

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen  
Albert Balagso  
Jennifer Maguire

**SUBJECT:** SEE BELOW

**DATE:** 01-24-07

Approved

Date

1/26/07

**COUNCIL DISTRICT:** Citywide

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR THE LAKE CUNNINGHAM REGIONAL PARK PERIMETER LANDSCAPING PHASE III REBID PROJECT; APPROVAL OF THE ENVIRONMENTAL MITIGATION, MONITORING AND REPORTING PROGRAM; AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE CONSTRUCTION AND CONVEYANCE TAX FUND: CITY-WIDE PARKS PURPOSES FUND.**

## RECOMMENDATION

- a. Report on bids and award of contract for the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project to the low bidder, Suarez & Munoz Construction, Inc., in the amount of \$1,147,030, and approval of a contingency in the amount of \$57,352.
- b. Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction and Conveyance Tax Fund: City-wide Parks Purposes (Fund 391):
  1. Establish an appropriation to the Parks, Recreation and Neighborhood Services Department for the Lake Cunningham Regional Park Perimeter Landscaping Project in the amount of \$330,000;
  2. Increase the Grants revenue estimate by \$290,000; and
  3. Decrease the Ending Fund Balance by \$40,000.
- c. Adoption of a resolution approving the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project and incorporation of environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the Project.

## **OUTCOME**

Award of the contract to Suarez & Munoz Construction, Inc., will enable the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project to proceed. Approval of the five percent contingency will allow funding for any unanticipated work necessary for the proper completion or construction of the project. Adoption of the ordinances and funding sources resolutions will appropriate the funding needed to construct this project consistent with prior Council action. Adoption of the resolution will ensure all environmental mitigation and monitoring measures will be carried out.

## **BACKGROUND**

Lake Cunningham Regional Park is located in East San José adjacent to Capitol Expressway between Cunningham Avenue and Tully Road (map attached). The Lake Cunningham Perimeter Landscaping Phase 3 Rebid Project consists of street improvements, landscape planting and irrigation improvements along the park side of Cunningham Avenue. This project conforms to the 1990 revised Master Plan for Lake Cunningham Regional Park.

Phase 1 landscaping was installed in 1986/87 along White Road and Tully Road. Phase 2 was conducted in 1990/91 and involved installation of retaining walls and additional landscaping and drainage along White and Tully Roads.

This project was previously bid in September 2006 and because of the high bids received, staff recommended that Council reject the bids. Council approved staff's recommendation in November 2006. The scope of the project was reduced by eliminating the improvements facing Capitol Expressway. The landscape improvements along Capital Expressway will be implemented at a later date in conjunction with the implementation of the VTA Capitol Light Rail line.

The scope of work for the Lake Cunningham Perimeter Landscaping Phase 3 Rebid project includes the installation of planting, irrigation, storm drainage, sidewalk, road widening, electrical, miscellaneous site furnishings, and a 60-day maintenance period. The Engineer's Estimate for this project is \$1,202,000.

Construction is scheduled to begin in April 2007 with completion in spring 2008.

## **ANALYSIS**

Bids were opened on December 21, 2006 with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Lone Star Landscape, Inc. (San Martin)	\$1,483,600	\$281,600	23
Sposeto Engineering, Inc. (Union City)	\$1,435,000	\$233,000	19
HSR, Inc. (Santa Clara)	\$1,309,500	\$107,500	9
Perma-Green Hydroseeding, Inc. (Gilroy)	\$1,214,000	\$12,000	1
<b>Engineer's Estimate</b>	<b>\$1,202,000</b>	--	--
Joseph J. Albanese, Inc. (Santa Clara)	\$1,198,000	(\$4,000)	(0)
Robert A Bothman, Inc. (San José)	\$1,189,200	(\$12,800)	(1)
Suarez & Munoz Construction, Inc. (Hayward)	\$1,147,030	(\$54,970)	(5)

The low bid submitted by Suarez & Munoz Construction, Inc. is five percent under the Engineer's Estimate. The bid is considered acceptable for the work involved in the project.

Council Policy provides for a standard contingency of five percent on public works projects involving the construction of a park. Staff considers the standard contingency appropriate for this project.

Included in this memorandum is an appropriation action request to increase the Perimeter Landscaping project budget by \$330,000, with the funding coming from two different sources. Of the total amount being added to this project budget, \$290,000 will be received from the 2002 Resources Bond Act (Prop. 40) - Per Capita Program grant. The remaining funds (\$40,000) are recommended to come from the Parks City-wide Construction and Conveyance Tax Ending Fund Balance. This is consistent with the Council action taken on November 14, 2006 which provided for the shift of these grant funds from the Lake Cunningham Playground project to ensure that sufficient funds were available for the landscaping project prior to bid.

**POLICY ALTERNATIVES**

Not applicable.

**PUBLIC OUTREACH/INTEREST**

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. To solicit contractors, this project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for all Department of Public Works construction projects were provided to various contractor organizations and builder's exchanges. This memorandum will be posted on the City's website for the February 13, 2007 Council agenda.

In addition, community participation in the design development effort through various community participation meetings was solicited through citywide flyers, mailers, and local newspaper articles and advertisements.

### COORDINATION

This project and memorandum have been coordinated with the Departments of Planning, Building and Code Enforcement, the City Attorney's Office and the Council District 8 Office.

### FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy.

### COST SUMMARY/IMPLICATIONS

1. COST OF PROJECT:	
Project Delivery	\$516,193 *
Design Consultant	161,187
Construction	1,147,030
Contingency	57,352
<b>TOTAL PROJECT COSTS</b>	<b>\$1,881,762</b>
Prior Year Expenditures	405,945
<b>REMAINING PROJECT COSTS</b>	<b>\$1,475,817</b>

\* A total of \$405,945 was expended/encumbered in prior fiscal years for project delivery cost, including design development, CEQA clearance, and the construction documents.

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

Site Preparation, Storm Water Pollution Prevention	\$184,106
Grading, Drainage, Traffic Control	354,330
Irrigation, Planting, Maintenance	297,432
Concrete and Asphalt Paving	271,952
Electrical	22,030
Miscellaneous items	17,180
<b>TOTAL CONSTRUCTION CONTRACT</b>	<b>\$1,147,030</b>

3. SOURCE OF FUNDING: 462 - Lake Cunningham Fund  
 391 – Construction and Conveyance Tax Fund: City-wide  
 Parks Purposes

4. OPERATING COSTS: The proposed operating and maintenance costs of this project have been reviewed and it has been determined that the project will have an annualized cost of \$65,565.00 ongoing impact to the General Fund operating budget beginning December 2007. To offset this impact to the General Fund, a concurrent increase in the ongoing transfer of funds from the Lake Cunningham Fund (462) to the General Fund of an equal amount was implemented as part of the 2006/2007 budget process.

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amount for Contract	2006-2007 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
<b>Remaining Project Costs</b>				<b>\$1,475,817</b>			
<b>Current Funding Available</b>							
462	4686	Lake Cunningham Perimeter Landscape	112273	\$1,146,000	\$817,030	V – 612	10/17/2006, Ord. No. 27888
<b>Total Current Funding Available</b>				<b>\$1,146,000</b>			
<b>Total Current Funding Recommended*</b>							
391	TBD	Lake Cunningham Perimeter Landscaping		\$330,000	\$330,000		
<b>Total Project Funding</b>				<b>\$1,476,000</b>	<b>\$1,147,030</b>		

\* Included in this memorandum is a recommendation to increase this project budget by \$330,000 to ensure adequate funding to complete the project.

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**Subject: Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project**

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**CEQA**

CEQA: Mitigated Negative Declaration, PP05-115.

All projects approved under the Per Capita Grant Program must have California Environmental Quality Act (CEQA) clearance. Projects funded under the Per Capita Grant Program are required to submit a written request to change the scope of any project already approved by the Resources Agency. The Resources Agency must approve the changes.

The Planning Department has issued a mitigated negative declaration for the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project. The mitigated negative declaration identifies a number of mitigations that need to be implemented in order to address environmental impacts. These mitigation measures and their manner of implementation are identified in the Mitigation Monitoring and Reporting Program (MMRP) for the master plan amendment. The mitigations that are required for this project have been incorporated into the project design and construction documents. As part of today's action, staff is requesting Council to approve these mitigations and their manner of implementation, as set forth in the MMRP and direct the implementation of these mitigations as part of the project. Mitigation measures that are required as part of this project are attached to this memorandum.



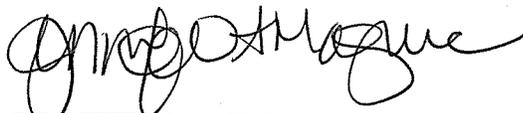
*for*  
KATY ALLEN

Director, Public Works Department



ALBERT BALAGSO

Director, Parks, Recreation and  
Neighborhood Services Department



JENNIFER MAGUIRE

Acting Budget Director

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Attachments

HONORABLE MAYOR AND CITY COUNCIL

01-24-07

**Subject: Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Rebid Project**

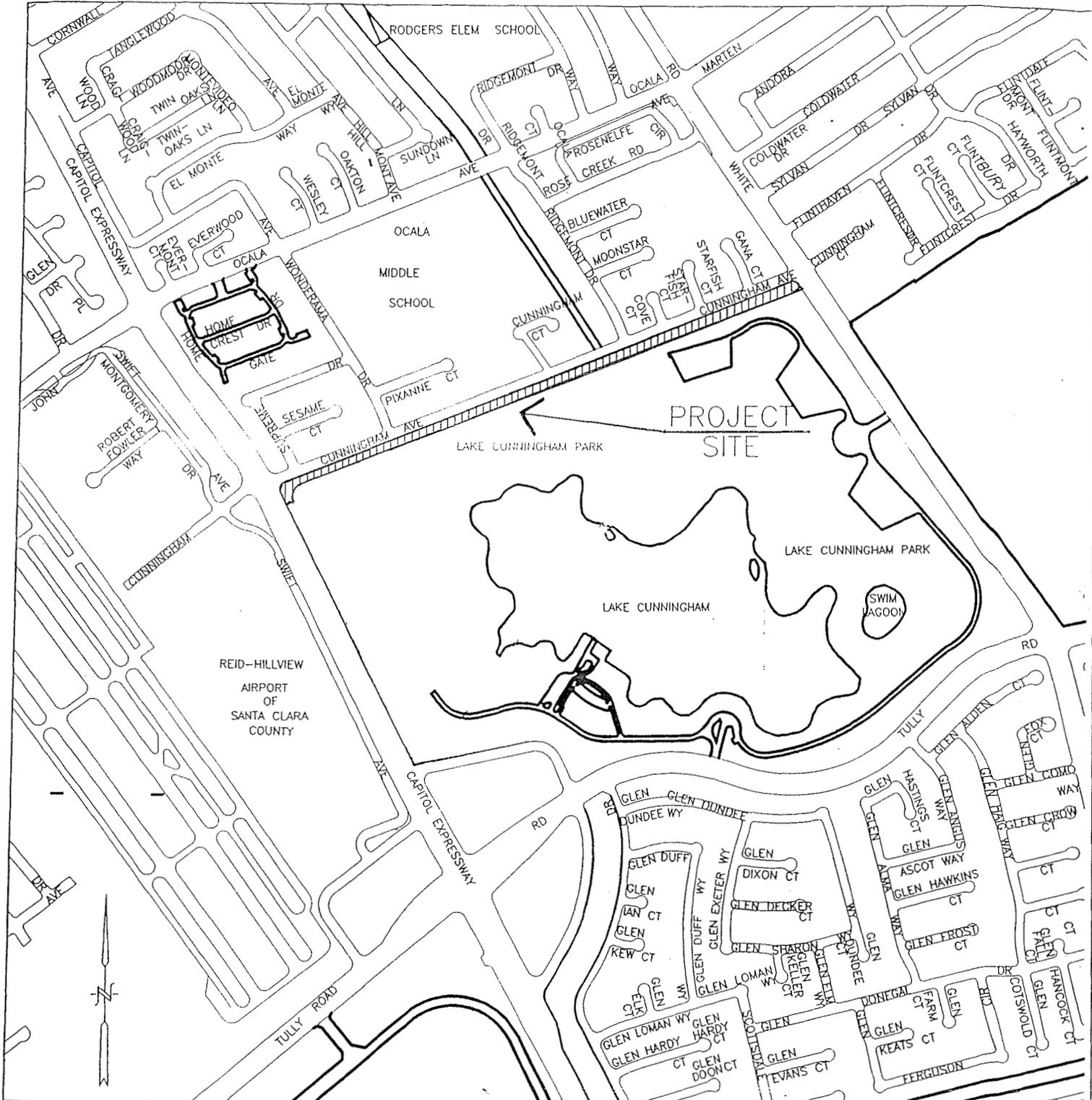
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I hereby certify that there will be available for appropriation in the Construction and Conveyance Tax Fund: City-wide Parks Purposes in Fiscal Year 2006-2007 monies in excess of those heretofore appropriated there from, said excess being at least \$290,000.



JENNIFER MAGUIRE  
Acting Budget Director

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, PUBLIC WORKS DEPARTMENT, (408) 535-8300.



# LAKE CUNNINGHAM PARK

LOCATION MAP

NOT TO SCALE

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE APPROVING THE LAKE CUNNINGHAM REGIONAL PARK PERIMETER LANDSCAPING PHASE 3 PROJECT, FOR WHICH AN INITIAL STUDY / MITIGATED NEGATIVE DECLARATION WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM**

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San Jose prepared an Initial Study and adopted a Mitigated Negative Declaration for the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Project (Planning File No. PP05-115) in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA; and

**WHEREAS**, the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Project ("Project") analyzed under the Initial Study/Mitigated Negative Declaration consisted of the construction of street improvements, drainage and landscaping along Cunningham Avenue between White Road and Capitol Expressway, San Jose, California, and

**WHEREAS**, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level; and

**WHEREAS**, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

**WHEREAS**, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and

**WHEREAS**, the City of San Jose is the lead agency on the Project, and the City Council is the decision-making body for the proposed Project; and

**WHEREAS**, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

**WHEREAS**, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:**

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project. The City Council designates the Director of Public Works at the Director's Office at 200 East Santa Clara Street, 5<sup>th</sup> Floor Tower, San Jose, California 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby approve construction of the Project (Planning File No. PP05-015) and adopt the Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower, San Jose, California 95113 and (2) available for inspection by any interested person.

ADOPTED this 13th day of February, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, CMC  
City Clerk

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Air Quality</b>				
<p>The project would generate air pollutant emissions during construction. The project would result in short-term air quality impacts during construction, associated primarily with the increase in suspended particulates, or dust. Construction activities, including site clearing and soil disturbance, could generate dust emissions and locally elevated levels of particulates (i.e., PM10) downwind of construction activities.</p>	<p>In order to minimize PM10 emissions during construction, the project contractor shall implement the following dust control measures:</p> <ul style="list-style-type: none"> <li>▪ Water all active construction areas at least twice daily.</li> <li>▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.</li> <li>▪ Pave, apply water three time daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</li> <li>▪ Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.</li> <li>▪ Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li> </ul>	<p>Department of Public Works, City Facilities and Architectural Services</p>	<p>Include the identified dust control measures in contract specifications and documents.</p>	<p>Implement dust control measures during the entire construction period.</p>

**Biological Resources**

<p>Results of the biological study indicate that the project site contains potential burrowing owl habitat. The proposed project could result in impacts to burrowing owls, if they are present within or adjacent to the project area at the time of construction. With implementation of the following measures, potential impacts to burrowing owls will be reduced to less-than-significant levels.</p>	<p>1. A qualified biologist shall conduct pre-construction surveys for burrowing owls no more than 30 days prior to commencement of project activities. If burrowing owls are observed within the project area or areas adjacent to it during the breeding season (February 1 to August 31), a 250-foot buffer zone shall be established around the occupied burrow(s) and construction delayed in that buffer zone until all young have fledged and are able to feed on their own, as determined by monitoring surveys conducted by a qualified biologist. Breeding burrowing owls and their young should not be relocated</p> <p>2. If burrowing owls are observed within the project area or areas adjacent to it during the non-breeding season (September to January), a 50 meter/160-foot buffer zone shall be established around the occupied burrow(s) and construction delayed in that buffer zone until the owls have vacated the occupied burrow, as determined by monitoring conducted by a qualified biologist. If this is not practical, obtain a Memorandum of Understanding (MOU) from the California Department of Fish and Game to allow passive relocation of non-breeding burrowing owls. Passive relocation usually involves placing a "one-way" door on the occupied burrow to allow the owl to escape, but not reenter the burrow, and monitoring of the burrow by a qualified biologist for one week to ensure that the owl has vacated the burrow.</p>	<p>Department of Public Works, City Facilities and Architectural Services</p>	<p>The project proponent shall retain a qualified biologist to conduct the burrowing owl survey and monitoring and, if required, coordination with the California Department of Fish and Game. The results of the biologist's survey/monitoring (and relocation plan if required) shall be documented and a report shall be submitted to the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement.</p> <p>The Environmental Principal Planner in the Department of Planning, Building and Code Enforcement shall be notified immediately if burrowing owls are found during the survey.</p>	<p>Surveys and/or monitoring shall be conducted no more than 30 days prior to the onset of construction.</p> <p>Immediately notify the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement if burrowing owls are found during the survey.</p>
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**Cultural Resources**

<p>The potential for archaeological materials on the project site is considered low, since the site has been substantially disturbed by development of the park and adjacent streets. However, it is possible that construction of the project could potentially uncover buried archaeological resources. This represents a potentially significant impact that would be mitigated to a less-than-significant level with the identified measures.</p>	<p>1. In the event that human remains and/or cultural materials are found during construction, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. 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.</p> <p>2. 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 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.</p> <p>3. A final report shall be submitted to the City's Environmental Principal Planner when mitigation is completed. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.</p>	<p>Department of Public Works, City Facilities and Architectural Services</p>	<p>Include the identified mitigation measures in the project specifications and documents.</p> <p>A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>	<p>The identified mitigation shall apply during all earth moving activities.</p> <p>A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>
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**Water Quality**

Construction activities on the project site may result in an increase in erosion affecting the quality of storm water runoff. Grading and pavement removal activities would loosen soils and increase the release of sediment into Silver Creek. Implementation of the identified mitigation measures will reduce this impact to less-than-significant levels.

The project proponent shall obtain and comply with the NPDES General Construction Activity Storm Water Permit administered by the RWQCB. Prior to construction grading, the applicant shall file a Notice of Intent (NOI) in accordance with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) to minimize pre- and post-construction runoff. The SWPPP shall be submitted to the San Jose Environmental Services Division and Public Works Department and include the following measures:

- Preclude non-storm water discharges to the storm water system.
- Install BMPs for erosion and sediment control during and after construction.
- Cover soil, equipment, and supplies that could contribute to water pollution.
- Perform monitoring of discharges to the storm water system.
- Implement regular maintenance activities at the site to prevent soil and litter from accumulating on the project site and contaminating surface runoff.

Other post-construction source controls and BMPs include the following:

- Maintaining landscaped areas to maintain soil structure and permeability
- Maintaining landscaping with minimal pesticide use, including landscape maintenance techniques listed in Landscape Maintenance Techniques for Pest Reduction prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program

The project applicant shall file a Notice of Termination (NOT) for the General Permit with the RWQCB and San Jose Public Works Department when construction is complete, identifying that the SWPPP has been implemented.

The project applicant shall prepare and implement an erosion control plan to the San Jose Public

Department of Public Works, City Facilities and Architectural Services

Include the identified water quality protection measures in contract specifications and documents; submit documentation verifying compliance with the identified mitigation measures to the Environmental Principal Planner prior to project completion.

Implement water quality mitigation measures during project construction; maintain landscaping and drainage facilities after project completion.

File the Notice of Intent and Notice of Termination as specified in the mitigation measures.

	<p>Works Department in compliance with the City's Grading Ordinance, RWQCB regulations, and the Santa Clara Valley Urban Runoff Pollution Prevention Program. This plan shall include the following measures:</p> <ul style="list-style-type: none"> <li>▪ Using BMPs, including fiber rolls or other measures to retain sediment onsite;</li> <li>▪ Using stabilized construction entrances and/or wash racks</li> <li>▪ Damp street sweeping</li> <li>▪ Temporary covering of disturbed surfaces during construction</li> <li>▪ Permanent covering of disturbed surfaces to stabilize soil after construction</li> <li>▪ The project design shall include measures to minimize the release of nonpoint source pollutants, such as the following</li> <li>▪ Installing bioswales to treat runoff prior to discharge to the storm water system</li> <li>▪ Installing landscaping to facilitate the infiltration of storm water</li> <li>▪ Using landscape species that minimize irrigation, runoff, pesticide and fertilizer application</li> </ul> <p>Using efficient irrigation systems to minimize runoff</p>			
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**Noise**

<p>Construction of the proposed project would temporarily increase noise levels at residences along Cunningham Avenue in the project area. These residences are as close as about 30 feet from the project alignment. Construction noise represents a potentially significant impact that would be reduced to a less-than-significant level with implementation of the identified mitigation.</p>	<p>During construction, the contractor shall implement the following measures to minimize construction noise nuisance impacts:</p> <ol style="list-style-type: none"> <li>1. For work occurring within 500 feet of a residence, work hours shall be limited to between 7 am to 7 pm Monday through Friday, and from Saturdays from 9 am to 5 pm. No Sunday construction shall be allowed;</li> <li>2. Choose construction equipment that is of quiet design, has a high-quality muffler system, and is well maintained, including trucks used to haul materials;</li> <li>3. Install superior intake and exhaust mufflers and engine enclosure panels wherever possible on gas diesel or pneumatic impact machines;</li> <li>4. Eliminate unnecessary idling of machines when not in use;</li> <li>5. All stationary noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from existing residences and businesses. The setback distance would be determined in the field based on changing construction conditions.</li> </ol>	<p>Department of Public Works, City Facilities and Architectural Services and project contractor.</p>	<p>Include the identified noise control measures in contract specifications and documents.</p>	<p>Implement noise control measures during the entire construction period.</p>
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Public Review copy



Department of Planning, Building and Code Enforcement

STEPHEN M. HAASE, AICP, DIRECTOR

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

Project File Number, Description, and Location

PP05-115; Lake Cunningham Park Landscape Improvement Project. The City of San Jose is proposing to install new landscaping, sidewalks, and bike lanes along the perimeter of the park along the south side of Cunningham Avenue. The project also proposes new landscaping along the perimeter of the park facing Capitol Expressway. Council District: 8

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location does not contain a listed toxic site.

Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on June 9, 2005 and ends on July 11, 2005.

A public hearing on the project described above is tentatively scheduled for November 22, 2005, in the City of San Jose Council Chambers, 801 N. First Street, San Jose, CA 95110. The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number 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, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and the Hillview Branch Library 2255 Ocala Ave. San José, CA 95122, and online at http://www.sanjoseca.gov/planning/eir/MND.htm Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call Michael Rhoades at (408) 277-4576.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: \_\_\_\_\_

Deputy \_\_\_\_\_



*Department of Planning, Building and Code Enforcement*

STEPHEN M. HAASE, AICP, DIRECTOR

**DRAFT 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:** Lake Cunningham Regional Park Perimeter Landscaping Phase 3

**PROJECT FILE NUMBER:** PP05-115

**PROJECT DESCRIPTION:** The City of San Jose is proposing to install new landscaping, sidewalks, and bike lanes along the northern perimeter of lake Cunningham Regional Park, on the south side of Cunningham Avenue. The project also proposes new landscaping along the perimeter of the park on the east side of Capitol Expressway.

Landscaping is proposed along the existing berm within Lake Cunningham Park facing Capitol Expressway and Cunningham Avenue. The majority of this landscaping will extend to the existing fence line, which would remain at its present location. A sidewalk, bicycle lane, and landscape plantings are proposed along the south side of Cunningham Avenue. The bicycle lanes would be constructed on the existing compacted dirt shoulder along Cunningham Avenue. Drainage improvements along Cunningham Avenue would include enhancing an existing vegetated swale, construction of a new vegetated swale, and installation of new stormwater inlets that would connect to the City's existing storm drainage system. This system discharges to Silver Creek downstream of the project area.

**PROJECT LOCATION & ASSESSORS PARCEL NO. (APN):** Along the north and west sides of Lake Cunningham Park, adjacent to Cunningham Avenue and Capitol Expressway. APNs: 491-01-016, 491-01-030, and 491-01-031.

**COUNCIL DISTRICT:** 8

**APPLICANT CONTACT INFORMATION:** City of San Jose Department of Public Works, City Facilities Architectural Services Division, 170 W. San Carlos Street, 1<sup>st</sup> Floor, San Jose, CA 95113  
Contact: Judy Salvano, (408) 794-1378; [judy.salvano@sanjoseca.gov](mailto:judy.salvano@sanjoseca.gov)

**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 initial study prepared for the project 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 this resource, therefore no mitigation is required.
- II. AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. AIR QUALITY** – The project would generate air pollutant emissions during construction. The project would result in short-term air quality impacts during construction, associated primarily with the increase in suspended particulates, or dust. Construction activities, including site clearing and soil disturbance, could generate dust emissions and locally elevated levels of particulates (i.e., PM<sub>10</sub>) downwind of construction activities. This increase in dust could result in potentially significant short-term impacts on nearby industrial/commercial uses. The BAAQMD provides feasible control measures for construction emissions of PM<sub>10</sub>. The potentially significant air quality impacts would be reduced to a less-than-significant level with the following mitigation measures:

In order to minimize PM<sub>10</sub> emissions during construction, the project contractor shall implement the following dust control measures:

- Water all active construction areas at least twice daily.
  - Cover all trucks hauling soil, sand, and other loose materials *or* require all trucks to maintain at least two feet of freeboard.
  - Pave, apply water three time daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
  - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- IV. BIOLOGICAL RESOURCES** – Results of the biological study indicate that the project site contains potential burrowing owl habitat. The proposed project could result in impacts to burrowing owls, if they are present within or adjacent to the project area at the time of construction. With implementation of the following measures, potential impacts to burrowing owls will be reduced to less-than-significant levels:
- A qualified biologist shall conduct pre-construction surveys for burrowing owls no more than 30 days prior to commencement of project activities. If burrowing owls are observed within the project area or areas adjacent to it during the breeding season (February 1 to August 31), a 250-foot buffer zone shall be established around the occupied burrow(s) and construction delayed in that buffer zone until all young have fledged and are able to feed on their own, as determined by monitoring surveys conducted by a qualified biologist. Breeding burrowing owls and their young should not be relocated.
  - If burrowing owls are observed within the project area or areas adjacent to it during the non-breeding season (September to January), a 50 meter/160-foot buffer zone shall be established around the occupied burrow(s) and construction delayed in that buffer zone until the owls have vacated the occupied burrow, as determined by monitoring conducted by a qualified biologist. If this is not practical, obtain a Memorandum of Understanding (MOU) from the California Department of Fish and Game to allow passive relocation of

non-breeding burrowing owls. Passive relocation usually involves placing a “one-way” door on the occupied burrow to allow the owl to escape, but not reenter the burrow, and monitoring of the burrow by a qualified biologist for one week to ensure that the owl has vacated the burrow

- Prior to the issuance of any grading or building permits, the developer shall submit a biologist’s report to the satisfaction of the City’s Environmental Principal Planner 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 regulatory agencies identified above.

**V. CULTURAL RESOURCES** – No known historic sites are located on or near the project property. The potential for archaeological materials on the project site is considered low, since the site has been substantially disturbed by development of the park and adjacent streets. However, it is possible that construction of the project could potentially uncover buried archaeological resources. This represents a potentially significant impact that would be mitigated to a less-than-significant level with the following measures.

- In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. 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 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.
- A final report shall be submitted to the City’s Environmental Principal Planner when mitigation is completed. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City’s Environmental Principal Planner.

**VI. GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**VII. HAZARDS AND HAZARDOUS MATERIALS** – The project the use, transport or disturbance of hazardous materials, therefore no mitigation is required.

**VIII. HYDROLOGY AND WATER QUALITY** – Construction activities on the project site may result in an increase in erosion affecting the quality of storm water runoff. Grading and pavement removal activities would loosen soils and increase the release of sediment into Silver

Creek. Implementation of the following mitigation measures will reduce this impact to less-than-significant levels:

Construction Period Water Quality Protection Measures

- The project proponent shall obtain and comply with the NPDES General Construction Activity Storm Water Permit administered by the RWQCB. Prior to construction grading, the applicant shall file a Notice of Intent (NOI) in accordance with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) to minimize pre- and post-construction runoff. The SWPPP shall be submitted to the San Jose Environmental Services Division and Public Works Department and include the following measures:
  - Preclude non-storm water discharges to the storm water system.
  - Install BMPs for erosion and sediment control during and after construction.
  - Cover soil, equipment, and supplies that could contribute to water pollution.
  - Perform monitoring of discharges to the storm water system.
  - Implement regular maintenance activities at the site to prevent soil and litter from accumulating on the project site and contaminating surface runoff. Other post-construction source controls and BMPs include the following:
    - Maintaining landscaping with minimal pesticide use, including landscape maintenance techniques listed in *Landscape Maintenance Techniques for Pest Reduction* prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program.
  - The project applicant shall file a Notice of Termination (NOT) for the General Permit with the RWQCB and San Jose Public Works Department when construction is complete, identifying that the SWPPP has been implemented.
  - The project applicant shall prepare and implement an erosion control plan to the San Jose Public Works Department in compliance with the City's Grading Ordinance, RWQCB regulations, and the Santa Clara Valley Urban Runoff Pollution Prevention Program. This plan shall include the following measures:
    - Using BMPs, including fiber rolls or other measures to retain sediment onsite.
    - Using stabilized construction entrances and/or wash racks.
    - Damp street sweeping.
    - Temporary covering of disturbed surfaces during construction.
    - Permanent covering of disturbed surfaces to stabilize soil after construction.

Post-Construction Water Quality Control Measures

- The project design shall include measures to minimize the release of nonpoint source pollutants, such as the following:
  - Installing bioswales to treat runoff prior to discharge to the storm water system.
  - Installing landscaping to facilitate the infiltration of storm water.
  - Using landscape species that minimize irrigation, runoff, pesticide and fertilizer application.

- Using efficient irrigation systems to minimize runoff.
- Maintaining landscaped areas to maintain soil structure and permeability.
- Implement regular maintenance activities at the site to prevent soil and litter from accumulating on the project site and contaminating surface runoff.
- Maintaining landscaping with minimal pesticide use, including landscape maintenance techniques listed in *Landscape Maintenance Techniques for Pest Reduction* prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program.

**IX. LAND USE AND PLANNING** – The project will not have a significant impact on land use and planning, therefore no mitigation is required.

**X. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XI. NOISE** – Construction of the proposed project would temporarily increase noise levels at residences along Cunningham Avenue in the project area. These residences are as close as about 30 feet from the project alignment. Construction noise represents a potentially significant impact that would be reduced to a less-than-significant level with implementation of the following mitigation:

During construction, the contractor shall implement the following measures to minimize construction noise nuisance impacts:

- For work occurring within 500 feet of a residence, work hours shall be limited to between 7 am to 7 pm Monday through Friday, and from Saturdays from 9 am to 5 pm. No Sunday construction shall be allowed.
- Choose construction equipment that is of quiet design, has a high-quality muffler system, and is well maintained, including trucks used to haul materials.
- Install superior intake and exhaust mufflers and engine enclosure panels wherever possible on gas diesel or pneumatic impact machines.
- Eliminate unnecessary idling of machines when not in use.
- All stationary noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from existing residences and businesses. The setback distance would be determined in the field based on changing construction conditions.

**XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XIV. RECREATION** – The project would have a beneficial impact on recreation resources by expanding walking and bicycling opportunities in the surrounding area.

**XV. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on transportation or traffic, therefore no mitigation is required.

**XVI. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required

**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **July 11, 2005**, 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; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$100 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant

Stephen M. Haase, AICP  
Director, Planning, Building and Code Enforcement

Circulated on: \_\_\_\_\_  
Deputy

Adopted on: \_\_\_\_\_  
Deputy