



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: June 18, 2007

Approved

Date

6/19/07

COUNCIL DISTRICT: 3
SNI AREAS: Five Wounds/
Brookwood Terrace

SUBJECT: PUBLIC HEARING ON AN APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE LAS PLUMAS HOUSEHOLD HAZARDOUS WASTE FACILITY.

Relocation of the household hazardous waste drop-off facility previously located at the City of San Jose's Central Service Yard (1661 Senter Road). Proposed on-site activities consist of collection of household hazardous wastes such as paint, solvents, and motor oil from members of the public approximately eight days per month, and temporary storage of the collected materials in prefabricated storage containers. Proposed site changes include new and relocated storage containers and creation of a driveway. The project site is a currently vacant 1.8-acre portion of a 4.2-acre City-owned parcel located at the corner of Las Plumas Avenue and Nipper Avenue (1608 Las Plumas Avenue). File No.: PP06-100.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council adopt a resolution to certify:

1. The City Council has read and considered the Final EIR;
2. The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA); and
3. The Final EIR reflects the independent judgment and analysis of the City of San Jose.
4. The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to the Applicant and to any other decision-making body of the City of San Jose for the project.

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OUTCOME

Rejection of the appeal and certification of the Final EIR will allow the City Council to consider relocation of the County Household Hazardous Waste Collection Facility to the City-owned property at 1608 Las Plumas Ave.

EXECUTIVE SUMMARY

On June 11, 2007, the Planning Commission held a public hearing on the Final EIR for the Household Hazardous Waste Collection Facility (HHW). After public testimony and discussion, the Planning Commission (5-2, Platten and Campos opposed) certified the Final EIR. On June 14, 2007, William Stauble of Therma Corp., and Arlene Inch, CEO of Trans-Pak Inc, filed a timely appeal. The certification appeal hearing of the City Council is de novo. The City Council may hear the appeal of the certification concurrently with the project.

Appeal. The appellants question the validity of the HHW Final EIR on the following premises;

Will Stauble/Therma Corp.

- 1) The EIR cumulative analysis did not consider a pending residential General Plan Amendment (GP05-03-07) at King/Las Plumas.
- 2) The range of Alternative Locations was inadequate.
- 3) Analysis of the Union Pacific property Alternative Location was inadequate.
- 4) The Final EIR response to comments concerning the HHW's proximity to housing was inadequate.
- 5) The EIR's description of Lower Silver Creek was inaccurate.

Arlene Inch, Trans-Pak.

- 6) The HHW would be unsafe for the adjacent family shelter, Center for Training and Careers, the American Indian Education Center, and surrounding businesses.
- 7) The area is not an appropriate location for the HHW.
- 8) The businesses in this area would suffer economically with the anticipated depreciation of their property.

Response. For a detailed response to each issue raised above, refer to the **ANALYSIS** section of this report. These issues were raised at or prior to the Planning Commission hearing, and were addressed in the Final EIR and/or by staff at the public hearing.

In summary, the Planning Commission found the HHW Final EIR meets the requirements of CEQA by disclosing the significant environmental effects of the project, identifying feasible ways to mitigate the significant effects, and describing reasonable alternatives to the project, to allow the City Council to make an informed decision whether to relocate the HHW facility to the City-owned Las Plumas property.

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The Final EIR complies with the substantive and procedural requirements of the CEQA guidelines. The Final EIR has been completed in compliance with the requirements of CEQA. It also represents the independent judgment and analysis of the City of San Jose.

BACKGROUND

CEQA Requirements for Certification of an EIR

The DEIR, taken together with the First Amendment, constitute the Final EIR. The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and (3) the Final EIR reflects the independent judgement and analysis of the lead agency.

On June 11, 2007, the Planning Commission held a public hearing on the Final EIR for the San Jose Flea Market. After public testimony and discussion, the Planning Commission certified the Final EIR (5-2-0, Platten and Campos opposed).

Appeal of an EIR

When an EIR is certified by a non-elected decision-making body with the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body. On June 14, 2007, William Stauble of Therma Corp., and Arlene Inch, CEO of Trans-Pak Inc, filed a timely appeal. San Jose Municipal Code (SJMC) Chapter 21.07 requires the Director of Planning, Building and Code Enforcement to schedule a noticed public hearing on a timely appeal of the Commission's certification of the Final EIR before the City Council. The certification appeal hearing of the City Council is de novo. The City Council may hear the appeal of the certification concurrently with the project.

Upon conclusion of the certification appeal hearing, the City Council may find that the Final EIR has been completed in compliance with the requirements of CEQA. If the City Council makes such a finding, it shall uphold the Commission's certification of the Final EIR and it may then immediately act on the project associated with the Final EIR. If the City Council finds that the Final EIR has not been completed in compliance with CEQA, the Council must require the Final EIR to be revised and it may not take any action on the project. All decisions of the City Council are final.

ANALYSIS

The attached letters, received from William Stauble of Therma Corp., and Arlene Inch, CEO of Trans-Pak Inc, constitute a formal appeal of the Planning Commission's certification on June 11, 2007 of the Final EIR for the HHW project. The appeal and the City of San Jose's response are discussed below. William Stauble also resubmitted his comments previously provided on the

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Draft EIR, responses for which are provided in the Final EIR previously provided to the City Council.

William Stauble, letter dated June 11, 2007

RESPONSE TO APPEAL OF EIR: The following are responses to Mr. Stauble's letter appeal.

COMMENT 1: *The EIR omits analysis of cumulative impacts resulting from the proposed 14 acre high density residential development on Las Plumas Avenue General Plan Amendment proposal, as described in attached Notice of Preparation. (File no. GP05-03-07)*

RESPONSE 1: This comment was not made during the comment period on the Draft EIR, but rather was provided at the Planning Commission certification hearing. The HHW EIR's cumulative analysis complies with the CEQA Guidelines. As stated in the Draft EIR p.93, because the project does not include an amendment to the City's General Plan, the method that was used to prepare the cumulative impact analysis relied upon a list of pending projects consisting of development applications, and not pending General Plan Amendments.

General Plan Amendments are land use policy changes and are not specific development projects whose impacts can be analyzed at a level consistent with specific construction projects. The cumulative analysis for a General Plan Amendment would include other General Plan Amendments, and not specific development projects. The Notice of Preparation for GP05-03-07 (p.4 #15 Cumulative Impacts) specifically states the cumulative analysis for the proposed General Plan Amendment will include a discussion of other General Plan Amendment applications.

The inherent differences in the level of detail, timeframe for development, and analytical methodologies preclude the consideration of land use policy changes (GPAs) and specific development projects, i.e. the HHW, in the same cumulative analysis. As an example, the traffic analysis methodologies for the HHW EIR require specific project information not available at the GPA stage for the pending King/Las Plumas site. The long-range General Plan traffic modeling for the King/Las Plumas GPA assumes planned transportation infrastructure and land uses that do not yet exist, i.e. future 101/Mabury interchange, and that cannot be assumed in the context of near-term traffic analysis for the HHW facility. The HHW EIR did consider the housing present on the south side of Las Plumas, east of King, opposite the GPA site, and has therefore accounted for the proximity of housing on the east side of King Road.

COMMENT 2: *The scope of Alternative Locations evaluated in the EIR is inadequate. The EIR only included sites which were previously rejected by the Environmental Services Department. There were no alternative locations considered incident to this EIR. The EIR fails to include a range of reasonable alternative locations.*

RESPONSE 2: The EIR does include a reasonable range of alternatives. CEQA does not specify a minimum number of alternatives, but rather a reasonable range to permit an informed choice. The EIR includes a total of nine alternatives, including seven location alternatives. While the comment argues the EIR should have included more alternative locations, no comments have been received suggesting an alternative location not already considered in the EIR. Planning staff and the environmental consultant independently evaluated the list of alternative sites generated by Environmental Services and County staff, and did not identify other locations that achieved HHW location criteria and other program objectives to include in the EIR.

COMMENT 3: *Analysis of Union Pacific Property and response to public comment fail to make good faith effort at full disclosure. The EIR is misleading concerning the UP property's potential as a project alternative in that the EIR only considered the portion of the UP parcel near Senter Road, and did not consider the portion of the UP parcel directly adjacent to the former HHW site on 10th Street. The portion of the UP parcel along 10th Street is not near Kelly Park and is environmentally superior to the Las Plumas Ave site.*

RESPONSE 3: The EIR considered as an alternative location the triangular Union Pacific property fronting on Senter Road, APN 477-38-010, as described at pg. 103 Draft EIR. The comment suggests the EIR should have also considered the railroad right-of-way APN 477-38-013, a long, narrow property running from Senter Road to S. 10th St. See attached detailed analysis concerning this parcel entitled "Union Pacific Railroad (UPRR)" for detailed discussion of the issues associated with this parcel. In brief, the parcel suffers from traffic ingress and egress issues, its proximity to the Muni Stadium, which hosts events with which the HHW collection events would substantially conflict, unknown soil/groundwater conditions, and is being considered, as part of the SJSU-City South Campus District Plan for potential use related to a regional soccer facility. For these various reasons, this location neither meets project objectives nor is it environmentally superior. The City Council will consider the feasibility of this alternative when the Council considers relocating the HHW to Las Plumas Ave.

COMMENT 4: *The EIR response to public comment concerning the proposed hazardous waste site's immediate proximity to housing is inadequate. The family shelter should be considered a large multi-family residential dwelling, and the EIR dismissed the shelter as a non-traditional residential use. The City's HHW relocation criteria to not locate the HHW within 300 feet of residential uses precludes locating the HHW at the Las Plumas Ave property given the family shelter location.*

RESPONSE 4: The EIR does not dismiss the family shelter as a residential use, and did appropriately consider the potential impacts posed by the HHW to the women and children residing at the shelter in its analysis, and includes feasible mitigation measures to reduce identified impacts. The Final EIR does clarify in a response to a comment (PP-10) that a shelter is not considered a traditional residential use. Shelters are only allowed in industrial and commercial zoning districts, while traditional residential uses, such as an apartment, are located in residential zoning districts.

COMMENT 5: *The EIR's analysis of Potential Alternative Locations is inadequate. The EIR's conclusion that the UP property is not an environmentally superior alternative to a site bordering schools, multi-family dwellings, non-profits and businesses is inaccurate.*

RESPONSE 5: See Response 3 above.

COMMENT 6: *The EIR's environmental setting/baseline description of the surrounding project area is inaccurate. The EIR specifically cites the UP property's proximity to Coyote Creek as a reason why 'hazardous waste impacts' might be greater at the UP site than at the proposed site (section 7.4.2.2).*

RESPONSE 6: The EIR does not state this -- the letter writer is misinterpreting the Draft EIR, which states on Page 104 that at the UPRR site "hazardous materials impacts may be greater, as the site is near the sensitive receptors in the regional park east of the site that also contains the Coyote Creek riparian corridor..." The Draft EIR does not state that the impacts on the creek are the reason why the hazardous materials impacts would be greater.

COMMENT 7: *In response to public comment, EIR response PP-12 admits that Coyote Creek is actually many times further from the UP property than Lower Silver Creek is from the proposed property.*

RESPONSE 7: The proximity of the two creeks to the proposed and alternative sites has only minimal relevance, because the EIR identifies no impacts at all from the project upon Lower Silver Creek. The letter writer also does not identify any impacts to Lower Silver Creek. The SCVWD and the California Department of Fish and Game also did not express any concerns regarding the project's impact on the creek or habitats.

COMMENT 8: *Without proximity ruled out as a reason for the EIR's erroneous analysis, the revised justification offered in the EIR comment response is that the Lower Silver Creek Watershed near the project site, has virtually no remaining riparian vegetation (EIR Response PP-12). " This characterization of Lower Silver Creek is completely inaccurate.*

According to the Santa Clara Valley Water District (SCVWD), Lower Silver Creek, a major tributary to Coyote Creek, is an enhanced riparian wetland habitat and with flourishing riparian vegetation (attachment #3). In fact, the SCVWD recently completed a seven-year major enhancement of Lower Silver Creek's fisheries and riparian habitat. Lower Silver Creek Watershed is approximately 150 feet from the proposed HHW site, and according to SCVWD, is actually an earthen riparian corridor with high wetland habitat value.

RESPONSE 8: This comment also provides no evidence that the project would impact the creek. As the appellant states, the creek is at least 150 feet from the proposed project site, and an active industrial business and buildings are located between the creek and the proposed household hazardous waste facility.

In addition, nowhere in the materials provided by the appellant does the Santa Clara Valley Water District (SCVWD) state that Lower Silver Creek is "an enhanced riparian wetland habitat and with flourishing riparian vegetation." The District's "Monthly Progress Report, June 2006" provided by the appellant states that "Reach 1 has some tree cover in the very lowest part of the reach near Coyote Creek and runs through a highly developed industrial area." Restoration plantings along the creek completed as part of the flood control project are recent and very immature. The SCVWD did not express any concerns regarding the EIR's characterization of the creek or habitats.

Response PP-12 from the First Amendment to the Draft EIR describes the creek as "channelized", meaning the creek has been altered from its original morphology. The EIR does not say the creek is not an earthen channel.

Regardless of the status of the wetland or riparian habitat of the creek, no impacts on the creek from the project were identified by the EIR, the appellant, or the responsible agencies.

COMMENT 9: *The inaccurate analysis of the environmental setting of the surrounding project area renders the EIR invalid.*

The EIR's baseline analysis of Lower Silver Creek Watershed is completely inaccurate. Erroneous analysis of the environmental setting was used as basis of analysis elsewhere in the EIR, such as the discussion of alternative locations. Information on the nearly adjacent Lower Silver Creek Watershed is readily available to both the public and the Lead Agency. The EIR fails to make a good faith attempt at full disclosure of potential project impacts in this and other areas, as required by CEQA. The EIR is fatally inadequate in this and other areas.

RESPONSE 9: This comment identifies no impacts on Lower Silver Creek. The EIR baseline analysis only discussed the stretch of the creek itself near the project site since a discussion of the "Watershed" was beyond the scope of the EIR. The EIR accurately describes the relationship between the HHW and Lower Silver Creek.

Arlene Inch, letter dated June 14, 2007

The following are responses to Ms. Inch's letter appeal.

COMMENT 1: *The HHW would be unsafe for the adjacent family shelter, Center for Training and Careers, the American Indian Education Center, and surrounding businesses.*

RESPONSE 1: This comment makes no specific charges concerning the EIR's analysis of impacts, mitigation measures, and discussion of alternatives, nor offers facts or analysis to refute the EIR's analysis. The appellant's opinion is noted, and will be considered by the City Council as it considers whether to relocate the HHW facility to Las Plumas Ave.

COMMENT 2: *The area is not an appropriate location for the HHW.*

RESPONSE 2: This is an opinion of the appellant, and not a specific disagreement with the EIR's analysis. The opinion is noted, and will be considered by the City Council as it considers whether to relocate the HHW facility to Las Plumas Ave.

COMMENT 3: *The businesses in this area would suffer economically with the anticipated depreciation of their property.*

RESPONSE 3: This is an opinion of the appellant, and is unsupported by any analysis. The EIR addresses potential environmental impacts associated with the HHW facility, and does not address, nor is it required to address, potential economic impacts, whether on surrounding businesses or property values.

ALTERNATIVES

If the Council does not uphold the Certification of this EIR, then Council would need to indicate the specific analysis needed to complete the EIR. This analysis would need to be completed, the EIR re-circulated, and considered by Planning Commission prior to any Council consideration of relocating the HHW facility to Las Plumas Ave.

PUBLIC OUTREACH/INTEREST

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

Public Notice and Review of Draft EIR

On April 10, 2007, the Director of Planning, Building and Code Enforcement caused a Notice of Availability (NOA) to be published in the San Jose Mercury News and posted for review with the County Clerk. As required by Pub. Res. Code secs. 21092(b), 21092.6; CEQA Guidelines secs. 15087, 15105, the NOA contains (1) a project description and location, (2) identification of significant environmental impacts, (3) specification of the review period, (4) identification of the public hearing date, time, and place, (5) information about where the Draft EIR is available, (6) and whether the project site is a listed toxic site.

The Draft EIR was circulated for public review for 45 days, beginning on April 10, 2007 and ending on May 24, 2007, as required by Pub. Res. Code sec. 21091 and CEQA Guidelines 15087 and 15105. The Draft EIR was available for review in the Department of Planning, Building and Code Enforcement, at the Martin Luther King Junior Main Library, Berryessa Library, East Branch Carnegie Library, Northside Community Center, American Indian Education Center, Berryessa Community Center, Anne Darling Elementary School, Five Wounds / Brookwood Terrace NAC, and online on the Department's website. In addition, the Draft EIR was mailed to other agencies, private organizations, business and individuals listed in Section I of the First Amendment to the Draft EIR.

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COORDINATION

Preparation of the responses in this memo to the FEIR appeals have been coordinated with the City Attorney's Office.

FISCAL / POLICY ALIGNMENT

Not applicable.

COST SUMMARY / IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Resolution to be adopted.

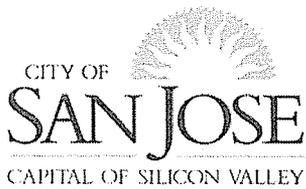
Akoni Danielsen
for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Akoni Danielsen, Principal Planner, at 535-7823.

cc: Appellants

Attachment:

Appeal filed by William Stauble, Therma Corp.
Appeal filed by Arlene Inch, Trans-Pak, Inc.



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

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	PPO6-100		RECEIPT # 456719
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	EIR		AMOUNT 100
			DATE 6/14/07
			BY [Signature]
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
Proposed Hazardous Waste Site on Las Plumas PPO6-100			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
The Final EIR was NOT prepared in compliance with CEQA for the attached reasons			
PERSON FILING APPEAL			
NAME	William Stauble		DAYTIME TELEPHONE (408) 640-5762
ADDRESS	1601 Las Plumas Avenue	CITY San Jose	STATE CA ZIP CODE 95133
SIGNATURE	[Signature]		DATE 6/14/07
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME	Same		
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

I. INTRODUCTION

“The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision makers, and the public, with information about the project that is required by CEQA.” Santiago County Water District v. County of Orange (1981) 118 Cal. App. 3d 818, 829. California courts have consistently emphasized that an EIR should: disclose all relevant facts; provide a balancing mechanism based on good-faith full disclosure whereby decision makers and the public can appropriately weigh the costs and benefits of a project; provide increased public awareness of the environmental issues; provide for agency accountability; and provide substantial environmental protection. Because of the serious shortcomings below, the EIR for the proposed hazardous waste site on Las Plumas is inadequate to meet both the procedural and substantive mandates of CEQA. The EIR fails to provide the Planning Commission and the public with information required under CEQA accountability, and therefore is inadequate for consideration of project approval.

II. THE EIR OMITTS REQUIRED ANALYSIS OF CUMULATIVE POTENTIALLY SIGNIFICANT IMPACTS FROM LARGE (14 ACRE) HIGH DENSITY RESIDENTIAL DEVELOPMENT ON LAS PLUMAS AVENUE GENERAL PLAN AMENDMENT (GPA) PROPOSAL – AND IS THEREFORE FATALY INADAQUETE

A. CEQA requires an EIR to disclose and analyze the potential cumulative impacts of reasonably foreseeable future nearby projects

“When analyzing the cumulative impacts of a project under 15130 (b)(1)(A), the Lead Agency is required to discuss not only the approved projects under construction and approved related projects not yet under construction, but also unapproved projects currently under environmental review with related impacts or which result in significant cumulative impacts. This analysis should include a discussion of projects under review by the Lead Agency and projects under review by other relevant public agencies, using reasonable efforts to discover, disclose, and discuss the other related projects (CEQA Title 14 Section 15130. *Discussion of Cumulative Impacts*. discussion: page 13).” An EIR must include a discussion of potentially significant cumulative impacts of the project when considered with other past, present, and reasonably foreseeable future projects in the area. (CEQA Section 15130).

B. The EIR omits analysis of cumulative impacts resulting from the proposed 14 acre high density residential development on Las Plumas

Section 6.1 (“Cumulative Impacts”) of the EIR states that, “the purpose of the cumulative analysis is to allow decision-makers to better understand the potential impacts that might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project.” To this end, it discusses potential cumulative impacts resulting from two residential rezoning proposals in the area, the Dobbins Drive Planned Development Rezoning and Berryessa Flea Market Planned Development

Rezoning. While discussion of both of these reasonably foreseeable projects is required by CEQA for inclusion in the EIR, the complete omission of the much closer Las Plumas proposal nullifies the legal adequacy of the environmental study. This omission renders the EIR incomplete and disregards the requirement that an EIR to make a good faith effort at full disclosure.

C. The Las Plumas 14 acre residential rezoning General Plan Amendment was known to the Lead Agency long before the DEIR/EIR was prepared.

The Notice of Preparation (NOP) for the King/Las Plumas General Plan Amendment was published by the Planning Department in January 2007 (attachment #1). The NOP states that, "the purpose of the High Density Residential (25-50 DU/AC) designation is to allow development of three- to four-story apartments or condominiums. (Notice of Preparation of a Draft Environmental Impact Report (E.I.R.) For The King-Las Plumas General Plan Amendment. Jan 2007. C. Overview and Description of the Project)."

The DEIR for the HHW proposal was published in April 2007, four months after the Las Plumas GPA proposal NOP. The project was known and had been published by the Lead Agency prior to drafting the EIR. The full disclosure and analysis of cumulative project impacts from this very nearby (less than one block away) anticipated development were knowingly and impermissibly omitted from the EIR.

D. The EIR analysis of cumulative impacts is fatally incomplete

The EIR's knowing omission of required discussion and analysis of the potential cumulative impacts from known or reasonably foreseeable nearby future projects deprives the public and the decision makers with information required under CEQA. Without the required disclosure and reasonable analysis of potential cumulative project impacts in light of the very close large Las Plumas residential proposal, the EIR is fatally incomplete and inadequate.

III. ABSENSE OF GOOD FAITH FULL DISCLOSURE IN ANALYSIS OF ALTERNATIVE LOCATIONS AS REQUIRED UNDER CEQA

A. The scope of alternative locations evaluated in the EIR is inadequate

The EIR analysis of alternative locations and response to public comments is misleading and does not provide a good faith attempt at full disclosure as required under CEQA. The San Jose Planning Commission specifically requested that potential alternative locations be considered as part of the current EIR. Planning staff stated that analysis of potential alternative locations would, in fact, be the primary substantive difference between an Initial Study and EIR.

However, Section 7.4.2 of the EIR states that an evaluation of alternative sites is not required. Though the EIR did evaluate a number of alternative locations, it elected to only include sites which were previously rejected by the Environmental Services

Department (ESD). There were no alternative locations considered incident to this EIR. The EIR simply documented a pre-Initial Study evaluation of sites rejected in early 2006.

An EIR, under CEQA, is required to describe a range of reasonable alternatives to the project, which would feasibly attain most of the project objectives but would avoid or substantially lessen its significant effects. 14 Cal Code Regs § 15126.6(a). The lead agency has a substantive duty to adopt feasible, environmentally superior alternatives. Pub. Res. Code § 21002, 14 Cal. Code Regs. §§ 15002(a)(3), 15021(a)(2). A lead agency cannot abdicate this duty unless substantial evidence supports a finding that the alternative is infeasible. See, eg., Citizens of Gotleta Valley v. Board of Supervisors, 197 Cal. App. 3d 1167, 1181 (1998). Analysis in an EIR must offer a good faith and reasonable attempt at full disclosure. Simply evaluating sites already rejected over one year earlier does not satisfy this threshold. The EIR fails to include a range of reasonable alternative locations, and the alternative location analysis contained the EIR did include is seriously flawed.

B. Analysis of Union Pacific property and response to public comment fail to make a good faith attempt at full disclosure

The EIR is misleading in its response to public comment concerning the Union Pacific (UP) property as a potential project alternative. The Union Pacific property discussed in the EIR runs along the entire Central Service Yard, from 10th Street to Senter Road and Alma Road. A portion of the very large parcel is directly adjacent to the original HHW site (on 10th Street). This portion is approximately the same size as the original HHW site. Unlike the proposed location, it is located in a heavy industrial zone (HI) surrounded by non-sensitive uses. The UP property is bordered by the Municipal Rifle Range (north), Central Service Yard (south), heavy industrial uses (west), and additional UP property (east). It is well insulated, and unlike the portion of the parcel the EIR elected to discuss, it is not adjacent to Kelly Park. Its omission from the EIR is disturbing. The EIR elects only to mention the portion of the long UP parcel that is near Senter Road, and thus, Kelly Park. There is a complete omission of the portion along 10th Street which is clearly an environmentally superior alternative to the Las Plumas property. The EIR's response to public comment concerning the UP property is also misleading in several additional areas, such as liquefaction potential and approximations of distance from Coyote Creek and sensitive receptors. At the very least, the EIR's analysis of the UP property is seriously inadequate.

Union Pacific Property

- No known soil and groundwater contamination
- Nearest school: approx one mile
- No housing in vicinity
- Flood designation: D (undetermined but possible flooding)
- Liquefaction potential: unknown
- Nearest Creek: at least 900 feet
- Current users familiar w/ location (it borders the original HHW site)
Zoned Heavy Industrial (HI)

Las Plumas Property

- Unmitigated soil and groundwater contamination exceeding safety levels
- Nearest school: approx 40 feet
- Adjacent to high-density multi-family dwelling
- Flood designation AH (inundation to 3 ft)
- Liquefaction potential: HIGH (weak soil at shallow depths)
- Nearest creek: 150: (confluence of 3 rivers)
- Current users likely *unfamiliar* w/ location (it is located in across town)
- Zoned Light Industrial (LI) (w/ schools, housing, non-profits, and commercial uses)
- Proposed 14 acre high density Las Plumas development ½ block away (and omitted entirely from analysis in the EIR)

C. The EIR response to public comment concerning the proposed hazardous waste site's immediate proximity to housing is inadequate.

In its discussion of potential alternative locations, Section 7.4.2 of the EIR states that a suitable HHW site should be at least 300 feet from “residential uses.” The prohibition on residential uses within 300 feet of a HHW site contained in the City’s relocation analysis (attachment # 2) was based environmental rather than operational concerns. It is a standard location criterion for large hazardous waste handlers whose sole or primary product is hazardous waste. The EIR response to public comment raising the proposed site’s incompatibility with adjacent uses (large single mother shelter) ignores the proposed site’s proximity to residential uses. It fails to adequately address potential impacts to the many adjacent residents.

In response to public comment, planning staff elected to focus on how the adjacent housing should not be characterized as “multi-family residential dwelling” because it is located in an area still currently zoned as light industrial (EIR Response PP-10). This is in spite of the fact that the single mother shelter is, in fact, a large multi-family residential dwelling. Emphasis on zoning designation as opposed to actual environmental impact is inappropriate and impermissible under CEQA, and dismissing the single mother shelter’s many residents as non-residents is inaccurate. Public comment clearly raised the issue of

proximity. By focusing on how to characterize the adjacent residential use as opposed to the proposed projects potential environmental impacts to Family Supportive Housing, the EIR fails to address public comment. Public comment clearly stated that an HHW site is precluded at the Las Plumas location according to the City's relocation analysis exclusion of sites within a 300 foot radius of "residential uses." Staff response ignores the unmistakable meaning altogether and instead by focused on an ancillary, rather than substantive, aspect of public comment.

D. The EIR's Analysis of Potential Alternative Locations is Inadequate

The EIR's conclusion that the UP property is not an environmentally superior alternative to a site bordering schools, multi-family dwellings, non-profits and businesses is inaccurate. It is based on an evaluation which knowingly excludes the environmentally superior portion of the large UP property. The City's site selection criteria's exclusion of site's with "residential uses" within 300 feet precluded the proposed Las Plumas location. There appears at least indirect discrimination based upon the socio-economic circumstance of the many adjacent Las Plumas residents. The dozens of family's that reside adjacent to the proposed HHW site are not receiving the minimum standards of decency typically shown in environmental analysis of project impacts to more affluent families. The reliance on zoning designations as a surrogate for environmental impacts is not permitted under CEQA.

III. THE EIR'S ENVIRONMENTAL BASELINE DESCRIPTION OF LOWER SILVER CREEK IS COMPLETELY INNACCURATE ACCORDING TO THE SANTA CLARA VALLEY WATER DISTRICT -- THEREFORE THE EIR FAILS TO COMPLY WITH CEQA REQUIREMENTS

A. CEQA requires an accurate description of the environmental setting of the project site and surrounding area

CEQA requires that an EIR accurately describe the environmental setting of the project. 14 CCR § 15125. An EIR based on an inaccurate description of the environmental setting or baseline may, in turn, lead to an inaccurate description of the environmental impacts of the project, inadequate review of alternatives, and inaccurate assessment of the mitigation measures needed to avoid or minimize the significant impacts of the project. San Joaquin Raptor/Wildlife Rescue ctr. V. County of Stanislaus (1994) 27 Cal. App. 4th 713; Cadiz Land Co. v. Rail Cycle (2000) 83 Cal. App. 4th 74. In San Juaquin Raptor the court found that "the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete and misleading; it does not comply with State CEQA Guidelines section 15125." Id. At 728-29.

B. The EIR's environmental setting/baseline of the surrounding project area is inaccurate

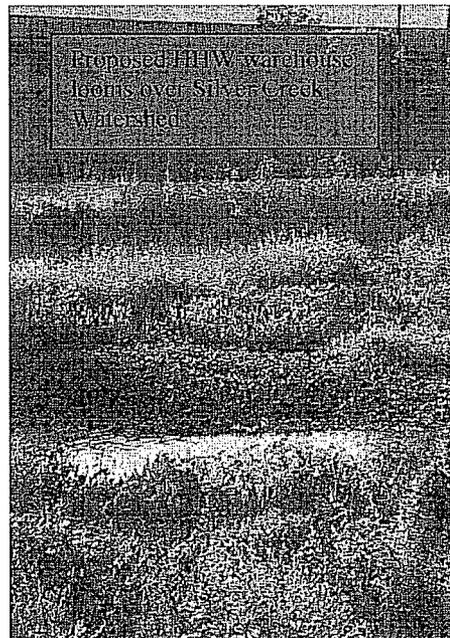
The EIR specifically cites the UP property's proximity to Coyote Creek as a reason why 'hazardous waste impacts' might be greater at the UP site than at the proposed site (section 7.4.2.2). In response to public comment, EIR response PP-12 admits that Coyote

Creek is actually many times further from the UP property than Lower Silver Creek is from the proposed property. Without proximity ruled out as a reason for the EIR's erroneous analysis, the revised justification offered in the EIR comment response is that the Lower Silver Creek Watershed near the project site, has virtually no remaining riparian vegetation (EIR Response PP-12).” This characterization of Lower Silver Creek is completely inaccurate.

According to the Santa Clara Valley Water District (SCVWD), Lower Silver Creek, a major tributary to Coyote Creek, is an enhanced riparian wetland habitat and with flourishing riparian vegetation (attachment #3). In fact, the SCVWD recently completed a seven-year major enhancement of Lower Silver Creek's fisheries and riparian habitat. Lower Silver Creek Watershed is approximately 150 feet from the proposed HHW site, and according to SCVWD, is actually an earthen riparian corridor with high wetland habitat value.

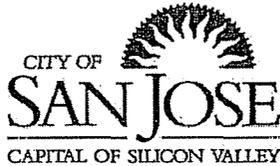
C. The inaccurate analysis of the environmental setting of the surrounding project area renders the EIR invalid

The EIR's baseline analysis of Lower Silver Creek Watershed is completely inaccurate. Erroneous analysis of the environmental setting was used as basis of analysis elsewhere in the EIR, such as the discussion of alternative locations. Information on the nearly adjacent Lower Silver Creek Watershed is readily available to both the public and the Lead Agency. The EIR fails to make a good faith attempt at full disclosure of potential project impacts in this and other areas, as required by CEQA. The EIR is fatally inadequate in this and other areas.



ATTACHMENT

1



**NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT (E.I.R.)
FOR THE KING-LAS PLUMAS GENERAL PLAN AMENDMENT**

File number: GP05-03-07

Applicant: Allen Mirzaei

Proposed project: General Plan Amendment from *Light Industrial* to *High Density Residential (25-50 DU/AC)* on 4.0 acres, *Medium High Density Residential (12-25 DU/AC)* on 8.5 acres, and *General Commercial* on 0.5 acres.

Project location: Northeast corner of North King Road and Las Plumas Avenue.

As the lead agency, the City of San José will prepare an Environmental Impact Report (EIR) for the project referenced above. The City welcomes your input regarding the scope and content of the environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities in connection with the proposed project. If you are affiliated with a public agency, this EIR may be used by your agency when considering subsequent approvals related to the project.

The project description, location, and probable environmental effects that will be analyzed in the EIR for the project are attached. According to State law, the deadline for your response is 30 days after receipt of this notice. However, we would appreciate an earlier response, if possible.

If you have any comments on this Notice of Preparation or general, non-E.I.R. related questions or comments about the King/Las Plumas General Plan Amendment, including anticipated scheduling of next steps in the review process please identify a contact person and send your correspondence to:

- City of San Jose Planning Division, Attn: Allen Tai, Project Manager
200 East Santa Clara Street, 3rd Floor San Jose, CA 95113-1905
Phone: (408) 535-7866, e-mail: allen.tai@sanjoseca.gov

The Draft E.I.R. for the King/Las Plumas General Plan Amendment is currently in the process of being prepared. A separate E.I.R. Notice of Availability will be circulated when the Draft EIR becomes available for public review and comments (currently anticipated to begin in April 2007).

The Planning Division will hold a neighborhood meeting and an EIR public scoping meeting to describe the proposed project and the environmental review process, and to obtain your input on the EIR analysis for the proposal. The meeting will be held on February 8, 2006. Please refer to the attached notice for more detail.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Deputy

Date: _____

NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT (E.I.R.) FOR THE KING/LAS PLUMAS GENERAL PLAN AMENDMENT

January 2007

A. Introduction

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to evaluate a project and its potential for significant impacts on the environment; to examine methods of reducing adverse impacts; and to consider alternatives to the project.

The EIR for the proposed project will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with the requirements of CEQA, the EIR will include the following:

- A summary of the project;
- A project description;
- A description of the existing environmental setting, potential environmental impacts, and mitigation measures;
- Alternatives to the project as proposed; and
- Environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; (d) effects found not to be significant; and (e) cumulative impacts.

B. Project Location

The proposed project is located on an approximately 13-acre site (the entire site consists of approximately 14.23 acres, of which approximately 1.23 acres is a former railroad spur designated *Light Industrial*, which will remain unchanged) on the northeast corner of North King Road and Las Plumas Avenue in East San José. The project site is comprised of two parcels and a portion of a third parcel [Assessor's Parcel Numbers (APNs): 254-54-023, 254-54-024, and 254-55-013] that are currently developed with light industrial and warehouse buildings and a public storage facility. The site is bordered to the northwest, northeast, southwest, and south by light industrial uses and to the southeast by residential uses.

C. Overview and Description of the Project

The proposed General Plan Amendment (GPA) requests to change the City's General Plan land use designation on the site from *Light Industrial* to *High Density Residential (25-50 DU/AC)* on 4.0 acres, *Medium High Density Residential (12-25 DU/AC)* on 8.5 acres, and *General Commercial* on 0.5 acres.

The purpose of the *High Density Residential (25-50 DU/AC)* designation is to allow development of three- to four-story apartments or condominiums over parking. This density is planned primarily near the Downtown Core Area, near commercial centers with ready access to freeways and/or expressways in vicinity of the rail stations within the Transit-Oriented Development Corridors Special Strategy Area. The *Medium High Density Residential (12-25 DU/AC)* designation allows development of two-story apartments and condominiums with surface parking. This land use is planned primarily for locations on major streets and near major activity centers. The *General Commercial* land use designation is a non-specialized commercial designation intended to permit miscellaneous commercial uses. It includes both strip commercial areas along major thoroughfares as well as freestanding commercial establishments. Business and professional office uses are allowed within this category as well.

The project site is located adjacent to the Berryessa BART Station Area Node boundary. BART Station Area Nodes are areas defined by a circle with a radius of 3,000 feet from a planned BART station and are intended for higher residential densities, more intensive job generating uses, and mixed-use development to support BART ridership. The overall minimum density within this BART station node is 55 dwelling units per acre.

The Berryessa BART Station Area Node is planned for a mix of job generating uses, high density residential and supportive commercial uses, and parks/open space. The land use designations for the area include *Transit Corridor*

Residential (20+ DU/AC), Medium Density Residential (8-16 DU/AC), Combined Industrial/Commercial, and Public Park/Open Space. The area currently has existing businesses, including the San José Flea Market. It is intended that as some of the properties in the area are developed with new uses, residential, commercial and other job generating uses should be coordinated and phased together, so that no one use will be developed separately and in advance of other uses.

The project site is currently developed with an approximately 77,000 square foot storage facility, 9,000 square feet of office space, and 105,000 square feet of warehouse space. The proposed change in land use designation would allow a maximum of 412 residential units on the site.

D. Potential Environmental Impacts of the Project

The EIR will describe the existing environmental conditions on the project site and will identify the significant environmental impacts anticipated to result from potential future development of the project with the land uses as proposed. Where potentially significant environmental impacts are identified, the EIR will also discuss mitigation measures that may make it possible to avoid or reduce significant land use impacts, as appropriate.

The analysis in the EIR will include the following specific categories of environmental impacts and concerns related to the proposed project. Additional subjects may be added at a later date, as new information comes to light.

1. Land Use: The EIR will identify the land uses on and around the project site and evaluate potential land use constraints created by existing conditions in the project area. The EIR will also identify potential land use impacts and conflicts that could result to the proposed land use from on-site and nearby land uses as well as potential impacts upon nearby land uses resulting from the project.

2. Transportation: The EIR will describe the existing traffic conditions in the project area, based on the City of San José's Level of Service (LOS) Policy. A transportation modeling analysis will be prepared in order to evaluate the long-term impacts of the proposed project on the overall transportation network in the General Plan.

3. Cultural Resources: Due to the location of the site in an area of archaeological sensitivity, the EIR will discuss the potential for archaeological resources to be present on the site.

4. Hazardous Materials: The EIR will discuss the potential for soil and groundwater contamination from existing and previous users of the project site as well as other hazardous materials users in the project area. The potential for impacts to future residents of the site will be discussed.

5. Noise: The EIR will characterize the existing noise environment in the project area and the compatibility of the ambient noise levels with the proposed noise-sensitive residential uses. Potential noise impacts on the project resulting from nearby noise sources, including King Road and the adjacent light industrial land uses, will be discussed.

6. Geology and Soils: The EIR will discuss the existing geologic and soil conditions on the project site. Any potential impacts to future residential uses of the site will be identified.

7. Hydrology and Water Quality: The EIR will discuss the drainage conditions in the project area and the potential for flooding on the site. The impacts of residential redevelopment of the site on the quality of storm water runoff will also be addressed.

8. Population and Housing: The EIR will describe the existing and projected employment, population, and housing conditions in the City of San José, and evaluate the potential for the project to result in impacts due to increases in population and loss of planned jobs.

9. Biological Resources: The EIR will discuss the potential for the proposed General Plan Amendment to result in impacts to biological resources on the site, including removal of mature trees.

10. Air Quality: The EIR will discuss the project's consistency with the Clean Air Plan and Ozone Strategy and the impacts of the project on local and regional air quality.

11. Utilities and Service Systems: The EIR will discuss the ability of existing infrastructure in the project area to serve residential uses.

12. Visual and Aesthetics: This section will discuss the visual and aesthetic resources of the site and any impacts that would potentially occur as a result of the proposed General Plan Amendment.

13. Energy and Mineral Resources: The EIR will describe current energy demand from uses on the site and will summarize any mineral resource on the project site or in the project vicinity. The EIR will describe potential impacts associated with energy and mineral resources.

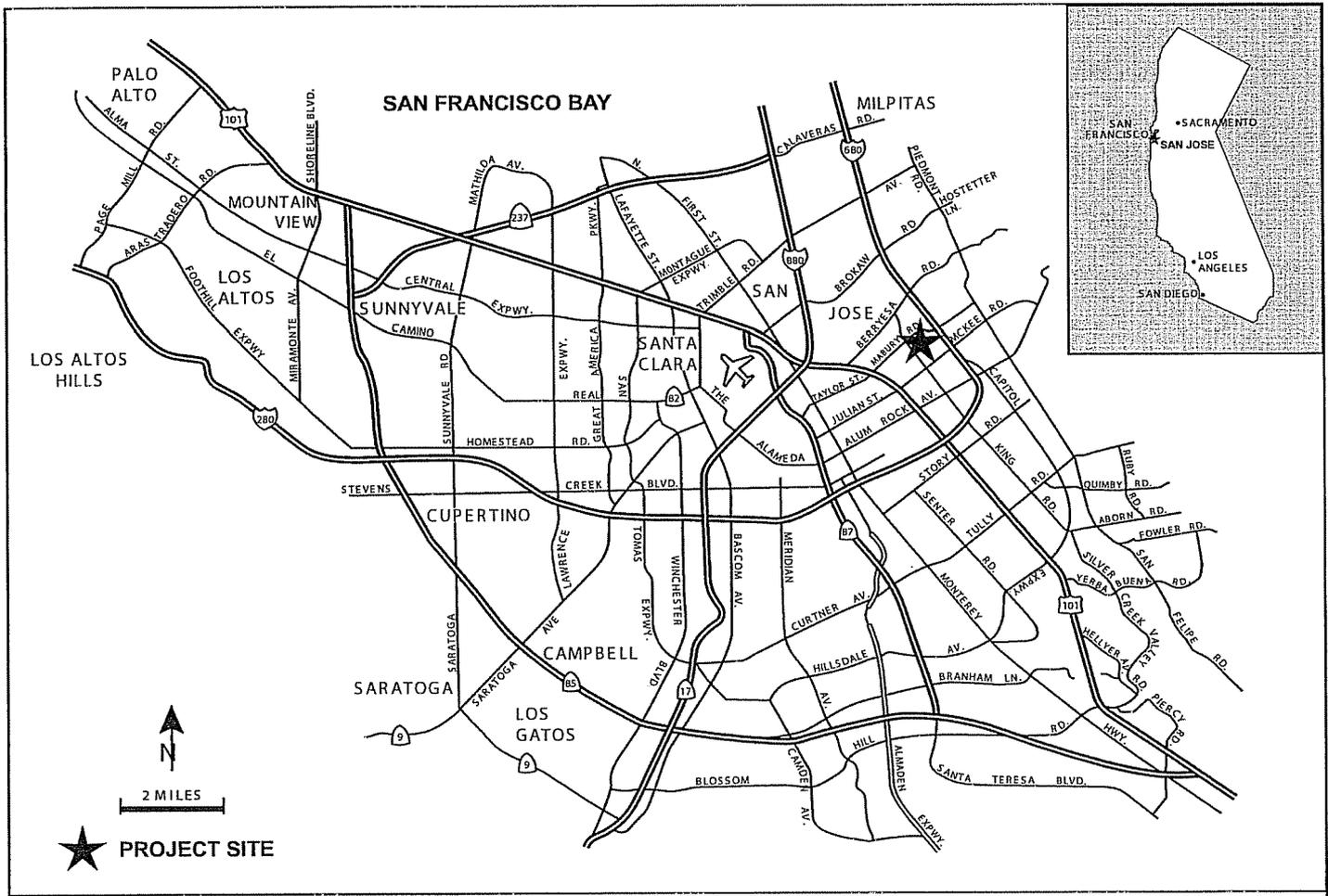
14. Availability of Public Facilities and Services: The EIR will discuss the availability of public facilities and service systems, and the potential for the project to require the construction of new facilities. This discussion will include a review of the effects on the provision of police and fire services, public school districts, libraries, and parks that would occur as a result of the project.

15. Cumulative Impacts: The EIR will include a discussion of the potentially significant cumulative impacts of the project when considered with other past, present, and reasonably foreseeable future projects in the area. The analysis will include a discussion of all General Plan amendment projects for which applications have been filed. This section will cover all relevant subject areas discussed in the EIR (e.g., traffic, air quality, and noise) and will specify which of the areas are anticipated to experience significant cumulative impacts. Cumulative impacts will be discussed qualitatively, unless specific quantitative information on other pending projects is available prior to publication of the Draft EIR.

16. Alternatives to the Project: The EIR will identify and evaluate project alternatives that might reasonably be assumed to reduce significant project impacts. The No Project Alternative is required by law. Other alternatives that may be discussed could include a Reduced Scale Alternative (either reduced development intensities and/or a smaller project area), Alternative Land Uses, and an Alternative Location.

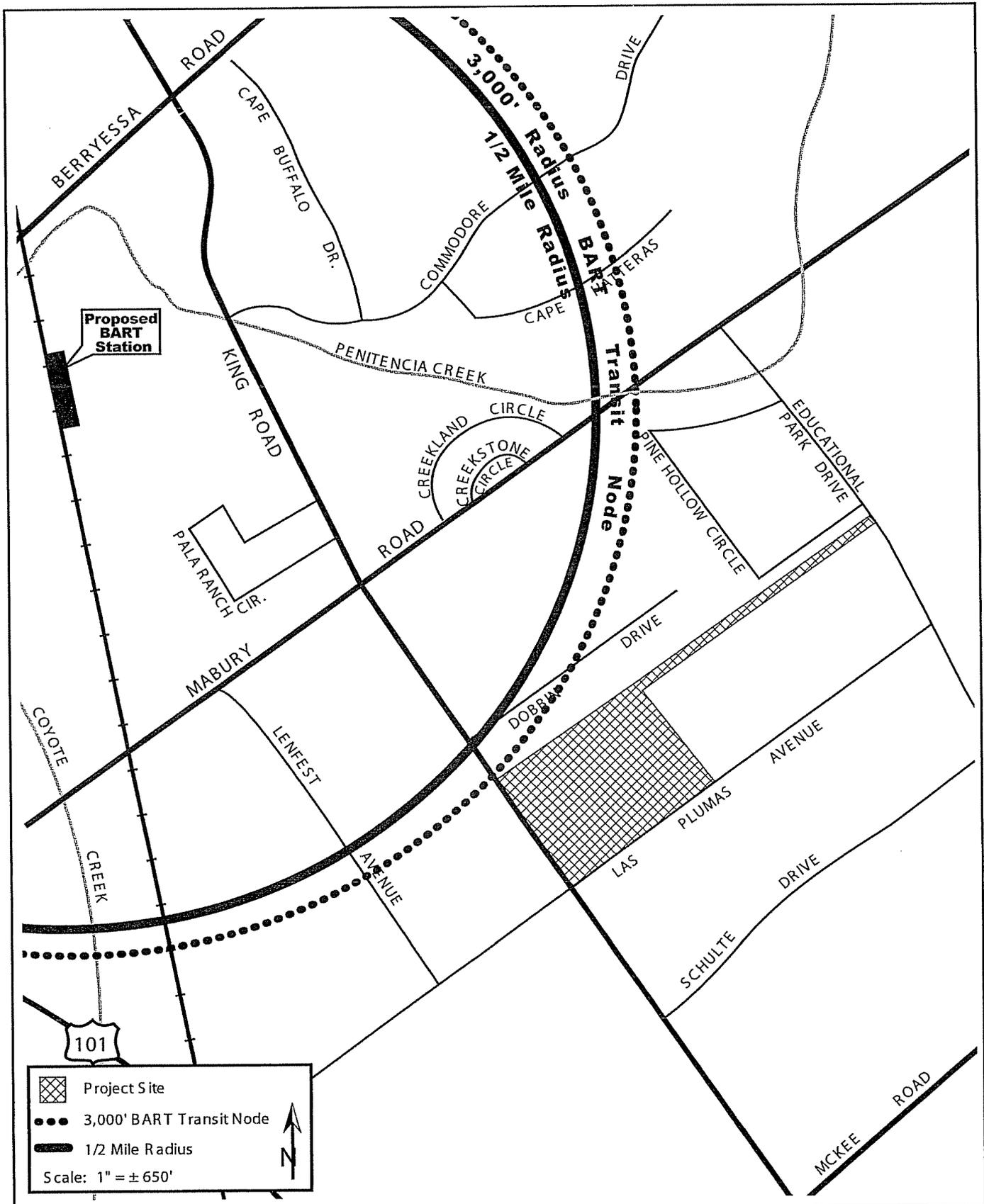
The EIR will identify the degree to which each alternative might reduce one or more of the project's impacts, whether or not the alternative could result in other or increased impacts, the viability of the alternative, and the degree to which the alternative is consistent with the project's goals and objectives.

17. Other Required Sections: The EIR will also include other information typically required for an EIR. These other sections include the following: 1) Growth Inducing Impacts; 2) Significant, Unavoidable Impacts; 3) Significant Irreversible Environmental Changes; 4) References; and 5) EIR Authors. Relevant technical reports will be provided in a technical appendix.



REGIONAL MAP

FIGURE 1



VICINITY MAP

FIGURE 2

ATTACHMENT

2

HHW Relocation Analysis

Updated: 10/27/05

TARGET SELECTION DATE: December 31, 2005

HHW Relocation Analysis

- Criteria:
1. Users familiar with site location
 2. Adequate traffic flow
 3. 0.5 acres needed minimum
 4. Land use compatible with area either 'Industrial' or 'Light Commercial'. No residential in immediate vicinity.
 5. Centrally located
 6. No cost or very low cost for acquisition and improvements

6. No cost or very low cost for acquisition and improvements

Prop	Site	Pros	Cons	Comments
1	UP Property adj to CSY	Users familiar with site location Adequate traffic flow Centrally located Low relocation costs	No lease for the area UP not responding	Patron contacted UP regional agent on 9/16 to determine disposition of land. He was referred to headquarters in UT. Action: Patron to follow up & complete - ON HOLD Patron to complete appraisal - ON HOLD Imminent domain or condemn property??
2	Old Rifle Range Site	Users familiar with site location Adequate traffic flow Meets minimum space needs Land compatible w/ area use Centrally located Low relocation costs	Site is under lease Bullet trap haz waste?? No room for expansion Requires building demolition	Under lease for another 3 years
3	Remillard Court	Adequate traffic flow Meets minimum space needs Centrally located Land compatible w/ area use		
4	Monterey Rd. Site	Adequate traffic flow Meets minimum space needs Land compatible w/ area use Centrally located	Marketing required for new location	NOT SOLD as of 9-25-05
None	Singleton Landfill (by Andrew Hill HS)	Adequate traffic flow Meets minimum space needs Centrally located	In an SMI area Adjacent to residential Access to site needs to go thru residential	Potential site for ballfields This would eliminate the need to purchase & construct a turn-out at Central Exp

Criteria:

1. Users familiar with site location
2. Adequate traffic flow
3. 0.5 acres needed minimum
4. Land use compatible with area either 'Industrial' or 'Light Commercial'. No residential in immediate vicinity.
5. Centrally located
6. No cost or very low cost for acquisition and improvements

Prop	Site	Pros	Cons
1	UP Property adj to CSY	Users familiar with site location Adequate traffic flow	No lease for the area UP not responding

- Other Actions in addition to those shown above:
- ESD - Research funding availability for capital improvements
 - PATRON - 2nd vacate letter to Rob Doroy
 - TANASE - Site map for CSY, Ice Centre, Muni Stadium block
 - CIPRIAN - background info on plans for Restore Facility in San Jose
 - TANASE - Draft & distribute a work plan for this effort

POSSIBLE REVENUE SOURCES:

- HHW Acquisition & Development
- HHW Grant - \$200k-300k/yr. (maybe resolution for design)
- Bond Program - Offset by E-Waste Res program
- AB 939 - Inconsistent rev stream

Adjacent Property to CSY:

- WPCP - Storm & Sanitary Sewers
- PRNS - Trail Project (Zsully)
- SY C&C
- Logitech Inc - they may be interested in adj land
- Muni Stadium (PRNS) - they may be interested in adj land
- Restore Facility

William Stauble

From: RLGGOOCH@up.com
Sent: Monday, October 23, 2006 2:17 PM
To: William Stauble
Subject: Re: UP property between 10th and Alma in San Jose

You are correct on both counts.

You are correct on both counts.

Rick Gooch
Director - Special Properties
29 Stevenson Street, Suite 1050
San Francisco, CA 94105
(415) 541-7050

Rick Gooch
Director - Special Properties

"William Stauble" <wstauble@therma.com>
10/20/2006 12:25 PM

To: <rigooch@up.com>
Cc:
Subject: UP property between 10th and Alma in San Jose

Hello, Mr. Gooch:

Thank you for your time this afternoon.

I would like to confirm the general details of our conversation today.

- 1) If the City of San Jose is interested, the Union Pacific property between 10th Street and Alma Street (adjacent to the Central Service Yard) is currently available for purchase.
- 2) The 'rough' estimated value of this property is approximately \$25/sq foot.

Please confirm when you have a moment.

Thanks again for your time.

I would like to confirm the general details of our conversation today.

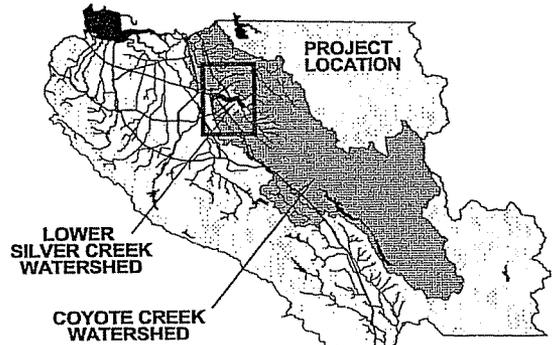
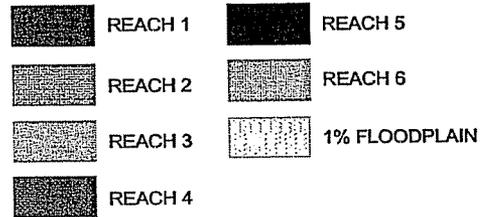
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ATTACHMENT

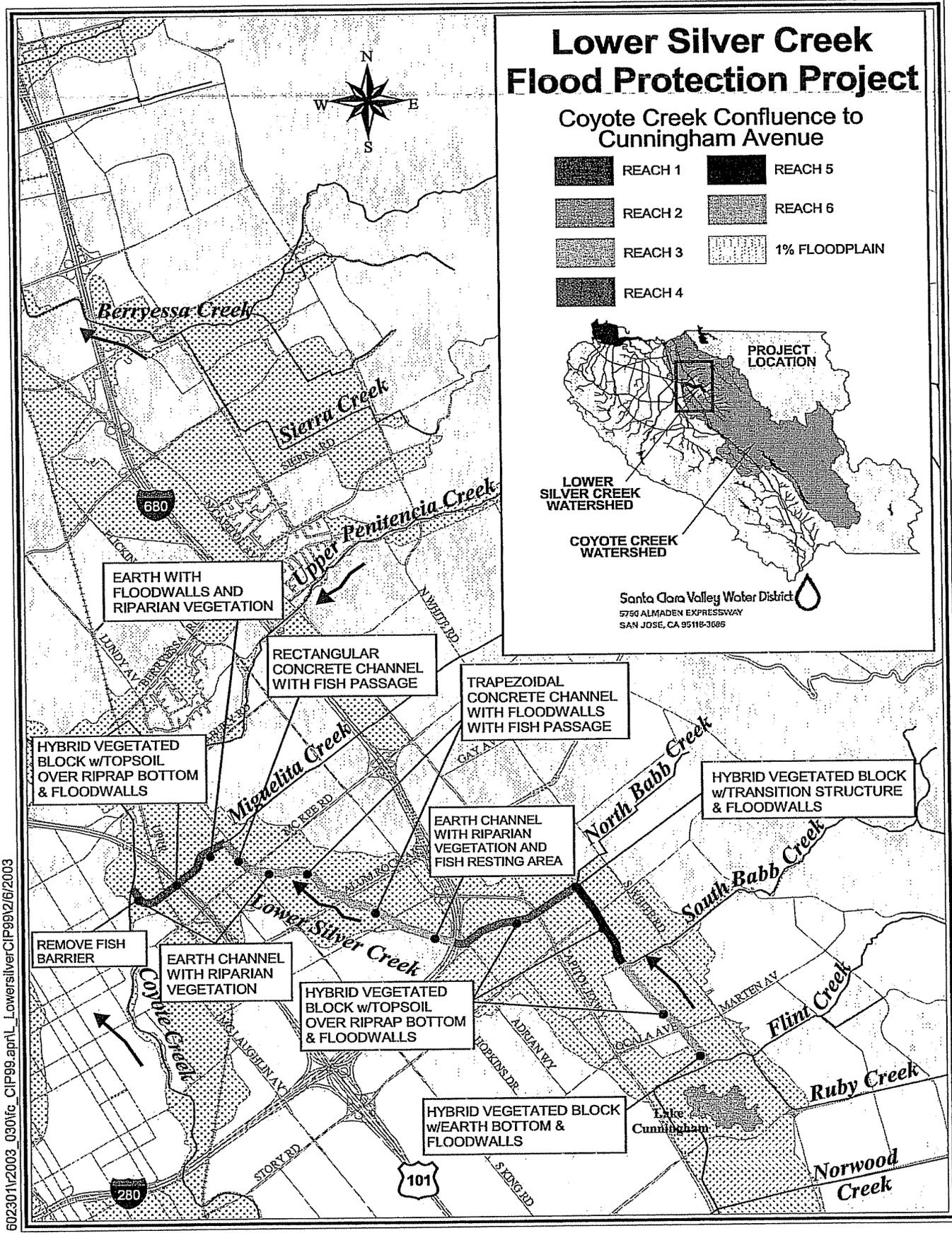
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Lower Silver Creek Flood Protection Project

Coyote Creek Confluence to Cunningham Avenue

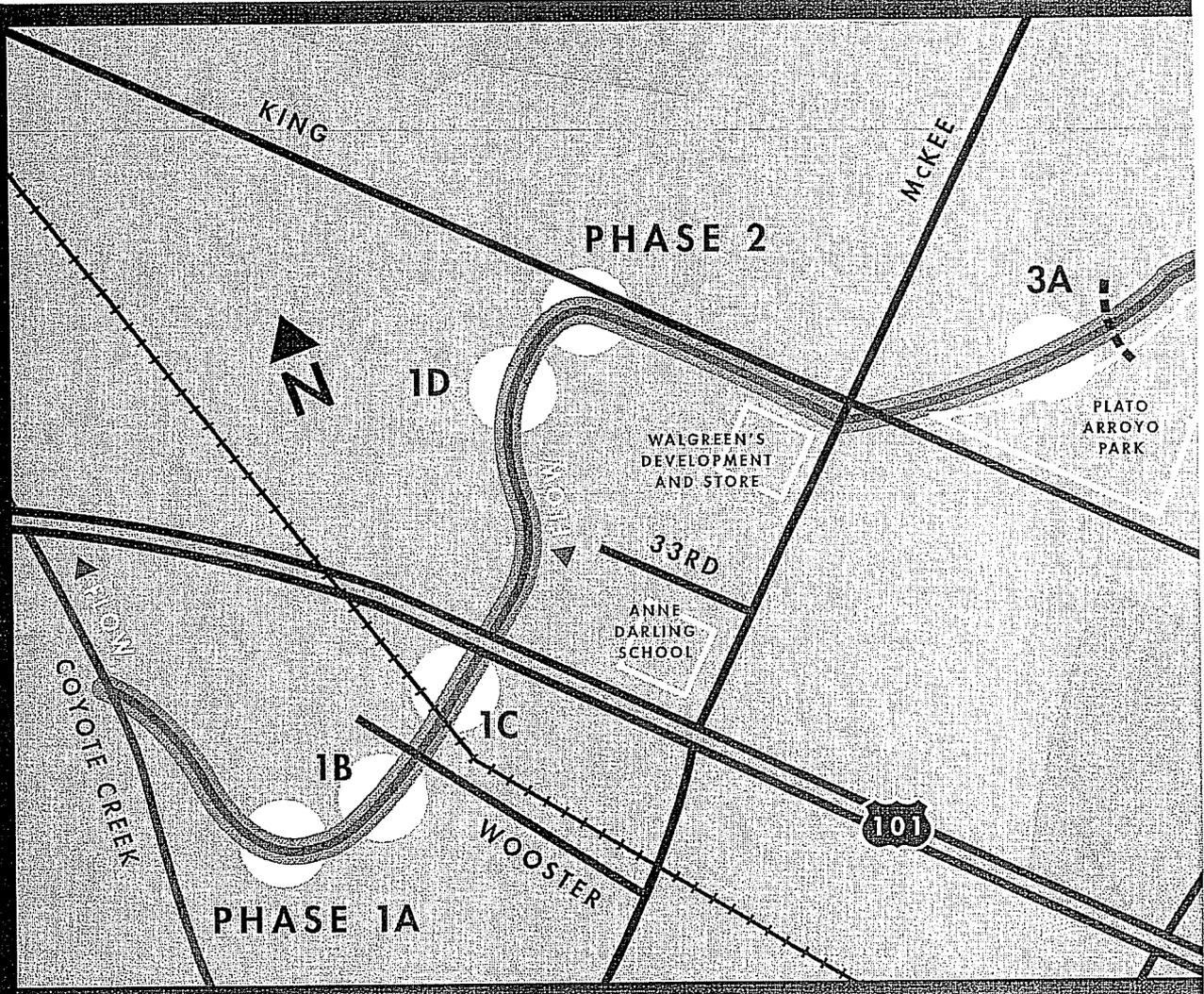


Santa Clara Valley Water District
 5750 ALMADEN EXPRESSWAY
 SAN JOSE, CA 95116-3685



602301/2003_0301fc_CIP99.apr_L_Lowersilver/CIP99/2/6/2003

Lower Silver Creek project between Coyote Creek and Interstate 680

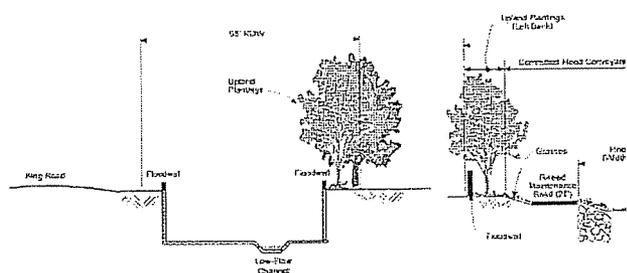
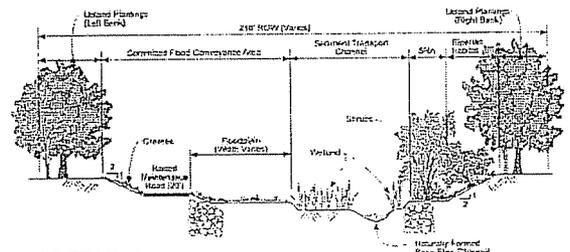


Lower Silver Creek project between Coyote Creek and Interstate 680

-  PROJECT LIMITS
-  1% FLOOD LIMITS
-  COYOTE WATERSHED
-  PEDESTRIAN BRIDGE

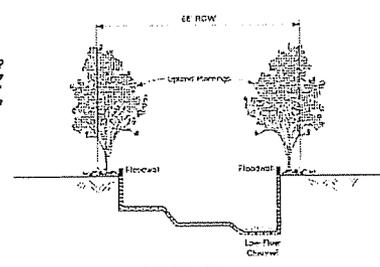
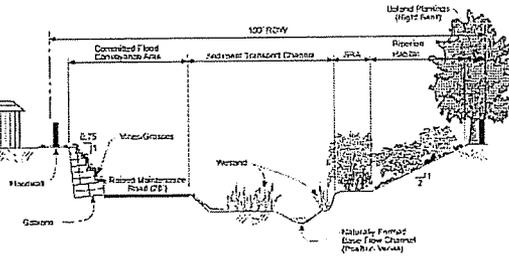
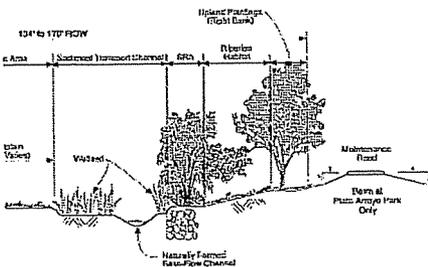
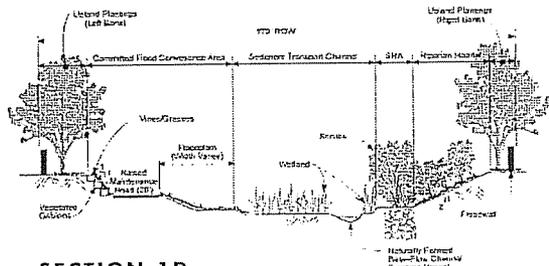
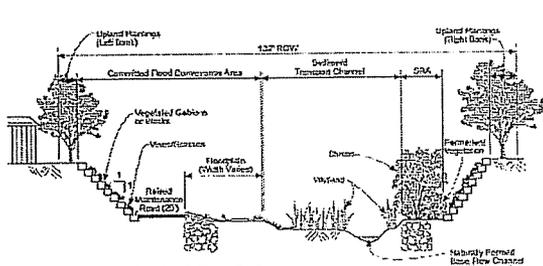
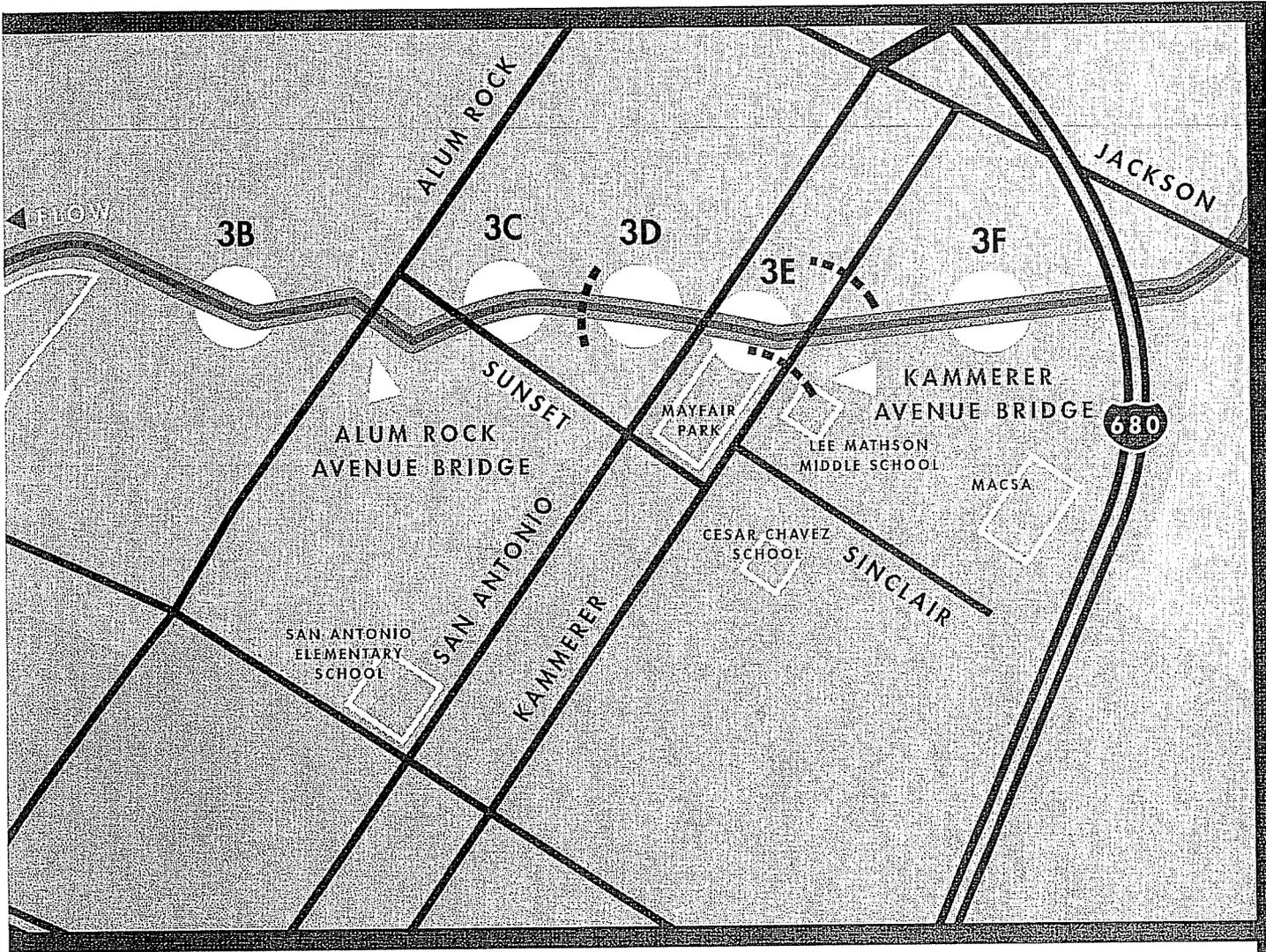


TYPICAL CROSS SECTIONS



SECTION 2

SECTION



fact sheet

Lower Silver Creek project between Coyote Creek and Interstate 680

Lower Silver Creek is a major tributary to Coyote Creek and drains a portion of the city of San Jose. Lower Silver Creek, between Coyote Creek and Interstate 680 is divided into two construction phases. The first phase begins at the Coyote Creek confluence near U.S. 101 and ends at the McKee/King roads intersection. The second phase of the project begins at the McKee/King roads intersection and ends at Interstate 680.

The map depicts the 2.3-mile long project, showing the proposed improvement by stream sections. Over the past 50 years, Lower Silver Creek has experienced severe flooding that resulted in damage to residential, commercial and industrial properties.

Because flooding is a major problem in this area, the Santa Clara Valley Water District is working in cooperation with the Natural Resource Conservation Service and Guadalupe Coyote Resource Conservation District to develop plan drawings and administer construction contracts.

The primary objectives of the project are to:

- Provide flood protection from a 1% or 100-year flood event
- Improve creek maintenance
- Enhance environmental values
- Improve water quality
- Provide recreational access to the public in cooperation with the City

The district is currently designing the project to include the following features:

- Enhanced sediment transport capacity
- Enhanced wetland habitat
- Creek bank stabilization
- Continuous maintenance road
- Enhanced vegetation plantings
- Pedestrian crossings

The planning and design phase is scheduled for completion in spring 2003; the construction phase is scheduled for completion in winter 2007.

A GUIDE TO TERMS USED

1% or 100-year flood event. A flood event that would be exceeded in severity only once every 100 years, on average.

Confluence. A flowing together of two or more streams.

Native Riparian habitat. Naturally occurring vegetation relating to the banks of a natural course of water.

Wetland habitat. A lowland area, such as a marsh or swamp, that is saturated with moisture, especially when regarded as the natural habitat of wildlife.

All information is proposed and subject to change.



Santa Clara Valley
Water District





**MONTHLY PROGRESS REPORT
June 2006**

LOWER SILVER CREEK REACHES 1 AND 2 (PROJECT 40264003)

PROJECT DESCRIPTION

Construct the NRCS Watershed Plan to Improve Lower Silver Creek to ensure flood protection from the 100-year flood event. Reach 1 begins at the Coyote Creek confluence near U.S. Highway 101 and is approximately 3,685 feet (0.7 miles) in length. Reach 1 has some tree cover in the very lowest part of the reach near Coyote Creek and runs through a highly developed industrial area. Reach 2 begins at Miguelita Creek and is approximately 1,315 feet (0.3 miles) in length. Reach 2 is adjacent to residential development and parallel to King Road. The upper limit of Reach 2 is McKee Road. Construction of Reaches 1 and 2 was completed in February 2005. Re-vegetation establishment work is currently underway. Project close-out activities will follow after the Contractor completes this re-vegetation work which is forecasted to be complete in June 2007.

GOALS AND OBJECTIVES

Implement the 1998 NRCS Watershed Plan Update to:

1. Provide Protection to the surrounding area from the 100-year flood event;
2. Mitigate and improve fisheries; and,
3. Mitigate and improve riparian habitat.

CURRENT FISCAL YEAR MILESTONE ACCOMPLISHMENTS (Dashboard Update)

Re-vegetation establishment for Year 3 has begun.

CURRENT FISCAL YEAR MILESTONE ISSUES (Dashboard Update)

On schedule to meet current fiscal year milestones.

ACCOMPLISHMENTS THIS PERIOD

1. Contractor is continuing maintenance of the revegetation plantings.
2. Revegetation subcontractor is being monitored (Harvey and District CMP).
3. Staff worked on Mitigation and Monitoring Report.
4. The District's Construction Management Program (CMP) is now performing the construction management work.

CURRENT ISSUES

1. Wooster Street Bridge Cooperative Agreement needs to be finalized by CPRU.
2. Finalize transition of CM activities next month between the CWP and the District's CMP.

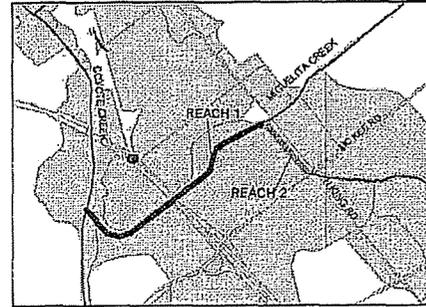
SCHEDULE STATUS

1. Channel construction is complete.
2. Three-year plant maintenance period began June 1, 2004.
3. Contractor is going to begin year 3 of 3 of re-vegetation establishment.

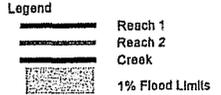
COST STATUS

The project is expected to remain within the budget.

DISTRICT PROJECT MANAGER: JOHN RYAN, JR.
CONTRACTOR: SHIMMICK CONSTRUCTION



Full extent of 1% flood limits not shown



MILESTONE DATES Milestone	Current Approved (Nov 2005)		Actual/ Forecast		
	Start	Finish	Start	Finish	
Design NTP	Jun-00	Jun-00	Jun-00	Jun-00	A
Complete CEQA*	Apr-99	Oct-01	Apr-99	Oct-01	A
Complete 30% Design*	Jun-00	Oct-00	Jun-00	Oct-00	A
Complete 60% Design*	Mar-01	Jul-01	Mar-01	Jul-01	A
Complete 90% Design*	Oct-01	Nov-01	Oct-01	Nov-01	A
100% Design*	Nov-01	Jan-02	Nov-01	Jan-02	A
Acquire Right of Way*	Oct-00	Jun-02	Oct-00	Jun-02	A
Obtain Environmental Permits*	Apr-99	May-01	Apr-99	May-01	A
Advertise and Award*	Mar-02	Jun-02	Mar-02	Jun-02	A
Construction					
Construction NTP*	Jun-02	Jun-02	Jun-02	Jun-02	A
Construction*	Jun-02	Feb-04	Jun-02	Feb-04	A
Complete Re-vegetation establishment (Year 1)*	Jun-04	Jun-05	Jun-04	Jun-05	A
Complete Re-vegetation establishment (Year 2)*	Jun-05	Jun-06	Jun-05	Jun-06	A
Complete Re-vegetation establishment (Year 3)*	Jun-06	Jun-07	Jun-06	Jun-07	F
Close-Out					
Close-Out *	May-06	Oct-07	May-06	Oct-07	F

*Indicates Project Plan milestone
Change in Schedule
Current Approved FY Milestones



MONTHLY PROGRESS REPORT
June 2006

LOWER SILVER CREEK REACHES 1 AND 2 (PROJECT 40264003)

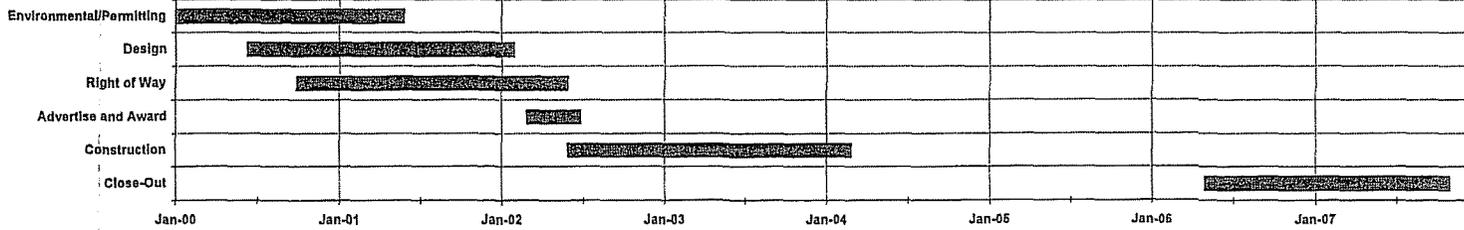
DISTRICT PROJECT MANAGER: JOHN RYAN, JR.
 CONTRACTOR: SHIMMICK CONSTRUCTION

DETAILED PROJECT COST

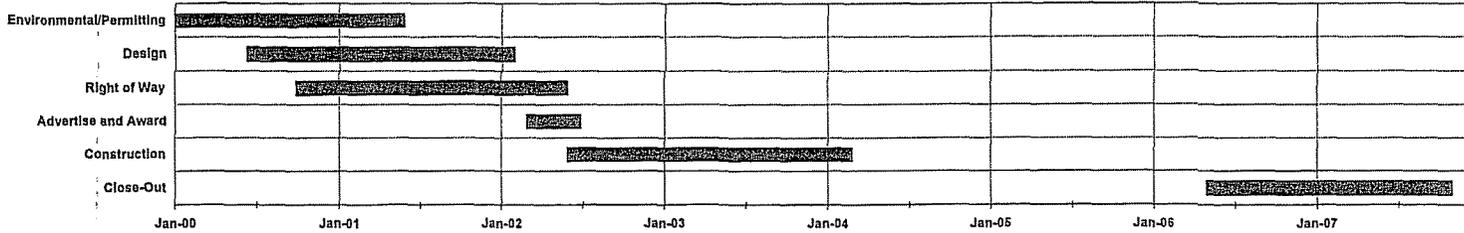
Project Component	Current Approved Project Plan (November 2005) (District Share)		Forecast Cost	Current (As of 7/20/06) Capital Projects- Estimated Balance Remaining		
Actual (FY01-FY00)	\$	1,143	\$	1,143	Current Budget	\$ 20,589,597
Planning	\$	138	\$	138	Spent to Date	\$ 20,458,879
Design	\$	2,835	\$	2,835	Balance Remaining	\$ 130,718
Construction Cost	\$	14,888	\$	14,888		
Construction Management	\$	1,957	\$	1,957		
Project Cost (LESS LERRDS)(\$1,000)	\$	20,539	\$	20,539		
LERRDS (40264009)	\$	114	\$	114		
Total Project Cost (\$1000)	\$	20,653	\$	20,653		

* Project costs not escalated over time

APPROVED SCHEDULE (per Project Plan)



FORECAST SCHEDULE



Draft EIR Comments submitted by William
Stauble, Therma Corp, May 24, 2007

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I. NATURE OF HAZARDOUS WASTE COLLECTED AND STORED BY THE CURRENT SITE

Asbestos, toxics, acids, poisons, reactive chemicals, PCB, mercury, used syringes, and oxidizers comprise much of the **over 1,000,000 pounds** of toxic and hazardous waste received by the current site each year. Wastes collected in mass quantities also include banned pesticides containing highly dangerous nerve-agents. Other seemingly more innocuous wastes such as used car batteries, motor oil and paint are also collected in significant quantities.

In a single analysis provided by the Environmental Services Department (ESD) of a one operating day at the current site, the site received at least 900 pounds of asbestos (August 12, 2006).

The ESD Director recently stated in a letter (August 25, 2006) that oxidizer hazardous waste is removed on the same day as its collection because of its inherently dangerous characteristics. However, on the August 12 operating event, 400 pounds of oxidizer waste was received, with 200 pounds being removed and 200 pounds stored for an unknown period.

Some types of hazardous, toxic, and biohazardous wastes are stored as a matter of policy for between 4 months to 1 year. For example, used medical waste (syringes) are stored for 4 months at a time, while 'dangerous when wet' waste is removed once per year.

The HHW program manager claims that *no data exists concerning the cumulative volume of hazardous waste stored at the current site*, although Title 22 of the California Code of Regulations seems to require collection and reporting of such data.

Despite repeated public requests, including by the Planning Commission, there has been no disclosure of the cumulative volumes of various hazardous wastes stored at the original facility. As this information was also omitted from the DEIR, the public has been deprived of the ability to comment on the quantity of waste which is cumulatively stored at the San Jose HHW site; this appears very much in contravention of the spirit, if not words, of CEQA. This information has been consistently treated by the HHW Program as a private program secret, which is alarming in itself.

The HHW program exists, in part, to prevent these highly flammable and reactive chemicals from igniting City garbage trucks on fire, which is an apparent serious problem. The program also exists to quarantine hazardous waste and thus help reduce the serious risk of lethal contamination to humans and the natural environment posed by exposure to many of the accepted wastes. Many of these hazardous wastes react to each other in dangerous ways. They are collected and stored in massive quantities and in close proximity to each other at the site. The site is inherently dangerous.

II. INADAQUETE GOOD FAITH ANALYSIS OF ALTERNATIVE SITES REQUIRED UNDER CEQA - AND REQUESTED BY THE PLANNING COMMISSION

On October 25 the San Jose Planning Commission specifically requested that potential alternative locations be considered as part of the current EIR. Section 7.4.2 of the DEIR states that the an

evaluation of alternative sites is not required. There were no alternative locations evaluated incident to the DEIR. As stated in Section 7.4.2, the DEIR elected simply to document to pre-Initial Study site selection process. These were mostly sites already rejected by the ESD.

A. Results of Relocation Analysis

In 2005 the City of San Jose studied a variety of potential relocation venues for the HHW site, resulting in a published relocation analysis (attachment # 1). The study incorporated a variety of criteria including minimum space requirements and *isolation from residential uses*. The study results ranked potential HHW relocation sites in order of preference based on six criteria, and concluded that the most appropriate relocation venue for the HHW site is the Union Pacific (UP) property adjacent to the original HHW facility and large Central Service Yard. The Las Plumas property was listed as an unranked alternative venue.

The City of San Jose's relocation analysis was cogent, and elements of the study criteria were in consideration of the public's health interest. *The relocation analysis' selection criteria precludes use of the Las Plumas site due to its immediate proximity to a large multi-family residential dwelling (Family Supportive Housing's single mother shelter).*

B. Union Pacific Property is an Environmentally Superior Relocation Venue

In the attached San Jose Environmental Services Department relocation analysis, the UP property discussed in the DEIR was found to be the most appropriate relocation venue. The zoning designation of this property is Heavy Industrial (HI). *It is approximately one-mile from the nearest school, has no residential uses in the vicinity, and borders the original HHW site.*

The City's residents who currently use the HHW program (>5%) are familiar with the UP location, and it easily accommodates minimum space requirements (0.5 acres). Unlike the Las Plumas location, there are no known soil or groundwater contaminants at the UP property – and so the cumulative effect of any spills or releases of toxic or hazardous waste by the HHW site would result in less of an impact.

Large portions of the UP property are insulated by the large City owned Central Service Yard. The UP property is completely surrounded by City owned land. Not surprisingly, the City of San Jose is already considering the acquisition of this large (HI) parcel.

C. Union Pacific Property is Available

In the San Jose Environmental Services relocation analysis, the UP property's viability was questioned because "UP not responding." The site was not questioned for environmental reasons such as immediate proximity to schools and high-density housing, existing unmitigated volatile soil and groundwater contaminants, location in an AH (three-foot) flood zone at the confluence of three rivers, nor high liquefaction potential – all of which exist at the Las Plumas property. While each site studied had 'cons' associated with them, the central 'con' for the UP property was that Union Pacific was not responding. While environmentally superior, the Union property appeared to be unavailable.

Incidentally, the Union Pacific property is readily available for purchase. The attached written correspondence with Union Pacific's Director of Special Properties Richard Gooch (attachment #2) confirms both the subject property's availability and modest asking price. Union Pacific is

quite motivated to sell this parcel, has invited any interested party to purchase, and states they will race an interested buyer to the finish line to sign a contract. There are no waiting periods, special rules, or encumbrances associated with this property. Union Pacific is very aggressively trying to sell this property. Based on a variety of selection criteria in the City's relocation study, including environmental concerns, the UP property is designated as San Jose's # 1 preferred relocation choice for the HHW site.

D. The DEIR Does Not Include a Good Faith Analysis of Alternative Locations Based on Substantial Evidence

Section 7.4.2 of the DEIR states that, "a suitable site should be at least 300 feet from residential uses," and also, "located on a flat, geologically stable site." The Las Plumas property meets neither requirement. The Las Plumas property is adjacent to large multi-family residential units (Family Supportive Housing) well within 150 feet of the proposed hazardous waste site. It also has very weak soil layers at relatively shallow depths and thus high liquefaction potential. The Las Plumas property miserably fails at least two out of the three selection criteria cited in the DEIR which relate to environmental concerns.

Alternatively, the Union Pacific property is a superior alternative with respect to both environmental requirements. There are no residential units within three hundred feet of the site. The Union Pacific property also has a lower potential for liquefaction.

Almost bizarrely, the DEIR states that the Union Pacific property's potential hazardous waste impacts may be greater (than the Las Plumas property) as the site is near 'sensitive receptors' and the 'Coyote Creek riparian corridor'. In fact, the Las Plumas property far closer to sensitive receptors – the Native American Education Center and CTC are only 40 feet away. Similarly, the Lower Silver Creek riparian corridor is approximately six times closer to the Las Plumas property than Coyote Creek is to the Union Pacific property.

The comparative analysis offered in the DEIR between these two locations is not only seriously inadequate – it is altogether illogical.

The final area discussed for comparative purposes in the DIER concerning the UP property is traffic. The DEIR speculates if the final UP HHW site plan did not allow for adequate queuing greater traffic impacts could occur. There is no substantial evidence, or evidence of any sort, in the record to support this. There was no preliminary site plan drafted to evaluate the potential capacity for queuing at the UP site. In fact, there was no new study whatsoever pertaining to alternative locations.

The DEIR analysis concerning alternative locations is inadequate, incomplete, and is not a good faith attempt at full disclosure.

Union Pacific Property

- No existing soil and groundwater contamination
- Nearest school: approx one mile
- No housing in immediate vicinity
- Flood designation: D (undetermined but possible flooding)
- Liquefaction potential: Medium
- Nearest Creek: at least 900 feet
- Current users familiar w/location

Las Plumas Property

- Unmitigated soil and groundwater contamination exceeding safety levels
- Nearest school: approx 40 feet
- Adjacent to high-density multi-family dwelling: approx 150 ft
- Flood designation AH (inundation to 3 ft)
- Liquefaction potential: HIGH (weak soil at shallow depths)
- Nearest creek: 150: (confluence of 3 rivers)
- Current users *unfamiliar* w/ location

The DEIR concluded that the UP property is not an environmentally superior alternative. In fact, it concluded that there are no environmentally superior alternatives. The DEIR analysis of alternative location is clearly not a good faith effort at full disclosure. In light of the comparative analysis above, it is also clearly not based on substantial evidence.

III. INADAQUETE ANALYSIS OF IMPACT OF EXISTING UNMITIGATED SOIL AND GROUNDWATER CONTAMINATION

A. There is Existing Unmitigated Soil and Groundwater Contamination at the Site

The 2003 Monitoring Well Installation Report cited in the DEIR shows high concentrations of soil contamination at the proposed project site and other portions of the 4.2 City owned parcel. The Fall 2006 report also shows significant concentrations of contaminants in the shallow groundwater table. There is also a variety of soil contaminants on the proposed project site which exceed safety levels. The existence of high concentrations of soil and groundwater contaminants at the site has been known for approximately 8 years. There is ongoing study of the contamination on some portions of the project site.

B. The 2003 Groundwater Report Recommends Additional Soil and Groundwater Investigation on the Northern Extent of the Property

The Well Monitoring reports were conducted by independent consultants under the supervision of a geologist. In its summary, the 2003 report states that, "additional investigation of the northern extent of free phase product and dissolved phase plumes as well as source removal will undoubtedly be required. This investigation will probably require several additional monitoring

wells and/or soil borings” Since the report was published, there has been no additional investigation of the northern extent of the larger HHW portion of the property, either through additional soil borings or well installations. This is in spite of the fact that significant concentrations of contaminants were found in earlier soil samples taken on the proposed project site.

The 2003 report goes on to state, “the number and locations of samples are chosen to provide required information, but it cannot be assumed that they are entirely representative of the areas not sampled....conclusions beyond those stated and reported herein should not be inferred from this document.” Yet making conclusions beyond those in the monitoring reports is precisely what the DEIR does. Even when the project sites single monitoring well has shown significant levels of contaminants which exceed safety levels, the DEIR contends that this is “probably the result of a lab error.” All such conclusions must be based on substantial evidence. In the absence of additional investigation of the soil and groundwater contaminants on the proposed project site, and additional soil borings or well installations on the northern extent of the project site, there is an incomplete evaluation of both the scale of contamination and associated risks

C. 2006 Groundwater Report Shows Significant Concentrations of Groundwater Contaminants Which Exceed Safety Levels

Depth to groundwater ranges at the project site depending on rainfall, but generally ranges from begins between 5 and 10 feet below surface. The fall 2006 report shows significant concentrations of groundwater contaminants under the proposed HHW portion of the property, at approximately 7 feet below the surface. In spite of the 2003 report’s clear recommendation, there remains only one monitoring well at the project site, in the southernmost portion property. The contamination levels measured in the 2006 report are consistent with earlier results from the City owned parcel. Soil and groundwater contaminants are known to migrate in a number of ways. The only well on the proposed project site has very recently shown the presence of contaminants which far exceed established safety levels.

D. Safety Impacts From the Existing Soil and Groundwater Contamination Were Not Evaluated in the Environmental Study

There is no evaluation in the DEIR of the potential safety impacts of the proposed project sites unmitigated soil and groundwater contamination. In areas of the project site, two feet of soil would be excavated to accommodate the new HHW facility. Disturbance of contaminated soil may result in any number of safety impacts. None of these potential impacts are addressed in the DEIR. The subject site is located in a high-density area with many sensitive neighbors. The potential adverse effect on these neighbors from the existing contamination has not been evaluated. Neither has the potential effect resulting from a disturbance during the repaving and construction of the site. Additionally, there has been no assessment of the cumulative impacts which may result from a spill or release on the already contaminated site.

E. The DEIR is Inadequate Without Evaluation of Safety Impacts Site Contamination

The DEIR lacks both analysis and mitigations concerning potential safety impacts of existing soil and groundwater contamination. It disregards recent findings of significant concentrations of contaminants on the project sites only monitoring well. It does not address potential adverse impacts from the removal of contaminated soil. And it ignores the potential cumulative impact from a spill or release on the already contaminated site. For these reasons, the DEIR is totally inadequate in its discussion of impacts resulting from existing site contaminants.

IV. THE DEIR FOR A HAZARDOUS WASTE FACILITY IMMEDIATELY ADJACENT TO NUMEROUS SENSITIVE RECEPTORS IN A KNOWN SEISMIC HAZARD ZONE IS INCOMPLETE WITHOUT A GEOTECHNICAL INVESTIGATION – AND THEREFORE INADEQUATE

A. The DEIR omitted a standard site-specific geotechnical investigation

The DEIR contains incomplete evaluation of the potential for liquefaction at the proposed project location. There was no geotechnical investigation of the project site. The project site is located within the State of California Seismic Hazard Zone for liquefaction. A geotechnical investigation is a minimum standard for similarly situated projects. For example, Santa Clara County required a geotechnical investigation of liquefaction potential for their very rural San Martin HHW facility proposal in 2000. Not surprisingly, geotechnical investigations are a standard for private hazardous waste facility proposals in known Seismic Hazard Zones.

B. Only generic provincial studies were used to evaluate seismic hazards – in spite of the nature of the proposed use and known potential for liquefaction

The DEIR elects to use only generic regional studies as the basis of its analysis. There is a complete absence of standard site specific analysis based on a geotechnical investigation. The DEIR cites three sources as the basis of its evaluation of geologic and soil conditions and, thus, any mitigation incorporated. The sources for the Section 3.2 ‘Geology and Soils’ evaluation were 1) a Monitoring Well Installation Report relating only to the existing groundwater contamination, 2) City of San Jose Geotechnical Investigation from year 1974, and 3) the City’s Geologic Hazard’s Map, updated in 2000. The first source does not address the site’s potential susceptibility to seismic hazards. The second and third sources show the site as having “weak soil layers at relatively shallow depths” with a moderately high potential for liquefaction. Additionally, the DEIR acknowledges that the project site is located on a State of California Seismic Hazard Zone for liquefaction.

C. Inadequate basis of seismic hazard evaluation is alarming in a high-density neighborhood surrounded by sensitive receptors.

While Santa Clara County comported with minimum standards of environmental review concerning seismic hazards for their rural San Martin HHW facility, the DEIR omits such study entirely for the high-density proposed project area. This is disturbing and does not show regard for the health of the surrounding community. This and other required categories of review were

treated as a formality in the DEIR. In omitting a site-specific study, the DEIR does not honor CEQA objectives nor make a good faith attempt at full disclosure.

D. The mitigation offered in the DEIR is based on incomplete information and is does not make a good faith effort at full disclosure

There is inadequate basis to determine appropriate mitigation for liquefaction in the absence of a site-specific geotechnical investigation. The mitigation offered in the DEIR is to bolt the hazardous waste containers in place. If soils were transformed to a liquid during a seismic event (liquefaction), bolting the containers in place would have no mitigating affect at all. In the absence of an adequate basis of understanding the project site soils potential for liquefaction, appropriate mitigation measures cannot be developed. No proper mitigations may be assessed, because no standard evaluation of the site has been conducted. The absence of mitigation addressing to the acknowledged potential impact of liquefaction is unacceptable.

V. INADEQUATE DISCLOSURE OF CUMULATIVE VOLUMES OF TOXIC AND HAZARDOUS WASTE STORED AT THE SAN JOSE HHW FACILITY

A. The Disclosure of Cumulative Volumes of Waste Stored Was Omitted From the DEIR

The full disclosure of cumulative volumes and types of waste stored at the San Jose HHW facility was requested by the San Jose Planning Commission during its October 25 hearing. This basic, and elsewhere standard, information has been excluded altogether from the DEIR. Inadequate or omitted information on cumulative volumes of hazardous waste stored at the facility precludes minimum levels of required analysis of the HHW site's potential impacts in many other areas of the DEIR. It is disturbing that the applicant has submitted the DEIR with this omission. It is also surprising in light of the clear directive to disclose this information in the EIR on October 25, 2006. Volumes of hazardous waste received on a particular day provide no relevant means of analysis when the cumulative volume of waste stored is far in excess of a single-day snapshot of received waste. This information is standard for other hazardous waste EIR's – and is the very basis of evaluating the degree of mitigation necessary in numerous other areas. It is also the basis of required worst case scenario accidental release analysis. An incomplete analysis of the cumulative volumes of toxic and hazardous waste stored precludes appropriate analysis elsewhere is the DEIR – and callously disregards the health of the proposed site's many sensitive neighbors. The DEIR is inadequate with the omission of the cumulative volumes stored at San Jose facility.

Additionally, Title 22 appears to require the reporting of cumulative volumes stored at an HHW facility. Records must be kept for a period of years documenting the cumulative volume of toxic and hazardous waste stored. .

B. DEIR only discloses cumulative volume of smaller satellite HHW facility – NOT the San Jose facility

Strangely, the DEIR elects to only disclose the cumulative volumes of a smaller satellite facility in Sunnyvale. The San Jose facility proposing to relocate in the DEIR was in operation for over 15 years, and presumably has such required records. The cumulative volumes of the Sunnyvale site are not the subject of this environmental review, and are therefore irrelevant to disclosure and analysis required under CEQA in the DEIR.

It may be worth noting, however, that the volumes of waste stored at the Sunnyvale facility are generally far greater than the amount received on a given day. If the public and the Planning Commission are to base their analysis of the San Jose facilities cumulative volumes based on the Sunnyvale sample (which is an admittedly odd and inadequate basis) – then many tens of thousands of pounds is typically stored at the San Jose facility, based on a reported 45,000 pounds received during a typical single San Jose operating day. This is very much at odds with the DEIR's oft regurgitated "approx 10% of waste is stored."

The DEIR is clearly outside of accepted norms in its substitution of another smaller facility's cumulative volumes of hazardous waste stored. Private project hazardous waste EIR's contain this information. The Planning Commission specifically requested the San Jose facilities cumulative volumes of toxic and hazardous waste stored onsite.

C. The DEIR is Inadequate Because of its Failure to Disclose the Cumulative Volumes of Toxic and Hazardous Waste Stored at the Original HHW Facility

The DEIR is seriously inadequate absent the disclosure and evaluation of cumulative volumes of waste stored at the San Jose HHW facility during 2006, or any year prior. The disclosure of cumulative volumes of toxic and hazardous waste stored at the original HHW facility was requested by the Planning Commission for this EIR. Title 22 requires such data to be recorded. This data has been omitted entirely from the DEIR, and has been kept secret from the public. This obvious omission precludes proper evaluation of either the risk to public health posed by the proposed HHW site, or additional mitigations which may be necessary. The level of analysis in the DEIR is recklessly inadequate without this essential data – and fails to comport with minimum standards of analysis required under CEQA and public policy.

VI INADAQUETE WITHOUT WORST CASE SCENARIO ANALYSIS IN THE EVENT OF AN ACCIDENTAL RELEASE – AS REQUIRED BY OTHER LARGE HAZARDOUS WASTE HANDLERS

There is no worst case scenario accidental release analysis as required in EIR's for large private hazardous waste handlers. Such analysis is based on the types and cumulative volumes of waste store. The DEIR refers only to a generic 'operations plan' which is not specific to the proposed project site and does not take into account the variety and cumulative volumes stored at the San Jose HHW facility.

Interestingly, the DEIR shows such analysis for other commercial sites which handle hazardous waste in the proposed HHW area of San Jose, while excluding it for the proposed project analysis.

VII. DEIR PROPOSES INADEQUATE FLOOD MITIGATION AND USES ERRONEOUS ELEVATION DATA - IN THREE FOOT FEMA FLOOD ZONE (AH)

A. The DEIR Contains Erroneous Elevation Data

The elevation data cited in Section 3.3.2.1 of the DEIR states that the elevation range of the site is between 83 and 85 feet, and refers to the elevation contours in the Figure 4 Site Plan. Both DEIR Section 3.3 and the Figure 4 Site Plan contain erroneous elevation levels. These elevations levels describe the project site as being predominately above the flood plain. The elevations levels were not the result of an elevation survey, but rather were inserted by the authors of the DEIR. There is no basis at all for the elevation levels in the DEIR. Accurate elevation levels are obviously necessary for the implementation of appropriate mitigations.

B. The Flood Mitigations Proposed in the DEIR Are Inadequate

To mitigate the potential for a release in a flood event, the Santa Clara Valley Water District recommends elevating all hazardous waste and chemical storage containers above the 1% water surface elevation. The one-percent surface elevation at the project site is 84 feet. Assuming the Water Districts recommendation were followed, the erroneous elevation levels in the DEIR would preclude any actual mitigation.

Furthermore, the DEIR states that only the larger hazardous waste and chemical storage will be stored at least one foot above grade as a safeguard against flooding. Presumably, undefined criteria would be used to establish what constitutes 'larger' containers, and mid-sized chemical and hazardous waste containers would not be subject to any mitigation at all.

The Santa Clara County proposal for the rural San Martin HHW facility required that the elevation of the site be raised above the flood plain. Private hazardous waste projects go even further in their mitigations. By incorporating the erroneous elevation data and only requiring the elevation of larger containers, this DEIR offers no actual flood mitigation at all. Treating flood mitigation carelessly for a hazardous waste site in a high density area both disturbing and inadequate.

VIII. Unavoidable Significant Impact of Illegal Dumping of Hazardous Waste

The unavoidable significant impact of illegal dumping of hazardous waste on the public sidewalk in the project area cannot be mitigated.

While measures can be introduced to reduce the duration of time hazardous waste remains on the sidewalk, pedestrian traffic is essentially constant in front of and around the proposed location, and the risk of injury is both unacceptably and unavoidably high.

Toxics, poisons, and acids left unattended on the sidewalk for even 15 minutes in the Las Plumas community are likely to come into contact with young children. The pedestrian traffic is unusually high in this community. This is to a large extent explained by the presence of two schools and single mother shelter adjacent to the proposed hazardous waste site location.

Unattended hazardous waste on the public sidewalk was observed on three out of four recent visits to the current facility (June 2006). HHW sites, including the current San Jose site, have serious unavoidable hazardous waste dumping problems. The current site has still failed to introduce mitigating measures which would at least reduce the duration of time unattended hazardous waste remains on the public sidewalk. The fact that HHW sites are a magnet for dumping of hazardous waste is one of the reasons why Bay Area cities locate HHW sites away from schools and homes. The ESD is proposing an anomalously low standard which would distinguish our community in a uniquely unflattering fashion.

Because of the nearly constant pedestrian traffic on Las Plumas of predominately young children, it's very possible that children would be the first responders to the toxic and hazardous waste left in front of the site on non-operating days.

Santa Clara County and Northern California cities responsibly choose to locate HHW sites in areas away from schools and young children. It is rather shocking that the ESD proposed this here. We do not believe they properly considered the very close proximity of the school's and residential housing's when they proposed this location for the hazardous waste relocation. When representatives of the HHW program were informed of the proposed hazardous waste site's proximity to the American Indian Education Center in June of 2006, they appeared surprised. It does not appear the ESD thoroughly evaluated the unavoidable impacts to the adjacent uses prior to proposing the relocation.

Unfortunately, incidence of illegal dumping of hazardous waste is yet another area where the ESD fails to keep records. The public has had to rely on the selective admissions of program staff, which have been inconsistent. There is no known data concerning the frequency of hazardous waste dumping incidents in front of the HHW site beyond recent observations of the public and the rational inferences which may be drawn from them.

If recent observations of the current hazardous waste site are indicative, the program suffers from a systemic problem with the illegal dumping of hazardous waste on the public sidewalk. The fact that illegally dumped hazardous waste is likely to be contained in non-obvious packaging compounds the risk to the many neighborhood children.

It would be inappropriate and unsound policy for the residents of the greater Las Plumas community to be treated as surrogates for exposure to the various poisons and vaporous hazardous wastes regularly dumped in front of these sites.

IX. INADAQUETE AND ERRONEOUS ANALYSIS OF PROJECT IMPACT TO GOALS OF THE GENERAL PLAN

The Las Plumas is virtually the last remaining mixed use light industrial area of San Jose, and is ripe for continued beneficial commercial and non-profit development. Las Plumas is essentially the last remaining similarly situated mixed-use area in San Jose. The proposed hazardous waste

site appears to be the last vacant parcel of land in this light industrial mixed-use area. Businesses which require this type of land have, to large degree, continued to migrate to other parts of the Bay Area. A large part of the reason behind this trend is the unavailability of suitable land. Depriving this valuable commercial land of uses which enrich the community and contribute to its economic growth does not properly consider the long term economic interest of San Jose. Designating this property for an independently inappropriate use is particularly counterproductive and would further engender the disturbing pattern of corporate migration to other accommodating Bay Area cities.

There are many viable existing locations in San Jose for the HHW facility which are not suitable for commercial or non-profit development. Capitalizing on these existing advantageous alternative locations is both in the community's health interest and very much in San Jose's economic interest.

X. INADAQUETE SPILL AND RELEASE DISCLOSURE – BECAUSE “ALL RECORDS DESTROYED BY WATER DAMAGE”

In response to a recent records request for the San Jose HHW facility's spill and release records, the program manager responded that all such records prior to 2006 have been destroyed by water damage.

XI. Highly Reactive Non-Conforming Waste

The current HHW site also experiences incidents of highly dangerous non-conforming waste, including ammunition, being delivered to the site.

A law enforcement bomb squad has even been mobilized because of non-conforming highly reactive material being brought to the current HHW site.

Because non-conforming wastes are outside the scope of accepted material, the delivering party is not permitted to leave the waste onsite. This creates a foreseeable potential for the additional non-conforming materials and wastes to be included among illegal dumping events.

This is incredibly disconcerting considering the ESD is proposing to relocate next to an elementary school and high-density housing.

The potential for serious injury to the many neighborhood children due to illegal dumping of extremely dangerous non-conforming waste is unacceptably high.

Again, this is why all area communities elect to locate such facilities away from sensitive receptors and high-density uses.

As incidence of non-conforming reactive waste being brought to the current site is yet another area where the HHW program fails to keep records, the public has had to rely on the selective admissions of program staff.

XII. There Would be Significant Detrimental Impact to Nearly Adjacent Bio-habitat and Special Status Species

The Bio-habitat located only 150 feet away from the proposed site would be potentially affected by a host of foreseeable direct and indirect causes, including: potential abandonment of nests and chicks from various birds, contamination from spills of hazardous and reactive waste, contamination in a flood event, existing site soil and groundwater contamination, impacts from night lighting, impact of sedimentation and erosion to open water, the serious hazardous waste dumping problem associated with the proposed facility, increased traffic, and various other less foreseeable events.

The raptors and migratory birds present daily are also very likely nesting in the adjacent watershed. All raptor nests are protected by the Department of Fish and Game, and migratory birds are protected under the Federal Migratory Bird Treaty Act or Section 3503.5 of the CDFG Code. The preponderance of and potential impact to these special status species in the project vicinity have not been evaluated

Lower Silver Creek is a sensitive habitat which provides important habitat value for wildlife, has unusual and regionally restricted habitat types, and provides high biological diversity. It is also an important riparian wildlife corridor. The Basin Plan defines uses of the Lower Silver Creek Watershed to include special status species protection, fish habitat, and wildlife habitat. There was no identification in the DEIR of existing adjacent biological habitats and plant communities, potential habitat for local special status plant and wildlife species, and sensitive biological resources.

Any contamination from either the existing contaminated groundwater at the proposed property, or new contamination by the proposed hazardous waste site, would flow unabated to the watershed, either above ground or through the soil.

Particularly during the rainy season, storms would increase the flow of both existing site contaminants and carry them downstream. This may not only affect the quality of the riparian and open water habitats associated with the Creek, but Coyote Creek and other downstream biological communities as well.

The existing unmitigated groundwater contamination and migrating toxic plumes at or adjacent to the proposed site are already potential existing threat to this sensitive ecosystem. The cumulative impact nearly adjacent publicly handled toxic and other hazardous waste serious endangers this sensitive natural resource.

Identification of possible impacts and development of mitigation measures have not been adequately developed. This seems to seriously violate required analysis under CEQA.

XIII. FLOOD EVENT WATERSHED IMPACT ANALYSIS IS ABSENT FROM THE DEIR

The DEIR failed to include adequate investigation of watershed management opportunities to maximize capture of local rainfall on the project site, eliminate incremental increases in flows to the storm drain system, and provide filtering of flows to capture both existing and potential contaminants from the proposed project site. It also failed to address potential project impacts to the watershed during a flood event.

XIV. Project Traffic Would Have a Significant Detrimental Impact on Adjacent Schoolchildren

There seems a complete absence of traffic impact studies such as those elucidated by the California Department of Transportation. This is particularly startling considering the entrance to two schools share the tiny (40 foot wide) Nipper Avenue with the entrance to the proposed site. The entrance to the Indian Education Center (funded by the California Department of Education) sits only 25 feet from Nipper Avenue, as do numerous classroom windows. The proposed HHW site would have up to 1000 vehicles delivering hazardous waste to this small street on operating days.

Standard environmental studies for similarly sensitive locations include both least restrictive and most restrictive foreseeable “worst-case scenario” traffic analysis and therefore adequately address these impacts.

The ESD has reported inconsistent numbers of vehicles delivering hazardous waste to the site per month, but approximately 1000 vehicles deliver waste on operating

It is unknown if the ESD used data collected by traffic specialists or if any additional data was collected providing expert analysis. Due to the extraordinarily high degree of pedestrian, predominately children, traffic at the intersection of Nipper and Las Plumas, such analysis is necessary to conform to minimum standards of safety and accountability.

Peak hourly analysis of when children and employees businesses frequent the intersection in particularly high numbers is also lacking. The predominance of children and small size of the street suggest serious unevaluated safety issues and, thus, serious and significant impacts.

Though this analysis is omitted in the DEIR, it is necessary for compliance with CEQA objectives. The percentage of increased traffic on the proposed site’s operating days is extraordinarily high and would amount to a very substantial increase.

The traffic impact significance determinations of the DEIR failed to consider the very large population of school children which share the small street (Nipper Avenue) with the proposed hazardous waste site entrance and border. The capacity of this small and narrow street is incredibly modest, and would be utterly choked by up to 1000 vehicles delivering hazardous waste on HHW operating days, an unknown number of hazardous waste trucks transporting the

many tons of waste received by the site, and an unknown number of illegal dumping of hazardous waste incidents.

The Hazardous Waste Site's addition of between 25,000 and 48,000 vehicles yearly to Nipper Avenue would have a significant detrimental impact on the adjacent school children. Partly because the populations served by the schools and shelter are lower-income, the incidence of pedestrian traffic is unusually high.

Nipper Avenue is a short two-lane, 40 foot wide lane which supports many pedestrians, entrances to two schools, and two businesses. It is not suitable for 1000 additional vehicles on HHW operating days.

The preponderance of children in the area is further compounded by fact that the proposed hazardous waste site is a stones throw away from the Anne Darling, King and McKee, and Northside high-density communities.

XV. The Proposed Projects Noise Level Would Have a Significant Detrimental Impact on Adjacent Schoolchildren

The Las Plumas area is a very quiet community and hosts a number of sensitive receptors which are incompatible with a significant cumulative increase in noise. The most notable which are the Native American Library and two schools located immediately adjacent to the proposed hazardous waste site.

Many school classroom windows are literally only 25 feet from Nipper Avenue.

The ESD has at times seemed loath to acknowledge the existence of the schools adjacent to the proposed hazardous waste site, and apparently they were not even considered in the DEIR noise analysis.

The draft IES lacks single noise event contours and research results on the probability of disturbance.

The DEIR fails to adequately assess the potentially significant impact of noise disturbance to the adjacent classrooms resulting from the proposed hazardous waste site and the thousands of vehicles it will place next to these classroom windows. As mentioned, the American Indian Education Center (funded by the California Department of Education) and Center for Technology and Training share the small 40 foot wide, two-lane street with the proposed site. On operating days, up to 1000 cars per day may deliver hazardous waste to the site, and an unknown number of toxic and hazardous waste trucks will be transporting waste from the site. This is in addition to vehicles bringing illegal deliveries of hazardous waste, and vehicles bringing employees of the site.

The adjacent school's classroom windows are actually only 25 feet from Nipper Avenue. The school's window air conditioning units actually receive air directly from the proposed hazardous waste site area. It is highly foreseeable that the noise generated by this tremendous increase in traffic on operating days will have a substantial adverse effect on the ability of schoolchildren to focus.

The noise information presented in the DEIR is grossly incomplete. The proposed project's contribution to the cumulative noise level at the schools are not considered in this section for comparison purposes. As a result, no assessment of project impacts or the need for any mitigation measures associated with the project is even discussed.

The DEIR discusses noise levels very generally, but not for the adjoining sensitive receptors of school children and library specifically and also discusses generally recommended values for sound levels during the assumed operating hours. However, 'generally recommended values' do not satisfy the requirement to assess the impacts of a project which must include analysis of highly foreseeable significant impact of noise disturbance on adjacent school children.

The noise level associated with the existing uses needs to accurately established as well as a clear delineation of the evaluation criteria (acceptable noise level in close proximity to classrooms). The subsequent differential associated with a tremendous increase in traffic on operating days can then be evaluated and assessed as significant or not.

The source of any existing information concerning noise levels on Nipper Avenue is unknown, as is the duration of any study, study criteria, or analysis methods used. Without an established existing condition, no comparison or assessment of the project impacts can be made.

There are no exhibits which indicate the anticipated project's direct and indirect contributions to cumulative noise levels contour to levels which will not impact studying school children. Exhibits showing the resulting noise contours from existing conditions and the project conditions are lacking, and so there is no readily comparable data set for evaluation and public comment.

The DEIR does not clearly inform the public of 1) the existing conditions of daytime activities as they relate to noise or impact on studying, 2) the acceptable noise levels and project target noise levels during school and library hours, 3) the anticipated impacts of the project noise levels on the adjacent schoolchildren, 4) assessment of noise impacts on other area uses, and 4) determination of appropriate mitigation measures. For these reasons and those listed above, the DEIR does not adequately assess the potentially very significant health, safety, and quality of life impacts of noise disturbance to school classrooms and library associated with this proposal.

Again, in an affluent area, compliance with the above would be compulsory. We believe this standard should not be lowered for this lower-income, predominately minority community.

SUMMARY

In summary, the impact of the proposed hazardous waste site on the environment and community has not been adequately evaluated, essential facts are erroneous and often missing altogether, and the environmental and human cost is unacceptable. Therefore we ask that an appropriate study be done, or that a responsible alternative location be designated.

Danielsen, Akoni

Akoni,

Please forward the letter below and attachments to the Planning Commission. We noticed that John Stufflebean's 8/24/06 letter was attached to the EIR, while my response letter was omitted. Please include this email with your submission of the letter and attachments.

Please forward to the Commission upon receipt.

Best,

William

From: William Stauble

Sent: Monday, August 28, 2006 7:30 PM

To: 'john.stufflebean@sanjoseca.gov'

Cc: 'mayoremail@sanjoseca.gov'; 'district3@sanjoseca.gov'; 'District5@sanjoseca.gov'; 'district7@sanjoseca.gov'; 'forrest.williams@sanjoseca.gov'; 'District6@sanjoseca.gov'; 'dave.cortese@sanjoseca.gov'; 'linda.lezotte@sanjoseca.gov'; 'District4@sanjoseca.gov'; 'District10@sanjoseca.gov'; 'judy.chirco@sanjoseca.gov'

Subject: Proposed hazardous waste site on Las Plumas Avenue

Dear Mr. Stufflebean:

Thank you for your letter (attached) delivered on Friday, August 25.

As I will be out of the office for the coming week, I thought it prudent to briefly respond to your comments.

We are delighted the Department has invited a dialogue regarding some of the concerns surrounding the proposed hazardous waste site.

You are quite correct that Therma is interested in the public receiving accurate information.

The heart of the community's concern, which is sadly omitted from the discussion, is the Department's proposal to have personnel in hazmat suits collecting pesticides, reactive chemicals, acids, used syringes, PCB containing waste, and asbestos, in close proximity to, and in full view of a school serving nearly 1000 students, single mother shelter, many companies, next to a creek, high density housing etc.

I will very briefly address your comments in sequential order in the hope of both providing greater clarity and engendering responses by the Department where past requests have failed.

Concerning the number of vehicles visiting the site per month:

You said: only 1,800 (as opposed to 2,500) vehicles visit the site per month

Page twelve of the Initial Environmental Study states that up to 1,000 vehicles per day on four days per month may visit the proposed site.

Page forty of the Initial Environmental Study states 500-800 trips on approximately four days per month. The Department's recently published 'fact sheet' also uses the 500-800 trips per day estimate.

Based on the Program's published data, the range is between 2,000 and 4,000 trips per month. It is unclear whether this includes the hazardous waste collection trucks which eventually transport the waste offsite.

This also likely excludes illegal dumping of hazardous waste.

Your letter dated 8/24 appears to be the first mention of the '1,800 visits' estimate.

Concerning the 'continuous flow' terminology

You said: "this is not a continuous flow."

Even using the Department's newest numbers, there will be nearly 2,000 legal trips delivering waste to the site, an unknown number of illegal deliveries of hazardous waste to the site, and an unknown number of hazardous waste trucks picking up the many tons of hazardous waste received by the site.

This is what 'continuous flow' was meant to describe.

Selection criteria for removal of a substance

You said: some high risk waste is shipped sooner to reduce risk

This is directly the opposite of what the program managers have publicly stated in very certain terms. This question has been publicly raised, and the response was that the selection criteria is exclusively a question of economics.

The program managers are the singular source of this information.

Concerning the volume and variety of waste received

You said: the site specific numbers are lower than reflected

In response to a definite and certain request for site specific data, the Department provided Form 404 during a meeting with P.A.C.T.

There was no indication whatsoever, including on the form itself, that other locations were included in the estimate.

On 8/17 Paul Ledesma informed me that program-wide data was erroneously included in the form provided by the Department. I requested corrected figures and followed up with an email request (see attached).

We have yet to receive corrected figures.

As the department has failed to provide corrected data, we simply revised the terminology of the brochure from 'site specific' to 'program-wide.'

If not for the intervention of P.A.C.T., the public comment period would expire tomorrow, and we would still be deprived of corrected data. This is incredibly disconcerting, and considering our repeated public and written requests, can hardly be considered accidental.

Concerning the hazardous chemical suit photo

You said: the County does not treat on site

You are absolutely correct. When this was privately raised by your project proponent, a caption was added indicating this photo is from another program.

The Department's hazmat personnel wear white and green hazmat suits and eye protection "onsite." The hazardous waste is then processed and treated, often through destructive incineration, requiring a number of hazmat suits.

The relevance of the photo is self-evident.

Concerning the frequency of unmitigated illegal dumping of hazardous waste on the public sidewalk

You feel: four visits is a small sample, the dumped hazardous materials in the photo seem innocuous because of the packaging, and the program will now mitigate through a community policing hotline and one random check per 24 hour period

The site was visited four times in a one month period. On three occasions there was unattended waste dumped on the sidewalk. You are quite right that this is a small sample, but the statistical likelihood of it being anomalous is hardly measurable.

Please understand that these are the only available numbers, as *this is yet another area where the program fails to keep records*. I can assure you that in private enterprise reports are generated for all such serious matters, and in this way sound policy is developed. It is hardly desirable from our perspective to monitor someone else's organization, though we hope that when the public is affected, the organization will monitor itself. Concerning your mention of the proposed one random check per 24 hour period, please understand that you are proposing to locate a hazardous waste site next to a Native American elementary school program, the CTC educational center serving nearly 100 students per year, a single mother shelter with up to 150 displaced women and children, thousands of employees, etc.

You are encouraged to visit the area and observe the constant foot traffic in front of the proposed hazardous waste site by children and families. The proposed hazardous waste site would present an attractive nuisance for the many, many children on Las Plumas, appears to have a systemic public dumping problem, *and will be unattended for at least 23 1/2 hours per day*.

Therma itself has sophisticated security cameras along the entire campus, security guards, barbed fences, and alarm systems. *In spite of this, we have had approximately two dozen break-ins and break-in attempts during the past 5 years. We have also have had high-end technical equipment stolen.*

Concerning the assertion that the photo of dumped hazardous materials appear to be paint related waste; are asbestos, acids, toxics, used syringes, etc. typically delivered in open and obvious packaging? My inference it is that its customary for the program to receive hazardous waste in non-obvious packaging. *Since again, no records are kept by the program concerning incidence of illegal dumping of hazardous waste, we may only draw rational inferences.*

Concerning highly reactive and non-conforming waste

You said: the authorities haven't removed ammo, and there is no need to keep records of non-conforming waste brought to the site

What was omitted from your comments was that non-conforming waste is, in fact, brought to the current sites. Representatives of the program have conceded in response to specific questions that materials such as ammunition are brought, though not accepted.

Because this is another area where no records are kept, the public is deprived knowledge of the frequency of such incidents. We must rely solely on the selective admissions of program staff, which have been inconsistent.

As you mentioned in your letter, a bomb squad has even been called in because of highly reactive non-conforming waste being brought to the facility.

The likelihood of extremely dangerous non-conforming waste being dumped on the sidewalk appears highly foreseeable. This would be a frightening prospect in proximity to schools, a mobile medical clinic, housing, employees, County services, a watershed, etc .

Concerning the anomalously aggressive schedule of the project

You said: the rate for this project is not accelerated

The Public Works liaison for the project has called the schedule 'highly unusual' and conceded that putting the project to bid prior to the completion of the Initial Environmental Study and public comment period was unprecedented during the tenure of his employment with the City. While we appreciate his honesty, we were not comforted considering the equally troubling nature of the proposal.

But for the public's reaction, the bid would have opened and closed in July.

Concerning proximity to Lower Silver Creek

You said: this has been reviewed by staff. then you diverted focus to Therma itself

The Department is proposing to store poisons, flammables, reactives, acids, used syringes, etc. in one-foot high storage sheds/modulars in close proximity to a watershed and in a three foot FEMA flood zone.

The incline of the property appears to flow directly towards the Indian Education Center. I should also add that the adjoining school's window air conditioning units would be receiving air in from the proposed HHW site.

An apparent decision by the Department to direct focus on those raising concerns, as opposed to the concerns themselves, is disappointing.

Therma has two cleanrooms and an auto service center for company vehicles. Any 'hazardous material' incident to these uses is not left unattended on the public sidewalk where neighboring school children would be the first responders. If recent observations of the current HHW facility are at all indicative, then children would likely be the first responders to dumping of the various poisons, acids, reactives, syringes, etc. accepted by the program.

Concerning estimates of proximity

Like the Department, Therma used satellite imagery for its approximations of distances. Unlike the Department's data, our data is reconcilable with itself.

For instance, in the Initial Study the Department claims the distance to the Creek is 700 feet. Yet on several occasions, including in your letter to me, the Department has stated that a number of homes in the Anne Darling neighborhood, which is located on the opposite side of the Creek, are within a 500 foot radius of the proposed site.

How is this possible?

I would be delighted to continue our conversation, including discussion of the actual substance of the public's concern with the proposed hazardous waste site.

As you copied the City Council and Mayor in your letter, I thought it is appropriate to do the same.

Best,

William Stauble

Therma Corporation

Tel 408 347 3400

Fax 408 347 3410

ATTENTION

The information contained in this message may be legally privileged and confidential. It is intended to be read only by the individual or entity to whom it is addressed or by their designee. If the reader of this message is not the intended recipient, you are on notice that any distribution of this message, in any form, is strictly prohibited

If you have received this message in error, please immediately notify the sender and delete or destroy any copy of this message.

William Stauble

From: William Stauble
Sent: Sunday, August 20, 2006 8:05 PM
To: Paul Ledesma@sanjoseca.gov; Jennifer Huey
Subject: site specific information

Hi, Paul:

I hope you enjoyed your weekend.

On Thursday evening you mentioned that the waste 'quantity and variety' information you provided to Jennifer included one or two satellite collection sites.

I wanted to remind you to please provide revised information reflecting the **Senter Street facility only**.

If there has been a decision (or even intention) concerning the proposed facility to include waste not collected at the current site, or, to exclude waste currently collected at the current site, please let us know.

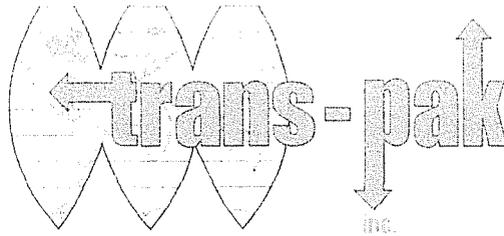
We will revise our notes as soon as we receive!

Please copy Jennifer when you reply with the revised data.

Best,

Will

8/28/2006



June 14, 2007

PACKAGING • CRATING • LOGISTICS

San Jose Planning Commission
c/o Akoni Danielsen
Akoni.Danielsen@sanjoseca.gov

Re: APPEAL for the FEIR on the Relocation of Household Material Collection Center (Las Plumas Avenue)

Dear San Jose Planning Commission,

It has been brought to our attention that the City of San Jose is considering a Household Hazardous Material Collection Center (hereinafter, "Hazardous Site") on Las Plumas Avenue in San Jose. We are very concerned that a Hazardous Site is being proposed in a location populated by high density housing, schools, family shelter, and offices housing thousands of employees

There are two alarming issues that are yet to be considered. Currently there is a school which sits a mere 40 feet away from the proposed site. We are concerned how the health and safety committee has concluded that the Hazardous Site is safe. Family shelter outside activities and school activities may ultimately be banned in light of the proposed hazardous site. Nor parents or teachers would be comfortable with the idea of having their child playing outside an area that could possibly be contaminated with hazardous toxics nor will they be comfortable with the increase of traffic the site will bring. The collection of over 1,000,000 pounds of toxic and hazardous waste is received by the current site each year. The toxic and hazardous waste are composed of materials such as asbestos, acids, used syringes and mercury. All of which have been found to be responsible for fires, explosions and contamination from spills of hazardous and reactive waste.

This area is not the appropriate location for such a site. In fact it is just the contrary. Too many individual lives are at risk. There are schools, businesses housing thousands of employees and a family shelter who would ultimately see the facility as a hazard itself.

In another aspect, the businesses in this area would suffer economically with the anticipated depreciation of their property. Clients, visitors and even employees would be discouraged from doing business, visiting, and working in an area containing hazardous toxics.

We strongly urge the San Jose Planning Commission to reconsider the location of the Hazardous Site. Thank you for your consideration in this matter.

We kindly request to be added to Therma Corporation's formal appeal on this matter.

Sincerely,

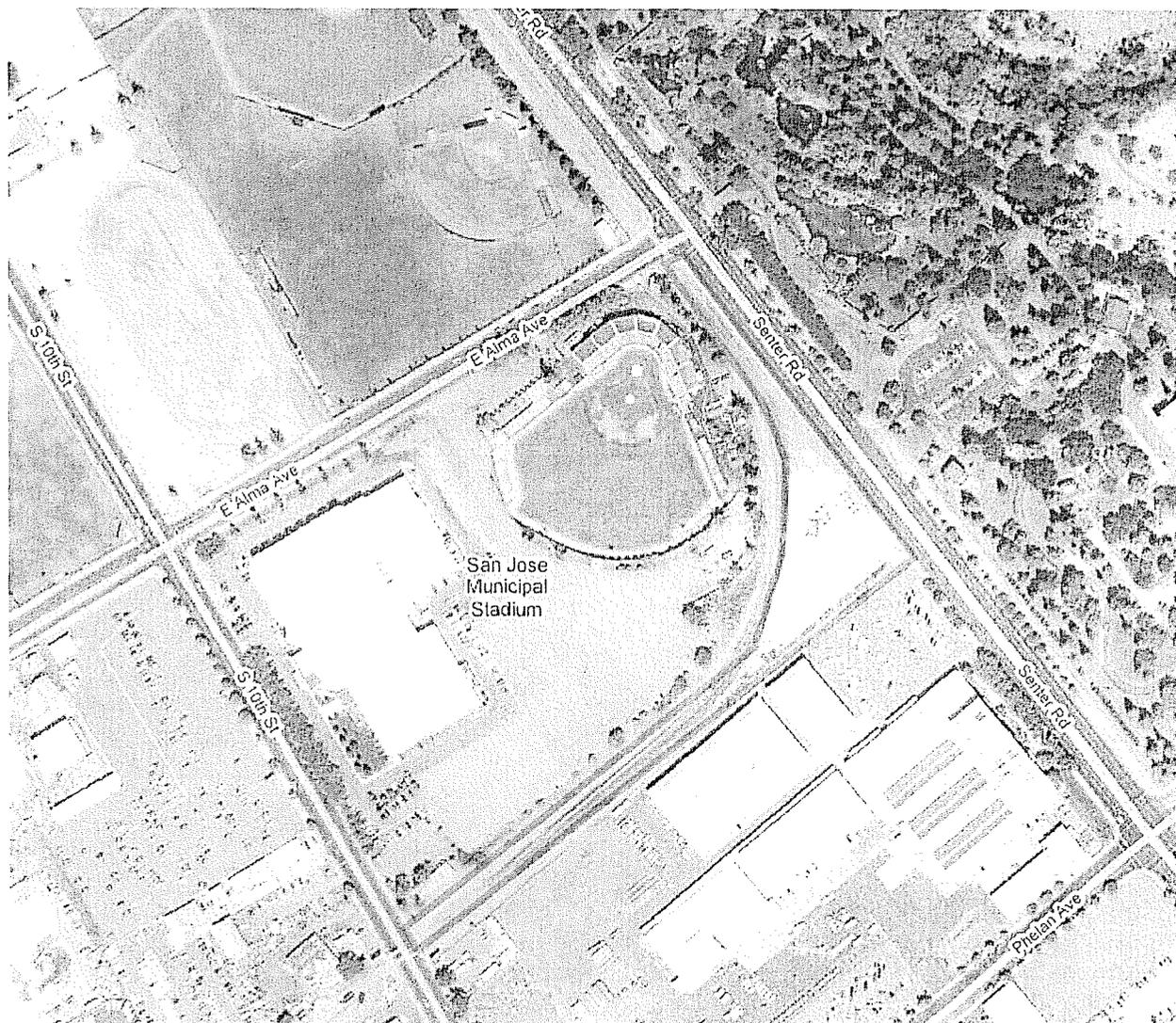
Arlene Inch
C E O of Trans-Pak, Inc.

Northwest Region
9720 SW Herman Rd., Tualatin, OR 97062
Packaging • Tel: 503.612.9780 Fax: 503.612.9757
Logistics • Tel: 888.972.7447

Bay Area Region / Corporate Headquarters
520 North Marburg Way, San Jose, CA 95133
Packaging & Crating • Tel: 408.254.0500 Fax: 408.254.0551
Logistics • Tel: 408.254.1499 Fax: 408.254.2085
www.transpak.com

Southwest Region
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Logistics • Tel: 888.972.7447

UNION PACIFIC RAILROAD (UPRR)



UPRR parcel is outlined above, bordered by Senter Road, the City of San Jose Central Service Yard, San Jose Municipal Stadium and 10th Street.

Upon evaluation of potential sites in 2005, UPRR was non-responsive to PW Real Estate staff for inquiries related to lease / sale of property. The initial short listing of potential sites from October 2005, did not yet include an evaluation of 1608 Las Plumas Avenue, which is a City inventoried asset and was subsequently determined as the preferred site due to its central location, size, non-impacts to traffic and surrounding entities.

Along Senter Road, the UPRR parcel is in close proximity to Muni Stadium, Kelley Park / History Park and Happy Hollow Zoo. Traffic ingress and egress from the parcel can only be accommodated by southbound lanes, which would impact the traffic conditions considerably in this major arterial road. For northbound traffic attempting to enter the parcel, vehicles would be required to make a U-turn at Alma Avenue, which is severely congested during sporting events at Muni Stadium. According to the Department of Transportation's Average Daily Traffic Volumes study in 2005, approximately 30,000

vehicles utilize Senter Road between Story Road and Phelan Avenue. 35,000 vehicles utilize Senter Road from Phelan Avenue to Tully Road.

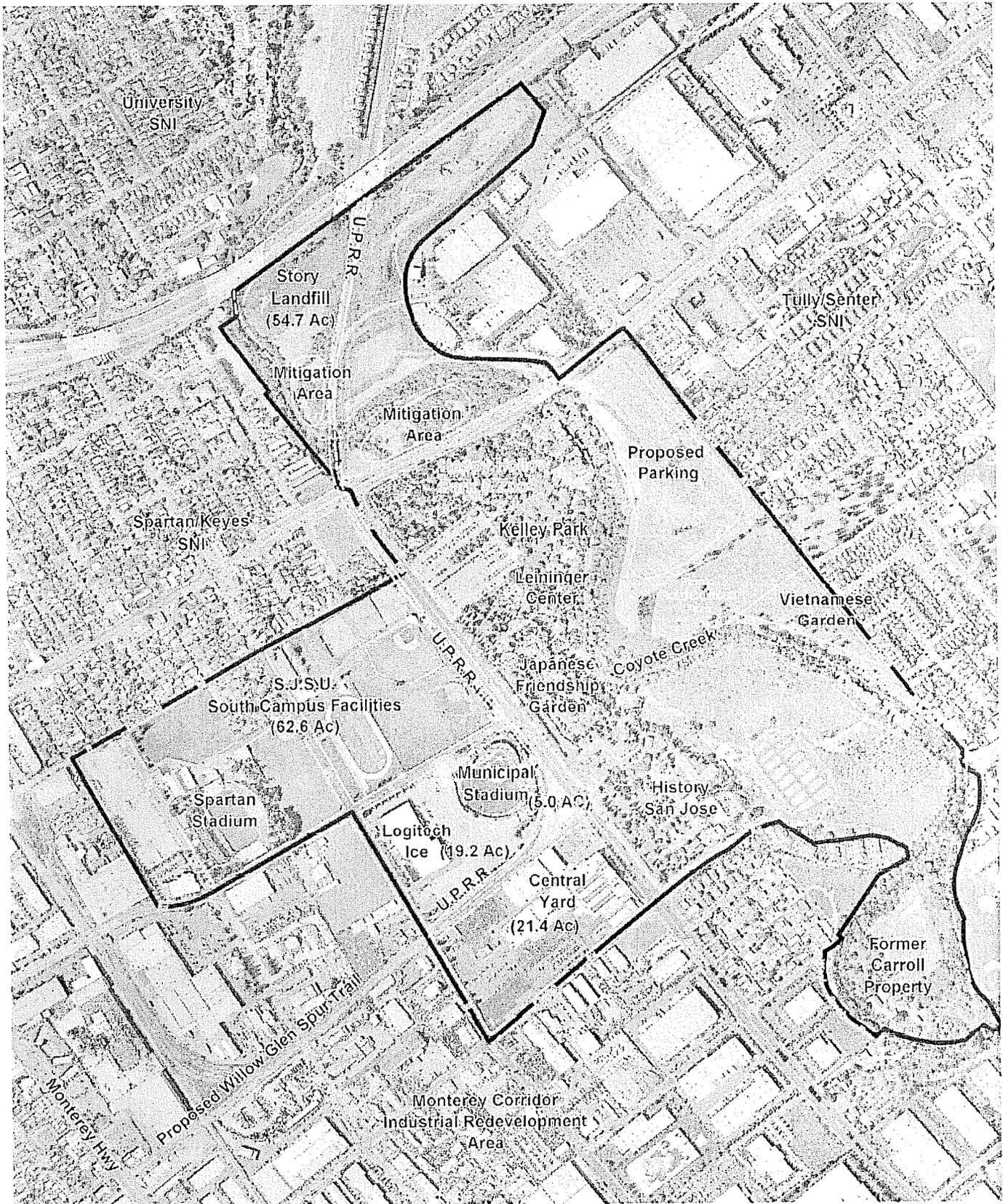
In addition to the close proximity to the regional park across Senter Road, during the 2007 San Jose Giants baseball season, Muni Stadium would host 30 home games on Wednesdays, Fridays and Saturdays. Several of such games during the summer season are during the day, which will coincide with the operating hours of the HHW collection facility. For evening games, there are multiply activities and occupancy at Muni Stadium during the daytime hours to prepare for the night events. The exterior food preparation and cooking area is adjacent to the railroad tracks. During home game event days, the amount of pedestrian foot traffic along Senter Road can amount to several hundred (including women and children), as patrons find alternate parking locations separate from the Muni Stadium parking lot. Patrons utilizing VTA lines and residents from nearby multi-family dwellings south of Phelan Avenue and other nearby streets also utilize Senter Road to arrive at Muni Stadium.

The Municipal Firing Range is situated along 10th Street and possesses an extended lease agreement for future use of the parcel. The UPRR parcel south of the Municipal Firing Range could not accommodate an HHW collection facility due to size constraints, traffic impacts and anticipated future use of the area. According to the Department of Transportation's Average Daily Traffic Volumes study in 2005, approximately 19,000 vehicles utilize 10th Street. Queuing lanes were already difficult with the previous HHW location at 1600 10th Street as 10th Street has only two northbound lanes with no shoulder, in which access to the eastern most lane was restricted during collection days to accommodate one lane for traffic queuing. Similarly, vehicles entering the UPRR parcel will also need to be queued on the eastern most lane of 10th Street. Southbound traffic on 10th Street would need to cross the northbound lanes to enter the UPRR parcel, with no traffic safety (signs or light) equipment in place. In fact, traffic could not enter the parcel directly from the southbound lanes as vehicles would also be queued in the entrance, restricting access into the parcel. Vehicles only traveling northbound could enter the queuing lane.

Environmental investigations of portions along the same and other UP corridors and / or adjacent properties were observed to have soil contamination related to the historical railroad uses. Typically, the observed contaminants are heavy metals (e.g. lead, arsenic), petroleum and solvents.

The South Campus District Plan (joint master plan between the City and SJSU) is current in assessment, with the planning and environmental documents anticipated to be available by November 2008. The South Campus District Plan will evaluate potential land uses and shared opportunities to create a dynamic, multi-purpose recreation district in the South Campus / Municipal Stadium / Kelley Park / Logitech Ice / Story Road Landfill area. The South Campus District Plan intends to provide improved recreation amenities for area residents and a regional amenity for sports events and tournaments, while continuing to meet SJSU campus academic, intramural, club sports, faculty / staff and intercollegiate needs. The South Campus District Plan also intends to improve parking capacity and pedestrian accessibility throughout the area. The UPRR parcel is within the master plan boundaries, and is currently being considered as a potential location for a regional soccer facility.

The South Campus District Plan is outlined below, with the UPRR properties encompassed within the master plan.



University SNI

Story Landfill (54.7 Ac)

Mitigation Area

Mitigation Area

Spartan/Keyes SNI

S.J.S.U. South Campus Facilities (62.6 Ac)

Spartan Stadium

Logitech Ice (19.2 Ac)

Municipal Stadium (5.0 Ac)

Central Yard (21.4 Ac)

Monterey Corridor Industrial Redevelopment Area

Tully/Senter SNI

Proposed Parking

Vietnamese Garden

Kelley Park

Leininger Center

Japanese Friendship Garden

History San Jose

Coyote Creek

Former Carroll Property

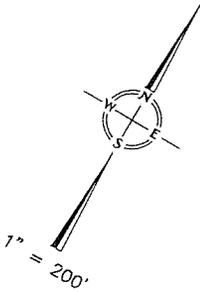
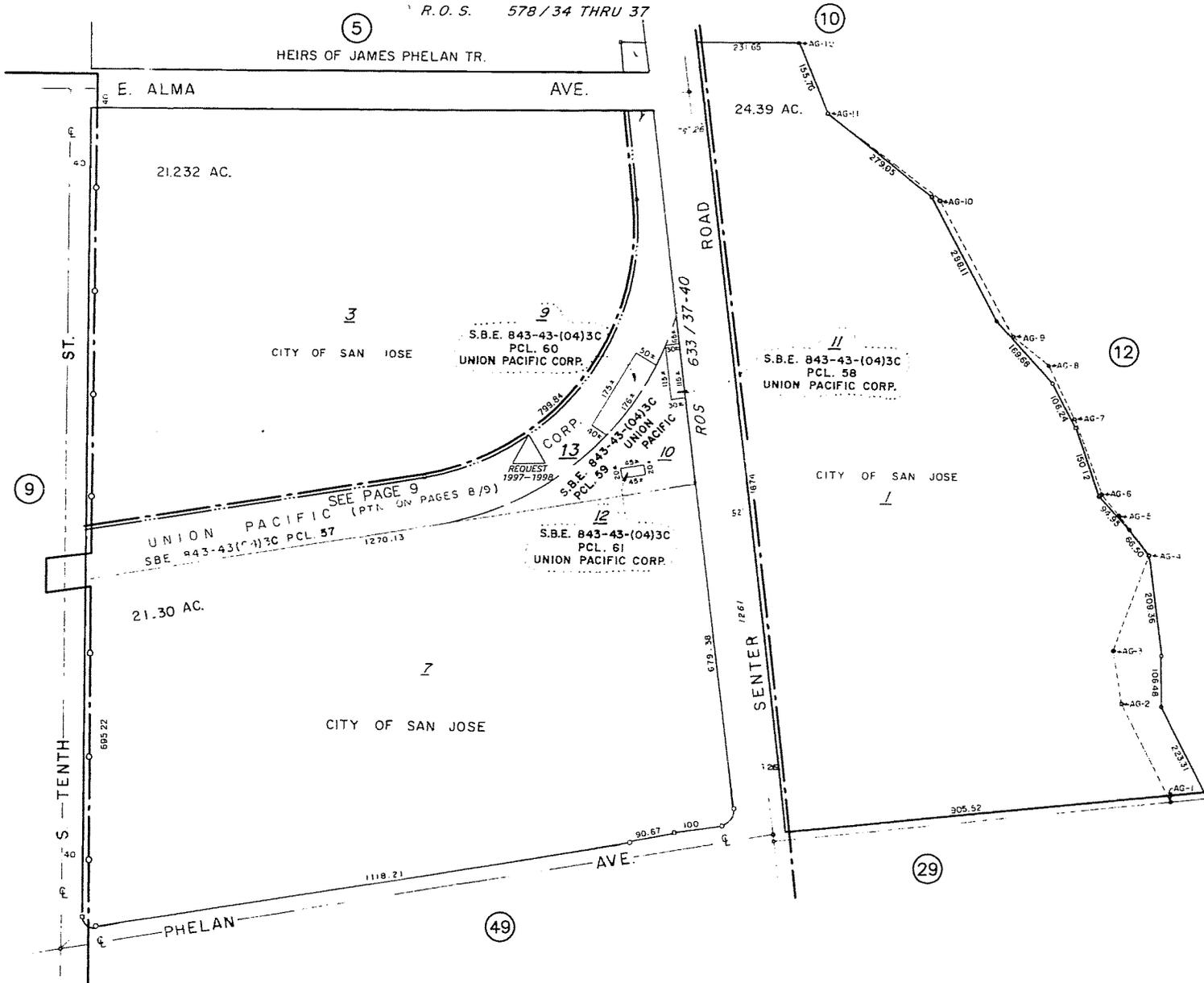
U.P.R.R.

U.P.R.R.

U.P.R.R.

Monterey Hwy

Proposed Willow Glen Spur Trail





Memorandum

TO: PLANNING COMMISSION

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: June 1, 2007

COUNCIL DISTRICT: 3
SNI: Five Wounds/
Brookwood Terrace

SUBJECT: FINAL ENVIRONMENTAL IMPACT REPORT FOR THE LAS PLUMAS HOUSEHOLD HAZARDOUS WASTE FACILITY. Relocation of the household hazardous waste drop-off facility previously located at the City of San Jose's Central Service Yard (1661 Senter Road). Proposed on-site activities consist of collection of household hazardous wastes such as paint, solvents, and motor oil from members of the public approximately eight days per month, and temporary storage of the collected materials in prefabricated storage containers. Proposed site changes include new and relocated storage containers and creation of a driveway. The project site is a currently vacant 1.8-acre portion of a 4.2-acre City-owned parcel located at the corner of Las Plumas Avenue and Nipper Avenue (1608 Las Plumas Avenue). File No.: PP06-100. Council District: 3.

BACKGROUND

I. Draft EIR

The Draft EIR has been prepared to evaluate the environmental impacts of the proposed project description listed above. The project had previously been the subject of a 2006 Initial Study/Mitigated Negative Declaration, which was challenged by a business across Las Plumas Ave. On October 25, 2006, the San José Planning Commission held a public hearing on the project, and voted unanimously to require an Environmental Impact Report for the proposed project. The Planning Commission indicated that the focus of the EIR should be on: "security regarding illegal dumping, volumes and types of chemicals handled by the facility, stormwater and flooding issues, effect on sensitive receptors, and volume of daily pedestrian traffic on Las Plumas and Nipper Avenues."

A. CEQA Requirements for Certification of an EIR

The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and (3) the Final EIR reflects the independent judgement and analysis of the lead agency. When an EIR is certified by a non-elected decision-making body with the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body.

B. San Jose Municipal Code Chapter 21.07 Requirements for Certification of an EIR

The City of San Jose is the lead agency for the Las Plumas Household Hazardous Waste Facility EIR as defined by CEQA. San Jose Municipal Code Chapter 21.07 designates the Planning Commission as the decision-making body for certification of EIRs. The Planning Commission must hold a noticed public hearing to certify the Final EIR. Upon conclusion of its certification hearing, the Planning Commission may find that the Final EIR is completed in compliance with CEQA.

If the Planning Commission certifies the Final EIR, that certification may be appealed to the City Council. A decision by the Planning Commission not to certify a Final EIR is not subject to an appeal. A Final EIR which is revised at the direction of the Planning Commission shall require another noticed public hearing.

Any person may file a written appeal of the Planning Commission's certification of the Final EIR with the Director of Planning, Building and Code Enforcement no later than 5:00 p.m. on the **third business day** following the certification of the Final EIR. The appeal must state the specific reasons that the Final EIR should not be found to be completed in compliance with CEQA. No appeal will be considered unless it is based on issues that were raised at the public hearing either orally or in writing prior to the public hearing. Upon receipt of a timely appeal, filed on the appropriate form and accompanied by filing fees, the Director shall schedule a noticed public hearing on the appeal of the Commission's certification of the Final EIR before the City Council. In this specific case, if the Planning Commission certifies the EIR on June 11, the EIR appeal period would expire June 14 at 5:00 p.m., and the appeal is scheduled to be heard by City Council June 26 at 1:30 p.m.

C. Planning Commission Role in Siting the Household Hazardous Waste Collection Facility

The matter before the Planning Commission is whether to certify the Final EIR as complete and in compliance with CEQA. If the Planning Commission certifies the EIR, the City Council is scheduled on June 26, 2007 to consider the information in the EIR and decide whether to locate the HHW facility at the Las Plumas Ave site.

In certifying the EIR, the Planning Commission is not deciding or recommending that the City Council decide to locate the HHW facility to Las Plumas Ave. In certifying the EIR, the Planning Commission is concluding the EIR is adequate to inform the City Council's decision to locate the HHW facility. The City Council's decision whether to locate the HHW facility at the Las Plumas Avenue site will be based upon information in the EIR and elsewhere in the administrative record.

D. Public Notice and Review of a Draft EIR

On April 10, 2007, the Director of Planning, Building and Code Enforcement caused a Notice of Availability (NOA) to be published in the San Jose Mercury News and posted for review with the County Clerk. As required by Pub. Res. Code secs. 21092(b), 21092.6; CEQA Guidelines secs. 15087, 15105, the NOA contains (1) a project description and location, (2) identification of significant environmental impacts, (3) specification of the review period, (4) identification of the public hearing date, time, and place, (5) information about where the Draft EIR is available, (6) and whether the project site is a listed toxic site.

The Draft EIR was circulated for public review for 45 days, beginning on April 10, 2007 and ending on May 24, 2007, as required by Pub. Res. Code sec. 21091 and CEQA Guidelines 15087 and 15105.

The Draft EIR was available for review in the Department of Planning, Building and Code Enforcement, at the Martin Luther King Junior Main Library, Berryessa Library, East Branch Carnegie Library, Northside Community Center, American Indian Education Center, Berryessa Community Center, Anne Darling Elementary School, Five Wounds / Brookwood Terrace NAC, and online on the Department's website. In addition, the Draft EIR was mailed to other agencies, private organizations, business and individuals listed in Section I of the First Amendment to the Draft EIR.

E. Preparation of a Final EIR

CEQA requires the Lead Agency to prepare a Final EIR responding to all environmental comments received on the Draft EIR during the public review period and to certify the Final EIR before approving the project. The responses to comments on a Draft EIR must include good faith, well-reasoned responses to all comments received on the Draft EIR. In responding to comments, CEQA does not require a Lead Agency to conduct every test or perform all research, study, or experimentation recommended or demanded by commentors. CEQA only requires a Lead Agency to respond to significant environmental issues and does not need to provide all information requested by reviewers as long as a good faith effort at full disclosure is made in the EIR.

The City's responses to comments on the Draft EIR are contained in the First Amendment to the Draft Environmental Impact Report. The First Amendment also contains text amendments to reflect changes to the project description since circulation of the Draft EIR and changes to the text made in response to comments received on the Draft EIR. One late comment letter was received after the comment period, Robert Inch, Jr. President of Trans-Pak, Inc. 5/29/07 (attached). The letter raises no new issues and covers issues raised by other commentors. No additional response is required.

The First Amendment and the Draft EIR constitute the Final EIR. As required by CEQA, the First Amendment contains (1) a list of persons, agencies, and organizations commenting on the Draft EIR, (2) copies of comments received during the public review period of the Draft EIR, (3) the City's responses to those comments. On June 1, the City provided a copy of its responses to each public agency, organization and individual that submitted comments by April 24, 2007, at least ten days prior to certifying the Final EIR in conformance with CEQA Guidelines Section 15089(b).

F. Recirculation of a Draft EIR

As a general rule, EIRs are circulated once for public review and comment. If "significant new information" is added to the EIR after the close of the public review period on the Draft EIR but before certification of the Final EIR, the Lead Agency must provide a second public review period and recirculate the Draft EIR for comments. Under CEQA Guidelines 15088(b), recirculation is required when new significant information identifies:

- (1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or
- (4) the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation of a Draft EIR is not required where the new information merely clarifies, amplifies, or makes minor modification to an adequate Draft EIR. Staff believes that none of the recirculation criteria have been met for the Final EIR. All new information that has been added to the Final EIR merely clarifies, amplifies, or makes minor modifications to the discussion and analysis in the Draft EIR.

G. Consideration of a Final EIR

A decision-making body is required to read and consider the information in an EIR before making a decision on the project. The City's administrative record on the proposed project must show that the Lead Agency reviewed and considered the Final EIR before acting on the project.

CONCLUSION

The Las Plumas Household Hazardous Waste Facility Final EIR meets the requirements of CEQA by disclosing the significant environmental effects of the project, identifying feasible ways to mitigate the significant effects, and describing reasonable alternatives to the project. The Final EIR complies with the substantive and procedural requirements of the CEQA guidelines. The Final EIR has been completed in compliance with the requirements of CEQA. It also represents the independent judgment and analysis of the City of San Jose.

The matter before the Planning Commission is whether to certify the Final EIR as complete and in compliance with CEQA. In certifying the EIR, the Planning Commission is not deciding or recommending that the City Council decide to locate the HHW facility to Las Plumas Ave. In certifying the EIR, the Planning Commission is concluding the EIR is adequate to inform the City Council's decision to locate the HHW facility.

ALTERNATIVE ACTION

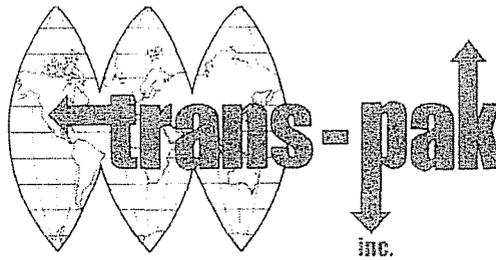
The alternatives available to the Planning Commission are to (1) certify the Final EIR for the proposed project; or (2) order revision of the Draft EIR.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the Planning Commission adopt a resolution to certify that:

1. The Planning Commission has read and considered the Final EIR;
2. The Final EIR has been completed in compliance with CEQA;
3. The Final EIR reflects the independent judgment and analysis of the City of San Jose; and
4. The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to the Applicant and to the decision-making body of the City of San Jose for the project.

for *Akoni Danielson*
JOSEPH HOR WEDEL, DIRECTOR
Planning, Building and Code Enforcement



PACKAGING ▲ CRATING ▲ LOGISTICS

May 29, 2007

San Jose Planning Commission
c/o Akoni Danielsens
Akoni.Danielsen@sanjoseca.gov

Re: Relocation of Household Material Collection Center (Las Plumas Avenue)

Dear San Jose Planning Commission,

It has been brought to our attention that the City of San Jose is considering a Household Hazardous Material Collection Center (hereinafter "Hazardous Site") on Las Plumas Avenue in San Jose. I am very concerned that a Hazardous Site is being proposed in a location populated by high density housing, schools, family shelter, and offices housing thousands of employees. Unfortunately, we did not receive Notice of the Public Comment Period, fortunately, someone did advise today.

There are two very alarming issues that are yet to be considered. Currently there is a school which sits a mere 40 feet away from the proposed site. I am concerned how the health and safety committee has concluded that the Hazardous Site is safe. Family shelter outside activities and school activities may ultimately be banned in light of the proposed hazardous site. Nor parents or teachers would be comfortable with the idea of having their child playing outside an area that could possibly be contaminated with hazardous toxics nor will they be comfortable with the increase of traffic the site will bring. The collection of over 1,000,000 pounds of toxic and hazardous waste is received by the current site each year. The toxic and hazardous waste are composed of materials such as asbestos, acids, used syringes and mercury. All of which have been found to be responsible for fires, explosions and contamination from spills of hazardous and reactive waste.

This area is not the appropriate location for such a site. In fact it is just the contrary. Too many individual lives are at risk. There are schools, businesses housing thousands of employees and a family shelter who would ultimately see the facility as a hazard itself.

In another aspect, the businesses in this area would suffer economically with the anticipated depreciation of their property. Clients, visitors and even employees would be discouraged from doing business, visiting, and working in an area containing hazardous toxics.

We strongly urge the San Jose Planning Commission to reconsider the location of the Hazardous Site. Thank you for your consideration in this matter.

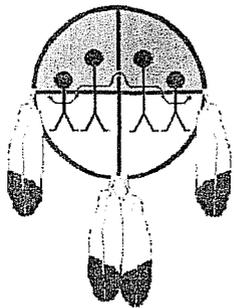
Sincerely,

Robert Inch, Jr.
President of Trans-Pak, Inc.

Northwest Region
9720 SW Herman Rd., Tualatin, OR 97062
Packaging • Tel: 503.612.9780 Fax: 503.612.9757
Logistics • Tel: 888.972.7447

Bay Area Region / Corporate Headquarters
520 North Marburg Way, San Jose, CA 95133
Packaging & Crating • Tel: 408.254.0500 Fax: 408.254.0551
Logistics • Tel: 408.254.1499 Fax: 408.254.2085
www.transpak.com

Southwest Region
2877 N. Nevada St., Ste 130, Chandler, AZ 85225
Packaging • Tel: 480.507.9144 Fax: 480.507.9187
Logistics • Tel: 888.972.7447



**American Indian Education Center
and
Resource Library, Inc.**

LETTER OF SUPPORT

June 4, 2007

Mr. Akoni Danielsen
City of San Jose
Department of Building, Planning, and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

RE: SUPPORT FOR RELOCATION OF HHW DROP-OFF FACILITY (PP06-100)

Dear Mr. Danielsen:

The American Indian Education Center, Inc. wishes to express its support for the proposed household hazardous waste relocation to 1608 Las Plumas Ave. As proposed, this facility poses no additional risk to the community and will offer much needed services to our underserved community.

The proposed days and hours of operation of the American Indian Education Center will not coincide with the operating hours of the HHW drop-off facility. The students in our after school program will not be present when the HHW facility is open. Furthermore, we welcome all of the planned improvements and security measures the City will be constructing at this location.

For too long, this area has suffered from the blighted conditions at 1608 Las Plumas Ave. The proposed facility will make much needed street improvements and will make the local community safer by giving people a convenient place to legally dispose of their unwanted household toxics. We also believe the local neighborhood will benefit from the City locating complementary community services at this location.

Please approve this facility. The benefits for the community are tangible. The additional risks from this proposal are unfounded.

Sincerely,

Rene Samayoa, Executive Director
American Indian Education Center, Inc.

May 22, 2007

William Stauble
Therma Corporation
1601 Las Plumas Ave
San Jose, CA 95133-1613

RE: Draft EIR for Las Plumas Household Hazardous Waste Facility

Dear Mr. Stauble,

Your May 21, 2007 letter requests a one-week extension for public comment on the above-referenced Draft EIR. This DEIR began public circulation on April 10 for 45 days to close May 24. This review period is already 15 days longer than required by CEQA for projects not required to be submitted to the State Clearinghouse.

The stated reason for your request is to receive the site topographic survey, which was provided to you yesterday in an email from Bob Mandinici in the Department of Public Works. This supporting reference information could have been provided to you much earlier in the DEIR public review period had you requested it, and the timing of your information requests is not a basis to further extend the DEIR comment period.

As my staff explained on May 16, the elevation contour numbers are the result of a typo by the City's environmental consultant and will be corrected in the Final EIR without substantive change to the EIR's analysis and conclusions. With your receipt of the survey and my staff's prior explanation, an extension is unwarranted. Please honor the comment deadline of Thursday May 24 at 5:00 p.m.



Joseph Horwedel, Director
Planning, Building and Code Enforcement

C: Walter Lin, ESD

Corporate Headquarters

1601 Las Plumas Avenue, San Jose, CA 95133, phone 408 347 3400, fax 408 347 3418



www.therma.com

21 May, 2007

AKONI DANIELSEN
City of San Jose, Department of Planning

Re: Proposed Hazardous Waste Site on Las Plumas Avenue DEIR
PP06-100

Akoni:

As noted in my email to Walter Lin of Environmental Services this morning, Therma Corporation requests a minimum one week extension in the public comment period for the DEIR for the following reason:

We have repeatedly requested and continue to request the basis of the City's understanding of the elevation levels in the DEIR. The City has yet to disclose this information, which is integral to our examination of the adequacy of the DEIR.

The elevation levels in the DEIR are erroneous. Walter Lin of Environmental Services responded to our request with the Figure 5 Site Plan of the IS, but with elevation levels inserted. These elevations levels were different than those requested in the DEIR. We have been told that the DEIR elevation levels were the result of a typo. We then requested from ESD and Public Works the basis of the Figure 5 elevation levels. We have followed-up several times, and have yet to receive this information.

It is highly plausible from our perspective that if we did not notice this discrepancy in elevation levels, the mitigations for the proposed project would have been based on flawed elevation data.

We strongly feel that the flood mitigations offered in the DEIR may be interpreted in more than one way. A full disclosure of basis of the City's understanding of the elevation levels is basic to our examination of the DEIR and to our written comments.

We still have not received this information, and there are only a few days of public comment left. There is now insufficient time to properly examine this information. We therefore request a minimum of one week extension to the public comment period, as well as disclosure of this essential data for our analysis of the DEIR.

Please let me know as soon as possible.

Respectfully,

THERMA CORPORATION

A handwritten signature in black ink, appearing to read 'William Stäuble', is written over the company name.

William Stäuble

cc: Joseph Parisi, President
Councilmember Liccardo