RESOLUTION NO. 73580

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE DOBBIN DRIVE RESIDENTIAL GENERAL PLAN AMENDMENT PROJECT, FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the Dobbin Drive Residential General Plan Amendment Project ("Project") requires the City of San Jose ("City") to approve an amendments to the City of San Jose 2020 General Plan (file no. GP06-03-01); and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission and the City Council of the City of San José have each certified that the Final Environmental Impact Report ("FEIR"), for the Dobbin Drive Residential General Plan Amendment Project was completed in accordance with the requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended, and state and local guidelines; and

WHEREAS, the project analyzed under the FEIR consisted of General Plan Amendment from *Light Industrial* to *Transit Corridor Residential (20+ dwelling units per acre)* with a "Floating Park" designation; and

WHEREAS, the City Council of the City of San José is the decision-making body for the Dobbin Drive General Plan Amendment ("Project"); and

WHEREAS, the City Council of the City of San José intends to approve actions related to the Project as identified in Exhibit A, entitled "APPROVAL OF THE PROPOSED DOBBIN DRIVE RESIDENTIAL GENERAL PLAN AMENDMENT PROJECT" attached to this Resolution and incorporated herein by this reference; and

WHEREAS, CEQA requires that in connection with the approval of a project for which a FEIR has been prepared which identifies one or more significant environmental effects, the decision-making body of a responsible agency must make certain findings regarding those significant effects on the environment identified in the FEIR; and

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

THAT THE CITY COUNCIL hereby finds that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein including the written and oral comments received at the public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment and analysis of the City of San José as Lead Agency

for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113-1905, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project as it is described in Exhibit A attached to this Resolution:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. LAND USE

1. Impacts

Implementation of the proposed General Plan Amendment to allow for the redevelopment of the site with residential uses could result in significant land use conflicts and/or new limitations on the existing industrial uses south of the project site.

The proposed change in General Plan land use designation for the project site could result in exposure of future residents to impacts related to the surrounding industrial development.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Future development on the project site would be subject to General Plan policies, including the following:

- *Urban Conservation Policy #2* states the City should encourage new development which enhances the desirable qualities of the community and existing neighborhoods.

- *Residential Land Use Policy #1* states residential development at urban densities (one dwelling unit per acre or greater) should be located only where adequate services and facilities can be feasibly provided.

- *Residential Land Use Policy #3* states higher residential densities should be distributed throughout the community. Locations near commercial and financial centers, employment centers, the rail transit stations, and along bus transit routes are preferable for higher density housing.

- *Residential Land Use Policy #5* states residential development should be allowed in areas with identified hazards to human habitation only if these hazards are adequately mitigated.

- *Residential Land Use Policy #11* states residential developments should be designed to include adequate open spaces in either private yards or common areas to partially provide for residents' open space and recreation needs.

- *Residential Land Use Policy #17* states the City encourages developers of large residential projects to identify and appropriately address the need generated by these projects for child care facilities and services.

- *Residential Land Use Policy #22* states high density residential and mixed residential/commercial development located along transit corridors should be designed to:

  - create a pleasant walking environment to encourage pedestrian activity, particularly to the nearest transit stop;
  - maximize transit usage;
  - allow residents to conduct routine errands close to their residence;
  - integrate with surrounding uses to become a part of the neighborhood rather than an isolated project;
  - use architectural elements or themes from the surrounding neighborhood; and
  - ensure that building scale does not overwhelm the neighborhood.

- *Residential Land Use Policy #23* states new high-density residential development in Transit-Oriented Development Corridors and BART Station Area Nodes should be designed to protect residents from any potential conflicts with adjacent land uses.

- *Residential Land Use Policy #24* states new residential development should create a pedestrian friendly environment by connecting the features of the development with safe, convenient, accessible, and pleasant pedestrian facilities. Such connections should also be made between the new development, the adjoining neighborhood, transit access points, and nearby commercial areas.

- *Urban Design Policy #1* states that the City should continue to apply strong architectural and site design controls on all types of development to ensure the proper transition between areas with different types of land uses.

- *Urban Design Policy #5* states the design review process should take into consideration the long-term maintenance ramifications of the design of private streets and other private infrastructure improvements.

- *Urban Design Policy #18* states to the extent feasible, sound attenuation for development along City streets should be accomplished through the use of landscaping, setback, and building design rather than the use of sound attenuation walls.

- *Urban Design Policy #22* states that design guidelines adopted by the City Council should be followed in the design of development projects.

Residential Design Guidelines

The City of San José has adopted Residential Design Guidelines that are applicable to all attached residential development and small lot single family development in San José. The following specific policies in the Residential Design Guidelines will avoid land use conflicts between new high density residential development and nearby land uses:

- *Chapter 1.D-Building Heights Three Stories and Taller:* The height of new buildings, when greater than two stories and adjacent to existing neighborhoods of single-family homes, should be limited to no more than one foot for every two feet of setback from common single-family property. Height should be measured from existing grade at the common single-family property line.

- *Chapter 14.C-Solar Access of Existing Houses:* New building should not be located in positions that will result in substantial shading of existing adjacent private open spaces that presently have substantial sun exposure enjoyed by the occupants. This guideline is intentionally flexible to discourage shading of adjacent properties while retaining for the review process a decision based on the circumstances of each case.

Finding

Although implementation of the General Plan policies and *Residential Design Guidelines* identified above would reduce many of land use compatibility issues of the project, the placement of additional residents in a primarily industrial area would result in a land use compatibility impact at **significant unavoidable levels**.

B. TRANSPORTATION

1. Impact

The proposed General Plan amendment would result in significant long range traffic impacts.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Future development on the project site would be subject to General Plan policies, including the following:

- *Services and Facilities Level of Service Policy #5* requires that the minimum overall performance of City streets during peak travel periods should be level of service “D”. To meet that goal, the policy states that development proposals should be reviewed for their measurable impacts on the level of service and should be required to provide

appropriate mitigation measures if they have the potential to reduce the level of service to "D" or worse.

- *Transportation Policy # 1 (Thoroughfares)* states that inter-neighborhood movement of people and goods should occur on thoroughfares and is discouraged on neighborhood streets.

- *Transportation Policy #3 (Thoroughfares)* states that public street right-of-way dedication and improvements should be required as development occurs. Ultimate thoroughfare right-of-way should be no less than the dimensions as shown on the Land Use/Transportation Diagram except when a lesser right-of-way will avoid significant social, neighborhood or environmental impacts and perform the same traffic movement function.

- *Transportation Policy #8 (Thoroughfares)* states that vehicular, bicycle, and pedestrian safety should be an important factor in the design of streets and roadways.

- *Transportation Policy #9 (Impacts on Local Neighborhoods)* states that neighborhood streets should be designed to discourage through traffic and unsafe speeds. If neighborhood streets are used for through traffic or if they are traveled at unsafe speeds, law enforcement and traffic operations techniques should be employed to mitigate these conditions.

- *Transportation Policy #11 (Transit Facilities)* states that the City should cooperate with transportation agencies to achieve the following objectives for the County's public transit system:

  - Provide all segments of the City's population, including the handicapped, elderly, youth and economically disadvantaged, with adequate access to public transit. Public transit should be designed to be an attractive, convenient, dependable and safe alternative to the automobile.
  - Enhance transit service in major commute corridors, and provide convenient transfers between public transit systems and other modes of travel.

- *Transportation Policy #16 (Pedestrian Facilities)* states that pedestrian travel should be encouraged as a viable mode of movement between high density residential and commercial areas throughout the City and in activity areas such as schools, parks, transit stations, and in urban areas, particularly the Downtown Core Area and neighborhood business districts by providing safe and convenient pedestrian facilities.

- *Transportation Policy #41 (Bicycling)* states that the City should develop a safe, direct, and well-maintained transportation bicycle network linking residences, employment centers, schools, parks and transit facilities and should promote bicycling as an alternative mode of transportation for commuting as well as for recreation.

- *Transportation Policy #42 (Bicycling)* states that bike lanes are considered generally appropriate on arterial and major collector streets. Right-of-way requirements for bike lanes should be considered in conjunction with planning the major thoroughfares network and in implementing street improvement projects.

- *Transportation Policy #43 (Bicycling)* states that priority improvements to the Transportation Bicycle Network should include:

  - Bike routes linking light rail stations to nearby neighborhoods.
  - Bike paths along designated trails and pathways corridors.
  - Bike paths linking residential areas to major employment centers.

Finding

The proposed General Plan amendment would result in significant impacts due to an increase in peak hour traffic volumes in proximity to the site and a significant increase in volume to capacity ratios on the affected screenlines. Although implementation of the General Plan policies identified above would reduce the impacts of the propose amendment, the impacts would remain at a **significant and unavoidable level**.

C. HAZARDS AND HAZARDOUS MATERIALS

1. Impacts

Near surface soils exceed the ESLs for several metals in samples taken from near the drain in front of the paint booths.

Concentrations of several metals exceed the residential ESLs along the former railroad alignment. The presence of these metals would result in a significant impact on future residents of the site.

Elevated levels of TPHs in groundwater and possible soil contamination from the previous plating operations could impact future residents of the site.

Current and previous operations on the site may have resulted in subsurface contamination that could impact future residential uses on the site.

Soils on the site may be contaminated from pesticide application during the former use of the site for agricultural production.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating potential environmental effects resulting from planned development within the City. All future development on the site would be subject to General Plan policies, including the following:

- *Hazardous Materials Policy #1* states the City should require proper storage and disposal of hazardous materials to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal.

- *Hazardous Materials Policy #2* states the City should support State and Federal legislation which strengthen safety requirements for the transportation of hazardous materials.

- *Hazardous Materials Policy #3* states the City should incorporate soil and groundwater contamination analysis within the environmental review process for development proposals. When contamination is present on a site, the City should report this information to the appropriate agencies that regulate the cleanup of toxic contamination.

- *Soil and Geologic Conditions Policy #9* states that residential development proposed on property formerly used for agricultural or heavy industrial uses should incorporate adequate mitigation/remediation for soils contamination as recommended through the Development Review process.

Finding

The proposed project, with the implementation of the identified General Plan policies would reduce significant hazardous material impacts due to existing contamination to **less than significant levels**.

2. Impacts

Future residents of the project site would be impacted by a worst-case hazardous materials release from nearby industrial facilities as well as smaller, more likely events and/or accidents that could cause release of lesser amounts of chemicals that could be detected by residents.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating potential environmental effects resulting from planned development within the City. All future development on the site would be subject to General Plan policies, including the following:

- *Hazardous Materials Policy #1* states the City should require proper storage and disposal of hazardous materials to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal.

- *Hazardous Materials Policy #2* states the City should support State and Federal legislation which strengthen safety requirements for the transportation of hazardous materials.

Findings

Under a worst-case release scenario, accidental chemical releases from nearby industrial facilities would result in a hazardous materials impact on future residents of the site at **significant and unavoidable levels**.

D. NOISE

1. Impacts

Residential uses would be exposed to exterior noise levels greater than 60 dBA L_{dn} on portions of the site, which exceeds the noise and land use compatibility standards in the City of San José's General Plan.

Interior noise levels would exceed 45 dBA Ldn without the incorporation of noise insulation features.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating potential environmental effects resulting from planned development within the City. All future development on the site would be subject to General Plan policies, including the following:

- *Noise Policy #1* states that the City's acceptable noise level objectives are 55 L_{dn} as the long-range exterior noise quality level, 60 dBA L_{dn} as the short-range exterior noise quality level, 45 Ldn as the interior noise quality level, and 76 L_{dn} as the maximum exterior noise level necessary to avoid significant adverse health effects. These objectives are established for the City recognizing that the attainment of exterior noise quality levels in the environs of the San José International Airport, the downtown core area, and along major roadways may not be achieved in the time frame of this plan. To achieve the noise objectives, the City should require appropriate site and building design, building construction, and noise attenuation techniques in new residential development.

- *Noise Policy #8* states the City should discourage the use of outdoor appliances, air conditioners, and other consumer products which generate noise levels in excess of the City's exterior noise level guidelines.

- *Noise Policy #9* states construction operations should use available noise suppression devices and techniques.

- *Noise Policy #12* states that noise studies should be required for land use proposals where known or suspected peak event noise sources occur which may impact adjacent existing or planned land uses.

- *Urban Design Policy #18* states to the extent feasible, sound attenuation for development along city streets should be accomplished through the use of landscaping, setback, and building design rather than the use of sound attenuation walls. Where sound attenuation walls are deemed necessary, landscaping and an aesthetically pleasing design shall be used to minimize visual impact.

Finding

The proposed project, with the implementation of the identified General Plan policies, would ensure that exterior and interior noise levels are reduced to a **less than significant level**.

E. HYDROLOGY AND WATER QUALITY

1. Impact

Future redevelopment of the project site will locate housing within the 100-year floodplain.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Future development on the project site would be subject to General Plan policies, including the following:

- *Level of Service (Storm Drainage and Flood Control) Policy #12* states new projects should be designed to minimize potential damage due to storm waters and flooding to the site and other properties.

- *Flooding Policy #1* states new development should be designed to provide protection from potential impacts of flooding during the “1%” or “100-year” flood.

- *Flooding Policy #7* states the City should require new urban development to provide adequate flood control retention facilities.

Finding

Implementation of the identified General Plan policies will reduce the hydrology impacts of the project to a **less than significant level**.

F. BIOLOGICAL RESOURCES

1. Impact

Future development of the site under the proposed General Plan land use designation may result in impacts to nesting raptors.

Mitigation

The following mitigation measures would be implemented for a future project specific development under the proposed General Plan land use designation:

- In conformance with federal and state regulations regarding protection of raptors, it is the City of San José's practice to require that appropriate preconstruction surveys for raptors be completed prior to any development on sites where it is reasonable to assume that such species may be located. The preconstruction surveys are used to verify the presence/absence of breeding raptors and the surveys must follow California Department of Fish and Game protocols.

  Preconstruction surveys will be conducted no more than 30 days prior to the start of site grading. If breeding owls or other raptors are located on or immediately adjacent to the site, a construction free buffer zone (typically 250 feet) around the active burrow or nest owls or other raptors are resident during the non-breeding season (September to January), a qualified ornithologist in consultation with the California Department of Fish and Game, would ensure that measures to avoid harm to the birds are taken prior to grading or tree removal.

- All future development on the site would be required to conform to the California State Fish and Game Code.
- All future development on the site would be required to conform to the provisions of the Migratory Bird Treaty Act.

Finding

Implementation of the identified programmed mitigation measures will reduce the impacts of the project on biological resources to a **less than significant level**.

2. Impact

Full development of the site under the proposed residential land use designation could result in the removal of up to 46 ordinance-size trees.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. All future development allowed by the proposed General Plan Amendment would be subject to General Plan policies, including the following:

- *Urban Forest Policy #2* states that development project should include the preservation of ordinance-sized, and other significant trees. Any adverse affect on the health and longevity of native oaks, ordinance-sized or other significant trees should be avoided through appropriate design measures and construction practices. When tree preservation is not feasible, the project should include appropriate design measures and construction practices. When tree preservation is not feasible, the project should include appropriate tree replacement.

- *Urban Forest Policy #3* states the City encourages the maintenance of mature trees on public and private property as an integral part of the urban forest. Prior to allowing the removal of any mature tree, all reasonable measures which can effectively preserve the tree should be pursued.

- *Urban Forest Policy #4* states in order to realize the goal of providing street trees along all residential streets, the City should:

  - Continue to update, as necessary, the master plan for street trees which identifies approved species.
  - Require the planting and maintenance of street trees as a condition of development.
  - Continue the program for management and conservation of street trees which catalogs street tree stock replacement and rejuvenation needs.

- *Urban Forest Policy #5* states the City should encourage the selection of trees appropriate for a particular urban site. Tree placement should consider energy saving values, nearby power lines, and root characteristics.

- *Urban Forest Policy #6* states trees used for new plantings in urban areas should be selected primarily from species with low water requirements.

- *Urban Forest Policy #7* states where appropriate, trees that benefit urban wildlife species by providing food or cover should be incorporated in urban plantings.

Finding

Implementation of the identified General Plan policies will reduce the impacts of the project on biological resources to a **less than significant level**.

G. AIR QUALITY

1. Impact

Although the project may increase population above the assumptions used for the current *Bay Area 2005 Ozone Strategy*, the project is not anticipated to result in an increase in the per capita rate of VMT due to its infill location near existing and planned transit and would not result in a significant air quality impact due to inconsistency with the *Bay Area 2005 Ozone Strategy*. The proposed GPA would result in a significant impact due to its size and potential to generate a substantial increase in air pollutant emissions.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. All future development allowed by the proposed General Plan Amendment would be subject to General Plan policies, including the following:

- *Transportation Policy #8 (Thoroughfares)* states that vehicular, bicycle, and pedestrian safety should be an important factor in the design of streets and roadways.

- *Transportation Policy #22 (Pedestrian Facilities)* states that pedestrian pathways and public sidewalks should provide connectivity between uses, such as neighborhoods, schools, parks, libraries, open space, public facilities, shopping centers, employment centers, and public transit. A continuous pedestrian facilities network should include pedestrian connections between neighborhoods, across natural and man-made barriers, between dead-end streets, and to trails and transit.

- *Transportation Policy #41 (Bicycling)* states that the City should develop a safe, direct, and well-maintained transportation bicycle network linking residences, employment centers, schools, parks and transit facilities and should promote bicycling as an alternative mode of transportation for commuting as well as for recreation.

- *Air Quality Policy #1* states the City should take into consideration the cumulative air quality impacts from proposed development and should establish and enforce appropriate land uses and regulations to reduce air pollution consistent with the region's Clean Air Plan and State law.

Finding

Implementation of the identified General Plan policies would reduce the air quality impacts of the GPA, however, the proposed GPA would result in a regional air quality impact due to its size and potential to generate a substantial increase in air pollutant emissions that is **significant and unavoidable**.

2. Impact

Construction and demolition activities related to the development allowed under the proposed land use designation could result in significant short-term air quality impacts.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. All future development allowed by the proposed General Plan Amendment would be subject to General Plan policies, including the following:

- *Air Quality Policy #6* states that the City should continue to enforce its ozone-depleting compound ordinance and supporting policy to ban the use of chlorofluorocarbon compounds (CFCs) in building construction.

BAAQMD has prepared a list of construction dust control measures that will reduce air quality impacts from construction. The following construction practices would be implemented during all phases of construction on the project site:

- Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily (except during periods of rainfall), or apply (non-toxic) soil stabilizers on all staging areas at construction sites.
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
- Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site;
- Limit traffic speed on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

Finding

The identified program mitigation measures would reduce the short-term construction air quality impacts from future redevelopment of the site to a **less than significant level**.

H. WATER SUPPLY AND UTILITIES AND SERVICE SYSTEMS

1. Impact

The sewage generated from redevelopment of the site with the proposed land uses will not exceed the capacity of the sewage treatment plant. However, there may be inadequate sewer line capacity available, in the project's vicinity, to accommodate future redevelopment of the site.

Mitigation

The policies in the City of San José General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. All future development allowed under the proposed land use designation would be subject to General Plan policies, including the following:

- *Level of Service Policy #1* states the City's urban service delivery priorities should be ordered as follows:

  - Provide services and facilities designed to serve existing needs.
  - Prevent the deterioration of existing levels of service.
  - Upgrade City service levels, when feasible.

- *Level of Service Policy #2* states capital and facility needs generated by new development should be financed by new development. The existing community should not be burdened by increased taxes or by lowered service levels to meet needs created by new growth. The City Council may provide a system whereby funds for capital and facility needs may be advanced and later repaid by affected property owners.

- *Level of Service (Sanitary Sewer System) Policy #6* states the minimum performance standard for sanitary sewer lines should be level of service "D", defined as restricted sewage flow during peak flow conditions. Development which will have the potential to reduce the downstream level of service to worse than "D", or development which would be served by downstream lines already operating at a level of service worse than "D", should be required to provide mitigation measures to improve the level of service to "D" or better. In recognition of the substantial non-sewer benefits of infill development, small infill projects may be exempted from sewer mitigation requirements.

- *Level of Service (Sewage Treatment) Policy #7* states the City should monitor and regulate growth so that the cumulative sewage treatment demand of all development can be accommodated by San José's share of the treatment capacity of the San José/Santa Clara Water Pollution Control Plant.

- *Level of Service (Sewage Treatment) Policy #9* states the City should continue to encourage water conservation programs which result in reduced demand for sewage treatment capacity.

Finding

Implementation of the identified General Plan policies would reduce impacts of redevelopment of the site with the proposed land uses to a **less than significant level**.

I. PUBLIC FACILITIES AND SERVICES

1. Impact

The additional elementary students generated by the project may result in the need for additional school facilities.

Mitigation

State law (Government Code Section 65996) specifies the acceptable method of offsetting a project's effect on the adequacy of school facilities as the payment of a school impact fee prior to issuance of a building permit. California Government Code Sections 65995-65998, sets forth provisions for the payment of school impact fees by new development as the exclusive means of "considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property." [§65996(a)]. The legislation goes on to say that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA. [§65996(b)]. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would partially offset project-related increases in student enrollment.

Finding

Future redevelopment on the site would increase the number of children attending public schools in the project area, but, as a matter of law, compliance with state law regarding school mitigation impact fees is deemed to mitigate the impact of those students to a **less than significant level**.

J. CUMULATIVE IMPACTS

1. Impact

The proposed cumulative GPAs would result in a substantial decrease in the amount of available industrial land, including light industrial land.

Mitigation

No mitigation has been identified that would reduce this impact to a less than significant level.

Finding

The cumulative GPAs would result in a loss of industrial land that would be **significant and unavoidable**.

2. Impact

The proposed GPA would contribute to a cumulatively considerable local loss of light industrial land in the vicinity of the proposed GPA site.

Mitigation

No mitigation has been identified that would reduce this impact to a less than significant level.

Finding

The proposed GPA would result in a cumulatively considerable contribution to a local land use impact that would be **significant and unavoidable**.

3. Impact

The proposed GPA would result in a cumulative considerable contribution to a cumulative increase in traffic volumes across the North San José subarea cordon lines.

Mitigation

Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than significant level.

Finding

No feasible mitigation has been identified to reduce this impact to a less than significant level and, therefore, this impact is **significant and unavoidable**.

4. Impact

The proposed GPA would result in a cumulatively considerable contribution to a significant cumulative screenline impact.

Mitigation

Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than significant level.

Finding

No feasible mitigation has been identified to reduce this impact to a less than significant level and, therefore, this impact is **significant and unavoidable**.

5. Impact

The cumulative General Plan amendments would result in significant increases in overall VMT and VMT on congested roadway links. The proposed GPA would significantly contribute to the VMT impact on all roadway links and congested roadway links.

Mitigation

Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than significant level.

Finding

No feasible mitigation has been identified to reduce this impact to a less than significant level and, therefore, this impact is **significant and unavoidable**.

6. Impact

The proposed GPA would contribute significantly to impacts on all four link sets from the cumulative impact of local land use conversions.

Mitigation

Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than significant level.

Finding

No feasible mitigation has been identified to reduce this impact to a less than significant level and, therefore, this impact is **significant and unavoidable**.

7. Impact

The proposed GPA would contribute significantly to increases in overall VMT and VMT on congested roadway links.

Mitigation

Since the CUBE model used to evaluate cumulative traffic impacts includes all major transportation infrastructure identified in the General Plan Land Use/Transportation Diagram, including infrastructure that is not yet built and/or funded, no feasible mitigation measures would reduce the impacts of the project to a less than significant level.

Finding

No feasible mitigation has been identified to reduce this impact to a less than significant level and, therefore, this impact is **significant and unavoidable**.

8. Impact

The impacts from a chemical release would result in a significant cumulative hazardous materials impact. The proposed GPA, therefore, would result in a considerable contribution to a cumulative impact.

Mitigation

No feasible mitigation measures have been identified to reduce the hazardous materials impacts of the cumulative projects to a less than significant level.

Finding

Since no feasible mitigation measures have been identified to reduce the cumulative hazardous materials impacts to a less than significant level, the impact remains **significant and unavoidable**.

9. Impact

The proposed GPA would contribute considerably to a significant cumulative impact based on the exposure of residents to accidental releases from the local use of hazardous materials.

Mitigation

No feasible mitigation measures have been identified to reduce the hazardous materials impacts of the cumulative projects to a less than significant level.

Finding

Since no feasible mitigation measures have been identified to reduce the cumulative hazardous materials impacts to a less than significant level, the impact remains **significant and unavoidable**.

10. Impact

Construction in areas with multiple developments adjacent to sensitive uses would result in a significant cumulative impact. The proposed GPA, therefore, would have a considerable contribution to a significant cumulative impact.

Mitigation

While future construction noise impacts of many individual projects on the cumulative GPA sites can be minimized or reduced to a less than significant level, no feasible mitigation has been identified to reduce the cumulative impacts of construction noise in areas planned for multiple or very large developments.

Finding

The contribution of the proposed GPA to temporary construction noise impacts in combination with probable future redevelopment in the area east of North King Road would result in a cumulatively considerable contribution to a cumulative local construction noise impact that is **significant and unavoidable**.

11. Impact

The proposed GPA would substantially contribute to violations of air quality in the Bay Area and subsequently result in a cumulatively considerable contribution to a cumulative air quality impact.

Mitigation

Many of the proposed General Plan amendments, including the GPA that is addressed in this EIR, are consistent with the general policy direction of the Clean Air Plan, in that propose higher density residential uses near existing and planned transit at infill locations. The City's General Plan includes all of the Transportation Control Measures identified in the BAAQMD CEQA Guidelines that can be implemented by a local government. These are the only feasible mitigation measures that can be implemented at the program level of analysis included in the EIR for this GPA.

Finding

The proposed GPAs would result in a significant increase in air pollutants in the San Francisco Bay Area. The proposed GPA includes General Plan policies to reduce the air quality impacts of the project, however, the proposed GPA would result in cumulatively considerable contribution to a cumulative air quality impact that is **significant and unavoidable**.

12. Impact

The increase in students allowed by the cumulative GPAs, including the proposed GPA, would result in a significant cumulative impact for the Alum Rock Union Elementary School District.

Mitigation

The City's ability to plan for school facilities is limited by State law in that cities can no longer require the dedication of school sites in conjunction with the planning process. State law (Government Code 65996) specifies that the sole method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to issuance of the building permit. In San José, residential development project applicants can either negotiate directly with the affected school districts, or they can make the "presumptive payment" per dwelling unit. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code. The school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would partially offset the costs of serving project-related increases in student enrollment.

Finding

At the time of future development of a new school or additional facilities, it is assumed that the school facilities would be constructed near the proposed residential development, at a location suitable for school uses. Under State law, impacts on schools are deemed mitigated through the payment of school impact fees and therefore this impact is mitigated to a **less than significant level**.

13. Impact

The proposed GPA is likely to result in the proposal of additional industrial to residential conversions in the 70-acre area previously identified on the east side of North King Road. Conversion of this area is likely to result in substantial new demands on public facilities and services including schools and parks.

Mitigation

The *Floating Park* designation identifies that some parkland would be developed in the project area however the exact location is not yet known. The public facilities and

service requirements of the new residential population would require construction of at least one new school and additional parkland. It would be speculative to identify a location for these facilities at this point and, therefore, any future facilities required near the identified area would be subject to further environmental review.

Finding

The payment of fees and/or dedication of parkland would constitute adequate mitigation to reduce the identified cumulative local impacts to a **less than significant level.**

II. ALTERNATIVES TO THE PROPOSED PROJECT

A. "NO PROJECT" ALTERNATIVE

1. Description

Under the No Project Alternative, the project site would continue to be designated Light Industrial. Therefore, the No Project Alternative could include the site remaining as it is – occupied with warehouse and light industrial buildings that could be occupied by the same or new businesses for industrial uses. Future redevelopment could occur under the existing light industrial land use designation, which could include removing the existing buildings and redeveloping the entire property with new light industrial uses. Redevelopment of the site with new light industrial land uses would have the same construction impacts on air quality, water quality, and cumulative noise. Redevelopment would also subject buildings on the site to seismic hazards, including liquefaction. Under this alternative, the site would remain in industrial use and be a source of employment in the City.

2. Comparison to Proposed Project

This alternative would avoid the significant impacts associated with the proposed change in land use. A large new residential population would not be potentially affected by their proximity to hazardous materials users. If the existing warehouses remained, they would continue to provide a level of buffer between the existing residences to the north and east and the recorded users of hazardous materials to the south and west. Alternatively, the site could also be redeveloped with light industrial uses that used hazardous materials more than the current warehouse-type uses. The No Project Alternative would avoid the significant transportation impacts of the project. The regional air quality impacts of the more intense residential use of the site would also be avoided. The existing soil contamination on-site would remain but would not expose sensitive (residential) land uses to the constituents present in the soil. The No Project Alternative would also avoid any impacts to public facilities and services.

3. Finding

The City finds that this Alternative is infeasible for the following reasons: In general, the "no project" Alternative would, by definition, not meet the project's objectives as described in the EIR. This Alternative would not achieve the objectives of allowing for residential development on the site or supporting transit ridership on the planned BART extension. This alternative would not meet any of the applicant's objectives for the site.

B. REDUCED SCALE ALTERNATIVE

1. Description

The goal of a "Reduced Scale" alternative would be to add fewer additional dwelling units to the project site in order to reduce or avoid project impacts. Two of the project's significant unavoidable impacts, land use compatibility and hazardous materials, result from locating residential uses within an area impacted by an accidental chemical release at nearby industrial uses. The industrial uses of concern are primarily located southwest of the site. In order to avoid hazardous materials impacts to future residents due to an accidental chemical release, approximately 6.2 acres of the site closest to North King Road (southwest end of the site) could be designated in the General Plan for *Neighborhood/Community Commercial* use. The commercial use along North King Road would provide a buffer between the industrial uses and the sensitive residential population. The remaining 18.6 acres of the site could be designated for the project's proposed land use, *Transit Corridor Residential (20+ DU/AC)*. This designation would allow for development of approximately 1,023 residential units on the site at 55 dwelling units per acre.

2. Comparison to Proposed Project

The Reduced Scale Alternative would limit residential development to the north-eastern three-quarters of the site, which would avoid land use compatibility and hazardous materials impacts resulting from five out of six potential accidental chemical releases, because it would place residential uses outside their area of impact.

Development of the Reduced Scale Alternative would reduce traffic impacts and the associated air quality impacts resulting from increased vehicular travel. This alternative would also reduce the significant impacts on the Alum Rock Union Elementary School District.

Redevelopment of the site under this alternative would still result in a loss of light industrial land in the City. Redevelopment under this alternative would also represent a considerable contribution to cumulative construction noise impacts.

3. Finding

The Reduced Scale Alternative would meet the objectives of creating a Transit-Oriented Development to encourage transit ridership on the planned BART extension. This alternative would also provide substantial new dwelling units to assist the City in meeting housing production goals. This alternative would meet the applicant's objectives of providing a minimum of 496 high-density residential use proximate to existing and planned mass transit. This alternative would not, however, locate housing as close to BART as the proposed project.

The Reduced Scale alternative would reduce most of the hazardous materials impacts of the project and the land use compatibility impact related to placement of housing near industrial uses. This alternative would also reduce the traffic and air quality impacts of the proposed GPA, however, all of the project's impacts would remain significant.

Although this Alternative would reduce the project's impacts and achieve many of the objectives of the project, it would not reduce any of the project's impacts to a less than significant level.

C. ALTERNATIVE LOCATION

1. Description

There are no specific alternative sites identified by the City of San José that would accommodate development with approximately 1,364 dwelling units and would result in substantially fewer environmental impacts. There are, however, properties that could accommodate the density proposed such as the San José Flea Market. The proposed land use designation *Transit Corridor Residential (20+ DU/AC)* is currently designated on 58.40 acres at the San José Flea Market site on Berryessa Road.

2. Comparison to Proposed Project

Redevelopment of the Flea Market site with residential uses would likely result in biological resource impacts due to two creeks adjacent to the site and potential vibration impacts due to the UPRR tracks adjacent to the eastern border of the site. Similar to the proposed GPA site, industrial uses are located to the south and west of the site. The presence of these uses may present similar land use compatibility and hazardous materials risks to future residents. Development of this site with residential uses would not result in additional transportation and air quality impacts that were not already identified in the adopted General Plan.

3. Finding

The City finds this alternative infeasible, in that it would involve the development of properties that are privately owned by other entities and are not under the control of the project applicant. This alternative site would not meet the goal of providing additional

land for residential development within the City. The development of this alternative site may also result in impacts to biological resources and vibration from the presence of a riparian corridor and railroad tracks, respectively, that would not occur with the currently proposed GPA site.

III. MITIGATION MONITORING AND REPORTING PROGRAM

CEQA allows for the annual report on general plan status required pursuant to the Government Code to constitute the reporting program for adoption of a City general plan. CEQA Guidelines Section 15097(b) states, "Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

IV. STATEMENT OF OVERRIDING CONSIDERATIONS

The City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project.

A. SIGNIFICANT UNAVOIDABLE IMPACTS

With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated impacts to land use (project and cumulative)**,** transportation (project and cumulative)**,** hazardous materials (project and cumulative)**,** noise (cumulative), and air quality (project and cumulative) as disclosed in the FEIR prepared for this Project. The impacts would not be reduced to a less than significant level by feasible changes or alterations to the Project.

B. OVERRIDING CONSIDERATIONS

After review of the entire administrative record, including—but not limited to—the FEIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the City Council finds that specific economic, legal, social, technological and other anticipated benefits of the Project outweigh the unavoidable adverse environmental impacts, and therefore justify the approval of this Project. The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible (including the incorporation of feasible mitigation measures), and finds that the remaining significant, unmitigated or unavoidable impacts of the Project described above are acceptable because the benefits of

the Project outweigh them. The City Council finds that each of the overriding considerations expressed as benefits and set forth below constitutes a separate and independent ground for such a finding. The Project will result in the following substantial benefits, which constitute the specific economic, legal, social, technological and other considerations that justify the approval of the Project:

C. BENEFITS OF THE PROJECT

1. The Project will further the City's Smart Growth Policies by being located near public transit and other existing neighborhood services thereby maximizing the existing public infrastructure investments made by the City and other public agencies.

2. The Project will develop an under-utilized, industrial, in-fill property into a mixed-use development that takes advantage of nearby transit facilities.

3. The Project will support investments in current transit by generating more ridership at nearby light rail and bussing stations than the current industrial uses.

4. The Project will support investments in future transit by generating more ridership at the proposed Berryessa BART station than the current industrial uses.

5. The Project will create high-density market rate homes that meet the goals for transit-oriented development to support future BART ridership.

6. The Project will create new job opportunities including near-term jobs in construction and long-term retail jobs onsite.

7. The Project will create a new mix of workforce housing opportunities proximate to employment centers in North San José and Downtown.

8. The Project provides housing to needy and homeless families through the incorporation of the City's only transitional housing shelter.

9. The Project will help address the City's substantial unmet affordable housing demand by providing housing to extremely low income and very low-income families consistent with the General Plan Housing Element goals.

10. The Project will help to revitalize an unused and dilapidated industrial property and help rejuvenate this part of Northeast San José.

11. The Project provides an opportunity to complete an existing residential neighborhood and create uniformity in this community.

12. The Project eliminates blight in a predominantly residential neighborhood by replacing dilapidated light industrial buildings.

13. The Project through its future residents will help support the hundreds of surrounding neighborhood serving businesses.

14. The Project will not have a negative fiscal impact to the City's General Fund because of a number of revenue sources including property taxes.

ADOPTED this 12th day of December, 2006, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE
VACANT	DISTRICT 6

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk