all of the rented vehicles, in which event CFPD shall give written notice to SFD indicating the effective date on which a particular vehicle shall permanently be taken out of service. CFPD's obligation to pay rent and to provide maintenance and insurance coverage for such vehicle shall cease as of the effective date on which the vehicle is taken out of service. SFD may thereafter use or dispose of such vehicle in any manner it deems appropriate.
- B. CFPD will purchase the vehicles listed in Exhibit B, entitled Vehicles to Be Sold to CFPD. SFD shall transfer title to CFPD for the 2000 Ford SUV effective September 1, 2009 with a negotiated value of \$6,000. SFD shall transfer title to the 1994 Ford Crown Victoria effective July 1, 2008 with a negotiated value of \$2,000. The cost of the SUV and Ford Crown Victoria are included in the \$275,000 price referred to in Section 6.06 below.
- C. CFPD shall not rent nor purchase Engine 31, which is currently owned by SFD. However, CFPD shall provide regular maintenance on Engine 31 and shall add Engine 31 to CFPD's liability insurance plan at no cost to SFD. CFPD shall stop providing routine maintenance and liability insurance on Engine 31 when Engine 31 is no longer used as a reserve engine or the volunteer division's primary fire engine for service to SFD.

6.05 Rescue Equipment Assigned to All SFD HQ Vehicles. CFPD shall retain specialized rescue equipment on the SFD vehicles that had such equipment as of July 1, 2008. As the equipment is removed from service CFPD shall replace only the number of units needed to comply with CFPD's standard equipment inventory. If SFD desires to augment the assigned inventory on a vehicle assigned to SFD HQ, it may request CFPD to do so and SFD shall pay for the extra equipment.

6.06 Purchase of Equipment and Two Vehicles. CFPD shall pay SFD \$275,000 on or before May 15, 2008 for the 2000 Ford SUV and 1994 Ford Crown Victoria listed in Exhibit B and all the equipment listed in Exhibit D.

SECTION 7

Records Retention

7.01 Records Retention and Storage. SFD shall retain ownership of all SFD emergency and public service related service records pertaining to responses that occur prior to July 1, 2008. CFPD shall have access to all such records. CFPD shall provide a list of records CFPD intends to move from SFD for use elsewhere and the new location of such records. Those records that are not needed by CFPD at another location shall remain with SFD. CFPD shall own all service records related to emergency and public service calls for service that occur on or after July 1, 2008.

SECTION 8

Insurance And Indemnities

8.01 Insurance Required.

- A. SFD shall insure the real property listed in Exhibit A against the risk of damage or destruction in amounts sufficient to enable it to satisfy the obligations created by this Agreement.
- B. CFPD shall maintain its current insurance program or contract for and maintain during all periods this Agreement is in effect comprehensive general liability insurance and property insurance, and shall provide an endorsement naming SFD, members of its Commission and all other officers, agents and employees of SFD, individually and collectively, as additional insureds. The coverage under such insurance shall include the indemnification requirements of CFPD as set forth in Section 8.02 of this Agreement. CFPD's current insurance program or any future comprehensive general liability insurance shall provide minimum coverage of two million dollars. CFPD's insurance shall be primary to SFD's general and property insurance policies and shall not contribute with SFD's coverage. Certificates of insurance shall be provided to SFD Board of Fire Commissioners annually on the anniversary date of this Agreement and to the extent CFPD alters any coverage, it shall include SFD, members of the SFD Board of Fire Commissioners and all other officers, agents and employees of SFD as additional insured parties. Any and all insurance purchased must be from carriers holding an A.M. Best rating of no less than A:VII. SFD shall be given thirty days' advance notification of any cancellations or lapses in coverage including, but not limited to, policy limits

and deductibles.

- C. CFPD shall maintain its current workers' compensation self-insurance program or shall at all times maintain workers' compensation insurance in an amount to comply with California statutory requirements. Such coverage shall apply to all CFPD employees who are former SFD employees. SFD shall at all times maintain workers' compensation coverage either through a self-insurance program or insurance policy in an amount to comply with California statutory requirements. SFD shall be responsible for any and all workers' compensation claims arising out of an accident or incident that occurred prior to July 1, 2008.

- D. SFD shall maintain its current insurance program or contract for and maintain during all periods this Agreement is in effect comprehensive general liability insurance and property insurance and shall provide an endorsement naming CFPD, members of its Board of Directors and all other officers, agents and employees of CFPD, individually and collectively, as additional insureds. The coverage under such insurance shall include the indemnification requirements of SFD as set forth in Section 8.02 of this Agreement. SFD's current insurance program or any future comprehensive general liability insurance shall provide minimum coverage of two million dollars. SFD's insurance shall be primary to CFPD's general and property insurance policies and shall not contribute with CFPD's coverage. SFD shall provide Certificates of insurance to the CFPD Fire Chief annually on the anniversary date of this Agreement and to the extent SFD alters any coverage, it shall include CFPD, members of the CFPD Board of Directors and all other officers, agents and employees of CFPD as additional insured parties. Any and all insurance purchased, must be from carriers holding an A.M. Best rating of no less than A:VII. CFPD shall be given thirty days' advanced notification of any cancellations or lapses in coverage including, but not limited to, policy limits and deductibles.

8.02 Mutual Indemnities. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead CFPD and SFD agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, commissioners, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, commissioners, employees or agents, under or in connection with or arising out of any work, authority, services, or jurisdiction delegated to or performed by such party under this Agreement or use of the Real Property by the indemnifying party. No party, nor any officer, board member, commissioner, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other party hereto, its officers, board members, commissioners, employees or agents, under or

in connection with or arising out of any work, authority, services, or jurisdiction delegated to or performed by such party under this Agreement or use of the Real Property by such party.

SECTION 9

Term Of Agreement

9.01 Initial Term of Agreement. The initial term of this Agreement shall commence on July 1, 2008, at 12:00:01 a.m. and shall expire on July 1, 2013 at 12:00 o'clock a.m.

9.02 Renewal. At the expiration of the initial term, this Agreement shall automatically renew year to year for an additional five years unless SFD or CFPD provides written notice of non-renewal to the other party at least one year prior to the July 1 that the terminating party intends to terminate the Agreement. Unless sooner terminated by either party, this Agreement shall expire on July 1, 2018, at 11:59:59 p.m.

SECTION 10

Terms Of Payment/Financial Provisions

10.01 Payment. Commencing on July 1, 2008, and every fiscal year thereafter SFD shall pay CFPD an amount equal to 90% of the total property taxes apportioned to SFD, inclusive of the Homeowners Property Tax Replacement (HOPTR) and prior property taxes but exclusive of property taxes designated for SFD's general obligation bond, and property taxes attributed to fiscal year 2007-2008. In the event of any change in apportionment laws, for example the elimination of the Educational Revenue Augmentation Fund (ERAF), or changes in tax rates or tax revenues due to annexations or detachments, the 90% factor described in this section shall apply to the new rates or amounts.

10.02 Terms of Payment. SFD shall pay CFPD 90% of the tax revenues described in Section 10.01 within 30 days after the date on which SFD receives written notice from the County of Santa Clara (which may be in the form of an email message) that the tax revenues have been apportioned to SFD. If SFD is tardy with the payment SFD shall pay a late fee of one percent of the delinquent payment if SFD has not made the payment within 30 days of learning that the property taxes had been apportioned. For every fifteen days that payment is late CFPD shall be entitled to the base amount plus late fees, compounded by one percent each fifteen days.

10.03 American Medical Response West (AMRW) First Responder Payments. SFD relinquishes to CFPD SFD's right to payments from AMRW, or its successor, fees, payments or pass-through revenues that relate to fire departments providing first responder emergency medical care in support of AMRW'S contractual obligations to Santa Clara County relative to response times.

SECTION 11

Fire Personnel

11.01 Designation of Fire Chief. The CFPD Fire Chief shall be designated as the Fire Chief for SFD for purposes of statutory regulations and the exercise of all powers and duties assigned to the fire chief under any applicable laws.

11.02 Paid Fire Personnel. CFPD has the right to hire and control all personnel necessary to fulfill its obligations set forth in this Agreement and assumes all responsibility and liability for personnel in accordance with applicable State and Federal laws.

11.03 Layoff of SFD Personnel. Effective 12:00 o'clock a.m. July 1, 2008, SFD shall lay-off its Firefighters, Firefighter-Paramedics, Engineers, Engineer-Paramedics, Captains, Captain-Paramedics, and Assistant Chief who are listed in Exhibit E, entitled Former Paid SFD Fire Personnel, and CFPD shall hire these employees effective as of 12:00:01 o'clock a.m., July 1, 2008. The specific terms of employment including job title and job class, rank, compensation, benefits, seniority, leave accruals and usage, and retirement benefits are addressed in separate agreements.

11.04 SFD Volunteer Division. Exhibit "F", entitled Former SFD Volunteers, is incorporated herein by this reference. CFPD shall enroll those persons who were SFD volunteers listed on Exhibit "F", into its volunteer division. Former SFD volunteers shall be afforded the same training and emergency response opportunities as CFPD volunteers plus the additional privilege described in section 2.01.E.

SECTION 12

Termination

12.01 Termination for Cause. Without limiting any other remedy that may be available, this Agreement may only be terminated for a material breach after utilizing the Arbitration Review Board procedure in Section 13.01.

12.02 Termination without Cause. Neither party may terminate this Agreement without cause prior to June 30, 2013. Thereafter, either party may terminate this Agreement without cause only the manner provided in Section 9.02. SFD and CFPD can mutually agree to terminate this Agreement without cause at any time.

12.03 Duties upon Termination. In the event of termination, and in accordance with all applicable laws, CFPD shall retain ownership of all records pertaining to emergency and non-emergency calls for service that CFPD responded to during the period that this Agreement was in force. SFD shall have reasonable access to all such records.

12.04 Employment of Fire Personnel upon Termination. Upon termination of this

Agreement SFD shall assume full responsibility for fire protection and fire department-related emergency services within SFD. SFD shall provide its former SFD employees currently employed by CFPD a right of first refusal for employment subject to SFD's minimum qualifications. Former SFD employees currently employed by CFPD are described in that document entitled "Former Paid SFD Fire Personnel," attached hereto marked Exhibit "E" and incorporated herein by this reference. Thereafter, SFD shall provide CFPD employees a right of first refusal for employment subject to SFD's minimum qualifications. In the event SFD elects to contract with another provider of fire protection services, SFD shall endeavor to provide the same right of first refusal set forth above in the contract terms with the new provider.

12.05 Payment upon Termination. CFPD shall rebate to SFD any payment for services not received, and SFD shall pay CFPD a prorated amount for all days not constituting a full month owed up to and including the date of termination date.

SECTION 13

Dispute Resolution

13.01 Arbitration Review Board. At any time during the term of this Agreement, the party aggrieved by a material breach may provide written notice describing the breach to the party responsible. Upon receipt of the written notice, the party responsible shall respond within ten (10) working days in writing with a detailed action plan summarizing how the party shall correct the problem. If the dispute is not resolved within ninety days of such-notice of breach, SFD and CFPD shall attempt to agree on appointing an individual to serve as a non-binding mediator. If the parties cannot agree on the selection of a mediator, or if either of the parties elects to not accept the mediator's suggestions, the parties shall appoint an Arbitration Review Board consisting of three (3) members, one (1) appointed by each entity, and the third mutually agreed upon. After the Board's decision is given, the aggrieved party, if not satisfied, may then give written notice of termination. This arbitration shall be conducted in accordance with procedures agreed to by the parties (such as applicable California statutes regarding non-binding arbitration or the rules set forth by the American Arbitration Association). The arbitration shall be non-binding and each party shall bear its own costs and expenses of this proceeding. The parties shall equally bear the fees charged by the arbitrators.

13.02 Governing Law. California law shall govern this Agreement and the interpretation thereof.

SECTION 14

Miscellaneous Provisions

14.01 Assignment. Except as expressly provided herein, neither SFD nor CFPD shall voluntarily or involuntarily assign, delegate, subcontract, pledge, hypothecate or encumber any right, duty or interest, in whole or in part, in or of this Agreement.

14.02 Notice. All notices, demands or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given if sent by facsimile or made or sent when made in writing and deposited in the United States mail, registered or certified and postage prepaid and addressed as follows:

To SFD: Chairperson
Board of Fire Commissioners
Saratoga Fire Protection District
14380 Saratoga Avenue
Saratoga, CA 95070

To CFPD: FIRE CHIEF
Santa Clara County Fire Department
14700 Winchester Boulevard
Los Gatos, CA 95032-1818

The address to which any notice, demand or other writing may be given or made or sent to any party may be changed by written notice given by such party.

14.03 Compliance with Law. SFD and CFPD agree to comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations which affect this Agreement or any activity, duty, obligation, performance or occupancy of use of real or personal property which arise from this Agreement.

14.04 Waiver of Rights. Neither party may waive or release any of its rights or interests in this Agreement except in writing. Failure to assert any right arising from this Agreement shall not be deemed or construed to be a waiver of such right.

14.05 Interest in Agreement. This Agreement shall not be deemed or construed to confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Agreement.

14.06 Consents Approvals, and Modifications.

- A. All consents, approvals, interpretations and waivers relating to this Agreement shall bind a party only when executed by such party's Authorized Representative. SFD's Authorized Representative shall be the Chairperson of the SFD Board of Fire Commissioners, and CFPD's shall be its Fire Chief. Superiors and successors of, and agents expressly authorized in writing by, said SFD Chairperson and Fire Chief, as the case may be, shall also be authorized representatives.

- B. The express terms of this Agreement represent the exclusive understanding between the parties for the services contemplated herein. Modification of this Agreement may occur only in writing upon the mutual consent of the parties. The SFD Chairperson is authorized to approve minor modifications to this contract on behalf of SFD, providing such modifications do not significantly affect the scope of services or compensation. The Fire Chief is authorized to approve minor modifications on behalf of CFPD that do not significantly affect the scope of services or compensation.

14.07 Entire Agreement. Except as otherwise provided in Section 11.02, this Agreement and the exhibits hereto contain the entire Agreement between SFD and CFPD with respect to the fire and emergency medical services, and no other agreement, statement or promise made by any party or any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.

14.08 Successors in Interest. This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

14.09 Severability. Should any part, term, portion, or provision of this Agreement be decided to be in conflict with any law of the United States or of the State of California, or otherwise found to be unenforceable or ineffectual, the validity of the remaining terms, parts, portions, or provisions shall be deemed severable and shall not be affected, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which the parties intended to enter into for fire and emergency medical services by CFPD in the first instance.

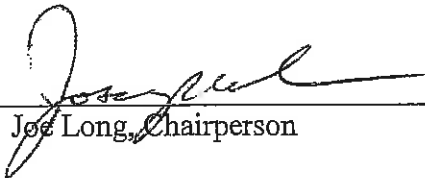
14.10 Nondiscrimination. Each party and every subcontractor shall comply with all applicable federal, state, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101 and 1102. The parties shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall the parties discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations or marital status.

14.11 Survival of Obligations. The rights and obligations of the parties set forth in Sections 5, 7 and 8 shall survive the termination of this Agreement.

14.12 Termination of Administrative Management Agreement. This Agreement supersedes and cancels in all respects the existing Administrative Management Agreement between CFPD and SFD dated July 1, 2005, and upon the effective date hereof, said Administrative Management Agreement shall be deemed terminated and have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the persons thereunto duly authorized as of the date first mentioned.

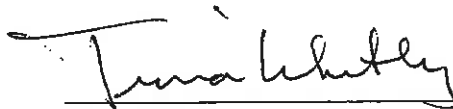
SARATOGA FIRE
PROTECTION DISTRICT

By: 
Joe Long, Chairperson


SANTA CLARA COUNTY
CENTRAL FIRE PROTECTION DISTRICT

By: 
BLANCA ALVARADO VICE CHAIR

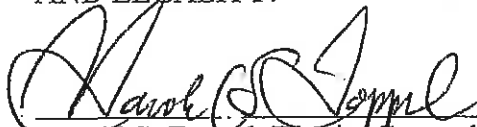
ATTEST:


Trina Whitley, Secretary

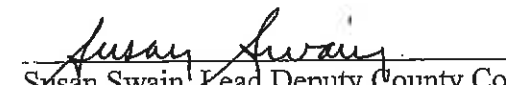
ATTEST:


Phyllis A. Perez, Clerk of the Board

APPROVED AS TO FORM
AND LEGALITY:


Harold S. Toppel, District Counsel

APPROVED AS TO FORM
AND LEGALITY:


Susan Swain, Lead Deputy County Counsel

**FIRST ADDENDUM
TO
FIRE AND EMERGENCY MEDICAL SERVICES AGREEMENT
SARATOGA FIRE PROTECTION DISTRICT AND SANTA CLARA COUNTY
CENTRAL FIRE PROTECTION DISTRICT**

THIS FIRST ADDENDUM TO FIRE AND EMERGENCY MEDICAL SERVICES AGREEMENT, dated 12/17/09, 2009, by and between the SARATOGA FIRE PROTECTION DISTRICT, an independent fire district organized and operating pursuant to the Fire Protection District Law of 1987 of the California Health and Safety Code ("SFD"), and the SANTA CLARA COUNTY CENTRAL FIRE PROTECTION DISTRICT, a fire protection district, organized and operating under the Fire Protection District Law of 1987 of the California Health and Safety Code, ("CFPD"), is made with reference to the following facts:

A. SFD and CFPD are parties to a Fire and Emergency Medical Services Agreement effective as of July 1, 2008 (the "Services Agreement").

B. Section 10.01 of the Services Agreement provides as follows:

10.01 Payment.

Commencing on July 1, 2008, and every fiscal year thereafter SFD shall pay CFPD an amount equal to 90% of the total property taxes apportioned to SFD, inclusive of the Homeowners Property Tax Replacement (HOPTR) and prior property taxes but exclusive of property taxes designated for SFD's general obligation bond, and property taxes attributed to fiscal year 2007-2008. In the event of any change in apportionment laws, for example the elimination of the Educational Revenue Augmentation Fund (ERAF), or changes in tax rates or tax revenues due to annexations or detachments, the 90% factor described in this section shall apply to the new rates or amounts.

C. The State of California has suspended Proposition 1A and intends to borrow property tax revenue from cities, counties and special districts, including SFD and CFPD.

D. If property tax revenues are borrowed, the State will be obligated to repay the loan within three years of borrowing these revenues, plus interest.

NOW, THEREFORE, SFD and CFPD agree as follows:

1. If any property tax revenues that otherwise would be allocated to SFD are borrowed by the State of California, then upon repayment of such loan, and in accordance with the provisions of Section 10.01 of the Services Agreement, 90% of each repayment representing property taxes that would be shared with CFPD, including 90% of the interest thereon, shall be paid to CFPD and the remaining 10% shall be remitted to SFD. If any property taxes are diverted by the State that are designated for SFD's general obligation bond, then upon repayment of such loan, 100% of the each repayment, including all interest thereon, shall be paid to SFD.

2. In the event the term of this Agreement expires before the State repays the subject loans, SFD is still obligated to pay CFPD 90% of each repayment representing property taxes that CFPD is entitled to under the Services Agreement and this Addendum, including 90% of the interest thereon, shall be paid to CFPD .

3. All terms of the Agreement not in conflict with this Addendum shall remain in full force and effect.


4. Each of the undersigned warrants and represents that they have the authority to sign this Addendum on behalf of the respective parties.

5. This Addendum contains the entire agreement between the parties pertaining to the subject matter and fully supersedes all prior written or oral

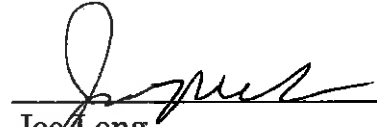
agreements and understandings between the parties pertaining to such subject matter.

IN WITNESS WHEREOF, the Addendum is effective as of the day and year set forth above.

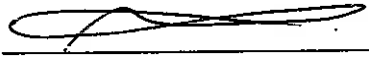
SANTA CLARA COUNTY
CENTRAL FIRE PROTECTION
DISTRICT:


Kenneth L. Waldvogel
Fire Chief
Date: 12/11/09

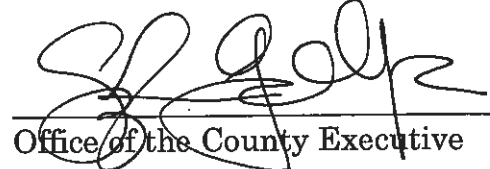
SARATOGA
FIRE PROTECTON DISTRICT:


Joe Long
Chairman
Date: 12/15/09

APPROVED AS TO FORM AND LEGALITY:


Neysa A. Fligor
Deputy County Counsel

APPROVED:


Office of the County Executive
Sylvia Gallegos
11-20-05

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: RESPONSES FROM AGENCIES TO RECOMMENDATIONS IN LAFCO'S
SPECIAL DISTRICTS SERVICE REVIEW REPORT: PHASE 2

STAFF RECOMMENDATION

Accept staff report and provide direction as necessary.

BACKGROUND

Responses Received From the Affected Agencies, Except Lake Canyon Community Services District

As directed by the Commission at its December 4, 2013 meeting, staff requested a written response from each affected agency on how the agency plans to implement the recommendations presented in LAFCO's Special Districts Service Review: Phase 2 Report, along with the time-frame for implementation, and an explanation if the agency does not plan to implement a recommendation. Staff requested that responses be provided by March 14, 2014.

Staff has received written responses from nearly all of the affected agencies, specifically Burbank Sanitary District, Cupertino Sanitary District, County Sanitation District No. 2-3, Lion's Gate Community Services District, Midpeninsula Regional Open Space District, and West Valley Sanitation District. These responses will also be posted on the LAFCO website.

However, staff has not received a response from the Lake Canyon Community Services District. To date, the Lake Canyon CSD has not responded to staff's further attempts to contact the District's General Manager or Board.

Response Expected from Lion's Gate Community Services District (LGCSD) by Meeting

LGCSD's General Manager and Legal Counsel are in the process of trying to determine how best to address the recommendations of the Service Review Report. LAFCO staff and the District's Legal Counsel discussed the fact that the District has not ever filed Form 700s. The District's Legal Counsel is now in direct contact with the FPPC to

determine what disclosure laws apply to the District and why. Additionally, the County Counsel's Office and the District's Legal Counsel are in the process of developing a conflict of interest code for the District. Once the conflict of interest code is approved, then the Form 700s are filed pursuant to the disclosure requirements in the conflict of interest code.

LGCSO indicated their next Board meeting will not be held until March 26th and that they will discuss LAFCO's request at this meeting and then provide their response to LAFCO staff on March 27th. As of the writing of this report, staff has not received the District's response. Staff will provide the District's response to the Commission when it becomes available.

Burbank Sanitary District (BSD) Response (Attachment A)

BSD indicated that the District has or will implement the recommendations of the Service Review Report within the next year. The District anticipates that the requested budget and audited financial statement will be available on the District's website by the end of March 2014 and that the District will adopt policies on expense reimbursements, Brown Act compliance, public request for information, and code of ethics by the end of July 2014. Additionally, the District expects to have a new contract in place with Environmental Commercial Sweeping by the end of April 2014, and is also working with the City of San Jose on a new joint use agreement and is waiting for the City to respond.

LAFCO, BSD, and City of San Jose staffs are all scheduled to meet on April 4th in order to discuss the service and governance structure alternatives identified in the Service Review Report for BSD, identify a preferred alternative, and outline how to proceed. LAFCO staff will update the Commission on the outcome of this meeting.

Cupertino Sanitary District (CSD) Response (Attachment B)

CSD indicated that the District has or will implement the recommendations of the Service Review Report. The District will adopt policies on expense reimbursements, Brown Act compliance, public requests for information and code of ethics by the end of fiscal year 2014. The District, as part of the ongoing update of its master plan, will assess the number of parcels that are on septic systems in order to better quantify potential future demand. The District will continue to work with the City of San Jose in support of a new master agreement for wastewater treatment and a new joint use agreement. The District also indicated that it would meet with WWSO staff in regards to the potential for resource sharing by the end of fiscal year 2014. Lastly, the District will initiate a discussion with the City of Sunnyvale concerning the District's potential annexation of parcels located in the City of Sunnyvale that are receiving sewer service from the District.

County Sanitation District No. 2-3 (CSD 2-3) Response (Attachment C)

CSD 2-3 indicated that the District has or will implement the recommendations of the Service Review Report. The District anticipates that the requested budget, audited financials, rates, and links to the County Board of Supervisors website (which is where

the District's Board meeting agendas and minutes are posted) will be available on the District's website by the end of March 2014. The District is undertaking CCTV inspection of their entire sewer system and recently completed video inspection of all sewer mains within 200 feet of a creek. The inspections will allow the District to accelerate its efforts to plan, fund, and complete capital improvements projects and address structural integrity issues. The District is also working with the City of San Jose on a new joint use agreement.

West Valley Sanitation District (WVSD) Response (Attachment D)

WVSD indicated that the District has or will implement the recommendations of the Service Review Report. However, the District noted that implementation of some recommendations are not within the sole control of the District and will require the cooperation and agreement of all parties to accomplish these tasks. The District notes that it continues to work with both the cities of San Jose and Santa Clara (but primarily the City of San Jose) in regards to updating its 1983 Master Agreement for Wastewater Treatment. The District also stated that they will collaborate further with the Cupertino Sanitary District on issues of joint-concern, such as mutual aid response for situations that would not impede WVSD's ability to respond to emergencies, and outreach material for educating the public on preventing grease from entering the sanitary sewers.

The District recently completed an assessment of the number of parcels that presently rely on private septic systems within the District's boundaries in order to better quantify potential future demand. The District estimates that it has enough capacity to serve these parcels and has a program to encourage owners of private septic systems to abandon such systems and connect to the District's sewer system. The District also clarified that it is not serving APN 393-17-002 and therefore does not see a need to annex this parcel at this time.

Midpeninsula Regional Open Space District (MROSD) Response (Attachment E)

MROSD reported that the District will implement the recommendations of the Service Review Report within the next year. Beginning with the completed Form 700s for 2013, the District will forward copies to the Clerk of the Board of Supervisors in Santa Clara County, San Mateo County, and Santa Cruz County. Additionally, the District will add this requirement to their Conflict of Interest Code upon its biannual review, which will be submitted to the Fair Political Practices Commission by October 2014.

The District also indicated that they plan to take the next fiscal year (April 2014 – May 2014) to lay out the various steps, requirements, and processes for annexing the portion of the Sierra Azul Open Space Preserve and adjacent lands which are located outside of the District's bounds and within its sphere of influence. It is anticipated that Board authority to initiate the formal annexation process and actual preparation of the application would occur in the following fiscal year (April 2015 – March 2016).

No Response from Lake Canyon Community Services District (LCCSD)

LCCSD did not respond to LAFCO's January 29, 2014 letter concerning implementation of the recommendations of LAFCO's Special Districts Service Review: Phase 2. LAFCO staff's recent attempts to contact the District's staff or officials by email and phone have not resulted in a response. As you may recall, Policy Consulting Associates also had a difficult time contacting the District during LAFCO's Special Districts Service Review. The Service Review Report included several recommendations that the District should implement in order to bring the District into legal compliance and to improve the accountability and transparency of the District, including Board members and District staff filing outstanding Form 700s and conducting biennial ethics training. Staff has informed the Clerk of the County Board of Supervisors and County Counsel regarding these issues so that they can be addressed through the County's processes. The County indicated that filers have until April 1st to complete their Form 700 filing. Thereafter, the County provides warnings to those who have not completed their Form 700 and notifies the FPPC of any outstanding Form 700 filings after June 1st.

County of Santa Clara's Response

The County Controller-Treasurer's Department reported that they have received copies of Cupertino Sanitary District's, County Sanitation No. 2-3's, and Lake Canyon CSD's annual budgets. The Clerk of the County Board of Supervisors reported that they will contact Lake Canyon Community Services District in order to facilitate their Form 700 filings. The Office of the County Counsel indicated that they will contact the Lion's Gate Community Services District (LGCSDD) in order to help the District develop a conflict of interest code. Once this issue is addressed, the County Clerk of the Board can then contact the LGCSDD in order to facilitate their Form 700 filings.

NEXT STEPS

LAFCO staff will track each agency's implementation efforts and provide updates to the Commission, as necessary.

ATTACHMENTS

- Attachment A: Burbank Sanitary District's Response (Richard Tanaka, District Manager and Engineer)
- Attachment B: Cupertino Sanitary District's Response (Richard Tanaka, District Manager and Engineer)
- Attachment C: County Sanitation District No. 2-3's Response (Richard Tanaka, District Manager and Engineer)
- Attachment D: West Valley Sanitation District's Response (John Newby, District Manager and Engineer)
- Attachment E: Midpeninsula Regional Open Space District's Response (John Newby, District Manager and Engineer)



Burbank Sanitary District
20863 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014
Phone (408) 255-2137 Fax (408) 253-5173
www.burbanksanitary.org
"Serving the Burbank Community since 1940"

Page 2

- Negotiate a new joint use agreement with City of San Jose

We are working with City of San Jose for this new agreement. We have done everything possible on our end. We are waiting for City to respond.

- Negotiate a new contract with Environmental Commercial Sweeping

We anticipate new contract to be in place by end of April 2014.

- Governance Structure Options

BSD supports your recommendation to discuss service and governance structure with City of San Jose. The initial meeting with City of San Jose is planned to be held in early March 2014.

If you have any questions, please do not hesitate to call me.

Sincerely,

MARK THOMAS & CO. INC.

A handwritten signature in black ink, appearing to read 'Richard Tanaka', is written over a faint circular stamp.

Richard Tanaka
District Manager-Engineer



Burbank Sanitary District

20863 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014

Phone (408) 255-2137 Fax (408) 253-5173
www.burbanksanitary.org

"Serving the Burbank Community since 1940"

February 18, 2014

Ms. Neelima Palacherla
LAFCO Executive Officer
70 West Hedding Street, 11th Floor
San Jose, CA 95110

RE: Implementation of the Recommendations of LAFCO's Special Districts Service Review

Dear Ms. Palacherla:

We are in receipt of your letter dated January 29, 2014 with your comments and your request for our responses before March 14, 2014.

Our responses to the key points raised in your letter are as follows:

- Include budget and audited financial statement on its website.

We will include these two items on our website by end of March 2014.

- Adopt policy on expense reimbursements

We will work on a new policy on reimbursement expenses, to be completed by end of July 2014.

- Adopt policies specific to Brown Act compliance, public request for information and code of ethics

We will work on a new policy on these compliances by end of July 2014.

- Work with Cities of San Jose and Santa Clara related to treatment plant master agreement

We are not part of the master agreement, but we do have a major interest in the development of the master plan for the treatment plant as well as a new agreement between San Jose/Santa Clara and other three tributary agencies (WVSD, CUSD and Milpitas).

**AGENDA ITEM # 9
Attachment B**

DISTRICT MANAGER-ENGINEER
MARK THOMAS & COMPANY, INC.
RICHARD K. TANAKA

DISTRICT COUNSEL
ATKINSON FARASYN, LLP.
HAROLD S. TOPPEL



BOARD OF DIRECTORS
WILLIAM A. BOSWORTH
JOHN M. GATTO
STEVE C. ANDREWS
WENDELL H. KERR, JR.
ANGELA S. CHEN

20863 STEVENS CREEK BOULEVARD, SUITE 100
CUPERTINO, CALIFORNIA 95014-2154
(408) 253-7071 PHONE • (408) 253-5173 FAX

www.cupertinosanitarydistrict.org

February 18, 2014

File: CSD – MOP #14-204

Ms. Neelima Palacherla
LAFCo Executive Director
70 West Hedding Street, 11th Floor
San Jose, CA 95110

Subject: District Response to Your Letter of January 29, 2014 regarding special districts

Dear Ms. Palacherla:

We are in receipt of your letter dated January 29, 2014 with your comments and your request for our responses before March 14, 2014.

Our responses to the key points raised in your letter are as follows:

- File a copy of annual budget with the County Auditor

Annual Budget (2013-14) was submitted to John Cruz, Santa Clara County Controllers' Office on July 16, 2013.

- Adopt a policy on expense reimbursements

We will adopt expense reimbursement policy prior to end of fiscal year 2014.

- Adopt policies specific to Brown Act compliance, public requests for information and code of ethics

We will adopt these policies prior to end of fiscal year 2014

- Assess number of parcels that are on septic systems in order to better quantify potential future demand

This work is part of the on-going updating of the master plan. This work will be completed prior to end of fiscal year 2016.

- Update District Master Plan from 1964

It is true that last official master plan was completed in 1964. However, District has annually been updating the infrastructure plans to show revisions from the 1964. District is undertaking updating the master plan, which first step, Inflow/ Infiltration Study, will be completed by end of fiscal year 2015.

- City of San Jose Master Agreement

District has requested on many occasions for a new master agreement. District will continue to work with City of San Jose for a new agreement.

- Expedite contract negotiation with City of San Jose for a new joint use agreement

A verbal agreement was reached back in 2013. We are awaiting for City to provide us with a new agreement.

- Governance Structure's Option

District and WVSD are both proponent of a new master agreement. District staff will meet with WVSD staff in regards to potential for resource sharing prior to end of this fiscal year.

- Jurisdictional Boundary Change

We have reviewed your recommendation for jurisdictional boundary change for Parcels 326-26-014, 323-26-016, 323-26-033, 323-26-034 and 323-26-007 (not 077) to City of Sunnyvale from CUSD. Currently, Parcel 323-26-007 is fronting Homestead Road and is connected to our main. Other Parcels, 323-26-014, 323-26-016, 323-26-033 and 323-26-034 are fully developed and are connected to City of Sunnyvale system. We will initiate a discussion with City of Sunnyvale for a jurisdictional boundary change for these four parcels only and not 323-26-007, which is currently serviced by CUSD.

Page 3

If you have any questions or comments, please do not hesitate to call me.

Yours very truly,

MARK THOMAS & COMPANY, INC.
District Manager-Engineer

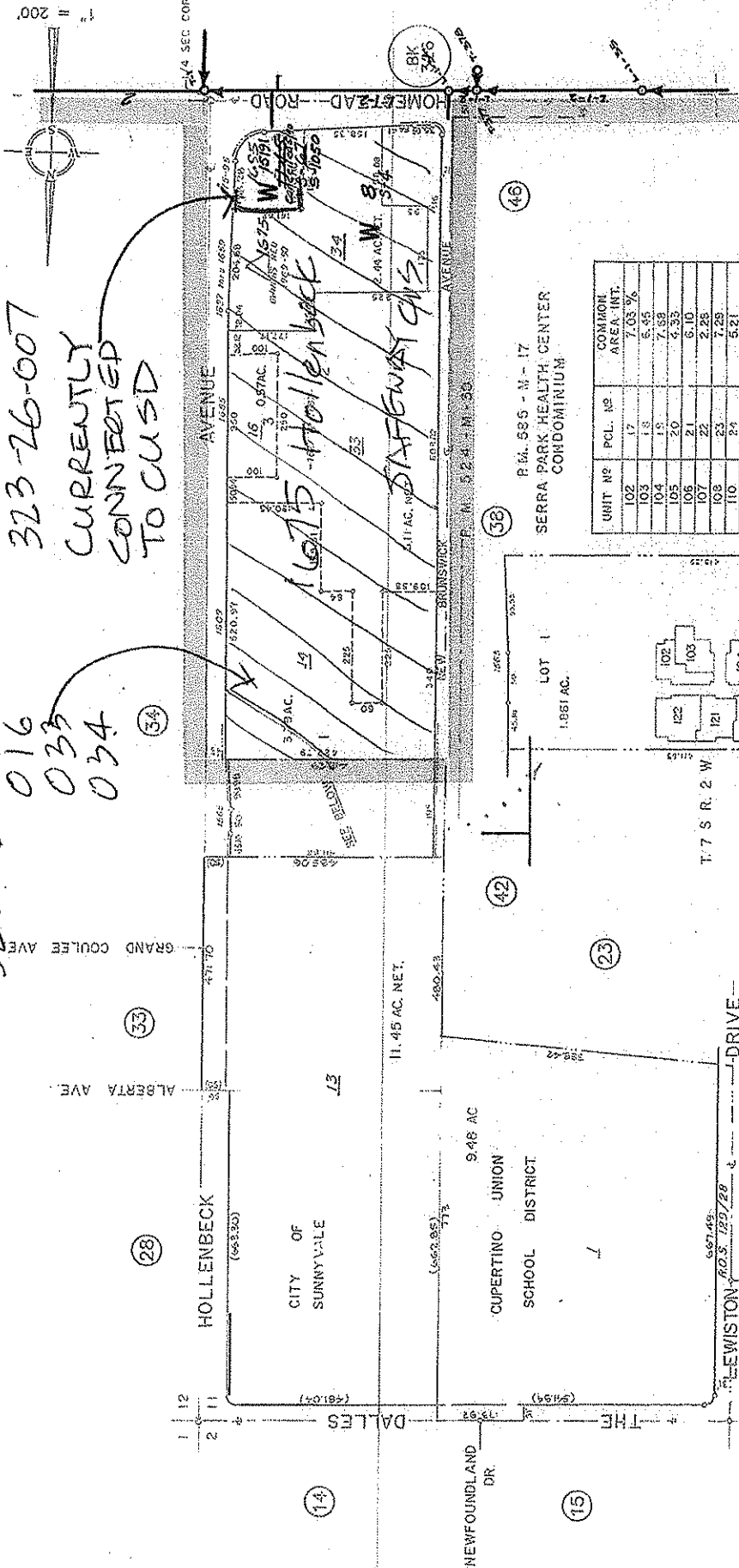
A handwritten signature in black ink, appearing to read 'R. Tanaka', written over a circular scribble.

Richard K. Tanaka

ALL SERVED BY SUNNYVALE

323-26-014
016
033
034

323-26-007
CURRENTLY
CONNECTED
TO CUSD



UNIT N°	PCL. N°	COMMON AREA INT.
102	17	7.03 %
103	18	6.95 %
104	19	7.88 %
105	20	4.33 %
106	21	6.10 %
107	22	2.28 %
108	23	7.28 %
110	24	5.21 %
112	25	8.37 %
114	26	7.11 %
115	27	5.83 %
116	28	5.63 %
118	29	4.72 %
119	30	7.72 %
121	31	6.25 %
122	32	8.01 %

BY ACT. 2002 CH. 25
LAWRENCE E. STONE — ASSESSOR
Calculated map for assessment purposes only.
Computed under R. P. Code, Sec. 327.
Effective Roll Year 2011-2012.



COUNTY SANITATION DISTRICT NO. 2-3
OF SANTA CLARA COUNTY

COUNTY SANITATION DISTRICT No. 2-3
of SANTA CLARA COUNTY
Office of the District Manager and Engineer

Mark Thomas & Company, Inc.
20863 Stevens Creek Blvd., Suite 100, Cupertino, CA 95014
(408) 255-2137 fax (408) 253-5173
www.csd2-3.org

AGENDA ITEM # 9
Attachment C

February 25, 2014

File: CSD No. 2-3
Letter #14-100

Ms. Neelima Palacherla
LAFCO Executive Officer
70 West Hedding Street, 11th Floor
San Jose, CA 95110

RE: Implementation of the Recommendations of LAFCO's Special Districts Service Review

Dear Ms. Palacherla:

We are in receipt of your letter dated January 29, 2014 with your comments and your request for our responses before March 14, 2014.

Our responses to the key points raised in your letter are as follows:

- Address structural integrity issues that have resulted in a particularly high rate of sewer system overflows

District is now undertaking CCTV of the entire sewer system. Our commitment is to complete CCTV of all sewer system within 200 feet of the creek and rehabilitate any and all PAACP rated 5. Within 7 years, entire CCTV will be completed with a 5 year CIP to complete/rehabilitate district owned sewer main. District is already programmed \$500,000 CIP program and will continue this program for at least next 5 years.

- Accelerate capital improvement schedule, based on settlement agreement with Northern California River Watch

District has completed CCTV within the 200 feet area from the creek. District is now under design and anticipate going out to construction this summer.

- Accelerate inspection plans in order to properly address the issues the system is facing

District is committed to CCTV the entire system within next 7 years.



COUNTY SANITATION DISTRICT NO. 2-3
OF SANTA CLARA COUNTY

COUNTY SANITATION DISTRICT No. 2-3
of SANTA CLARA COUNTY
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Page 2

- Include rates, budget and audited financial on website, include linkage to County Board of Supervisors

This will be completed by March 2014.

- File a copy of annual budget with the County Auditor

Annual Budget (2013-14) was submitted to John Cruz, Santa Clara County Controllers' Office on July 16, 2013.

- Work with City of San Jose and Santa Clara to update the agreement

District will continue to work with City of San Jose for a new agreement.

- Negotiate a new joint use agreement with City of San Jose

We are working with City of San Jose for this new agreement. We have done everything possible on our end. We are waiting for City to respond.

Should there be questions, or if you have need for additional information, please do not hesitate to call me.

Yours very truly,
MARK THOMAS & COMPANY INC.

A handwritten signature in black ink, appearing to read 'Richard K. Tanaka'.

Richard K. Tanaka
District Manager-Engineer



AGENDA ITEM # 9
Attachment D

February 25, 2014

Via E-mail and U.S. Mail

Local Agency Formation Commission of Santa Clara County
Attn: Neelima Palacherla, LAFCO Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

**Re: Implementation of Recommendations of LAFCO's Special Districts Service
Review: Phase 2 Sphere of Influence Updates**

Dear Ms. Palacherla:

West Valley Sanitation District ("District") has reviewed LAFCO's Special Districts Service Review: Phase 2 Report pertaining to the District and the associated recommendations that the District should implement in order to improve its services as well as accountability and transparency. The purpose of this letter is to provide responses to the recommendations summarized in Attachment A of your letter dated January 29, 2014, which are as follows:

- Assess the number of parcels that presently rely on private septic systems within the District's bounds, in order to better quantify potential future demand.
- Work with the cities of San Jose and Santa Clara to update the Master Agreement with regard to the treatment plant in the near future. The District has indicated that it would like to address the following issues: 1) define how debt payments related to the treatment plant are addressed as areas are annexed by the City of San Jose and detached from WVSD, 2) define how treatment capacity should be transferred if areas are reversely annexed into WVSD and detached from the cities, and 3) describe in detail the extent of the District's capital obligations with regard to master plan improvements at the plant.
- Collaborate further with Cupertino Sanitary District on issues of joint-concern, such as negotiations with the cities of San Jose and Santa Clara, as well as identify any potential for resource sharing.
- Apply to LAFCO to annex Area K (APN 393-17-002), as Area K is currently receiving services from the WVSD.

LAFCO also requests that the District provide an explanation if it does not plan to implement any of the above recommendations. While it is the District's desire to work with the cities of San Jose and Santa Clara as described in the second bullet point above, implementation of these recommendations is not within the sole control of the District, and will require the cooperation and agreement of all parties to accomplish these tasks.

Assess the number of parcels that presently rely on private septic systems within the District's bounds, in order to better quantify potential future demand.

Attached for your information is the District's assessment of the number of parcels currently relying on private septic tanks within our service area, as well as estimated potential future demand (See Attachment A). The District will continue to monitor these parcels as individual property owners seek connection to the District's collection system. Based on its assessment, the District anticipates that it has enough capacity to acquire the estimated future connections from abandoned septic systems. In fact, the District encourages such connections through its Septic System Abandonment Program, in which the District provides low interest loans to property owners of private septic systems that wish to abandon such systems, construct sewer system extensions (if necessary), and connect to the District.

Work with the cities of San Jose and Santa Clara to update the Master Agreement with regard to the treatment plant in the near future.

The District continues to work with both the cities of San Jose and Santa Clara (but primarily the City of San Jose) in regards to updating its 1983 Master Agreement for Wastewater Treatment ("Master Agreement"). Because the issues pertaining to the Master Agreement are complex and intertwined with the City of San Jose's need to finalize the engineering and financial plans for the Plant Master Plan, the District expects this negotiation process to take place over the next few years. Again, updating the Master Agreement is a joint effort among three public agencies, and will require cooperation and agreement from all parties in order to accomplish these tasks.

In a letter to San Jose Mayor Chuck Reed, the District strongly asserted that a comprehensive amendment to the Master Agreement is necessary in order to address implementation of the Master Plan for the San Jose/Santa Clara Regional Wastewater Facility, and requested that specific sections of the Master Agreement be updated, including provisions related to debt payments and treatment capacity upon the annexation and detachment of property, as well as the District's capital obligations to pay for future improvements associated with the Plant Master Plan. A copy of this letter, and the City of San Jose's response, are attached hereto as Attachments B and C, respectively.

As indicated in its response, the City of San Jose believes that it is premature to amend the Master Agreement until a specific development project comes forward. Over the next few months, San Jose staff expects to have more detailed information available for the District, as well as other tributary agencies, regarding the anticipated size, scope, sequencing, timing, and cost of the Plant Master Plan's capital projects. Once this validation process is complete, the District hopes to gain a better understanding of its potential capital cost obligations, and will use this information to work with the cities of San Jose and Santa Clara to update the Master Agreement accordingly.

The City of San Jose also acknowledged that its staff is “in the process of researching the annexation concerns raised by West Valley staff, and will provide a status update to West Valley staff under separate cover.” Although the City of San Jose did not specify a timeline for providing this additional information with respect to annexation, the District looks forward to addressing these issues with the City as soon as possible. Once the District receives and reviews this information, we will contact San Jose staff at our earliest convenience to discuss the process for amending Part VIII(B) and Exhibit G of the Master Agreement.

Collaborate further with Cupertino Sanitary District on issues of joint-concern.

The District continues to collaboratively work with Cupertino Sanitary District as a sister tributary agency to the San Jose/Santa Clara Regional Wastewater Facility. As stated above, Cupertino is also participating in the joint discussions with San Jose in an effort to reach agreement with all parties involved. Along with these discussions, the District and Cupertino Sanitary District will look for opportunities to share resources in an effort to improve efficiencies and reduce cost for our rate payers such as mutual aid response for situations that would not impede WVSD’s ability to respond to emergencies and outreach material for educating the public on preventing grease from entering the sanitary sewers.

Apply to LAFCO to annex Area K (APN 393-17-002), as Area K is currently receiving services from the WVSD.

We have reviewed our records regarding Area K and confirmed it is currently an “island” parcel owned by the San Jose Water Company that is located outside of the West Valley Sanitation District and not receiving services from our agency. Based on this, we do not see a need to annex this parcel into the service area. We apologize for not catching this fact during our opportunity to provide review and comments on the service review report.

Please let me know if you have any questions.

Sincerely,



Jon Newby
District Manager and Engineer
West Valley Sanitation District

Attachment:

- A. District’s Assessment of the Number of Parcels on Private Septic Tanks
- B. WVSD Letter Dated November 4, 2013
- C. City of San Jose Response Dated December 16, 2013

Cc:

West Valley Sanitation District Board of Directors
LAFCO Members

Attachment A

West Valley Private Septic Systems					
Type	Number of Parcels	Flow GPD	BOD lbs/day	Suspended Solids lbs/day	Ammonia lbs/day
Residential	726	133,584.00	278.379	278.379	38.973
Commerical	22	4,048.00	8.436	8.436	1.181
Total	748	137,632.00	286.815	286.815	40.154



November 4, 2013

Hon. Mayor Chuck Reed
City of San Jose
200 E. Santa Clara St. (10th Floor)
San Jose, CA 95113-1905

Re: Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara, and West Valley Sanitation District

Dear Mayor Reed:

As you know, the West Valley Sanitation District of Santa Clara Valley ("District") is one of the tributary agencies to the San Jose/Santa Clara Water Pollution Control Plant ("WPCP").¹ The District has a significant and long-term interest in the WPCP,² and has thus commented about the WPCP Master Plan to the City of San Jose ("City") through the Draft EIR, as well as through its participation on TPAC. The WPCP Master Plan contemplates substantial improvements and upgrades to the WPCP, many of which the District supports. However, a fundamental, overarching problem remains unaddressed that neither the CEQA process nor TPAC can resolve: the proposed changes to the WPCP necessitate, in the opinion of my Board of Directors, a comprehensive amendment to the District's 1983 Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara ("Master Agreement").

The current form of the Master Agreement does not contemplate the magnitude of the projects contained in the WPCP Master Plan. Essential provisions related to financing these projects, debt service, cost allocation, and buffer land are ambiguous, or altogether missing. In other words, the Master Agreement is not an adequate vehicle for implementing the WPCP Master Plan going forward and must be updated to clarify the parties' respective rights and responsibilities. Please find attached to this letter a summary of the major provisions that we believe need to be added to and/or updated in the Master Agreement.

¹ The District provides wastewater collection and disposal services for the Cities of Campbell, Monte Sereno, Los Gatos, much of Saratoga, and some unincorporated areas of the Santa Clara County within the District boundary. The District serves approximately 109,000 persons with a service area of approximately 29.8 square miles. The pipeline collection system maintained and operated by the District consists of 414 miles of main and trunk sewers and 209 miles of sewer laterals, for a total of 623 miles of sewer lines.

² Under the District's 1983 Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara ("Master Agreement"), the District owns 12.052 million gallons per day of the WPCP capacity, shares 6.773% of capital costs of WPCP future improvements, and shares 8.747% of WPCP operation and maintenance costs, all of which demonstrates the District's substantial investment in the WPCP.

The District's Board of Directors would like to begin an open dialogue with the City about amending the Master Agreement, with the hope and expectation that we reach an agreement before the City begins implementing the WPCP Master Plan. The District has always worked with the City in good faith and continues to support the City's goals for wastewater treatment. However, if the City expects the District to financially contribute to the projects contemplated in the WPCP Master Plan, then a reasonable and reliable amendment must be negotiated. Proceeding without such an amendment will likely cause a financial hardship to the District's ratepayers and drop the District's capital reserves below fiscally prudent levels.

Given the City's aggressive implementation schedule, time is of the essence in negotiating a comprehensive update to the Master Agreement with long-term benefits for all parties. A minor amendment or several piecemeal amendments in the short-term would not go far enough. To continue this discussion, please contact the District's Manager and Engineer, Jon Newby, at your earliest convenience. We look forward to working with you and City staff.

Sincerely,

A handwritten signature in black ink that reads "Ken Yeager". The signature is written in a cursive, flowing style.

Ken Yeager, Chair
West Valley Sanitation District

cc:

Kerrie Romanow, City of San Jose
Mayor Jamie Matthews, City of Santa Clara
Julio J. Fuentes, City of Santa Clara

**Summary of Major Provisions that could be added to
and/or Updated in Master Agreement with West Valley Sanitation District**

PART I: DEFINITIONS

The Master Agreement has a definition for "First Stage Expansion." The WPCP Master Plan contemplates a major expansion of the Plant's facilities, and therefore deserves its own definition of this new "Second Stage Expansion" for easy reference throughout the Master Agreement.

The Master Agreement should clearly define "Improvements" or "Future Improvements." The defined term "Intermediate-Term Improvements" associated with the 1980's is no longer relevant, and the Master Agreement otherwise lacks any definition for any current or future improvement. This is problematic as the City begins to implement all of the significant and major improvements to the Plant under the WPCP Master Plan.

Likewise, the term "Major Rehabilitation" should be separately defined and distinguished from the term "Improvements." The term "Major Rehabilitation" is currently used in the definition of "Replacement Costs" and it is unclear how "Major Rehabilitation" projects are different from "Plant expansions or upgrades to meet future user demands," as well as Improvements generally. These definitions must be added for clarity.

PART IV and EXHIBIT C: LAND

The WPCP Master Plan considers development of new land uses on the existing WPCP property. However, the District needs to understand more clearly how development of buffer land relates to its sewer customers and wastewater treatment specifically, and how this would fit into the Master Agreement generally. Part IV and Exhibit C of the Master Agreement discuss land use, but only in the context of land purchases and the distribution of revenue upon the sale, lease, or rental of Plant property. With respect to the proposed development of buffer land, however, Part IV and Exhibit C have little to no relevance as to how any benefits and/or impacts of such development will be distributed to the District (and other tributary agencies, for that matter). For example, how will tax revenue be distributed? How will mitigation of the development's impacts be addressed and funded? The Master Agreement is silent on these and many other issues raised regarding the development of buffer land, and therefore needs to be amended.

PART V: AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

Part V largely relates to payments for existing and additional capacity rights, future improvements, and operation and maintenance expenses of the Plant. In particular, section

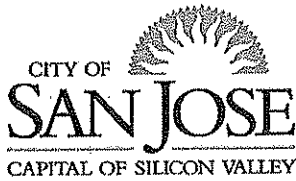
V(C) [concerning future improvements] is inadequate to deal with the scope and magnitude of major improvements proposed in the WPCP Master Plan. This section is vague as to the type of improvements contemplated and is also entirely silent on how these improvements would be financed through debt service. The Master Agreement warrants a new section specifically devoted to debt service obligations for the WPCP Master Plan. Proceeding with implementing the WPCP Master Agreement without a complete and clear understanding of the parties' debt service obligations would create disagreements, misinterpretations, and other issues in the future. Amending the Master Agreement to provide clarity as to financing will benefit all parties involved.

The District is also very concerned with how the costs of these "future improvements" will be allocated among the tributary agencies. Payments for future improvements are currently based on the District's existing capacity rights, essentially its percentage ownership of flow, BOD, suspended solids, and ammonia multiplied by the investment cost for each loading parameter. The District's current capacity rights are more heavily weighted towards flow. However, the District anticipates that its weighted average will decrease upon implementation of the WPCP Master Plan, because the improvements appear to focus on BOD, suspended solids, and ammonia, and less on flow. As such, using the existing capacity rights method is no longer a one-size-fits-all solution for cost allocation of future improvements. To obtain the most equitable distribution of costs between the City and tributary agencies, an engineering study is necessary to determine the cost of each loading parameter for each anticipated improvement. The Master Agreement must be amended to reflect the proper calculation of the District's participation in the costs of a given future improvement. If this engineering study is not performed, then the District's share of costs would be unnecessarily inflated due to the District's ownership of flow.

In addition, the Master Agreement should be amended – in Part V or elsewhere – to provide the District an option to participate in capital projects that are unrelated to wastewater treatment, capacity, or operation and maintenance expenses of the Plant, especially if a given project has no financial benefit to the District. A primary example is the WPCP Master Plan's proposed improvements to buffer land. Land development has little to no relationship to the provision of reliable and cost-effective wastewater treatment, capacity, or O&M. Other examples include City art projects and other nonessential aesthetic projects that are used to enhance the Plant's architecture or building design beyond code and discharge permit requirements. A similar opt-in provision is found in Section III(B) of the Master Agreement, where the District may elect to participate in an expansion of capacity. As such, the District should have the option to participate in financing the development of buffer land and other projects unrelated to wastewater treatment, capacity, and O&M, much like the District has the option to participate in the Plant's expansion of capacity.

PART VIII(B): ANNEXATION AND DETACHMENT

Although unrelated to the WPCP Master Plan, Part VIII(B) related to annexation and detachments also requires an update. The District's Counsel recently discussed this provision with the City's Counsel. Part VIII(B) needs to address future circumstances in which the District annexes property detached from the City. The Master Agreement only accounts for annexation and detachment in the other direction, from the District to the City. In addition, when property is detached from the District, this section should also address the potential Proposition 218 and Proposition 26 issues that may arise from the District's rate-setting and corresponding debt service obligations based on a revenue source that no longer exists.



*Environmental Services Department
Director's Office*

December 16, 2013

The Honorable Ken Yeager, Chair
West Valley Sanitation District
100 East Sunnyoaks Ave.
Campbell, CA 95008-6608

Re: Master Agreement and Capital Program for San Jose/Santa Clara Water Pollution Control Plant

Dear Chair Yeager:

Thank you for your letter regarding the capital program for the San Jose/Santa Clara Water Pollution Control Plant (Plant). As you may be aware, the cities of Santa Clara and San Jose adopted the Plant Master Plan on December 3, 2013, and November 19, 2013, respectively. I look forward to our agencies working cooperatively to ensure the future operation of the Plant for the mutual benefit of our customers.

We want to begin our response to your letter by noting that the majority of the capital projects envisioned in the Plant Master Plan are to address the longstanding deferral of much needed rehabilitation and renovation of existing facilities. Over the years, the City of San Jose, as the administering agency, has engaged in similar rehabilitation projects, based on the terms of the 1983 Master Agreements with the tributary agencies. The 1983 Master Agreements between San Jose/Santa Clara and the tributary agencies have provided the parties with the flexibility needed to address the critical needs of the Plant infrastructure in a timely fashion.

When the parties have agreed to modifications to the Master Agreements in the past, it was for limited purposes. For example, the parties agreed to supplemental financing agreements in 1983 for the intermediate improvements, and to amendments to the master agreements in 1995 for the South Bay Water Recycling Program (SBWR) due to changes in the National Pollutant Discharge Elimination System permit (NPDES) requirements. The 1983 financing agreements were required to memorialize the financing obligations of the parties, and the 1995 amendments were made to confirm that payment for the SBWR project would be based on flow capacity only, and not on the four parameters used for other capital projects.

**Master Agreement and Capital Program for
San Jose/Santa Clara Water Pollution Control Plant
Page 2**

We also want to reflect that San Jose staff has always worked diligently to provide information to West Valley and other tributary agencies concerning the Plant capital program. San Jose staff meets on a monthly basis with staff from Santa Clara and the tributary agencies including West Valley Sanitation District to review in detail the purpose of the all pending projects, and budget requirements prior to consideration by the Treatment Plant Advisory Committee. If West Valley has questions or concerns about specific projects, we find that it is more effective to have this discussion at the staff level, and to focus on the purpose of a specific project and how that project addresses the tributary agency's wastewater. San Jose, Santa Clara and tributary agency staff have also discussed at great length the importance of each agency reserving sufficient funds to pay for upcoming capital projects, or being prepared to make appropriate rate adjustments to accommodate anticipated increases in capital costs.

Within the next few months, San Jose staff expects to have more detailed information available for Santa Clara, West Valley and other tributary regarding the anticipated costs on the Plant Master Plan capital projects. The Plant Capital Program management team is scheduled to complete a validation process in February 2014 which will fine tune the size, scope, sequencing, timing, and cost of the capital projects. Once this process is complete, each party will have a better understanding of their potential capital cost obligations.

Even without the validation information, San Jose anticipates that it will have sufficient reserves for its share of near term projects. San Jose was able to set aside sufficient reserves due to rebudgeting savings from the capital budget each year. West Valley also had the same opportunity to set aside sufficient reserves by rebudgeting its savings from the previous fiscal years. We understand that despite the opportunity to reserve prior years' savings, West Valley may not currently have adequate reserves for its share of near term projects.

It should be noted that the near term project costs may not be high enough to justify the cost of a major financing. However, San Jose remains committed to coordinating with West Valley and all agencies that use the Plant, to determine whether financing will be needed to meet the capital cost obligations for both near and long term projects. We agree that if an agency needs to finance its share of project costs, as opposed to paying for the costs in the years they are budgeted, supplemental financing agreement(s), or master agreement amendment(s) would need to be executed to memorialize the repayment obligation of each party for the financing of these capital costs.

**Master Agreement and Capital Program for
San Jose/Santa Clara Water Pollution Control Plant
Page 3**

We also want to assure West Valley that tributary agencies are not expected to contribute towards the economic development on the Plant lands that is unrelated to operation of the Plant. The Master Agreements provide the tributary agencies with the opportunity to provide input through TPAC when TPAC makes recommendations on potential sale or lease of Plant buffer lands. In addition, the Master Agreement provide for revenue sharing; and San Jose and Santa Clara have a history of sharing both leasehold and property sale revenue with the tributary agencies, without amending the Master Agreements. Until a specific development project comes forward, it would be speculative to address whether and how it might be desirable to amend the Master Agreements.

In closing, we briefly want to acknowledge West Valley's concern with the annexation provisions related to its Master Agreement. These provisions are unique to the Master Agreement with West Valley. San Jose staff is in the process of researching the annexation concerns raised by West Valley staff, and will provide a status update to West Valley staff under separate cover.

I hope this response has clarified the issues raised in your letter dated November 4, 2013. Please do not hesitate to contact me with further questions or concerns.

Sincerely,



Kerrie Romanow, Director
Department of Environmental Services
City of San Jose

cc: Honorable Mayor Chuck Reed
Mayor Jamie Matthews, City of Santa Clara
Chuck Page, West Valley Sanitation District
Jon Newby, West Valley Sanitation District
Julio J. Fuentes, City of Santa Clara



Regional
OpenSpace

Midpeninsula Regional Open Space District

AGENDA ITEM # 9 Attachment E

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

March 13, 2014

Ms. Neelima Palacherla
LAFCO Executive Director
Local Agency Formation Commission of Santa Clara County
70 West Hedding Street
11th Floor, West Wing
San Jose, CA 95110
neelima.palacherla@ceo.sccgoc.org

RE: Response to LAFCO's Service Review and Implementation Recommendations

Dear Ms. Palacherla,

Thank you for your letter dated January 29, 2013, in which you outline two recommendations for Midpeninsula Regional Open Space District (District) that are a direct result of the recently completed 2013 Special Districts Service Review. As you have requested, this letter serves to provide the District's response on how this agency will implement the two identified LAFCO recommendations, including the associated timeframe. Details are provided below:

Recommendation #1 – Accountability and Transparency

Per LAFCO, the following recommendation would improve the accountability and transparency of the District:

As a courtesy, the District should submit copies of its Form 700s with each of the counties in which it has territory.

RESPONSE: Current District policy requires forwarding copies of completed Form 700s to the Fair Political Practices Commission. Beginning with the completed Form 700s for 2013, the District will forward copies to the Clerk of the Board of Supervisors in Santa Clara County, San Mateo County, and Santa Cruz County. This requirement will be added to the District's Conflict of Interest Code upon its biannual review, which will be submitted to the Fair Political Practices Commission by October 1, 2014.

Recommendation #2 – Governance Structure

LAFCO also recommends the following:

Apply to LAFCO of Santa Clara County for annexation of the portion of Sierra Azul Open Space Preserve located outside of the District's bounds and within its sphere of influence (SOI) to align the District's boundary with the SOI, as the District has initiated capital planning efforts within that portion of the preserve in the form of trails and amenities, is conducting regular maintenance, and offers park ranger services to that area.

RESPONSE: Currently, the District owns and manages a numbers of properties that lie outside its jurisdiction, but within its sphere of influence along its southernmost reach, in and around Sierra Azul Open Space Preserve. Lands owned and/or managed by the District in fee title or as easement within this zone total 8,846 acres, which encompass approximately 71.7% of the total land area. The remaining 3,500 acres of land, of which the majority is owned by San Jose Water Company, are distributed across 74 separate parcels. District land in this zone includes the Mount Umunhum area of Sierra Azul Open Space Preserve, a portion of which is open to the public for hiking, equestrian, and mountain bicycling use. Additional trails and a new staging/parking area are currently underway. Included in this zone is also the future opening of the Mount Umunhum summit to the public, which is currently scheduled to occur as early as 2017.

It has been the District's intention to make its jurisdiction boundary and sphere of influence boundary coterminous. In fact, this is a recommendation that is included in the Draft Sierra Azul Open Space Preserve Master Plan. Due to competing priorities over the last five plus years, the District has been unable to complete the Master Plan project, which would have set in place District Board authority to begin the annexation process. In light of Santa Clara County LAFCO's recent recommendation, the District will proceed with researching the annexation process ahead of completing the Master Plan project. The District plans to take the next fiscal year (April 2014 – March 2015) to lay out the various steps, requirements, and processes for the annexation. Included as part of this pre-planning effort would likely be a discussion that is held amongst the various County LAFCOs to determine which LAFCO would act as the Lead and to gain full concurrence regarding the role and involvement of the other LAFCOs in this annexation process. District Board authority to initiate the formal annexation process as well as the actual preparation of an application would occur the following fiscal year (April 2015 – March 2016).

If you have any questions regarding this letter, please feel free to contact Ana Ruiz, Assistant General Manager via phone at (650) 691-1200 or via email at aruiz@openspace.org. We appreciate your thorough review of our Service Plan and your recommendations for improvements.

Sincerely,



Stephen E. Abbors
General Manager

cc: District Board of Directors
Jennifer Woodworth, District Clerk
Santa Clara County LAFCO
Santa Cruz County LAFCO

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: CALAFCO REGIONAL FORUMS

STAFF RECOMMENDATION

Accept report and provide direction.

BACKGROUND

The California Association of Local Agency Formation Commission (CALAFCO) is a non-profit association dedicated to providing member LAFCOs with educational and technical resources. CALAFCO coordinates statewide activities, serves as a resource to the Legislature and other bodies, and offers structure for information sharing. LAFCO of Santa Clara County is a member of CALAFCO.

In 2010, CALAFCO created four regions within the Association – Central, Coastal, Northern, and Southern for the purpose of Board representation. The CALAFCO Board of Directors is comprised of County, City, Special District, and Public members from each region. LAFCO of Santa Clara County is part of the Coastal Region, which includes 15 LAFCOs (Attachment A: CALAFCO regional map).

In November 2013, CALAFCO's Board discussed the idea and expressed support for regional forums. The Board encouraged interested LAFCOs to explore creating regional forums that would be hosted by LAFCOs within each region. Ventura LAFCO, also a member of the Coastal region, suggests in the attached letter that Coastal LAFCOs consider organizing one pilot regional forum to share our collective knowledge and ideas on how to address common challenges (Attachment B). Potential topics might include emerging issues; best practices; or water, drought, and future growth.

It is requested that the Commission provide feedback to staff on whether the Commission would support and participate in regional forums.

ATTACHMENTS

Attachment A: Map of CALAFCO Regions

Attachment B: Letter from Ventura LAFCO

CALAFCO Regions



These policies and procedures were adopted by the CALAFCO Board of Directors on 12 January 2007 and amended on 9 November 2007¹, 8 February 2008², 13 February 2009³, 12 February 2010⁴, 18 February 2011⁵ and 29 April 2011⁶. They supersede all previous versions of the policies.



VENTURA LOCAL AGENCY FORMATION COMMISSION

COUNTY GOVERNMENT CENTER • HALL OF ADMINISTRATION

800 S. VICTORIA AVENUE • VENTURA, CA 93009-1850

TEL (805) 654-2576 • FAX (805) 477-7101

WWW.VENTURA.LAFCO.CA.GOV

October 14, 2013

Coastal Region Members of the Board of Directors
CALAFCO
1215 K Street, Suite 1650
Sacramento, CA 95814

Sent Via Electronic Mail

Subject: Regional Meeting of the Coastal LAFCOs

Dear Ms. Inman, Mr. Leopold, Mr. McGill and Mr. Weit:

One of the items on the Ventura LAFCO meeting agenda last month was a discussion regarding the recent CALAFCO Conference and Peter Detwiler's paper titled "California Within Limits: Research Notes for a History of California's Local Boundary Laws". Those who attended the Conference shared their impressions and all agreed that it was informative and interesting. I therefore want to thank you and the other members of the CALAFCO Board of Directors for hosting such a valuable event.

As part of our discussion, it was suggested that CALAFCO could further increase value to its members by spearheading educational and networking forums at the regional level. The discussion ultimately led to a consensus to send this letter requesting your support for the establishment of a meeting of the Coastal Region LAFCOs to share our collective knowledge and ideas regarding common challenges. As you no doubt agree, there are many examples of such challenges including limited water supplies, conversion of agricultural lands and lack of affordable housing.

If carefully planned, regional meetings also have the potential to provide benefits similar to the statewide CALAFCO conferences at a lower cost. By this we do not mean that regional meetings should replace the statewide conferences but merely to acknowledge that many LAFCOs are facing significant budget reductions. For some LAFCOs, a regional workshop may indeed be the only CALAFCO educational event that they can attend.

Our suggestion is for CALAFCO to host one pilot meeting located somewhere near the geographic center of the Coastal Region in an area with convenient airport access. If the level of interest in the pilot warrants, perhaps it could be continued on an annual basis. As part of our request, we would also like to see a dedicated source of funding for regional forums included the next CALAFCO budget.

Thank you for your consideration of this matter and we look forward to hearing from you through Kim Uhlich, Ventura LAFCO Executive Officer at (805) 654-2866 or kim.uhlich@ventura.org.

Sincerely,

Gail Pringle,
Chair

c: Commission Members, Ventura LAFCO
Pamela Miller, Executive Director, CALAFCO
LAFCO Executive Officers, Coastal Region

LAFCO MEETING: April 2, 2014
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, LAFCO Analyst
SUBJECT: AB 2762 (ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT)
CORTESE-KNOX-HERTZBERG (CKH) ACT OMNIBUS BILL

STAFF RECOMMENDATION

Take a Support position on AB 2762 and authorize staff to send a letter of support.

BACKGROUND

AB 2762 is the CALAFCO sponsored annual CKH Act Omnibus bill. The bill makes the following minor technical changes, clarifications, and corrections to the CKH Act:

- §56101– Repeals an obsolete code section
- §56106 – Changes cross reference to correct subdivision in §56658.
- §56653 – Clarifies the requirement for submitting a “plan for services”
- §56668 – Clarifies LAFCO’s requirement to consider consistency with city and county land use plans in its review of a proposal
- §56886 – Clarifies that specific terms and conditions imposed by a LAFCO under this code section prevail in an event of conflict with Part 5 of §57300
- §57113(b) – Clarifies protest and voter approval requirements for “landowner-voter districts”

CALAFCO has requested LAFCOs to take a support position on AB 2762, as the bill is scheduled to be heard in committee on April 24, 2014. A copy of the bill (Attachment A) and a draft letter of support (Attachment B) are attached for your consideration.

ATTACHMENTS

Attachment A: AB 2762 (Achadjian): CALAFCO CKH Act Omnibus Bill

Attachment B: Draft Letter in Support of AB 2762

ASSEMBLY BILL

No. 2762

**Introduced by Committee on Local Government (Achadjian (Chair),
Levine (Vice Chair), Alejo, Gordon, Melendez, Mullin, Rendon,
and Waldron)**

March 24, 2014

An act to amend Sections 56100, 56653, 56668, 56886, and 57113 of, and to repeal Section 56101 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2762, as introduced, Committee on Local Government. Local government.

Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the authority and procedures for the initiation, conduct, and completion of changes of organization and reorganization of cities and districts. The act does not apply to pending proceedings for a change or organization or reorganization for which the application was accepted for filing prior to January 1, 2001, as specified. The act authorizes these pending proceedings to be continued and completed under, and in accordance with, the law under which the proceedings were commenced.

This bill would repeal those provisions relating to pending proceedings for a change or organization or reorganization for which an application was accepted for filing prior to January 1, 2001, and make other conforming changes.

The act specifies that provisions governing the time within which an official or the commission is to act are, with specific exceptions, directory rather than mandatory.

This bill would make a technical amendment to that provision.

The act requires a local agency or school district that initiates proceedings for a change of local government organization or reorganization by submitting a resolution of application for a change of organization or reorganization to also submit a plan for providing services within the effected territory, as specified.

This bill would instead require, if a proposal for a change of organization or reorganization is submitted, that the applicant submit a plan for providing services within the effected territory.

The act specifies the factors that a local agency formation commission is required to consider in the review of a proposal for a change of organization or reorganization, including, among other things, a regional transportation plan, as specified, and its consistency with city or county general and specific plans.

This bill instead would require the local agency formation commission to consider, in the review of a proposal for a change of organization or reorganization, among other things, a regional transportation plan, and the consistency of the proposal for a change of organization or reorganization with city or county general and specific plans. By increasing the duties of a local agency formation commission, this bill would impose a state-mandated local program.

The act authorizes a change of organization or reorganization to provide for, or to be made subject to, one or more terms and conditions specified in the commission's resolution making determinations, in which case, the terms and conditions imposed constitute the exclusive terms and conditions for the change of organization or reorganization, notwithstanding other specified general provisions of law.

This bill instead would provide, that if a change or reorganization is made subject to terms and conditions, those terms and conditions shall prevail in the event of a conflict with other specified general provisions of law.

The act defines a landowner-voter district and prescribes certain voting thresholds for landowner-voter districts for elections associated with proposals initiated by a local agency formation commission.

This bill would make nonsubstantive, technical changes to these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56100 of the Government Code is
2 amended to read:

3 56100. (a) Except as otherwise provided in Section ~~56036.5,~~
4 ~~56036.5 and~~ subdivision (b) of Section 56036.6, ~~and Section~~
5 ~~56101~~, this division provides the sole and exclusive authority and
6 procedure for the initiation, conduct, and completion of changes
7 of organization and reorganization for cities and districts. All
8 changes of organization and reorganizations shall be initiated,
9 conducted, and completed in accordance with, and as provided in,
10 this division.

11 (b) Notwithstanding any other ~~provision~~ of law, proceedings
12 for the formation of a district shall be conducted as authorized by
13 the principal act of the district proposed to be formed, except that
14 the commission shall serve as the conducting authority and the
15 procedural requirements of this division shall apply and shall
16 prevail in the event of conflict with the procedural requirements
17 of the principal act of the district. In the event of such a conflict,
18 the commission shall specify the procedural requirements that
19 apply, consistent with the requirements of this section.

20 SEC. 2. Section 56101 of the Government Code is repealed.

21 ~~56101. This division does not apply to any proceeding for a~~
22 ~~change of organization or reorganization for which the application~~
23 ~~shall have been accepted for filing by the executive officer pursuant~~
24 ~~to Section 56658 prior to January 1, 2001. These pending~~
25 ~~proceedings may be continued and completed under, and in~~
26 ~~accordance with, the provisions of law under which the proceedings~~
27 ~~were commenced. The repeals, amendments, and additions made~~
28 ~~by the act enacting this division shall not apply to any of those~~
29 ~~pending proceedings, and, the laws existing prior to January 1,~~
30 ~~2001, shall continue in full force and effect, as applied to those~~
31 ~~pending proceedings.~~

32 SEC. 3. Section 56106 of the Government Code is amended
33 to read:

1 56106. Any provisions in this division governing the time
2 within which an official or the commission is to act shall in all
3 instances, except for notice requirements and the requirements of
4 subdivision ~~(i)~~ (h) of Section 56658 and subdivision (b) of Section
5 56895, be deemed directory, rather than mandatory.

6 SEC. 4. Section 56653 of the Government Code is amended
7 to read:

8 56653. (a) ~~Whenever~~ ~~If a local agency or school district~~
9 ~~submits a resolution of application~~ *proposal* for a change of
10 organization or reorganization *is submitted* pursuant to this part,
11 the ~~local agency applicant~~ shall submit ~~with the resolution of~~
12 ~~application~~ a plan for providing services within the affected
13 territory.

14 (b) The plan for providing services shall include all of the
15 following information and any additional information required by
16 the commission or the executive officer:

17 (1) An enumeration and description of the services to be
18 extended to the affected territory.

19 (2) The level and range of those services.

20 (3) An indication of when those services can feasibly be
21 extended to the affected territory.

22 (4) An indication of any improvement or upgrading of structures,
23 roads, sewer or water facilities, or other conditions the local agency
24 would impose or require within the affected territory if the change
25 of organization or reorganization is completed.

26 (5) Information with respect to how those services will be
27 financed.

28 SEC. 5. Section 56668 of the Government Code is amended
29 to read:

30 56668. Factors to be considered in the review of a proposal
31 shall include, but not be limited to, all of the following:

32 (a) Population and population density; land area and land use;
33 per capita assessed valuation; topography, natural boundaries, and
34 drainage basins; proximity to other populated areas; the likelihood
35 of significant growth in the area, and in adjacent incorporated and
36 unincorporated areas, during the next 10 years.

37 (b) The need for organized community services; the present
38 cost and adequacy of governmental services and controls in the
39 area; probable future needs for those services and controls; probable
40 effect of the proposed incorporation, formation, annexation, or

1 exclusion and of alternative courses of action on the cost and
2 adequacy of services and controls in the area and adjacent areas.

3 “Services,” as used in this subdivision, refers to governmental
4 services whether or not the services are services which would be
5 provided by local agencies subject to this division, and includes
6 the public facilities necessary to provide those services.

7 (c) The effect of the proposed action and of alternative actions,
8 on adjacent areas, on mutual social and economic interests, and
9 on the local governmental structure of the county.

10 (d) The conformity of both the proposal and its anticipated
11 effects with both the adopted commission policies on providing
12 planned, orderly, efficient patterns of urban development, and the
13 policies and priorities in Section 56377.

14 (e) The effect of the proposal on maintaining the physical and
15 economic integrity of agricultural lands, as defined by Section
16 56016.

17 (f) The definiteness and certainty of the boundaries of the
18 territory, the nonconformance of proposed boundaries with lines
19 of assessment or ownership, the creation of islands or corridors of
20 unincorporated territory, and other similar matters affecting the
21 proposed boundaries.

22 (g) A regional transportation plan adopted pursuant to Section
23 ~~65080, and its consistency with city or county general and specific~~
24 ~~plans 65080.~~

25 *(h) Consistency with city or county general and specific plans.*

26 ~~(h)~~

27 (i) The sphere of influence of any local agency which may be
28 applicable to the proposal being reviewed.

29 ~~(i)~~

30 (j) The comments of any affected local agency or other public
31 agency.

32 ~~(j)~~

33 (k) The ability of the newly formed or receiving entity to provide
34 the services which are the subject of the application to the area,
35 including the sufficiency of revenues for those services following
36 the proposed boundary change.

37 ~~(k)~~

38 (l) Timely availability of water supplies adequate for projected
39 needs as specified in Section 65352.5.

40 ~~(l)~~

1 (m) The extent to which the proposal will affect a city or cities
2 and the county in achieving their respective fair shares of the
3 regional housing needs as determined by the appropriate council
4 of governments consistent with Article 10.6 (commencing with
5 Section 65580) of Chapter 3 of Division 1 of Title 7.

6 ~~(m)~~

7 (n) Any information or comments from the landowner or owners,
8 voters, or residents of the affected territory.

9 ~~(n)~~

10 (o) Any information relating to existing land use designations.

11 ~~(o)~~

12 (p) The extent to which the proposal will promote environmental
13 justice. As used in this subdivision, “environmental justice” means
14 the fair treatment of people of all races, cultures, and incomes with
15 respect to the location of public facilities and the provision of
16 public services.

17 SEC. 6. Section 56886 of the Government Code is amended
18 to read:

19 56886. Any change of organization or reorganization may
20 provide for, or be made subject to one or more of, the following
21 terms and conditions. If a change of organization or reorganization
22 is made subject to one or more of the following terms and
23 conditions in the commission’s resolution making determinations,
24 the terms and conditions imposed shall ~~constitute the exclusive~~
25 ~~terms and conditions for the change of organization or~~
26 ~~reorganization, notwithstanding~~ *prevail in the event of a conflict*
27 *between a specific term and condition authorized pursuant to this*
28 *section and any of the general provisions of Part 5 (commencing*
29 *with Section 57300). However, none of the following terms and*
30 *conditions shall directly regulate land use, property development,*
31 *or subdivision requirements:*

32 (a) The payment of a fixed or determinable amount of money,
33 either as a lump sum or in installments, for the acquisition, transfer,
34 use or right of use of all or any part of the existing property, real
35 or personal, of any city, county, or district.

36 (b) The levying or fixing and the collection of any of the
37 following, for the purpose of providing for any payment required
38 pursuant to subdivision (a):

39 (1) Special, extraordinary, or additional taxes or assessments.

1 (2) Special, extraordinary, or additional service charges, rentals,
2 or rates.

3 (3) Both taxes or assessments and service charges, rentals, or
4 rates.

5 (c) The imposition, exemption, transfer, division, or
6 apportionment, as among any affected cities, affected counties,
7 affected districts, and affected territory of liability for payment of
8 all or any part of principal, interest, and any other amounts which
9 shall become due on account of all or any part of any outstanding
10 or then authorized but thereafter issued bonds, including revenue
11 bonds, or other contracts or obligations of any city, county, district,
12 or any improvement district within a local agency, and the levying
13 or fixing and the collection of any (1) taxes or assessments, or (2)
14 service charges, rentals, or rates, or (3) both taxes or assessments
15 and service charges, rentals, or rates, in the same manner as
16 provided in the original authorization of the bonds and in the
17 amount necessary to provide for that payment.

18 (d) If, as a result of any term or condition made pursuant to
19 subdivision (c), the liability of any affected city, affected county,
20 or affected district for payment of the principal of any bonded
21 indebtedness is increased or decreased, the term and condition
22 may specify the amount, if any, of that increase or decrease which
23 shall be included in, or excluded from, the outstanding bonded
24 indebtedness of that entity for the purpose of the application of
25 any statute or charter provision imposing a limitation upon the
26 principal amount of outstanding bonded indebtedness of the entity.

27 (e) The formation of a new improvement district or districts or
28 the annexation or detachment of territory to, or from, any existing
29 improvement district or districts.

30 (f) The incurring of new indebtedness or liability by, or on behalf
31 of, all or any part of any local agency, including territory being
32 annexed to any local agency, or of any existing or proposed new
33 improvement district within that local agency. The new
34 indebtedness may be the obligation solely of territory to be annexed
35 if the local agency has the authority to establish zones for incurring
36 indebtedness. The indebtedness or liability shall be incurred
37 substantially in accordance with the laws otherwise applicable to
38 the local agency.

39 (g) The issuance and sale of any bonds, including authorized
40 but unissued bonds of a local agency, either by that local agency

1 or by a local agency designated as the successor to any local agency
 2 which is extinguished as a result of any change of organization or
 3 reorganization.

4 (h) The acquisition, improvement, disposition, sale, transfer, or
 5 division of any property, real or personal.

6 (i) The disposition, transfer, or division of any moneys or funds,
 7 including cash on hand and moneys due but uncollected, and any
 8 other obligations.

9 (j) The fixing and establishment of priorities of use, or right of
 10 use, of water, or capacity rights in any public improvements or
 11 facilities or any other property, real or personal. However, none
 12 of the terms and conditions ordered pursuant to this subdivision
 13 shall modify priorities of use, or right of use, to water, or capacity
 14 rights in any public improvements or facilities that have been fixed
 15 and established by a court or an order of the State Water Resources
 16 Control Board.

17 (k) The establishment, continuation, or termination of any office,
 18 department, or board, or the transfer, combining, consolidation,
 19 or separation of any offices, departments, or boards, or any of the
 20 functions of those offices, departments, or boards, if, and to the
 21 extent that, any of those matters is authorized by the principal act.

22 (l) The employment, transfer, or discharge of employees, the
 23 continuation, modification, or termination of existing employment
 24 contracts, civil service rights, seniority rights, retirement rights,
 25 and other employee benefits and rights.

26 (m) The designation of a city, county, or district, as the successor
 27 to any local agency that is extinguished as a result of any change
 28 of organization or reorganization, for the purpose of succeeding
 29 to all of the rights, duties, and obligations of the extinguished local
 30 agency with respect to enforcement, performance, or payment of
 31 any outstanding bonds, including revenue bonds, or other contracts
 32 and obligations of the extinguished local agency.

33 (n) The designation of (1) the method for the selection of
 34 members of the legislative body of a district or (2) the number of
 35 those members, or (3) both, where the proceedings are for a
 36 consolidation, or a reorganization providing for a consolidation or
 37 formation of a new district and the principal act provides for
 38 alternative methods of that selection or for varying numbers of
 39 those members, or both.

- 1 (o) The initiation, conduct, or completion of proceedings on a
2 proposal made under, and pursuant to, this division.
- 3 (p) The fixing of the effective date or dates of any change of
4 organization, subject to the limitations of Section 57202.
- 5 (q) Any terms and conditions authorized or required by the
6 principal act with respect to any change of organization.
- 7 (r) The continuation or provision of any service provided at that
8 time, or previously authorized to be provided by an official act of
9 the local agency.
- 10 (s) The levying of assessments, including the imposition of a
11 fee pursuant to Section 50029 or 66484.3 or the approval by the
12 voters of general or special taxes. For the purposes of this section,
13 imposition of a fee as a condition of the issuance of a building
14 permit does not constitute direct regulation of land use, property
15 development, or subdivision requirements.
- 16 (t) The extension or continuation of any previously authorized
17 charge, fee, assessment, or tax by the local agency or a successor
18 local agency in the affected territory.
- 19 (u) The transfer of authority and responsibility among any
20 affected cities, affected counties, and affected districts for the
21 administration of special tax and special assessment districts,
22 including, but not limited to, the levying and collecting of special
23 taxes and special assessments, including the determination of the
24 annual special tax rate within authorized limits; the management
25 of redemption, reserve, special reserve, and construction funds;
26 the issuance of bonds which are authorized but not yet issued at
27 the time of the transfer, including not yet issued portions or phases
28 of bonds which are authorized; supervision of construction paid
29 for with bond or special tax or assessment proceeds; administration
30 of agreements to acquire public facilities and reimburse advances
31 made to the district; and all other rights and responsibilities with
32 respect to the levies, bonds, funds, and use of proceeds that would
33 have applied to the local agency that created the special tax or
34 special assessment district.
- 35 (v) Any other matters necessary or incidental to any of the terms
36 and conditions specified in this section. If a change of organization,
37 reorganization, or special reorganization provides for, or is made
38 subject to one or more of, the terms and conditions specified in
39 this section, those terms and conditions shall be deemed to be the
40 exclusive terms and conditions for the change of organization,

1 reorganization, or special reorganization, and shall control over
2 any general provisions of Part 5 (commencing with Section 57300).

3 SEC. 7. Section 57113 of the Government Code is amended
4 to read:

5 57113. Notwithstanding Section 57102, 57108, or 57111, for
6 any proposal that was initiated by the commission pursuant to
7 subdivision (a) of Section 56375, the commission shall forward
8 the change of organization or reorganization for confirmation by
9 the voters if the commission finds either of the following:

10 (a) In the case of inhabited territory, protests have been signed
11 by either of the following:

12 (1) At least 10 percent of the number of landowners within any
13 subject agency within the affected territory who own at least 10
14 percent of the assessed value of land within the territory. However,
15 if the number of landowners within a subject agency is less than
16 300, the protests shall be signed by at least 25 percent of the
17 landowners who own at least 25 percent of the assessed value of
18 land within the territory of the subject agency.

19 (2) At least 10 percent of the voters entitled to vote as a result
20 of residing within, or owning land within, any subject agency
21 within the affected territory. However, if the number of voters
22 entitled to vote within a subject agency is less than 300, the protests
23 shall be signed by at least 25 percent of the voters entitled to vote.

24 (b) In the case of a landowner-voter district, ~~that~~ the territory
25 is uninhabited and protests have been signed by at least 10 percent
26 of the number of landowners within any subject agency within the
27 affected territory, ~~owning~~ *who own* at least 10 percent of the
28 assessed value of land within the territory. However, if the number
29 of ~~voters~~ *landowners* entitled to vote within a subject agency is
30 less than 300, protests shall be signed by at least 25 percent of the
31 ~~voters~~ *landowners* entitled to vote.

32 SEC. 8. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 a local agency or school district has the authority to levy service
35 charges, fees, or assessments sufficient to pay for the program or
36 level of service mandated by this act, within the meaning of Section
37 17556 of the Government Code.



April 2, 2014

Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
California State Assembly
State Capitol, Room 4098
Sacramento, CA 95814

RE: SUPPORT of AB 2762: Local Government Committee Omnibus Bill

Dear Assembly Member Achadjian:

The Local Agency Formation Commission of Santa Clara County is pleased to support AB 2762, the Assembly Local Government Committee bill which makes technical, non-substantive changes to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

This annual bill includes technical changes to the Act which govern the work of local agency formation commissions, or LAFCOs. These changes are necessary as commissions implement the Act and small inconsistencies are found or clarifications are needed to make the law as unambiguous as possible. AB 2762 clarifies several sections, makes changes to obsolete and incorrect code references, and makes minor updates to outdated sections. We are very grateful to your Committee staff and counsel, all of whom worked diligently on this language to ensure there is no substantive change, yet creates a significant increase in the clarity of the Act for all stakeholders.

This legislation helps insure the Cortese-Knox-Hertzberg Act remains a vital and practical law that is consistently applied around the state. We appreciate your Committee's authorship and support of this bill, and your support of the mission of LAFCOs.

Sincerely,

Susan Vicklund Wilson, Chairperson
LAFCO of Santa Clara County

cc: Members, Assembly Local Government Committee
Misa Yokoi-Shelton, Associate Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus



El Camino Hospital
THE HOSPITAL OF SILICON VALLEY

AGENDA ITEM # 16.1

2500 Grant Road
Mountain View, CA 94040-4378
Phone: 650-940-7000
www.elcaminohospital.org

March 18, 2014

**VIA E-MAIL (NEELIMA.PALACHERLA@CEO.SCCGOV.ORG)
AND U.S. MAIL**

Neelima Palacherla, Executive Officer
Santa Clara County Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: El Camino Hospital Corporation – Notice of Intent to Purchase of Real Property

Dear Ms. Palacherla:

In the interest of transparency, accountability and full disclosure, we are writing to inform the Santa Clara County LAFCO that El Camino Hospital, a California nonprofit public benefit corporation (“El Camino Hospital”) intends to purchase two properties in Los Gatos, California. These two properties are adjacent to El Camino Hospital Los Gatos are currently under contract and are expected to close escrow in April 2014. They are described as:

Property # 1

777 Knowles Dr. Los Gatos, CA
20,000 SF Single Story Medical Office Building,
APN 406-26-006 and 406-26-007

Property # 2

320, 340 & 360 Dardanelli Lane, Los Gatos CA
3 - 18,000 SF Two Story Medical Office Buildings,
APN 406-27-018 and 406-27-020

We also want to reassure the Santa Clara County LAFCO that the El Camino Healthcare District will not fund the purchase, operation or maintenance of these properties (which are located outside the District’s existing service area boundaries).

Sincerely,

A handwritten signature in black ink, appearing to read "Ken King".

Ken King
Chief Administrative Services Officer

Cc: (by email)
Emmanuel Abello, LAFCO Clerk (Emmanuel.Abello@ceo.sccgov.org)
Tomi Ryba, CEO, El Camino Hospital (Tomi.Ryba@elcaminohospital.org)
Gregory B. Caligari, Esq., Cox Castle Nicholson (gcaligari@coxcastle.com)


County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105

AGENDA ITEM # 16.2



DATE: March 26, 2014
TO: LAFCO of Santa Clara County
FROM: Emily Harrison, Deputy County Executive 
RE: **NOTICE OF CEMA CONTRACT EXPIRATION**

The CEMA contract, which is the bargaining unit contract for the LAFCO Executive Officer position and the LAFCO Analyst position, ends on June 23, 2014. This notice is being provided by the County to LAFCO pursuant to the Memorandum of Understanding between the County and LAFCO, in order to allow LAFCO to timely submit requests for review of compensation and classification for the two positions.

Please let me know if you have any questions.

Thank you.

February 13, 2014

To: City Council of Morgan Hill
Board of LATCO
Rebecca Tolentino

From: Mrs. Carol Neal
15600 Foothill Ave.
Morgan Hill, Ca 95037
Phone 408-779-7133
nealfamily1@hotmail.com

Re: Southeast Quadrant Land Annexation and Uses

To whom it may concern,

1. Who am I?

I am a resident of the County of Santa Clara and have lived in our home on Foothill Ave for about 40 years. Our property is the proposed area to be annexed to the City of Morgan Hill. This property is the primary asset in our estate. It is very important to us how the proposed annexation will affect the value and environment of our neighborhood. The greatest asset of our property is the rural beauty of this valley.

There is an easement that runs in the back of my property that connects the property of John Fry's American Institute/golf course to the city. This property was formerly owned by Irvin Perch who developed the Flying Lady Golf Course and Restaurant. As Mr. Perch could not get county approval, he used his money, and power on the city of Morgan Hill and was annexed. I use this as an example of the money and special interest that rule what is done in my neighborhood. Currently, Fry's property is an eyesore with it's wall of trees destroying the view from the bottom and it's current plan to build a "castle" obstructing the view from the top.

As part of the "existing residential units" listed in the General Land Use Program, we cannot subdivide. We have NO say in the use of our property. As we are not in the city limits of Morgan Hill, we cannot vote for the policy makers, and we are little fish in the county of Santa Clara, we have limited influence. We are in effect, powerless. What will be the cost to us in migration fees, assessment fees, city taxes, property taxes, etc.?

2. My concerns or objections;

a. Location of proposed South County Catholic High School. There is no need to place the high school in this location. Today, the Daughters of Charity Health System wants to rezone it's current 24.5 acre plot that is currently in the city limits of Morgan Hill. As a Catholic organization why not deed the property for a school. Also, it is of note that Mr. George Chiala who is the biggest winner in the SEQ plan is an important member of the Catholic organization. It is a concern of mine that the placement of the school has become a stepping stone for the annexation.

2-

b. Effect of a private high school on the Morgan Hill Unified School District. Currently enrollment in this district is low and not growing with the population increase. As a former member of the school board, I saw the declining enrollment as a possibility and fought against the building of Sobrato High School. Live Oak is close to the proposed Catholic site. Live Oak did have an agricultural program. I am not opposed to private schools but I feel that placing the Catholic High School on the west side near Gilroy or San Jose would have less effect on the local school district.

c. Annexing this property would accelerate the growth of Morgan Hill and the rural atmosphere will be lost. Just talking to new members of the area, they love the rural area.

d. Currently the City of Morgan Hill has many large vacant areas that could hold all of the proposed recreational improvements. Why take on more land when they cannot improve the land south of Dunne Ave on Monterey Road. . How can the city say it wants to have a greenbelt but in continues to push eastward with Cochrane Plaza while many vacant units exist in the core city area?

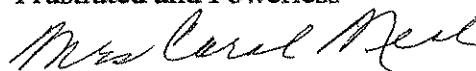
e. How can you preserve agriculture when you remove the most productive area from cultivation and make it into businesses. How will this area look in the future? A small farmer has put in a successful strawberry farm at the corner of Murphy and Tennant. Now you want to make it a sports field. The proposed Sustainable Agriculture Education is nothing but a grab of the government to control private land. How will this be supported? They say they have a grant but most likely it will be passed on to the taxpayer in mitigation fees and taxes.

g. What will be the effect of the Fry golf course? What will be needed for the proposed PGA golf tournaments? How will this affect the area? What about traffic, roads, etc. The current road that the city is responsible for is not maintained and is a hazard.

h. How is the City of Morgan Hill going to pay for this? Also it is to be noted that some of the stakeholders in this development are the city employees who make a good salary in promoting and developing this program.

It would be my hope that someday, before all of the plans, zoning changes, etc. are considered that all of the stakeholders, as in this case, all property owners, could meet as a group and have an opportunity for input. Having a minute to express you concerns in a public meeting doesn't allow for constructive and meaningful dialogue.

Frustrated and Powerless



Mrs. Carol Neal