



# Memorandum

**TO:** Honorable Mayor &  
City Council Members

**FROM:** Lee Price  
MMC, City Clerk

**SUBJECT:** The Public Record  
June 14 – July 25, 2006

**DATE:** July 25, 2006

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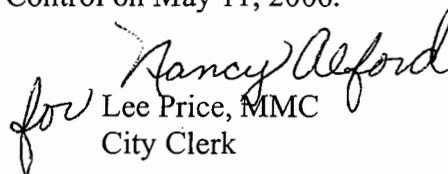
## **ITEMS TRANSMITTED TO THE ADMINISTRATION**

Letter from the American Civil Liberties Union of Northern California to Mayor Ron Gonzales, City Council Members and City Manager Les White dated July 6, 2006 requesting to add to the next San Jose City Council meeting agenda a review and discussion of San José Police Department's practices regarding traffic stop data collection and public release of information.

## **ITEMS FILED FOR THE PUBLIC RECORD**

- (a) Letter from the State Department of Transportation to Alvarez and Associates dated June 9, 2006 with regards to the May 5, 2006 Encroachment Permit Application to construct a 12" storm drain and a temporary construction road for entrance and exit, on State Highway 04-SCL-130.
- (b) Letter from Cingular Wireless to City Clerk Lee Price dated June 22, 2006 regarding Cingular Wireless Site No. CN3840/Air Systems.
- (c) Letter from the Department of the Navy to Fellow Restoration Advisory Board for Former NAS Moffet Field Members received on June 26, 2006 regarding an invitation to attend a meeting on July 13, 2006 from 7:00 p.m. to 8:50 p.m.
- (d) Email from Tom Steinbach, Greenbelt Alliance to City Clerk Lee Price dated June 29, 2006 with regards to a landmark study just produced by the bay Area Smart Growth Scoreboard.
- (e) Memorandum from City Clerk Lee Price to the Mayor and City Council dated June 29, 2006 regarding communications from David Wall.
- (f) Email from Beverly Bryant, Executive Director, Southern Division, Home Builders Association of Northern California to Parks, Recreation and Neighborhood Services Acting Director Albert Balagso dated July 5, 2006 regarding San Jose PDO/PIO Ordinance Revisions and Park Trust Fund in Lieu Fees Meetings Timetable.
- (g) Letter from Cingular Wireless to Lee Price, City Clerk dated June 30, 2006 regarding Cingular Wireless Site No. CN3707-02/Grant Road. & Portland Avenue.

- (h) Letter from T Mobile to Lee Price, City Clerk dated June 28, 2006 regarding OCI Site Number SF15050/San Jose, CA.
- (i) Letter from Cingular Wireless to Planning Director, City Manager and the City Clerk dated July 10, 2006 regarding Cingular Wireless Site No.: SNFCCAE044/Tully & White Address: 2827 Flint Avenue, San Jose, CA (APN: 649-16-100) Approval No.: Project File No. AD06-356/Permit Adjustment CP97-048.
- (j) Letter from Cingular Wireless to Lee Price, City Clerk dated July 10, 2006 regarding Cingular Wireless Site No. CN3848/Blossom Hill.
- (k) Letter from Cingular Wireless to Lee Price, City Clerk dated July 11, 2006 regarding Cingular Wireless Site No. CN3841/George Shirakawa Community Center.
- (l) Motion to intervene by Great Oaks Water In the Matter of the Application of San Jose Water Company for an Order authorizing it to increase rates charged for water service received on July 12, 2006.
- (m) Letter from Home Builders Association of Northern California to Lee Price, City Clerk dated June 27, 2006 requesting advance notice of several types of governmental action.
- (n) Email from Julie Groves to Lee Price, City Clerk dated July 17, 2006 regarding consideration to the environment and fiscal impact of development in the Coyote Valley.
- (o) Email from Rebecca Elliot, Regional Public Affairs Manager to Lee Price, City Clerk dated July 17, 2006 regarding Proposition 90.
- (p) Email from Joyce Wilson to Lee Price, City Clerk dated July 18, 2006 regarding the Coyote Valley Proposal.
- (q) Public Notice from Hitachi Global Storage Technologies, Inc. to City Clerk received on July 24, 2006 regarding a requested Class 1 permit modification pursuant to 22 CCR 66270.42 from the Department of Toxic Substances Control on May 11, 2006.

  
for Lee Price, MMC  
City Clerk

LP/np

Distribution:	Mayor/Council	City Auditor
	City Manager	Director of Public Works
	Assistant City Manager	Director of Finance
	Assistant to City Manager	Public Information Officer
	Council Liaison	San Jose Mercury News
	Director of Planning	Library
	City Attorney	



SAN JOSE OFFICE

111 North Market Street  
Suite 940  
San Jose, CA 95113  
ph: 408.282.8970  
fax: 408.282.8975

San Jose Mayor Ron Gonzales  
San Jose City Councilmembers  
City Manager Les White  
200 East Santa Clara Street  
San Jose, CA 95113

July 6, 2006

Dear Mayor, Councilmembers, and City Manager:

I am writing to request that the San Jose City Council add to the agenda of its next meeting a review and discussion of SJPD's practices regarding traffic stop data collection and public release of information.

The ACLU of Northern California is concerned that the San Jose Police Department ("SJPD") may be backing away from its public commitment to collect and release data on the race and gender of people subjected to traffic stops by San Jose police officers.

We are also troubled by SJPD's failure to comply with the California Public Records Act in responding to our requests for information about traffic stop data collection. SJPD has repeatedly failed to respond to public requests for traffic stop data within the 10-day deadline required under state law.

This is especially disconcerting given the Mayor and City Council's proactive efforts to establish a Sunshine Reform Task Force. At a time when the City of San Jose is renewing its commitment to public accountability, it appears that SJPD has not made government transparency a similar priority.

Data collection is an important way to engender community trust in law enforcement operations. By collecting and releasing data on the race and ethnicity of drivers pulled over by police, SJPD can move quickly to address allegations of racial profiling. The resulting gains in community trust are important, because police officers depend on that trust to safely and effectively conduct their work.

Without this data, however, allegations of racial profiling are left unresolved. This diminishes community trust in law enforcement, and it undermines the ability of police officers to advance public safety. That is why former San Jose Police Chief William Lansdowne initiated a system of traffic stop data collection in 1999.

QUINN DELANEY, CHAIRPERSON | DONNA BRORBY, ROBERT CAPISTRANO, LISA HONIG, ROBERTA SPIECKERMAN, VICE CHAIRPERSONS | NANCY PEMBERTON, SECRETARY/TREASURER  
DOROTHY M. EHRlich, EXECUTIVE DIRECTOR | MAYA HARRIS, ASSOCIATE DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR  
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CHERI BRYANT, DEVELOPMENT DIRECTOR | ERIKA CLARK, COMMUNICATIONS DIRECTOR  
FRANCISCO LOBACO, LEGISLATIVE DIRECTOR | VALERIE SMALL NAVARRO, VIVEK MALHOTRA, LEGISLATIVE ADVOCATES  
SANJEEV BERY, SAN JOSE DIRECTOR | NICOLE A. OZER, TECHNOLOGY AND CIVIL LIBERTIES POLICY DIRECTOR



## **Background on SJPD Racial Data Collection**

In 1999, former San Jose Police Chief Lansdowne won widespread praise for announcing that SJPD would collect racial data on traffic stops and share the results with the public. This data collection program is named the Vehicle Stop Demographic Study, and the data collected was first released on December 17, 1999.

In her 1999 year-end report, San Jose Independent Police Auditor Teresa Guerrero-Daly wrote:

It should be noted that the SJPD was the first police department in California to implement this type of study and provide data regarding vehicle stop activity by its officers. The SJPD should be applauded and recognized for this effort.<sup>1</sup>

The praise and support for the Vehicle Stop Demographic Study extended beyond the San Jose community. In his book *Good Cops – The Case for Preventive Policing* (2005), University of Toledo Law Professor David Harris wrote:

Lansdowne released the data to the public and posted them on the San Jose Police Department's Web site. He gave the citizens of his city all the information as well as his conclusions about it... The leaders and the organizations they represented literally stood with the chief and the police department, not necessarily agreeing with them in every respect but expressing appreciation for the effort and voicing support for a continuation of the study.<sup>2</sup>

Data collected under the Vehicle Stop Demographic Study goes beyond information contained in traffic citations. The Vehicle Stop Demographic Study includes general racial and ethnic data on people who are pulled over but not issued a traffic citation or placed under arrest. This data can shed light on whether or not officers are using race as a factor – consciously or not – in determining who to stop and search. It can shed light on the question of whether police are using traffic stops as a pretext to question motorists of color when there would otherwise be no justification for conducting the stop.

Based on a review of the SJPD website, it appears that the most recent vehicle stop data released by SJPD is over two years old. No data more recent than June 14, 2004, is currently available online.

## **Question of SJPD Commitment to Racial Data Collection**

While SJPD has received – justifiably – praise for its data collection program in the past, the department's response to our recent inquiries raises questions about its current commitment to data collection and openness.

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<sup>1</sup> Office of the Independent Police Auditor, *1999 Year End Report*, page 25.

<sup>2</sup> David Harris, *Good Cops – The Case for Preventative Police*, New Press: 2005.

Following the October 22<sup>nd</sup>, 2005, shooting in downtown San Jose, public allegations were made of racial profiling by San Jose police officers. According to Rick Callendar, President of the San Jose / Silicon Valley NAACP, "The NAACP has received numerous complaints from African-Americans and others describing the police department's disparate treatment in recent weeks, including the complete searching of their cars when being stopped for minor infractions."<sup>3</sup>

In response, SJPD Chief Rob Davis has stated, "It's unfortunate that anybody would believe that profiling is occurring, and it is untrue."<sup>4</sup> Chief Davis has also urged people with complaints to file them with the department or independent police auditor. This would enable the SJPD internal affairs unit to examine and quantify any problems.

Citizen complaints are one potential measure for problems within a department, but the number of complaints is often an inaccurate gauge. There are several reasons people may not file complaints, including distrust of the department or an expectation that the complaint will not be acted on. The City of San Jose should not wait for complaints to be filed to address public allegations of racial profiling when data collected under the Vehicle Stop Demographic Study can be analyzed to shed light on the question of whether or not racial profiling is occurring.

### **Requests for Public Records**

That is why the ACLU of Northern California sent a California Public Records Act request on November 22, 2005, seeking this data. In that request, we asked for the following public records:

- Vehicle Stop Demographic Study data and other records reflecting downtown traffic stop activity in the area surrounding the former Ambassador / B-Hive nightclub between October 1, 2005, and November 10, 2005.
- Incident reports, police reports, and incident logs documenting actions taken by San Jose police officers on October 28 and 29 and November 4 and 5 between 9 p.m. and 3 a.m in the above area.
- Copies of traffic tickets issued on October 28 and 29 and November 4 and 5 between 9 p.m. and 3 a.m in the above area.
- Any orders, bulletins, e-mails, or other documents issued by the department discussing traffic stop strategies, who to stop, what to look for in making a stop, or strategies for patrolling around the downtown nightclubs issued after October 22.

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<sup>3</sup> Rodney Foo, "S.J. Cops Accused of Racial Profiling," *San Jose Mercury News*, November 15, 2005.

<sup>4</sup> Rodney Foo, "Claims Probed of Profiling By S.J. Cops," *San Jose Mercury News*, January 14, 2005.

- Any police documents, training bulletins, or other documents describing the circumstances under which San Jose police officers may or may not use race or ethnicity in determining whether or not to take law enforcement action.

Two months later, SJPD responded with copies of traffic citations, department orders, memoranda, and sections from the duty manual. However, SJPD did not provide records in response to the core request: racial data collected under the Department's Vehicle Stop Demographic Study. SJPD also did not release any of their incident or department reports documenting police officer actions on the nights in question.

In its response, SJPD stated:

The demographic data entries were inconsistent and flawed due to human error. This problem was identified and corrected in December 2005. Until the Department has completed validation of the demographic data and is satisfied with the results, the Vehicle Stop Demographic Study data will not be available.

Six months have passed since SJPD discovered the alleged errors in its data collection system. It is troubling that SJPD still has not "completed validation of the demographic data" or released the data to the public.

During these six months, the Santa Clara County Civil Grand Jury investigated allegations that SJPD engaged in racial profiling in downtown San Jose. In reference to traffic stop data, the Santa Clara Civil Grand Jury stated:

The Grand Jury requested information about stops in the EZ [Entertainment Zone], but the SJPD stated they were unable to provide these data. This lack of documentation may obscure information about racial profiling. In interviews with individuals who have alleged racial profiling, the Grand Jury found that stops with no arrest or citation are commonplace and create an impression of police harassment and racial profiling.<sup>5</sup>

Valuable data that could have helped shed light on these allegations may be found within the Department's Vehicle Stop Demographic Study. The Department should have moved quickly to review any alleged data errors and release this information in a timely fashion. To date, SJPD has not done so.

### **SJPD Divergence from California Public Records Act**

Under the California Public Records Act, governmental agencies are required to determine whether they have documents responsive to a request for records within 10 days and promptly notify the requester, even if simply to deny the request (Government Code § 6253c). This initial ten-day period can be extended by up to fourteen days under extenuating circumstances. Any

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<sup>5</sup> Santa Clara County Civil Grand Jury, *2005-2006 Santa Clara County Civil Grand Jury Report – Racial Profiling by San Jose Police Department – Perception vs. Reality*, page 3.

denials of requests for information, however, can only occur for specific reasons enumerated in state law.

The California Public Records Act does not allow agencies to withhold records by claiming that they are “inconsistent and flawed due to human error.” The California Public Records Act also does not allow public agencies to indefinitely delay release of records until the agency “has completed validation of the demographic data and is satisfied with the results.” Yet these were both justifications offered by SJPD for not releasing its Vehicle Stop Demographic Study data.

On March 6<sup>th</sup> and May 4<sup>th</sup> of 2006, we sent letters following up on our original Public Records Act request mentioned above. In response to our follow-up letters, representatives of SJPD verbally stated that they were processing our request and would respond shortly. However, the actual records requested – or even a perfunctory letter – never came.

In SJPD’s last verbal responses to us, Lt. Gary Kirby stated in a phone call that if we wanted the traffic stop data we would have to pay the part-time salary of a SJPD database consultant to extract the data and “wash” it of errors. In a voice mail left on June 21, 2006, Lt. Kirby stated that the ACLU would have to pay \$1,937 to reimburse SJPD for 28.5 hours of programming time to obtain the data.

Even if the data has errors, it is still critical that SJPD make this information publicly available. It is only through the release of this data that the public can determine the extent to which data is actually being collected. In addition, members of the public are entitled to raw data in order to be able to verify the SJPD assertion that there are in fact errors.

While the failure to provide the data is disturbing, even more absurd is SJPD’s suggestion that the ACLU pay for fixing the data. SJPD should already have acted quickly to use the data *in its possession* to determine whether minority motorists were stopped and searched at disproportionate rates following the October 22, 2005, shooting. Instead, it has taken the indefensible step of requiring civil rights organizations to pay for this analysis *eight months later*.

SJPD has received national praise for its data collection program. That recognition carries the assumption that the data would be used and analyzed by the department. The mere suggestion that civil rights organizations be required to pay to fix a data problem within the department suggests a lack of commitment to data collection and government transparency.

### **San Jose City Council Oversight**

At a time when the City of San Jose is moving in a direction of greater openness and transparency, it only makes sense that SJPD should do the same. That is why the ACLU of Northern California requests that the San Jose City Council set aside a specific agenda item to evaluate SJPD practices regarding the Vehicle Stop Demographic Study, as well as adherence to the California Public Records Act.

Below are a few suggested lines of inquiry that the San Jose Mayor and City Council could consider with regards to SJPD. These questions should only serve as a starting point for further discussion and review of SJPD practices with regards to the above mentioned issues:

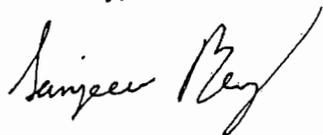
- What is SJPD's current commitment to the Vehicle Stop Demographic Study?
- What is SJPD's timeline for addressing alleged errors in its data collection system and releasing past information?
- How often will SJPD publicly release data from the Vehicle Stop Demographic Study?
- Will SJPD make vehicle stop data since June 2004 available on its website?
- What is SJPD's current policy on honoring California Public Records Act requests?
- What steps will SJPD take to ensure that future requests for information under the California Public Records Act request are honored?
- What steps will SJPD take to ensure that it complies with the response deadlines required under the California Public Records Act?

The San Jose City Council has taken significant steps towards increasing government transparency and accountability. The Sunshine Reform Task Force is a good example of this. Questions remain, however, as to whether or not SJPD has made a similar commitment.

Access to data is critical to maintaining community trust in law enforcement. If significant allegations of racial profiling are allowed to go unanswered, this trust can be undermined. That is why it is important for the San Jose Mayor and City Council to review the matters outlined above. Given SJPD's failure to provide timely access to racial and ethnic data regarding vehicle stops, the San Jose Mayor and City Council should intervene to ensure that the data collection program is living up to its promise.

Thank you for your consideration of this matter. Should you have questions or like to discuss any of these issues, I can be reached at (408) 282-8970.

Sincerely,



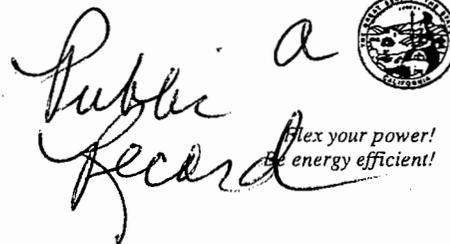
Sanjeev Bery  
San Jose Director  
ACLU of Northern California

**DEPARTMENT OF TRANSPORTATION**

111 GRAND AVENUE  
P. O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 286-4401  
FAX (510) 286-4712  
TTY (800) 735-2929

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2006 JUN 15 P 3:27



June 9, 2006

04-SCL-130 4.1  
06-0775

Alvarez & Associates  
82 North Capitol Avenue  
San Jose, CA 95127  
Attn: Nadim Raffoul

Gentlemen:

This letter is in regard to your May 5, 2006 Encroachment Permit Application to construct a 12" storm drain and a temporary construction road for entrance and exit, on State Highway 04-SCL-130, Post Mile 4.1, at 1665 Alum Rock Avenue in the City of San Jose.

We have the following comments which must be addressed before we can consider your application complete:

1. The Encroachment permit must be applied for by the owner of the property Ms. Helena Tran. Attached is an Encroachment permit application for the owner's use.
2. The Encroachment Permit Application must be accompanied with the environmental documentation described below:
  - a. An approved copy of the final environmental document.

Under the California Environmental Quality Act (CEQA) this document could be an Environmental Impact Report (EIR), Negative Declaration (ND), or a statement that the project is categorically exempt from the provisions of CEQA. Under the National Environmental Policy Act (NEPA), this document could be an Environmental Impact Statement (EIS); Finding of No Significant Impact (FONSI), or a statement that the project is categorically

excluded from the provisions of NEPA. The ND/FONSI should include an Initial Study/ Environmental Assessment. In addition to overall environmental evaluation for the project, the environmental documentation should address the impacts and their corresponding mitigations for the work to be done on Caltrans right of way.

- b. A copy of the Notice of Determination which the applicant is required to file with the County Clerk and/or the Office of Planning and Research (OPR).
- c. A copy of Caltrans comments made on the draft environmental document during the environmental review process for the subject project.

### **Hydraulics Comments:**

1. Please use an 18" RCP instead of 12" RCP for portion of storm drain located within Caltrans right of way..
2. Please provide a development plan, including pre-development topography and post-development topography and proposed drainage shed area for an 18" RCP storm drain.
3. Please match the existing curb and gutter grades so that resulting curb and gutter drains appropriately.
4. Please include the attached G2 manhole detail with a state standard manhole cover per Std. Plan B7-11, detail U45 or equivalent. It is our understanding that a city of San Jose type concentric manhole has a minimum height requirement of 7.5 feet and would not work in your situation.
5. It appears that flow line and top of grade at manhole may not be correct according to San Jose city storm drain plan 68C. Please confirm the elevations.

If you have any question regarding the above Hydraulics comments, please call Ms. Lily Chan at (510) 622-1770 or Ms. Monika Pedigo at (510) 286-4864.

### **Traffic Comments:**

1. Is the proposed driveway permanent or temporary? Please clarify.
2. Show on your plan the details of your proposed driveway along with the existing and new pavement striping and marking, signing, shoulder, and all other traffic control devices at the project area with measurement for our review.

3. Curb return driveway is not allowed within the State right of way. Driveway shall be Caltrans standard and shall be a minimum 10' away from your property line. Show the striping details on your plan and also the striping details for transitions.

If you have any questions regarding the above traffic comments please call Mr. Gerino Capino at (510) 286-4602.

**Other Comments:**

1. A \$5,000.00 performance bond and a \$5,000.00 payment bond and additional permit fee are required prior to issuance of permit. Payment and performance bonds shall be in Caltrans bond forms and signed by both permittee and bonding company. Attached are bond forms for your use. Additional permit fee will be calculated after completion of the permit review process.

Please revise your plan sheets accordingly and submit six (6) sets of revised plan sheets along with the other requested items for our further actions.

Reference file No 06-0775 in your submittal.

If there is no response from you within 60 days, your Encroachment Permit Application may be cancelled your application.

If you have any questions, please contact Mr. Kazem Rezaei at (510) 286 4419.

Sincerely,



R. B. DANTES  
District Branch Chief  
Office of Permits

Attachment:

RECEIVED  
San Jose City Clerk

2006 JUN 27 P 2:52

b

June 22, 2006

Lee Price, City Clerk  
**City of San Jose**  
801 N. First St.  
San Jose, CA 95110

Re: **Cingular Wireless Site No. CN3840/Air Systems**

Dear City Clerk:

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have any questions or require additional information, please call me at (925) 227-4356.

Sincerely,



Ellen Magnie  
Compliance Coordinator - Cingular Wireless

Attachments

**ATTACHMENT A**

**1. Project Location:**

Site Number and Name: CN3840/Air Systems

Site Address: 940 Remillard Ct.  
San Jose, CA 95122

County: Santa Clara

Location: 37-19-45.57  
121-51-38.83

Assessor's Parcel Number: 472-11-078

**2. Project Description:**

Number of Antennas to be installed:6

Tower Design Monopole

Tower Appearance: 1 antenna per sector, 6 sectors

Tower Height: 60'

Building Size(s): N/A

**3. Business addresses of all Local Government Agencies:**

**City of San Jose**  
Stephen Haase  
801 N. First St.  
San Jose, CA 95110  
408-277-4754

**4. Land use approval:**

On June 19, 2006. the City of San Jose approved Case No. SP05-059 for the installation use and maintenance of a Wireless Telecommunications Facility at 940 Remillard Ct., San Jose, CA.



DEPARTMENT OF THE NAVY  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE WEST  
1455 FRAZEE ROAD, SUITE 900  
SAN DIEGO, CA 92108-4310

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San Jose City Clerk

2006 JUN 26 P 2:54

5090  
Ser BPMOW.rcw  
22 June 2006

Public Record C

Dear Fellow Restoration Advisory Board (RAB) for Former NAS Moffett Field Members:

It is my pleasure to invite you to attend the meeting of the former NAS Moffett Field RAB on Thursday, July 13, 2006, from 7 to 8:50 p.m. **This meeting will be held in the Eagle Room of Building 943 at Moffett Field in Mountain View, Calif.** Building 943 is located just before the main gate on NASA Pkwy.

The proposed agenda, directions to the RAB meeting and draft minutes of the May 11, 2006, RAB meeting are enclosed.

If you have any questions or concerns, please contact me in any of the following ways:

Mr. Rick Weissenborn  
BRAC Environmental Coordinator, Former NAS Moffett Field  
Base Realignment and Closure, Program Management Office West  
1455 Frazee Road, Suite 900, San Diego, CA 92108-4310  
Phone: 619-532-0952, Fax: 619-532-0995, E-mail: richard.weissenborn@navy.mil

I look forward to seeing you at the next RAB.

Sincerely,

Richard Weissenborn  
BRAC Environmental Coordinator  
Former NAS Moffett Field

- Enclosures:
1. July 13, 2006, RAB agenda
  2. Directions to the RAB meeting
  3. May 11, 2006, draft RAB minutes

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2006 JUN 26 P 2:54



**Former NAS Moffett Field**  
Mountain View, California

**RESTORATION ADVISORY BOARD MEETING  
AGENDA**

**Date/Time:** Thursday, July 13, 2006, 7 to 8:50 p.m.

**Location:** Former NAS Moffett Field  
**Building 943, Eagle Room**  
Mountain View, CA

**7:00 to 7:15** WELCOME AND INTRODUCTIONS  
REVIEW AGENDA  
PRIOR MINUTES APPROVAL (May 11, 2006)  
CIRCULATE DOCUMENT SIGN-UP SHEETS

**7:15 to 7:30** REGULATORY UPDATE

**7:30 to 7:40** HANGAR 1 PUBLIC MEETING UPDATE

**7:40 to 8:10** BUILDING 88 PRESENTATION

**8:10 to 8:40** ORION PARK STATUS UPDATE

**8:40 to 8:50** RAB BUSINESS:  
RAB RELATED ANNOUNCEMENTS  
NEXT RAB MEETING: Sept. 14, 2006, 7 to 9:30 p.m.  
FUTURE RAB TOPICS

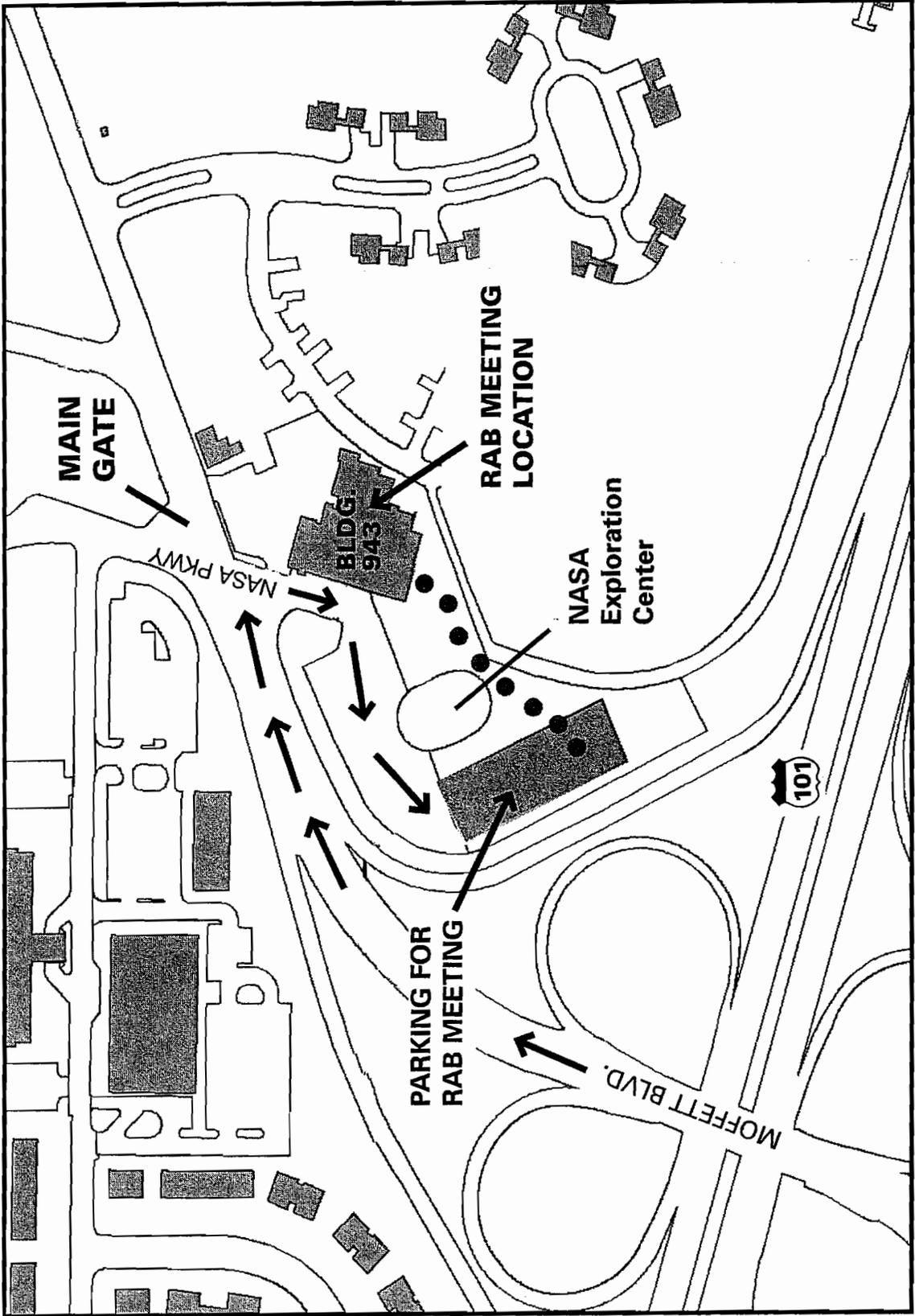
**8:50 P.M.** ADJOURN

**Former NAS Moffett Field  
Building 943  
Mountain View, CA**

**Legend:**

→ **DRIVE**

••••• **WALK**



**FORMER NAS MOFFETT FIELD  
RESTORATION ADVISORY BOARD  
MOUNTAIN VIEW CITY HALL, FOURTH FLOOR  
MOUNTAIN VIEW, CALIFORNIA 94041**

*NOTE: A glossary is provided on the last page of these minutes.*

**Subject: RAB MEETING MINUTES**

The Restoration Advisory Board (RAB) meeting for the former Naval Air Station (NAS) Moffett Field was held on Thursday, 11 May 2006 at the Mountain View City Hall, Fourth Floor, in Mountain View, California. Mr. Rick Weissenborn, Base Realignment and Closure (BRAC) Environmental Coordinator and RAB Co-Chair, opened the meeting at 7:16 p.m.

**WELCOME**

Mr. Weissenborn introduced himself, welcomed everyone in attendance, and asked for self-introductions of those present. The Moffett Field RAB meeting was attended by:

RAB Members	Regulators	Navy	Consultants & Navy Support	NASA	Public & Other
11	6	4	6	2	17

**AGENDA REVIEW**

Mr. Weissenborn reviewed the updated meeting agenda, noting it no longer includes the Building 88 presentation. RAB Community Co-Chair Mr. Bob Moss requested the Hangar 1 discussion begin earlier to allow more time for discussion. The agenda was approved with this modification.

**APPROVAL OF MINUTES**

The 09 March 2006 meeting minutes were approved without changes. Meeting minutes are posted on the project website at [www.navybracpmo.org/bracbases/california/moffett/](http://www.navybracpmo.org/bracbases/california/moffett/).

**DOCUMENTS FOR REVIEW**

Sign-up sheets for the following documents were circulated during the meeting:

#	<u>DOCUMENT</u>	<u>APPROXIMATE SUBMITTAL DATE</u>
1	Site 29 (Hangar 1) EE/CA	May 2006
2	Building 88 Investigation Report	May 2006
3	Draft Final Addendum to the Revised Final Station-Wide Feasibility Study Site 25	May 2006
4	Final Site 22 Landfill Post-Construction Operations, Maintenance, and Monitoring Plan Addendum. (Waiting for EPA approval of tech memo)	June 2006
5	Site 29 (Hangar 1) Action Memorandum	June 2006
6	Draft Groundwater Monitoring Well Installation and Sampling Report for Orion Park Housing Area	July 2006

## **RAB ELECTION**

Mr. Weissenborn introduced Mr. Dan Wallace, candidate for RAB membership. Mr. Wallace was unanimously approved for RAB membership by the attending RAB members.

## **REGULATORY UPDATE**

Mr. Weissenborn introduced Ms. Adriana Constantinescu of the San Francisco Bay Regional Water Quality Control Board. Ms. Constantinescu briefly presented Water Board activities relating to Moffett Field.

- The Water Board is reviewing final ecological restoration documents for Site 27, including the final remedial design report. The Water Board submitted comments on the document to the Navy and is working with them to resolve their concerns.
- The Water Board is reviewing the Navy's responses to comments on the Site 25 Draft Revised Feasibility Study and coordinating with Water Board management. A teleconference with the Navy is being scheduled to discuss the document.
- The Water Board received the Engineering Evaluation/Cost Analysis (EE/CA) for Hangar 1, and Ms. Judy Huang of the Water Board is reviewing the document. She will be submitting comments to the Navy and will present those comments at the Hangar 1 public meeting, scheduled for 23 May 2006.

The following questions were asked following the Water Board update.

- RAB member Mr. Peter Strauss asked if the Site 27 Draft Biological Mitigation and Restoration Measures Plan had been sent for review to the sign up list. Mr. Weissenborn explained there has already been a record of decision (ROD) and remedial design completed for the site. This document is a supplement to the remedial design and is not distributed to the public for comment. The ROD and remedial design are available in the information repository at the Mountain View Public Library.

Mr. Christopher Cora of the U.S. Environmental Protection Agency (EPA) stated that EPA received the Hangar 1 EE/CA and is evaluating it for consistency with EPA Non-Time-Critical Removal Action policy.

There were no questions for Mr. Cora.

## **SITE 27 FIELD WORK PRESENTATION**

Mr. Scott Gromko, Navy remedial project manager, presented an overview of Site 27 field work activity and site background information. Remediation activities at Site 27 have started, although some scheduled activities have been delayed because of rain. The Navy is working to get field work activity back on schedule.

Mr. Gromko presented a brief history of Site 27 and presented a PowerPoint presentation with activity pictures to help explain current construction taking place at the site.

- The site was prepared for delivery of the equipment. The National Aeronautics and Space Administration (NASA) perimeter security fences were temporarily reconfigured to consider the project area. The contractors are installing erosion control mechanisms for the project area, improving the condition of the northern berm of the Northern Channel and constructing a sediment stockpile and equipment lay down area.
- The northern berm of the Northern Channel will be graded, lined with geofabric, and a sub-base will be placed and compacted to prepare the berm for the increased truck traffic and truck weight.
- Water trucks will spread water on the Northern berm roughly every hour to control dust during the berm work.
- The sediment stockpile and equipment lay down area is under construction. The sediment stockpile area will be used to reduce the moisture in the sediment before it is transported to an EPA approved disposal facility. This will reduce the weight of the sediment and meet disposal facility requirements for

moisture content. The equipment lay down area will keep the equipment out of the way and secure when not in use.

Work on the berm haul road began at the end of April and is planned for completion by 15 May 2006. Contractors are working on the equipment storage area and stockpile area, which also has a planned completion date of 15 May 2006. De-watering of the channel will begin on 15 May 2006, and sediment removal from the Marriage Road Ditch will begin on 22 May 2006. To ensure the sediment removal for the Northern Channel is completed by the end of September, the removal of the debris pile has been rescheduled to September 2006. This decision was based on the consideration that the debris pile removal is not as weather dependent as the sediment removal. There were no questions following the presentation.

## **HANGAR 1 EE/CA DISCUSSION AND PUBLIC COMMENTS**

Mr. Weissenborn opened the Hangar 1 EE/CA discussion with an outline of the public review schedule and recommended alternative. The Navy issued the EE/CA for public review and comments on 05 May 2006. The Navy's recommended alternative is demolition and removal of the hangar. There is a 30-day public review and comment period. The Navy is accepting comments at this RAB meeting, at the public meeting scheduled for 23 May 2006, and in writing via postal mail and e-mail through 05 June 2006. The Navy will address the comments in a responsiveness summary appended to the action memorandum. The action memorandum is the decision document that selects the final remedy and obligates the Navy to complete the action. The action memorandum can make a different recommendation than the preferred alternative documented in the EE/CA. The action memorandum is scheduled to be released for public review in the first half of July. When the document is issued, the Navy may award the contract for whichever alternative is selected. The Navy has issued a request for proposals on the EE/CA's recommended alternative, however, the statement of work is easy to change if the action memorandum states a different cleanup remedy than the recommended alternative.

Mr. Weissenborn said the Navy is aware there is a general dislike for the recommended alternative. Any comments at tonight's RAB meeting will be included and addressed in the responsiveness summary appended to the action memorandum. At the Hangar 1 public meeting, the Navy will only be accepting comments and will not respond that evening to any comments received. Responses to all comments received at the public meeting will also be included in the responsiveness summary appended to the action memorandum.

The following questions were asked following the update.

- Mr. Lenny Siegel, RAB member, asked what the process is to get an extension of the EE/CA comment period. He stated BRAC funding should be available to use for restoring the hangar and looking for other funding sources should be enough justification for getting an extension. Mr. Weissenborn said the request for an extension should be in writing and sent to him in a timely manner. Mr. Weissenborn affirmed the RAB could make the request and suggested Mr. Moss prepare and sign the letter. Mr. Moss asked RAB members if they were in favor of him writing a letter on their behalf requesting an extension. As no RAB members were opposed, Mr. Moss stated that he will write the letter. Mr. Gabriel Diaconescu, RAB member, said while he was not opposed to an extension, he felt there was already too much delay and it was time for a decision to be made.
- Mr. Kevin Woodhouse, RAB member and city of Mountain View representative, said he supports an extension to the EE/CA comment period because it would provide an opportunity for the Mountain View City Council to review the document. The city council has a council meeting on 23 May and has limited time to review the report before the next council meeting. In addition, since the council meeting is scheduled for the same day as the public meeting, community members wishing to express their concerns about the EE/CA to the city council at that meeting wouldn't be able to do so because of the public meeting.
- Mr. Steve Sprugasci, RAB member, asked when the Navy will give a response to the extension request. Mr. Weissenborn said it would be given by Monday, 15 May 2006, if he receives it promptly. Mr. Moss said he would e-mail the letter tonight and he can provide copies by e-mail to those interested.

Public comments from RAB members and members of the public in attendance follow.

- Mr. Strauss asked if the Navy will issue a revised EE/CA if there are substantial comments that warrant the need for a revision and if the Navy would then still proceed with the action memorandum. Mr. Weissenborn said there will not be a revision to the EE/CA. The Navy has incorporated comments from regulatory agencies and the document was reviewed by the Assistant Secretary of the Navy before it was made available to the general public. Mr. Weissenborn said all comments received during the comment period will be responded to, although some comments may be clustered if they pertain to the same subject.
- Mr. Strauss asked if there will be responses to, for instance, substantive comments about environmental data, which he feels is not well represented in the document, and stated there should be more environmental data in the EE/CA. Mr. Weissenborn said environmental data has been previously distributed – that data is what led to the EE/CA. An EE/CA is developed after environmental data has been gathered and the need for an action has been identified. Mr. Cora said that from EPA’s perspective, an EE/CA is not the same as a remedial investigation document. There already is data showing the hangar has been found to be contaminated. Mr. John Chesnutt of the EPA added the EPA will be providing their comments on the EE/CA and there is data on the level of contamination. He noted in terms of public comment, an EE/CA has more flexibility over a remedial investigation/feasibility study (RI/FS). The Navy conducted an EE/CA to streamline the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process since the hangar coating has a limited life span. The Navy is holding a public comment period and public meeting, so the EE/CA would have the equivalency of an RI/FS. Mr. Weissenborn added an EE/CA does not require public meetings, but the Navy installation restoration policy states that any decision document requires a public meeting and a 30-day review period.
- Mr. Siegel stated that the community was promised a robust EE/CA since there was not enough time to conduct an RI/FS. Mr. Siegel then asked for clarification on Alternative 6, replacement of the visual siding, and asked what the cost estimate for Alternative 10 includes. Mr. Weissenborn clarified that Alternative 6 would only be for the hangar’s exterior and said the cost estimate for Alternative 10 includes environmental action, which is about \$12 to \$15 million. The final cost is the cost of historic mitigation.
- Mr. Siegel said it seems as if Alternative 11 doesn’t include the cost for modifying NASA’s infrastructure that runs through the hangar, and that this cost would then be borne by NASA. Mr. Weissenborn said this is correct. Mr. Siegel subsequently asked whether NASA has this cost estimate. Ms. Sandy Olliges of NASA said the agency is looking into the infrastructure cost estimates, but she does not know whether the information will be available during the comment period. Mr. Siegel said the cost difference between Alternative 10 and Alternative 11 may be smaller if the cost associated with modifying NASA’s infrastructure is included in the total cost estimates for demolishing the hangar. Although this may not affect the Navy, it makes a difference for the taxpayers, according to Mr. Siegel.
- Mr. Richard Eckert, RAB member, commented he was appalled that the government wouldn’t provide the funding to save a historic artifact.
- Mr. Moss said none of the alternatives are identified as recognizing or preserving the historic nature of the site. One of the alternatives is exterior asphalt coating, which was already done in the Time-Critical Removal Action. Mr. Moss said no one complained of the exterior asphalt coating having a negative impact on the historic integrity of the site. He has doubt that the correct facts are taken into account when talking about historic integrity, and it should be considered. Mr. Moss also said he finds it strange that tearing down the hangar has the same level of historic preservation as the other alternatives. He then commented that when considering the total cost package (initial cost and maintenance cost), the dollar figure should account for inflation. The cost for maintenance in today’s dollars is significantly lower than what it would be in 30 years, for instance. The EE/CA should show the same dollar figure as of

July 1, 2006. In addition, there should be distinction between a “permanent” and “long-term” cleanup remedy.

- Mr. Woodhouse said one of the criteria for evaluating the alternatives is implementability, and one of the criteria for implementability is community acceptance. He asked how much weight will be given to community acceptance in the evaluation. Mr. Weissenborn explained that community acceptance is one of the nine criteria required for a CERCLA remedy that would be seen in a feasibility study. The EE/CA evaluation includes implementability, effectiveness and cost. Navy policy and EPA guidance includes other criteria in subcategories of these three groups. The alternative has to comply with the applicable or relevant and appropriate requirements (ARARs) and has to protect human health and the environment; these are the threshold criteria. Many of the alternatives evaluated didn’t meet any or both of these threshold criteria. There are also primary balancing criteria, which include long-term effectiveness, short-term effectiveness, and reduction of toxicity, mobility or volume through treatment. The third criteria group, modifying criteria (acceptance by the state and by the public), is considered and serves the purpose of modifying the other criteria. For example, if the recommended alternative choice was between Alternative 2 and Alternative 11, then there would be more community acceptance consideration than if the choice was between Alternative 2 and Alternative 10.
- Mr. Woodhouse then asked how much community opposition equals \$12 million. Mr. Weissenborn said the Navy is evaluating the cost to address a source of environmental contamination. He further stated the Navy is aware of the historic nature of the hangar. It is difficult to balance community concern and \$12 million. Mr. Weissenborn said Alternative 10 does include replacing the siding as the historic mitigation for this alternative.\* All of the alternatives have the environmental cost and the historic mitigation cost included and both costs are included in the total cost. However, none of the costs include any costs associated with making the building usable. There would be a significant expense to meet building, fire and Americans with Disabilities Act (ADA) codes. Making the building usable is not part of the environmental response required of the Navy, although the Navy is aware there would be additional costs. There is also more to the environmental response that has not been analyzed yet. Ms. Olliges said NASA does not have a detailed cost estimate for bringing the building up to codes from an engineering conceptual analysis, but it is estimated between \$50 and \$100 million.

*\*At this time, the Navy has not determined if the siding will be replaced as the historic mitigation option for Alternative 10. If Alternative 10 is chosen as the final remedy, the three mitigation options described in the EE/CA for Alternative 10 (Historic American Engineering Record (HAER) documentation, replacing the siding with a skin that is of similar appearance to the original hangar skin, or combination of HAER documentation and replacing the siding) will be considered.*

- Mr. Diaconescu said he is a resident within 300 yards of the hangar. He thinks that assigning weight to community acceptance is good; however, the community needs to consider the importance of human health versus a historic building. Mr. Diaconescu said health is most important when considering people that live within the immediate vicinity of the hangar or are working near the hangar for many hours of the day.
- Ms. Diane Farrar of NASA Ames said the EE/CA is the basis for public discourse, and the community has been waiting many months for it; therefore, the final cleanup remedy should be a community decision. She is concerned with the accuracy of the costs presented for alternatives 10 and 11. Ms. Farrar said a NASA Ames staff member trained by the Navy to do cost estimates feels the cost for demolition was underestimated and the cost for cleaning up the site was inflated with irrelevant costs. Mr. Weissenborn said the NASA staff member in reference is accustomed to dealing with cost estimates for bids, which is different than figuring costs for the EE/CA. Mr. Weissenborn said he is comfortable with the costs presented in the EE/CA.
- Mr. Jeff Segall, community member, said he is concerned with the cost of restoring NASA’s infrastructure if the hangar is demolished and how this affects taxpayers. He said NASA’s infrastructure

costs should be mentioned in the EE/CA since it is a foreseeable cost. Mr. Segall said he appreciates the Navy allowing public comments if the decision is going to be made on the basis of true cost; however, the alternatives' costs cannot be compared when one alternative would leave a hangar and another would demolish it. Mr. Weissenborn said each step in the EE/CA process will present more detail, and more detailed cost information will become available. The Navy will have more information on infrastructure costs as the project proceeds.

- Mr. Mike Buhler of the National Trust for Historic Preservation asked if there were potential additional costs to make the building usable, outside the scope of the EE/CA report. Mr. Weissenborn affirmed that there are additional costs. Mr. Buhler asked about the status of Section 106 consultation under the National Historic Preservation Act (NHPA) and if the State Historic Preservation Office (SHPO) or Advisory Council on Historic Preservation (ACHP) have commented on the adequacy of the mitigation included in the EE/CA. Mr. Weissenborn said Section 106 consultation has been held as a series of discussions with the SHPO. Because it's a CERCLA action, the less formal discussions serve as consultations without the timeframe associated with formal consultations. When the Navy met with SHPO in October 2005, SHPO said the historic mitigation proposals were more than adequate. Both SHPO and ACHP have the EE/CA. With ACHP, there will be a federal undertaking that will have an adverse effect, and the Navy has been in discussions with ACHP. Mr. Weissenborn said he has personally been unable to get in contact with SHPO over the last month and a half.
- Mr. Larry Shapiro, community member, said he has previously compared the hangar to other historic structures like the Golden Gate Bridge, the Empire State Building and the Statue of Liberty, which no one would think of tearing down. He said the U.S. president flew into Moffett Field and landed near the hangar. Mr. Shapiro said if the hangar is safe enough to allow the president to use Moffett Field, then it is safe for the community to continue living next to it.
- Mr. Steve Williams, community member, said NASA's cost estimate for bringing the building up to current codes to allow reuse of the hangar seems like a lot of money, but if the hangar is demolished, the opportunity to ever reuse the hangar would be lost. Although funding may not be available now to bring the structure up to codes, it may be available in the future.
- Mr. Williams further stated that infrastructure costs directly play into the community's evaluation of which of the presented alternatives is more acceptable. It is difficult for the community to make a good evaluation of the Navy's recommendation if there is no opportunity for the community to find out how the infrastructure costs will affect taxpayers.
- Mr. Williams then asked whether the cost for Alternative 10 includes replacing the siding and if the Navy would replace the siding as part of this alternative. He said the document doesn't say that this alternative includes replacement of the siding, but he understands this is because historic mitigation is in another section of the report. Mr. Weissenborn said historic mitigation for Alternative 10 is part of the total cost, and based on the EE/CA, the Navy would replace the siding.\* Historic mitigation was considered as part of the ARARs. Mr. Weissenborn added, however, that the final decision will be made in Washington, D.C. Mr. Williams said he is concerned with commenting on a document that is not completely understood.

*\*At this time, the Navy has not determined if the siding will be replaced as the historic mitigation option for Alternative 10. If Alternative 10 is chosen as the final remedy, the three mitigation options described in the EE/CA for Alternative 10 (HAER documentation, replacing the siding with a skin that is of similar appearance to the original hangar skin, or combination of HAER documentation and replacing the siding) will be considered.*

- Mr. Terry Terma of Space World/SETI said he is concerned about the procedure for demolishing the hangar. He said encapsulation would be necessary before the hangar can be torn down, and once the hangar is torn down, the encapsulation can no longer be mechanically supported by the hangar structure. This would result in having to stop work and the structure would only be half demolished, possibly

releasing contaminants. Mr. Terma said there would be more of a risk from tearing down the hangar than a straight-forward encapsulation because of the risk of exceeding cost, time and contaminant leakage from the structure. Mr. Terma would like to see encapsulation of both the interior and exterior structure.

- Mr. Siegel clarified environmental risk and said proximity to contamination doesn't present risk; there has to be a pathway to the contamination. Contamination risk from the hangar is through breathing contamination (which is the reason NASA closed the building) and a pathway to the wetlands (where it poses an ecological risk).
- Mr. Siegel said federal officials, at the onset of BRAC in 1991, allowed the spending of federal funds through BRAC to allow communities to use closed bases as they see fit. Mr. Siegel said he believes it is the Navy's obligation to make the property available for reuse because that is the basic concept for the base closure process. He said it is the obligation of the federal government to clean up the site, and he believes that obligation is built into the base closure process.
- Mr. Strauss said the premise of the EE/CA is that the only acceptable alternative is one that will remove all of the source contaminant material. Mr. Strauss made a comparison to tearing down a house built prior to 1978 only because it was painted with lead paint. Mr. Strauss said the EE/CA's premise is not a strong enough argument; the Navy needs to state in the EE/CA that there is an environmental health risk and the EE/CA should reflect the environmental hazard more strongly to justify why the Navy wants to tear down the structure.
- Mr. Seth Shostak, Space World board member, said demolishing the hangar would be a loss in opportunity cost; once the hangar is gone, it's gone forever. He said it reminded him of Penn Station in New York that is now being rebuilt. If the hangar is used for Space World, the capital cost would be about \$400 million, and the revenue to Sunnyvale and Mountain View would be about \$30 million. He said the cost for saving the hangar is a small amount compared to the price of a helicopter and said this is the time to convince authorities in Washington, D.C. The hangar's value is enormous in terms of educating children and bringing people to the South Bay.
- Mr. Jack Gale, RAB member, said the structure cannot be rebuilt or another building be built at that site because of the proximity to the runway. Mr. Gale questioned who in the Navy approved the EE/CA because there was no approval signature. Mr. Weissenborn said guidance to evaluate opportunity cost in an engineering document does not exist; opportunity cost is subjective.
- Mr. Williams said it is not feasible to estimate opportunity cost, nor is it part of the Navy's job, because opportunity cost would be really large on one hand, and wouldn't exist on the other.
- Mr. Moss briefly described the process for eliminating alternatives and confirmed with Mr. Weissenborn that all coating options are for the hangar's exterior. Mr. Moss said Navy meetings with EPA and Water Board confirmed that the inside of the hangar also has to be addressed. Mr. Moss said the Navy should review the solutions he had previously recommended, such as epoxy coating, that are cheaper and more durable than the coatings selected in the EE/CA. Mr. Moss said his recommended coatings should be alternatives. Mr. Weissenborn said Mr. Moss' recommendations were analyzed, but given the size of the area to re-coat, they would not be effective. Mr. Moss said that this explanation of dismissal should have been provided in the EE/CA and said an explanation of why NASA's cost estimates are different than the Navy's should be made available to the public. Mr. Moss added that since NASA owns the site, it is concerned with what to do with the site after the Navy cleans it. He said the hangar's rent would bring about \$375,000 to \$400,000 per month, resulting in a rental income of about \$4.5 million per year. The cost to restore the hangar would be recouped, and NASA would continue to earn interest and value on it. Mr. Moss suggested the community speak with NASA about opportunity costs once they get the Navy to save the hangar.

- Ms. Olliges said the estimate she mentioned earlier for bringing the hangar up to building codes cannot be published; it is a general range and not yet confirmed. NASA does not have the budget to make the hangar useable since their budget is appropriated to space exploration.
- Mr. Buhler said NASA was responsible for Section 106 consultation and he asked whether NASA or the Navy was responsible for the costs associated with historic mitigation, such as replacing the siding. Mr. Weissenborn said the cost is the Navy's responsibility.
- Ms. Sarah Ann Moore of the Navy clarified historic mitigation. In the EE/CA, each alternative has different options for historic mitigation that the Navy considered. In Alternative 10, for example, one option is HAER documentation, another is HAER documentation with siding, and a third is siding alone. These mitigation options would be considered by the Navy as part of the alternative. Mr. Weissenborn said the costs associated with the historic mitigation options are in table 5-2 of the EE/CA.
- In response to Mr. Segall's question, Mr. Cora said that although interior air monitoring shows polychlorinated biphenyl (PCB) concentrations and the exterior doesn't, it does not signify that contamination doesn't exist. EPA believes there is migration from the interior to the exterior.
- Mr. John Kaiser of the Water Board said it was unacceptable for the Navy to not address the interior of the hangar since this has been discussed through the dispute resolution process. The Water Board has other issues that will be included in their official comments. Mr. Williams said although the EE/CA doesn't address the interior, the important point is that the costs presented in the EE/CA are not useful to the community when making comments.
- Mr. Terma said if the hangar is demolished without first being encapsulated, the Navy is risking contamination.
- Mr. Strauss asked if the Navy now thought it was valid to revise the EE/CA based on the comments received tonight. He said the community deserves a better EE/CA to comment on.
- Mr. Moss said many major issues with the EE/CA have been identified and the Water Board agrees there are issues with it. Assuming a 30-day extension on the comment period, the new closing date would be 05 July 2006.
- Mr. Malkav (SP?), community member, said he is knowledgeable about the type of metal on the hangar siding, and to his knowledge, he hasn't found that this metal is salvageable. Mr. Weissenborn clarified that the Navy expects the hangar structural frame to be recyclable, but not the siding.
- Ms. Farrar questioned how the Navy could be trusted to respond to public comments if the EE/CA was not as thorough as what the public had expected or requested. Mr. Weissenborn said the Navy is legally obligated to respond to every comment and the responses will be thorough.
- Mr. Jack Nadeau, community member, asked if the hangar ever had been appraised for its intrinsic value if it were built today. Mr. Moss said government property is typically not appraised unless it is going to be sold. There is no formal appraisal because no one typically expects to sell Navy property.
- Mr. Mike Buhler asked if the Navy could proceed with the project if EPA wasn't in agreement. Mr. Cora said if Mr. Buhler was referring to the structure and PCB-containing paint, he would have to do some research to answer the question. Mr. Cora said CERCLA does have limitations when it comes to materials from design. However, when there are releases into the environment, he believes that rule no longer applies, but would need to confirm this.
- Mr. Chesnutt said the EPA's opinion is that the Navy needs to address the interior of the hangar and this will be in EPA's comments. This will heavily weigh where the EPA falls on alternatives. The EPA is sympathetic to issues about tearing down the hangar. When there are costs involved, the EPA wants to ensure that funds are used effectively because the costs for this project affect funds available for use elsewhere.

- Mr. Buhler asked for clarification on the potential for contaminant release from the structural beams inside the hangar and if it is currently unknown whether contaminants are being released. Mr. Cora cited an example and said PCBs are in paint and on many structures, but the EPA doesn't make everyone tear down a structure simply because it contains PCB-containing paint. He said the issue of the hangar's contamination is a matter of size. The siding is highly contaminated with PCBs and it's been demonstrated that the contamination is releasing. The EPA is very concerned that the siding is releasing PCBs, asbestos and lead. Mr. Cora cited the hangar in Akron, Ohio and said the encapsulation of this 8-acre hangar is not going well – it has to be vacuumed twice per day, for example. Mr. Cora added there is a concern with ongoing maintenance for Hangar 1.
- Mr. Chesnutt said there is evidence of contamination releasing into the air, which is why NASA closed the building. He said the current process is an EE/CA and a removal action. If the Navy does anything but demolish the hangar, the Navy would have to do a remedial action. In that case, there would have to be a long-term operations plan and inspection of the re-applied coating. The hangar in Ohio has an intensive operations and maintenance plan to wipe down and control dust. Mr. Chesnutt said he was unsure whether the operations and maintenance costs were reflected in the coating options.
- Mr. Moss said the sediment basins are analyzed periodically. Tests conducted last November indicated PCBs and lead appear to be coming from the hangar. This indicates that the temporary coating may be wearing off, and the contamination could be coming from the hangar's interior, which hasn't been treated. NASA has expressed concern with the interior not being treated. If a remediation approach is taken, there will have to be ongoing observation of both inside and outside to ensure coatings are effective. This ongoing cost would be NASA's responsibility, or if NASA sells the building, it would be the buyer's responsibility. That is part of the cost the Navy has incorporated to get comparative cost estimates.

## **RAB BUSINESS**

### **RAB Related Announcements**

- Mr. Moss said there was discussion at the last RAB meeting of possibly having a special RAB meeting to discuss recommendations and comments on the EE/CA. He asked the RAB if there was still interest in having the special meeting. The RAB's consensus was to not hold a special meeting. Mr. Siegel said many interested members of the public have been meeting as the Save Hangar One Committee (SHOC). He thinks it is best that they meet as a community group, not a government sponsored group.
- The public meeting will be held on 23 May 2006, in Building 943 of Moffett Field, just outside the main gate on NASA Parkway. An open house will be held at 5 p.m. followed by the public meeting, from 7 to 9 p.m. The Navy will not be responding to comments at the public meeting. Mr. Weissenborn said each person making comments at the public meeting will be limited to three minutes, and the meeting will extend past 9 p.m., if needed, to accommodate all persons wishing to make a public comment.

Mr. Siegel asked if the SHOC could have a table at the open house and Mr. Weissenborn replied yes.

**RAB Schedule** - The next meeting is scheduled for Thursday, 13 July 2006, from 7 to 8:50 p.m., at Moffett Field, in Building 943, Eagle Room.

The RAB meeting schedule for the remainder of 2006 is as follows:

September 14, 2006

November 9, 2006

**Future RAB Topics** – The following topics were identified as potential agenda items:

- Hangar 1 schedule update
- Discussion of design plan for cleanup of Hangar 1

- Building 88
- Site 27 update

**Adjourn** – The meeting was adjourned at 9:15 p.m. and Mr. Moss thanked everyone for attending. He thanked Mr. Weissenborn for accepting public comments on the EE/CA at this meeting.

Mr. Weissenborn can be contacted with any comments or questions:

**Mr. Rick Weissenborn**

BRAC Environmental Coordinator, former NAS Moffett Field

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**GLOSSARY OF TERMS USED IN THESE MINUTES**

ACHP – Advisory Council on Historic Preservation

ADA – Americans with Disabilities Act

ARAR– applicable or relevant and appropriate requirement

BRAC – Base Realignment and Closure

CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act

EE/CA – Engineering Evaluation/Cost Analysis

EPA – U.S. Environmental Protection Agency

HAER – Historic American Engineering Record

NAS – Naval Air Station

NASA – National Aeronautics and Space Administration

NHPA – National Historic Preservation Act

PCBs – polychlorinated biphenyls

RAB – Restoration Advisory Board

RI/FS – Remedial Investigation/Feasibility Study

ROD – Record of Decision

SHOC – Save Hangar One Committee

SHPO – State Historic Preservation Office

Water Board – San Francisco Bay Regional Water Quality Control Board

***RAB meeting minutes are posted on the Navy's Environmental Web Page at:***

**[www.navybracpmo.org/bracbases/california/moffett/](http://www.navybracpmo.org/bracbases/california/moffett/)**

Public Record

**Price, Lee****From:** Tom Steinbach, Greenbelt Alliance [tsteinbach@greenbelt.org]**Sent:** Thursday, June 29, 2006 2:33 PM**To:** lee.price@sanjoseca.gov

Dear Lee,

As a local government leader, Greenbelt Alliance would like to alert you of a landmark study just produced, the *Bay Area Smart Growth Scorecard*, which evaluates the growth policies of each city and county in the Bay Area to see how well the region will accommodate growth. As you may know, the San Francisco Bay Area is projected to grow by one million people by 2020. Overall, the *Scorecard* shows that the region is ill-prepared for that growth.

The *Scorecard* was intended to recognize the hard work of city and county elected officials and planning staff, and also identify areas where improvement is most necessary. The *Scorecard* measured a select group of policies that are critical to smart growth. In every category, Greenbelt Alliance identified jurisdictions whose policies can provide a good example to help better prepare the region for the future.

The *Bay Area Smart Growth Scorecard* evaluates 101 cities:

- Cities are scored in seven policy areas: preventing sprawl; making sure parks are nearby; creating homes people can afford; encouraging a mix of uses; encouraging density in the right places; requiring less land for parking; defining standards for good development.
- On average, Bay Area cities score 34% (of a possible 100%), meaning cities are doing only a third of what they could be to achieve smart growth. Petaluma has the highest score, with 70%; San Jose is second, scoring 69%.

The *Scorecard* evaluates eight counties (San Francisco is treated as a city):

- Counties are scored in five policy areas: managing growth; permanently protecting open space; preserving agricultural land; conserving natural resources; and offering transportation choices.
- On average, Bay Area counties score 51%. Alameda County is the top-scoring county with an overall score of 66%.

The reports' findings also include:

- Only 25 of 78 eligible cities (cities not bounded by water or other cities) have urban growth boundaries to define where development should and should not go.
- Only 31 of 101 cities require parks to be within walking distance of every resident.
- Fifty-nine of 101 cities have inclusionary ordinances, which require new residential developments to include affordable homes.
- Seventy-nine of 101 cities allow a mix of homes, shops, and jobs in their downtowns and near transit, making it easier for people to walk from one to another.
- Five of eight counties have open space districts; only Napa and Solano Counties are missing public agencies to purchase and protect open space. Sonoma County scores 100% on open space protection—the only perfect score for a county—for its strong funding commitment to protecting farmland as well as parks.

The Smart Growth Scorecard measured policies, not on-the-ground reality. The Scorecard also did not measure leadership or implementation, crucial elements in achieving Smart Growth. Policies provide the critical groundwork for where growth will occur and will determine how cities and the region will grow as we move into the future.

6/29/2006

The good news is that cities and counties have many opportunities to improve their scores. In every area, at least one city or county is doing well, whether it's a city that is encouraging walkable neighborhoods, or a county that is preserving its agricultural land. Cities and counties can share the tools they're using to deal with growth—and the entire region will benefit. To find out more about your area, and what policies cities and counties throughout the area are implementing, please contact Greenbelt Alliance's Policy Research Director, Carey Knecht at [cknecht@greenbelt.org](mailto:cknecht@greenbelt.org) or 415-543-6771.

The full report, with scores for each city and county, is available at [www.greenbelt.org](http://www.greenbelt.org).

###

**About Greenbelt Alliance:**

Since 1958, Greenbelt Alliance has worked to protect open space and make cities better places to live throughout the nine-county San Francisco Bay Area. [www.greenbelt.org](http://www.greenbelt.org)

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No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.1.394 / Virus Database: 268.9.6/378 - Release Date: 6/28/2006



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# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT: COMMUNICATIONS FROM  
DAVID WALL**

**DATE:** 06-29-06

On June 29, 2006, David Wall filed the attached Public Record. He shares concerns about the fact that a packet of "interrogatories" he apparently expected to be distributed to you at the special meeting on June 28<sup>th</sup> had not been passed out to you before the meeting. He believes there was some mischievous reason for this when, in fact, there is none. The packets contained "interrogatories" previously received, noted and filed by the Rules Committee, and copied to each member of the City Council. Mr. Walls' intentions were not clear to me at the special meeting until he spoke, however, my intention was clearly to copy you with the packet left on the staff table after the meeting, which I am now doing.

Attached you will find Mr. Wall's letter of June 29<sup>th</sup> and a packet containing copies of previously distributed "interrogatories" filed during November and December 2005.

LEE PRICE, MMC  
CITY CLERK

cc: David S. Wall

Public Record

David S. Wall  
455 North San Pedro Street  
San José, California 95110  
Phone (408) - 287 - 6838  
Facsimile (408) - 295 - 5999

RECEIVED  
2006 JUN 29 A 11:53  
San José City Clerk

June 29, 2006

Mayor Gonzales and Members San José City Council  
200 East Santa Clara Street  
San José, California 95113-1905

**Re: Conduct of the Office of the City Clerk**

Mayor Gonzales and Members San José City Council;

During my public comment at yesterday's special Council meeting concerning issues surrounding the **NORCAL GARBAGE SCANDAL**, I became alarmed that a packet of written materials germane to my testimony to you was not given to you by the CITY CLERK.

For almost two decades now, I have brought (13) copies of documents I have wanted you and other Council members (and past administrations over the years) to review during my period of public comment. The documents were always given to the CITY CLERK or an authorized DEPUTY CITY CLERK prior to the commencement of the meeting and the documents were delivered to the Mayor and Council prior to the commencement of the meeting. **That is, with the exception of yesterday 6/28/2006.**

**During my testimony I raised the issue THAT you had not been given the copies of my interrogatories concerning the NORCAL GARBAGE SCANDAL.**

**What is going on here?** On January 10, 2006 the CITY CLERK'S OFFICE interfered with me placing other documents on the public record relating to the **NORCAL GARBAGE SCANDAL** as well. To her credit, the CITY CLERK, a few days later, apologized for a misunderstanding by members of her staff that precipitated that unnecessary controversy.

**Has there been a change in City policy that permits the CITY CLERK to suppress or censor information germane and on point to support testimony tendered during the public comment period?**

Once again, I feel the unclean hands of government throttling the voice of free speech, **but it may get worse; has the CITY CLERK RECEIVED ORDERS** to suppress documents that might raise legitimate questions concerning the participation in the **NORCAL GARBAGE SCANDAL** by a candidate for Mayor of San José?

**I demand a response to this inquiry.**

Respectfully submitted,

David S. Wall 6.29.06

**Cc: City Attorney / City Auditor / Interim City Manager**

1 David S. Wall  
2 455 North San Pedro Street  
3 San JOSÉ, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

RECEIVED  
San Jose City Clerk

2005 NOV 15 P 12:55

4 SAN JOSÉ CITY COUNCIL MEMBER NANCY PYLE  
5 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

6 THE NORCAL GARBAGE SCANDAL

7 INTERROGATORIES SET 1

8 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
9 SET FORTH AND CONTAINED HEREIN.

- 10 1. DO YOU HAVE ANY DISABILITIES AND OR IMPAIRMENTS OF THE BODY OR MIND  
11 THAT WOULD OR COULD IMPAIR YOUR ABILITY TO RESPOND TO THE FOLLOWING  
12 INTERROGATORIES REGARDING THE NORCAL GARBAGE SCANDAL? EXPLAIN.
- 13 2. WHY DID YOU VOTE AND CONTINUE TO VOTE, TO SHIELD INFORMATION  
14 CONCERNING EMAILS FROM MAYOR GONZALES AND NORCAL, FROM THE CITIZENS  
15 OF SAN JOSÉ? EXPLAIN.
- 16 3. IF YOU WOULD RELEASE THE EMAILS FROM MAYOR GONZALES AND NORCAL TO  
17 THE CITIZENS OF SAN JOSÉ, WOULD SAID RELEASE HAVE A NEGATIVE IMPACT  
18 ON VICE-MAYOR CHAVEZ'S CANDIDACY FOR MAYOR OF THE CITY OF SAN JOSÉ?  
19 IF YES, EXPLAIN.
- 20 4. IF YOU WOULD RELEASE THE EMAILS FROM MAYOR GONZALES AND NORCAL TO  
21 THE CITIZENS OF SAN JOSÉ, WOULD SAID RELEASE HAVE SAVED TAX-PAYER  
22 DOLLARS? EXPLAIN. STATE HOW MUCH REVENUE, LOST INTEREST AND OR  
23 REDUCTION OF SERVICES THE PUBLIC RESULTED FROM NON-DISCLOSURE.
- 24 5. DOES NORCAL AND OR ITS' SUBCONTRACTORS IN THE GARBAGE CONTRACT WITH  
25 THE CITY OF SAN JOSÉ, HAVE ILLEGAL ALIENS ON THEIR RESPECTIVE  
PAYROLLS? EXPLAIN. IF YOU DO NOT KNOW, DID YOU EVEN ASK NORCAL AND  
OR ITS' SUBCONTRACTORS IF THEY HIRE ILLEGAL ALIENS FOR CITY RELATED  
WORK? EXPLAIN.
6. DOES THE CITY OF SAN JOSÉ HAVE ILLEGAL ALIENS ON ITS' PAYROLL OR  
THE PAYROLL OF ANY SUBCONTRACTORS DOING BUSINESS WITH THE CITY OF  
SAN JOSÉ? EXPLAIN.

Dated this 15<sup>th</sup> day of November, 2005

By: David S. Wall  
11/15/2005

RECEIVED  
San Jose City Clerk

2005 NOV 21 P 1:48

**David S. Wall**  
**455 North San Pedro Street**  
**San José, California 95110**  
**Phone (408) - 287 - 6838**  
**Facsimile (408) - 295 - 5999**

SENT VIA FIRST CLASS MAIL

November 21, 2005

Mr. Chris Graham, Esq.  
Dechert, LLP  
1117 California Avenue  
Palo Alto, California 94304-1106  
(650) - 813 - 4800

**Re: The NORCAL GARBAGE SCANDAL**

Mr. Graham;

Enclosed are unanswered interrogatories put forth on the public record in and for the City of San José, California pertaining to the NORCAL GARBAGE SCANDAL.

There will be more documents sent to you before your report is submitted to the City of San José.

I hope they will be useful in your investigation and included in your report.

*David S. Wall*  
11/21/2005

David S. Wall

///  
///  
///

**Cc: Mayor Gonzales and Members City Council / City Attorney / City Auditor  
City Manager / Chief of Police / Foreperson, Santa Clara County Grand Jury**

RECEIVED  
San Jose City Clerk

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

2005 NOV 21 P 1:49

6 SAN JOSÉ CITY MAYOR RON GONZALES  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 1

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

- 12 1. DO YOU HAVE ANY DISABILITIES AND OR IMPAIRMENTS OF THE BODY OR MIND  
13 THAT WOULD OR COULD IMPAIR YOUR ABILITY TO RESPOND TO THE FOLLOWING  
14 INTERROGATORIES REGARDING THE NORCAL GARBAGE SCANDAL? EXPLAIN.
- 15 2. WHY DID YOU VOTE AND CONTINUE TO VOTE, TO SHIELD INFORMATION  
16 CONCERNING YOUR EMAILS AND NORCAL, FROM THE CITIZENS OF SAN JOSÉ?  
17 EXPLAIN.
- 18 3. IF YOU WOULD RELEASE THE EMAILS BETWEEN YOU AND NORCAL TO THE  
19 CITIZENS OF SAN JOSÉ, WOULD SAID RELEASE HAVE A NEGATIVE IMPACT ON  
20 VICE-MAYOR CHAVEZ'S CANDIDACY FOR MAYOR OF THE CITY OF SAN JOSÉ?  
21 EXPLAIN.
- 22 4. IF YOU WOULD RELEASE THE EMAILS BETWEEN YOU AND NORCAL TO THE  
23 CITIZENS OF SAN JOSÉ, WOULD SAID RELEASE HAVE SAVED TAX-PAYER  
24 DOLLARS? EXPLAIN. STATE HOW MUCH REVENUE, LOST INTEREST AND OR  
25 REDUCTION OF SERVICES TO THE PUBLIC RESULTED FROM NON-DISCLOSURE.
5. DOES NORCAL AND OR ITS' SUBCONTRACTORS IN THE GARBAGE CONTRACT WITH  
THE CITY OF SAN JOSÉ, HAVE ILLEGAL ALIENS ON THEIR RESPECTIVE  
PAYROLLS? EXPLAIN. IF YOU DO NOT KNOW, DID YOU EVEN ASK NORCAL AND  
OR ITS' SUBCONTRACTORS IF THEY HIRE ILLEGAL ALIENS FOR CITY RELATED  
WORK? EXPLAIN.
6. DOES THE CITY OF SAN JOSÉ HAVE ILLEGAL ALIENS ON ITS' PAYROLL OR  
THE PAYROLL OF ANY SUBCONTRACTORS DOING BUSINESS WITH THE CITY OF  
SAN JOSÉ? EXPLAIN.

Dated this 21<sup>st</sup> day of November, 2005

By: David S. Wall

///

///

23 Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
24 MR. SCOTT GRAHAM, ESQ. / FOREPERSON, SANTA CLARA COUNTY GRAND JURY  
25 MEMBERS CITY COUNCIL

RECEIVED  
San Jose City Clerk

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

2005 NOV 21 P 1:49

6 SAN JOSÉ CITY VICE-MAYOR CINDY CHAVEZ  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 1

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
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- 12 1. DO YOU HAVE ANY DISABILITIES AND OR IMPAIRMENTS OF THE BODY OR MIND  
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21 EXPLAIN.
- 22 4. IF YOU WOULD RELEASE THE EMAILS FROM MAYOR GONZALES AND NORCAL TO  
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29 OR ITS' SUBCONTRACTORS IF THEY HIRE ILLEGAL ALIENS FOR CITY RELATED  
30 WORK? EXPLAIN.
- 31 6. DOES THE CITY OF SAN JOSÉ HAVE ILLEGAL ALIENS ON ITS' PAYROLL OR  
32 THE PAYROLL OF ANY SUBCONTRACTORS DOING BUSINESS WITH THE CITY OF  
33 SAN JOSÉ? EXPLAIN.

Dated this 21<sup>st</sup> day of November, 2005

By: David S. Wall

///

///

34 Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
35 MAYOR GONZALES AND MEMBERS CITY COUNCIL / MR. CHRIS GRAHAM, ESQ.  
FOREPERSON, SANTA CLARA COUNTY GRAND JURY

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

RECEIVED  
San Jose City Clerk

2005 NOV 21 P 1:49

4 SAN JOSÉ CITY COUNCIL MEMBERS: NORA CAMPOS, JUDY CHIRCO, AND  
5 FORREST WILLIAMS  
6 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

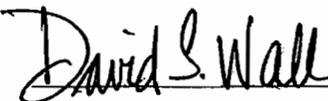
7 THE NORCAL GARBAGE SCANDAL

8 INTERROGATORIES SET 1

9 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
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- 11 1. DO YOU HAVE ANY DISABILITIES AND OR IMPAIRMENTS OF THE BODY OR MIND  
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19 IMPACT ON VICE-MAYOR CHAVEZ'S CANDIDACY FOR MAYOR OF THE CITY OF  
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- 21 4. IF YOU WOULD RELEASE THE EMAILS FROM MAYOR GONZALES AND NORCAL TO  
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- 25 5. DOES NORCAL AND OR ITS' SUBCONTRACTORS IN THE GARBAGE CONTRACT WITH  
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6. DOES THE CITY OF SAN JOSÉ HAVE ILLEGAL ALIENS ON ITS' PAYROLL OR  
THE PAYROLL OF ANY SUBCONTRACTORS DOING BUSINESS WITH THE CITY OF  
SAN JOSÉ? EXPLAIN.

Dated this 21<sup>st</sup> day of November, 2005

By: 

///

Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
MAYOR GONZALES AND MEMBERS CITY COUNCIL / MR. CHRIS GRAHAM, ESQ.  
FOREPERSON, SANTA CLARA COUNTY GRAND JURY

**David S. Wall**  
**455 North San Pedro Street**  
**San José, California 95110**  
**Phone (408) - 287 - 6838**  
**Facsimile (408) - 295 - 5999**

RECEIVED  
San Jose City Clerk

2005 NOV 22 P 4: 12

SENT VIA FIRST CLASS MAIL

November 22, 2005

Mr. Chris Graham, Esq.  
Dechert, LLP  
1117 California Avenue  
Palo Alto, California 94304-1106  
(650) - 813 - 4800

**Re: The NORCAL GARBAGE SCANDAL**

Mr. Graham;

Enclosed is an additional unanswered interrogatory put forth on the public record in and for the City of San José, California pertaining to the NORCAL GARBAGE SCANDAL.

**Concerning your investigation, is the testimony from the individuals you interview, sworn testimony, steno-graphically recorded?**



David S. Wall

///  
///  
///

**Cc: Mayor Gonzales and Members City Council / City Attorney / City Auditor  
City Manager / Chief of Police / Foreperson, Santa Clara County Grand Jury**

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

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San Jose City Clerk

2005 NOV 22 P 4 12

6 SAN JOSÉ CITY MANAGER DEL BORGS DORF  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 1

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

- 12 1. DO YOU HAVE ANY DISABILITIES AND OR IMPAIRMENTS OF THE BODY OR MIND  
13 THAT WOULD OR COULD IMPAIR YOUR ABILITY TO RESPOND TO THE FOLLOWING  
14 INTERROGATORIES REGARDING THE NORCAL GARBAGE SCANDAL? EXPLAIN.  
15 2. WERE YOU INSTRUCTED BY MAYOR GONZALES NOT TO VOLUNTARILY ENGAGE IN  
16 DISCUSSIONS WITH ANY MEMBER OF THE SAN JOSÉ CITY COUNCIL CONCERNING  
17 THE \$11.25 MILLION DOLLAR LABOR INCREASE IN GARBAGE CONTRACT WITH  
18 NORCAL? EXPLAIN.  
19 3. DO YOU HAVE ANY DOCUMENTED COMMUNICATION CONCERNING THE GARBAGE  
20 RATE INCREASE WITH NORCAL? EXPLAIN.  
21 4. HAVE YOU KEPT AN ACCURATE ACCOUNTING TO DATE AS TO THE TOTAL  
22 EXPENDITURE OF REVENUE EXPENDED ON THE NORCAL GARBAGE SCANDAL?  
23 EXPLAIN HOW MUCH REVENUE, LOST INTEREST AND OR REDUCTION OF  
24 SERVICES TO THE PUBLIC RESULTED FROM THE NORCAL GARBAGE SCANDAL.  
25 5. DOES NORCAL AND OR ITS' SUBCONTRACTORS IN THE GARBAGE CONTRACT WITH  
THE CITY OF SAN JOSÉ, HAVE ILLEGAL ALIENS ON THEIR RESPECTIVE  
PAYROLLS? EXPLAIN. IF YOU DO NOT KNOW, DID YOU EVEN ASK NORCAL AND  
OR ITS' SUBCONTRACTORS IF THEY HIRE ILLEGAL ALIENS FOR CITY RELATED  
WORK? EXPLAIN.  
6. DOES THE CITY OF SAN JOSÉ HAVE ILLEGAL ALIENS ON ITS' PAYROLL OR  
THE PAYROLL OF ANY SUBCONTRACTORS DOING BUSINESS WITH THE CITY OF  
SAN JOSÉ? EXPLAIN.

Dated this 22<sup>nd</sup> day of November, 2005

By: David S. Wall

///

Cc: CITY ATTORNEY / CITY AUDITOR / CHIEF OF POLICE  
MAYOR GONZALES AND MEMBERS CITY COUNCIL / MR. CHRIS GRAHAM, ESQ.  
FOREPERSON, SANTA CLARA COUNTY GRAND JURY

**David S. Wall**  
455 North San Pedro Street  
San José, California 95110  
Phone (408) - 287 - 6838  
Facsimile (408) - 295 - 5999

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San Jose City Clerk

2005 NOV 29 P 2 20

SENT VIA FIRST CLASS MAIL

November 29, 2005

Mr. Chris Graham, Esq.  
Dechert, LLP  
1117 California Avenue  
Palo Alto, California 94304-1106  
(650) - 813 - 4800

**Re: The NORCAL GARBAGE SCANDAL**

Mr. Graham;

Enclosed is unanswered interrogatories set (2) and (3) [Mayor Ron Gonzales] put forth on the public record in and for the City of San José, California pertaining to the NORCAL GARBAGE SCANDAL.

*David S. Wall*  
David S. Wall 11/29/2005

///  
///  
///

**Cc: Mayor Gonzales and Members City Council / City Attorney / City Auditor  
City Manager / Chief of Police / Foreperson, Santa Clara County Grand Jury**

RECEIVED  
San Jose City Clerk

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

2005 NOV 29 P 2:20

6 SAN JOSÉ CITY MAYOR RON GONZALES  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 2

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

12 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN)

13 7. WHAT DATE WERE YOU MADE AWARE THAT NORCAL INCREASED THE LABOR  
14 COST OF THE GARBAGE CONTRACT TO \$11.25 MILLION DOLLARS? EXPLAIN.

15 8. DID NORCAL DISCUSS THE TERMS OF THE LABOR RATE INCREASE WITH  
16 YOU DIRECTLY, THROUGH MEMBERS OF YOUR STAFF, OR THROUGH THE CITY  
17 MANAGER? EXPLAIN.

18 9. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS  
19 AND EMPLOYERS) OF ANY AND ALL INDIVIDUALS WHO HAVE KNOWLEDGE OF  
20 THE PURPOSED LABOR RATE INCREASE IN YOUR ANSWER TO INTERROGATORY  
21 NUMBER 8.

22 10. WHAT DATE WAS VICE-MAYOR CHAVEZ INFORMED AS TO THE PURPOSED  
23 GARBAGE RATE INCREASE OF \$11.25 MILLION DOLLARS? EXPLAIN.

24 11. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS  
25 AND EMPLOYERS) OF ANY AND ALL INDIVIDUALS WHO HAVE KNOWLEDGE OF  
VICE-MAYOR CHAVEZ'S INVOLVEMENT IN THE PURPOSED GARBAGE RATE  
INCREASE IN YOUR ANSWER TO INTERROGATORY NUMBER 10.

Dated this 29<sup>th</sup> day of November, 2005

By:

*David S. Wall*

22 ///  
23 ///  
24 ///

25 Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
MR. CHRIS GRAHAM, ESQ. / FOREPERSON, SANTA CLARA COUNTY GRAND JURY  
MEMBERS CITY COUNCIL

RECEIVED  
San Jose City Clerk

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408) 295-5999

2005 NOV 29 P 2: 20

4 SAN JOSÉ CITY MAYOR RON GONZALES  
5 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

6 THE NORCAL GARBAGE SCANDAL

7 INTERROGATORIES SET 3

8 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
9 SET FORTH AND CONTAINED HEREIN.

10 (INTERROGATORIES 1-11 ARE INCORPORATED AND REFERENCED HEREIN)

- 11 12. WHAT WAS THE EXTENT OF VICE-MAYOR CHAVEZ'S ROLE OR THAT OF  
12 HER STAFF IN DISCUSSIONS WITH NORCAL OR ITS' SUBCONTRACTORS IN  
13 REACHING THE \$11.25 MILLION DOLLAR LABOR COST INCREASE? EXPLAIN.  
14 13. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS  
15 AND EMPLOYERS) OF ANY AND ALL INDIVIDUALS WHO HAVE KNOWLEDGE OR  
16 ACTIVELY PARTICIPATED IN THE DECISION MAKING OF THE PURPOSED  
17 LABOR RATE INCREASE IN YOUR ANSWER TO INTERROGATORY NUMBER 12.  
18 14. WHAT WAS THE SELECTION CRITERIA YOU USED IN THE SELECTION  
19 PROCESS FOR VICE-MAYOR? EXPLAIN.  
20 15. WERE ALL SAN JOSÉ CITY COUNCIL MEMBERS QUALIFIED FOR THE  
21 POSITION OF VICE-MAYOR? EXPLAIN.  
22 16. DID YOU PERSONALLY INTERVIEW ALL SAN JOSÉ CITY COUNCIL  
23 MEMBERS FOR THE POSITION OF VICE-MAYOR? EXPLAIN.  
24 17. YOU HAVE MADE PUBLIC STATEMENTS TO THE EFFECT THAT YOU "HAVE  
25 DONE NOTHING WRONG" CONCERNING YOUR CONDUCT ASSOCIATED WITH THE  
\$11.25 MILLION DOLLAR LABOR COST INCREASE WITH NORCAL. IS THIS  
CORRECT? EXPLAIN.  
18. HAVE YOU RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY  
KIND FROM NORCAL AND OR ITS' SUBCONTRACTORS? EXPLAIN.

Dated this 29<sup>th</sup> day of November, 2005

By:

*David S. Wall*

Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
MR. CHRIS GRAHAM, ESQ. / FOREPERSON, SANTA CLARA COUNTY GRAND JURY  
MEMBERS CITY COUNCIL

**David S. Wall**  
**455 North San Pedro Street**  
**San José, California 95110**  
**Phone (408) - 287 - 6838**  
**Facsimile (408) - 295 - 5999**

SENT VIA FIRST CLASS MAIL

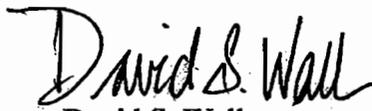
November 30, 2005

Mr. Chris Graham, Esq.  
Dechert, LLP  
1117 California Avenue  
Palo Alto, California 94304-1106  
(650) - 813 - 4800

**Re: The NORCAL GARBAGE SCANDAL**

Mr. Graham;

Enclosed is unanswered interrogatory, set (2), for VICE-MAYOR CHAVEZ put forth on the public record in and for the City of San José, California pertaining to the NORCAL GARBAGE SCANDAL.

  
David S. Wall

///  
///  
///

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San Jose City Clerk  
2005 NOV 30 P 2:13

**Cc: Mayor Gonzales and Members City Council / City Attorney / City Auditor  
City Manager / Chief of Police / Foreperson, Santa Clara County Grand Jury**

RECEIVED  
San Jose City Clerk

2005 NOV 30 P 2:13

1 DAVID S. WALL  
455 North San Pedro Street  
2 San José, California 95110  
Phone: (408) 287-6838  
3 Facsimile: (408) 295-5999

4 SAN JOSÉ CITY VICE-MAYOR CINDY CHAVEZ  
5 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

6 THE NORCAL GARBAGE SCANDAL

7 INTERROGATORIES SET 2

8 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
9 SET FORTH AND CONTAINED HEREIN.

10 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN)

11 7. WHAT DATE WERE YOU INFORMED OF THE PURPOSED NORCAL GARBAGE  
12 LABOR RATE INCREASE OF \$11.25 MILLION DOLLARS? EXPLAIN.

13 8. DID NORCAL DISCUSS THE TERMS OF THE RATE INCREASE WITH YOU  
14 DIRECTLY, THROUGH MEMBERS OF YOUR STAFF, OR THROUGH THE CITY  
15 MANAGER? EXPLAIN.

16 9. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS  
17 AND EMPLOYERS) OF ANY AND ALL INDIVIDUALS WHO HAVE PARTICIPATED  
18 IN, OR HAVE KNOWLEDGE OF, THE PURPOSED LABOR RATE INCREASE IN  
19 YOUR RESPONSE TO INTERROGATORY NUMBER 8.

20 10. WERE ALL COUNCIL MEMBERS NOTIFIED ON THE SAME DATE AND  
21 CIRCUMSTANCES IN YOUR RESPONSE TO INTERROGATORIES 7-9? EXPLAIN.

22 11. WAS SAID INCREASE IN LABOR COST TO FUND "PREVAILING WAGE"  
23 FOR EMPLOYEES OF NORCAL IN THE GARBAGE CONTRACT WITH THE CITY OF  
24 SAN JOSÉ? EXPLAIN.

25 12. HAS NORCAL, THEIR EMPLOYEES, SUBCONTRACTORS AND THEIR  
EMPLOYEES OFFERED TO ASSIST YOUR CANDIDACY FOR MAYOR OF THE CITY  
OF SAN JOSÉ? EXPLAIN.

Dated this 30<sup>th</sup> day of November, 2005

By:

*David S. Wall*

///

///

24 Cc: CITY ATTORNEY / CITY AUDITOR / CITY MANAGER / CHIEF OF POLICE  
MAYOR GONZALES AND MEMBERS CITY COUNCIL / MR. CHRIS GRAHAM, ESQ.  
25 FOREPERSON, SANTA CLARA COUNTY GRAND JURY

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408)-295-5999

RECEIVED  
San Jose City Clerk

2005 DEC -7 P 1:17

6 SAN JOSÉ CITY COUNCIL MEMBER: NANCY PYLE  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 2

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

12 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN.)

13 7. CONCERNING YOUR VOTE TO SUPPRESS E-MAILS FROM MAYOR GONZALES,  
14 MEMBERS OF HIS STAFF TO NORCAL, REFERENCED TO YOUR RESPONSE TO  
15 INTERROGATORY NUMBER (2), DID YOU RECEIVE ANYTHING OF VALUE,  
16 CONSIDERATION OF ANY KIND FOR YOUR VOTE FROM MAYOR GONZALES AND OR  
17 MEMBERS OF HIS STAFF? EXPLAIN.

18 8. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
19 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
20 INTERROGATORY NUMBER 7.

21 9. DID YOU RECEIVE ANYTHING OF VALUE, CONSIDERATION OF ANY KIND FROM  
22 NORCAL, ITS' EMPLOYEES OR THE SUBCONTRACTORS OF NORCAL AND THEIR  
23 EMPLOYEES? EXPLAIN.

24 10. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
25 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 9.

INTERROGATORY NUMBER 10.

11. HAVE YOU RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY KIND  
12 FROM THE LONGSHOREMEN, TEAMSTER OR ANY OTHER UNION? EXPLAIN.  
13 12. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
14 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
15 INTERROGATORY NUMBER 11.

Dated this 7<sup>th</sup> day of December, 2005

By: *David S. Wall*

23 ///  
24 ///  
25 ///

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408)-295-5999

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San Jose City Clerk

2005 DEC - 7 P 1:18

6 SAN JOSÉ CITY COUNCIL MEMBER: JUDY CHIRCO  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 2

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

12 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN.)

13 7. CONCERNING YOUR VOTE TO SUPPRESS E-MAILS FROM MAYOR GONZALES,  
14 MEMBERS OF HIS STAFF TO NORCAL, REFERENCED TO YOUR RESPONSE TO  
15 INTERROGATORY NUMBER (2), DID YOU RECEIVE ANYTHING OF VALUE,  
16 CONSIDERATION OF ANY KIND FOR YOUR VOTE FROM MAYOR GONZALES AND OR  
17 MEMBERS OF HIS STAFF? EXPLAIN.

18 8. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
19 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
20 INTERROGATORY NUMBER 7.

21 9. DID YOU RECEIVE ANYTHING OF VALUE, CONSIDERATION OF ANY KIND FROM  
22 NORCAL, ITS' EMPLOYEES OR THE SUBCONTRACTORS OF NORCAL AND THEIR  
23 EMPLOYEES? EXPLAIN.

24 10. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
25 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 9.

11. HAVE YOU RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY KIND  
FROM THE LONGSHOREMEN, TEAMSTER OR ANY OTHER UNION? EXPLAIN.

12. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 11.

Dated this 7<sup>th</sup> day of December, 2005

By: David S. Wall

23 ///  
24 ///  
25 ///

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408)-295-5999

RECEIVED  
San Jose City Clerk

2005 DEC -7 P 1:17

6 SAN JOSÉ CITY COUNCIL MEMBER: NORA CAMPOS  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 2

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
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12 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN.)

13 7. CONCERNING YOUR VOTE TO SUPPRESS E-MAILS FROM MAYOR GONZALES,  
14 MEMBERS OF HIS STAFF TO NORCAL, REFERENCED TO YOUR RESPONSE TO  
15 INTERROGATORY NUMBER (2), DID YOU RECEIVE ANYTHING OF VALUE,  
16 CONSIDERATION OF ANY KIND FOR YOUR VOTE FROM MAYOR GONZALES AND OR  
17 MEMBERS OF HIS STAFF? EXPLAIN.

18 8. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
19 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
20 INTERROGATORY NUMBER 7.

21 9. DID YOU RECEIVE ANYTHING OF VALUE, CONSIDERATION OF ANY KIND FROM  
22 NORCAL, ITS' EMPLOYEES OR THE SUBCONTRACTORS OF NORCAL AND THEIR  
23 EMPLOYEES? EXPLAIN.

24 10. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
25 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 9.

11. HAVE YOU RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY KIND  
FROM THE LONGSHOREMEN, TEAMSTER OR ANY OTHER UNION? EXPLAIN.

12. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 11.

Dated this 7<sup>th</sup> day of December, 2005

By: David S. Wall

23 ///  
24 ///  
25 ///

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408) 287-6838  
5 Facsimile: (408)-295-5999

RECEIVED  
San Jose City Clerk

2005 DEC -7 P 1:18

6 SAN JOSÉ CITY COUNCIL MEMBER: FORREST WILLIAMS  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 2

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
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12 (INTERROGATORIES 1-6 ARE INCORPORATED AND REFERENCED HEREIN.)

13 7. CONCERNING YOUR VOTE TO SUPPRESS E-MAILS FROM MAYOR GONZALES,  
14 MEMBERS OF HIS STAFF TO NORCAL, REFERENCED TO YOUR RESPONSE TO  
15 INTERROGATORY NUMBER (2), DID YOU RECEIVE ANYTHING OF VALUE,  
16 CONSIDERATION OF ANY KIND FOR YOUR VOTE FROM MAYOR GONZALES AND OR  
17 MEMBERS OF HIS STAFF? EXPLAIN.

18 8. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
19 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
20 INTERROGATORY NUMBER 7.

21 9. DID YOU RECEIVE ANYTHING OF VALUE, CONSIDERATION OF ANY KIND FROM  
22 NORCAL, ITS' EMPLOYEES OR THE SUBCONTRACTORS OF NORCAL AND THEIR  
23 EMPLOYEES? EXPLAIN.

24 10. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
25 EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 9.

11. HAVE YOU RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY KIND  
FROM THE LONGSHOREMEN, TEAMSTER OR ANY OTHER UNION? EXPLAIN.

12. IDENTIFY (BY STATING THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND  
EMPLOYERS) OF ANY AND ALL INDIVIDUALS IN YOUR RESPONSE TO  
INTERROGATORY NUMBER 11.

Dated this 7<sup>th</sup> day of December, 2005

By: David S. Wall

23 ///  
24 ///  
25 ///

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408)-287-6838  
5 Facsimile: (408)-295-5999

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San Jose City Clerk

2005 DEC -8 P 2:00

6 SAN JOSÉ CITY MAYOR RON GONZALES  
7 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

8 THE NORCAL GARBAGE SCANDAL

9 INTERROGATORIES SET 4

10 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
11 SET FORTH AND CONTAINED HEREIN.

12 (INTERROGATORIES 1-18 ARE INCORPORATED AND REFERENCED HEREIN)

13 19. YOU ARE NOW ON RECORD FOR MISLEADING THE PUBLIC, MEMBERS OF  
14 THE SAN JOSÉ CITY COUNCIL AND VIOLATING THE CITY CHARTER  
15 CONCERNING YOUR CONDUCT IN THE NORCAL GARBAGE CONTRACT LABOR  
16 RATE INCREASE. DO YOU INTEND TO RESIGN? EXPLAIN.

17 20. FORMER COUNCILMAN TERRY GREGORY AND COUNCILWOMAN KATHY COLE  
18 ARE NO LONGER IN OFFICE. IS THERE ONE STANDARD OF JUSTICE FOR  
19 AMERICANS OF AFRICAN DESCENT BUT YET ANOTHER STANDARD OF JUSTICE  
20 FOR AN AMERICAN OF HISPANIC DESCENT? EXPLAIN.

21 21. HAVE YOU EXCEEDED YOUR AUTHORITY AS CHAIRMAN OF THE BOARD OF  
22 A MUNICIPAL CORPORATION, THE CITY OF SAN JOSÉ, BY MISLEADING THE  
23 PUBLIC, MISLEADING MEMBERS OF THE SAN JOSÉ CITY COUNCIL, AND  
24 VIOLATING THE CITY CHARTER CONCERNING THE NORCAL GARBAGE  
25 CONTRACT LABOR RATE INCREASE? EXPLAIN.

26 22. HAVE YOU "CUT A DEAL" WITH VICE-MAYOR CHAVEZ AND OR COUNCIL  
27 MEMBERS: CAMPOS, LEZOTTE, PYLE, WILLIAMS, CHIRCO AND YEAGER TO  
28 KEEP YOUR JOB AND RETIREMENT BENEFITS? EXPLAIN.

29 23. WILL YOU TERMINATE THE SERVICES AND BENEFITS OF MR. JOE  
30 GUERRA, IMMEDIATELY? EXPLAIN.

31 Dated this 8<sup>th</sup> day of December, 2005

32 By: David S. Wall

33 ///

34 Cc: MEMBERS CITY COUNCIL / CITY ATTORNEY / CITY AUDITOR / CITY MANAGER  
35 CHIEF OF POLICE / FOREPERSON, SANTA CLARA COUNTY GRAND JURY  
SAN JOSÉ CHAPTER N.A.A.C.P.

1 DAVID S. WALL  
2 455 North San Pedro Street  
3 San José, California 95110  
4 Phone: (408)-287-6838  
5 Facsimile: (408)-295-5999

RECEIVED  
San Jose City Clerk

2005 DEC 12 P 2 24

4 SAN JOSÉ CITY MAYOR RON GONZALES  
5 IN AND FOR THE CITY OF SAN JOSÉ, CALIFORNIA

6 THE NORCAL GARBAGE SCANDAL

7 INTERROGATORIES SET 5

8 ANSWER TRUTHFULLY AND COMPLETELY TO THE INTERROGATORIES  
9 SET FORTH AND CONTAINED HEREIN.

10 (INTERROGATORIES 1-23 ARE INCORPORATED AND REFERENCED HEREIN)

11 24. YOU HAVE FORMALLY APOLOGIZED TO THE MEMBERS OF THE SAN JOSÉ  
12 CITY COUNCIL AND TO THE TAX-PAYERS FOR YOUR CONDUCT CONCERNING  
13 THE LABOR RATE INCREASE ASSOCIATED WITH THE NORCAL GARBAGE  
14 CONTRACT. DO YOU ADMIT YOUR APOLOGY JUSTIFIES THE UNNECESSARY  
15 AND UNWARRANTED PAYMENT OF \$11.25 MILLION DOLLARS TO NORCAL AND  
16 OR ITS' SUBCONTRACTORS? EXPLAIN.

17 25. WILL YOU ADMIT THE \$11.25 MILLION DOLLARS TO NORCAL AND OR  
18 ITS' SUBCONTRACTORS WAS DISPERSED TO THE EMPLOYEES OF NORCAL AND  
19 OR ITS' SUBCONTRACTORS, AND OR TO ILLEGAL ALIENS IN YOUR  
20 RESPONSE TO INTERROGATORY NUMBER (5)? EXPLAIN.

21 26. WILL YOU PROVIDE AN ACCURATE ACCOUNTING AS TO WHO RECIEVED  
22 THE \$11.25 MILLION DOLLARS TO NORCAL AND OR ITS' SUBCONTRACTORS  
23 AND THE AMOUNT EACH EMPLOYEE RECEIVED? EXPLAIN.

24 27. HAS YOUR CURRENT WIFE, AND OR OTHER MEMBERS OF YOUR  
25 IMMEDIATE FAMILY AND OR MEMBERS OF YOUR EXTENDED FAMILY,  
RECEIVED ANYTHING OF VALUE, CONSIDERATION OF ANY KIND FLOWING  
FROM YOUR POSITION AS MAYOR FOR THE CITY OF SAN JOSÉ? EXPLAIN.

26 28. HAS ANY MEMBER OF YOUR STAFF RECEIVED A HOLIDAY RELATED  
27 BONUS OF ANYTHING OF VALUE OR CONSIDERATION OF ANY KIND?  
28 EXPLAIN.

29 Dated this 12<sup>th</sup> day of December, 2005

30 By:

*David S. Wall*

31 ///

32 Cc: MEMBERS CITY COUNCIL / CITY ATTORNEY / CITY AUDITOR / CITY MANAGER  
33 CHIEF OF POLICE / FOREPERSON, SANTA CLARA COUNTY GRAND JURY

HOME  
BUILDERS  
ASSOCIATION



OF NORTHERN CALIFORNIA

June 29, 2006

Mr. Albert Balagso, Acting Director  
Parks, Recreation and Neighborhood Services Department  
City of San Jose  
200 East Santa Clara Street, 9th Floor  
San Jose, CA 95113

**RE: San Jose PDO/PIO Ordinance Revisions and Park Trust Fund In Lieu Fees Meetings Timetable**

Dear Albert:

On behalf of the Home Builders Association of Northern California, Southern Division, (HBANC), I am requesting that the Parks and Recreation Department (PRNS) provide more time for public input on any proposals that the Parks Recreation and Neighborhood Services Department will make for revising the Parkland Dedication Ordinance (PDO), the Park Impact Ordinance and the Associated Fee Resolution. We understand that your department is working to craft changes to these documents, and that the City Council has requested that PRNS secure public input on the documents and present them to the City Council in September.

Dave Mitchell, Parks Planning Manager, Parks and Neighborhood Services (PRNS) called me to outline the tentative schedule for public input that he hopes to implement over the next several weeks. This is summarized at the end of this letter. HBANC understands that input is needed from three San Jose Commissions, each of which will meet more than once. In addition, there will be least two meetings with a Stakeholders Group, the composition of which has not yet been determined.

While HBANC agrees with the nature and type of meetings that your organization is proposing, we are concerned that the time frame for at 9-10 meetings is extremely collapsed. We ask that the process be extended. Before the City of San Jose moves forward with revisions to two major ordinances and makes potential increases to its development impact fee structure, we request that the many relevant issues are thoroughly discussed and consensus is achieved. Our reasons follow:

- We understand that PRNS is in process of making new proposals for revisions to the PDO/PIO ordinances. These are not known at this time, in spite of the fact that the first "Public Hearing/Meeting" for the Parks and Recreation Commission is tentatively planned for July 19<sup>th</sup>, and a major holiday weekend begins tomorrow

SOUTH BAY

OFFICE:

675 North First Street

#620

San Jose

California 95112

Tel (408) 977-1490

Fax (408) 977-1493

Public Record  
f  
Rec'd 7/5/06  
via email

- July and August are prime vacation months for most of HBANC's builder and associate members. HBANC's participation at public hearings and stakeholder meetings will be compromised
- HBANC's Board of Directors meets only one time during the summer months; therefore, our members will not have time to discuss the issues presented and to make informed decisions
- The rapid turnaround requested by the City Council is forcing the PRNS staff to schedule time for hearings and study sessions, many of which are "back-to-back," or within a few days of each other. (Proposed dates include July 19; August 2, 9,10; September 6, 13, and 19). In addition, there will be at least two Stakeholder Group meetings. This makes it very difficult for HBANC Staff and members to participate and to provide informed and effective input into the public deliberative process

If an HBANC builder were to propose a public/neighborhood development project meeting timeline as difficult to meet as the one currently be considered by PRNS, City Staff would request that the schedule be redesigned. HBANC would agree.

HBANC recognizes the importance of the PRNS program for the citizens of San Jose. To conduct a rapid series of meetings without allowing time for reflection and real dialogue will result in a flawed process. HBANC builders, through the imposition of construction mandates and their contributions to the San Jose Park Trust Fund, continue to work to create San Jose's parks infrastructure. A PRNS program which is well written and which has mutual agreement of both the general public and the business community is preferable to one that is viewed as a series of onerous extractions and as an impediment to doing business in San Jose.

HBANC and its members are confident that PRNS wants to return to the Council with a program for the future that reflects genuine collaboration. We ask that you reconsider the aggressive timeline that is being proposed. We encourage you and your staff to work with the business community to develop a process which will result in changes to which we all can agree. We are confident that San Jose's neighborhood groups, business community, builders and citizens will support such an effort.

Best regards,

Beverley B. Bryant, Ph.D.  
Executive Director, Southern Division, HBANC

Cc: The Honorable Mayor Ron Gonzales  
The Honorable Members of the San Jose City Council

Les White, Interim City Manager  
 Dave Mitchell, Parks Planning Manager, PRNS

<b><u>Proposed Schedule</u></b>	<b><u>PDO/PIO Meetings (2006)</u></b>
<b>Meeting Date</b>	<b>Committee/Commission</b>
Wed., July 19, 6:00 pm	Parks and Recreation Commission Public Study Session #1
Wed., August 2, 6:00 pm	Parks and Recreation Commission Public Study Session #2
Public Stakeholder Meeting #1     ??? Date	Members to be identified; developers and others?
Public Stakeholder Meeting #2     ??? Date	Members to be identified; developers and others?
Public Stakeholder Meeting #3     ??? Date     ???	Members to be identified; developers and others?
Wed., August 9, 5:00 pm	Joint Parks and Recreation Commission and Planning Commission Study Session on PDO/PIO Ordinance and Fees Schedule
Thurs., Aug. 10, 5:00 pm	Housing Advisory Commission final vote
Wed., Sept. 6, 5:30 pm (Two days after Labor Day)	Parks and Recreation Commission final vote on PDO/PIO Ordinance and Fees
Wed., Sept. 13, 6:30 pm	Planning Commission final vote on PDO/PIO Ordinance and Fees
Tues., Sept. 19, 7:00 pm	PRNS Submits Draft Ordinance to City Council; Public Hearing, Final Vote

RECEIVED  
San Jose City Clerk

2006 JUN 30 P 4: 24

June 30, 2006

Lee Price, City Clerk  
City of San Jose  
801 N. First St.  
San Jose, CA 95110

Re: Cingular Wireless Site No. CN3707/Grant Rd. & Portland Ave.

Dear City Clerk:

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have any questions or require additional information, please call me at (925) 227-4356.

Sincerely,

*Ellen Magnie*

Ellen Magnie  
Compliance Coordinator - Cingular Wireless

Attachments



**ATTACHMENT A**

**1. Project Location:**

Site Number and Name: CN3707-02/Grant Rd. & Portland Ave.  
Site Address: 3645 Grant Rd.  
Mountain View, CA 94024  
County: Santa Clara  
Location: 37-21-35.4  
122-04-39.9  
Assessor's Parcel Number: 197-20-033

**2. Project Description:**

Number of Antennas to be installed: 6  
Tower Design: Water Tower  
Tower Appearance: 1 antennas per sector, 6 sectors  
Tower Height: 54'  
Building Size(s): N/A

**3. Business addresses of all Local Government Agencies:**

**City of San Jose**  
801 N. First St.  
San Jose, CA 95110  
408-277-475

**4. Land use approval:**

On 2/6/06, the City of San Jose approved Case No. 337-05-AA for the installation use and maintenance of a Wireless Telecommunications Facility at 3645 Grant Rd., Mountain View, CA

■ ■ ■ T ■ ■ Mobile ■<sup>®</sup>

*Public Review*  
h

RECEIVED  
San Jose City Clerk

2006 JUN 10 P 3:08

June 28, 2006

City Clerk:  
Lee Price  
200 E. Santa Clara St.  
San Jose, CA 95113

Re: OCI Site Number SF15050/ San Jose, CA.

Dear Ms. Price,

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have any questions or require additional information, please Contact Rod De La Rosa at (925) 521-5948.

Sincerely,



Renee Davis  
Compliance Consultant  
Omnipoint Communications Inc.

Attachments



June 28, 2005

Safety & Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**RE: OCI Site Number SF15050/ San Jose, CA**

This is to provide the Commission with notice pursuant to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ("CPUC") that :

(a) The cellular company has obtained all requisite land use approval for the project described in Attachment A.

(b) That no land use approval is required because \_\_\_\_\_.

A copy of this notification is also being provided to the appropriate local governmental agency for its information. Should there be any questions regarding this project, or if you disagree with any of the information contained herein, please contact Rod De La Rosa at (925) 521-5948 of Omnipoint Communications, Inc. dba T-Mobile, USA corporate identification number U-3056-C.

Very truly yours,

A handwritten signature in cursive script that reads "Renee Davis".

Renee Davis  
Compliance Consultant

c: City of San Jose

## ATTACHMENT A

### 1. Project Location:

Site Identification Number: **SF15050**  
Site Name: **Plaza De San Jose**  
Site Address: **1110 South King Road**  
County: **Santa Clara**  
Site Location: **San Jose**  
Assessor's Parcel Number: **486-11-042**  
Latitude: NAD 83 **37 20 16.413**  
Longitude: NAD 83 **-121 50 20.40**

### 2. Project Description:

Number of Antennas to be installed: **3**  
Tower Design: **Roof Top**  
Tower Appearance: **N/A**  
Tower Height:  
A) Structure Height  
B) Top of antenna Height **32'**  
Building Size(s): **N/A**

### 3. Business addresses of all Governmental Agencies

X **BP # 2006-017913-C1**

### 4. Land Use Approval:

X **16**

5. If Land Use approval was not required: *Explain reason for exemption and attach documentation from the jurisdiction (i.e. copy of ordinance) that officially states exemption.*

**17**

RECEIVED  
San Jose City Clerk

2006 JUL 12 P 2:58

July 10, 2006

✓ City of San Jose, Planning Director  
200 East Santa Clara Street  
San Jose, CA 95113

City of San Jose, City Clerk  
200 East Santa Clara Street  
San Jose, CA 95113

✓ City of San Jose, City Manager  
200 East Santa Clara Street  
San Jose, CA 95113

**RE: Cingular Wireless Site No.: SNFCCAEO44/Tully & White**  
**Address: 2827 Flint Avenue, San Jose, CA (APN: 649-16-100)**  
**Approval No.: Project File No. AD06-356/Permit Adjustment CP97-048**

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have questions or require additional information, please call me at (925) 227-4356.

Sincerely,



Ellen Magnie  
New Site Build Project Manager  
Northern California  
New Cingular Wireless PCS, LLC

Attachments

**ATTACHMENT A**

**1. Project Location:**

**Site Name / Number:** Tully & White/SNFCCA EO44  
**Site Address:** 2827 Flint Avenue  
**Location:** San Jose, CA  
**County:** Santa Clara County  
**Assessor's Parcel Number:** 649-16-100  
**Latitude:** 37- 19'-56.62"  
**Longitude:** 121'-47'-26.76"  
NAD 83

**2. Project Description:**

**Number of Antennae to be installed:** Six (6)

**Tower Design: ROOFTOP-** Six panel antennas mounted in RF transparent steeple in new cupola built on top of new entry way rooftop.

**Tower Appearance:**

**Tower Height:** Existing Building Height 23' 6" – new covered entry way rooftop 20'.10" ( rad center of antennas at 32" )

**Building Size(s):** Equipment will be placed within a 10' x 15' area enclosed area on the ground behind a 7 foot chain link fence with redwood slats.

**3. Business Addresses of All Local Governmental Agencies:**

Planning Dept.-Planning Director-Joseph Horwedel  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113  
Attn: Reena Mathews, Planner (408) 535-7844

City Clerk- Lee Price, MMC  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

City of San Jose  
City Manager-Les White  
200 East Santa Clara Street  
San Jose, CA 95113

**4. Land Use Approval:**

On April 21, 2006, the City of San Jose administratively approved Project File No. AD06-356/Permit Adjustment CP97-048, for the construction, use, and maintenance of this wireless telecommunications facility. The approval becomes effective April 21, 2006.

RECEIVED  
San Jose City Clerk

2006 JUL 18 A 8:39

July 10, 2006

Lee Price, City Clerk  
City of San Jose  
801 N. First St.  
San Jose, CA 95110

Re: **Cingular Wireless Site No. CN3848/Blossom Hill**

Dear City Clerk:

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have any questions or require additional information, please call me at (925) 227-4356.

Sincerely,



Ellen Magnie  
Compliance Coordinator - Cingular Wireless

Attachments

**ATTACHMENT A**

**1. Project Location:**

Site Number and Name: CN3848/Blossom Hill

Site Address: 5706 Cahalan Ave.  
San Jose, CA 95123

County: Santa Clara

Location: 37-14-55.43  
121-50-48.29

Assessor's Parcel Number: 687-19-014

**2. Project Description:**

Number of Antennas to be installed: 6

Tower Design Clock Tower

Tower Appearance: 1 antenna per sector, 6 sectors

Tower Height: 45'

Building Size(s): N/A

**3. Business addresses of all Local Government Agencies:**

**City of San Jose**  
Stephen Haase  
801 N. First St.  
San Jose, CA 95110  
408-277-4754

**4. Land use approval:**

On January 25, 2006, the City of San Jose approved Case No. H05-047 for the installation use and maintenance of a Wireless Telecommunications Facility at 5706 Cahalan Ave., San Jose, CA.

RECEIVED  
San Jose City Clerk

2006 JUL 18 A 8:39

July 11, 2006

Lee Price, City Clerk  
City of San Jose  
801 N. First St.  
San Jose, CA 95110

Re: Cingular Wireless Site No. CN3841/George Shirakawa Community Center

Dear City Clerk:

General Order 159-A (GO-159-A) of the California Public Utilities Commission (CPUC) requires cellular carriers to send a notification letter of a utility's intent to construct a cellular facility to CPUC's Safety and Enforcement Division within 15 business days of receipt of all requisite local land use approvals. The notification letter shall state that such approvals have been received, or that no land use approvals are required.

As set forth in GO 159-A, copies of the notification letter are required to be served concurrently by mail on the local governmental agency. Where the affected local governmental agency is a city, service of the notification letter to the city shall consist of service of separate copies of the notification letter upon the City Manager, the City Planning Director and the City Clerk. In order to comply with these requirements, I have enclosed a copy of the notification letter for our project within your city limits.

If you have any questions or require additional information, please call me at (925) 227-4356.

Sincerely,



Ellen Magnie  
Compliance Coordinator - Cingular Wireless

Attachments

**ATTACHMENT A**

**1. Project Location:**

Site Number and Name: CN3841/George Shirakawa Community Center

Site Address: 2072 Lucretia Ave.  
San Jose, CA 95122

County: Santa Clara

Location: 37-19-03.78  
121-50-38.63

Assessor's Parcel Number: 477-19-071

**2. Project Description:**

Number of Antennas to be installed: 6

Tower Design Monopine

Tower Appearance: 1 antenna per sector, 6 sectors

Tower Height: 50'

Building Size(s): N/A

**3. Business addresses of all Local Government Agencies:**

**City of San Jose**  
Stephen Haase  
801 N. First St.  
San Jose, CA 95110  
408-277-4754

**4. Land use approval:**

On May 26, 2006, the City of San Jose approved Case No. PD05-070 for the installation use and maintenance of a Wireless Telecommunications Facility at 2072 Lucretia Ave., San Jose, CA.

Public Record  
RECORDED  
City Clerk  
cc: CAO

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

2006 JUL 12 P 3:04

In the Matter of the Application of SAN JOSE	)	
WATER COMPANY (U 168W) for an Order	)	
authorizing it to increase rates charged for water	)	
service by \$14,646,000 or 8.54% in 2007, by	)	Application No. 06-02-014
\$5,196,000 or 2.78% in 2008, and by	}	
\$6,246,000 or 3.26% in 2009	)	TEND 1505
	)	

**MOTION TO INTERVENE AS A PARTY AND OTHER RELIEF**  
**BY**  
**GREAT OAKS WATER CO., U162-W**

Comes now Great Oaks Water Co. (GOWC), a Class A regulated Water Company, and moves the Commission for an order allowing intervention as a party in the above captioned proceeding for all purposes therein.

**I. STANDING**

GOWC has standing because the Company and its ratepayers are directly impacted by DRA's recommendation in its Report that San Jose Water Company (SJWC) be directed to buy more treated water rather than pump more ground water. The direction by DRA to purchase more treated water will have the ultimate impact of increasing the cost of ground water to GOWC's customers. Additionally, there is a serious potential impact on the environment by SJWC using more treated water and less ground water in a basin that already has historic high water levels and year round flooding issues.

**II. ISSUES GOWC IS INTERESTED IN ADDRESSING**

A. The impact on the cost of groundwater to GOWC and its ratepayers by DRA directing SJWC purchase more treated water and less groundwater from the Santa Clara Valley Water District. GOWC and its customers exclusively use groundwater recharged by the District

B. The impact on the environment by SJWC's use of or failure to use ground water in a basin that already has historic high water levels and year round flooding issues.

C. The need for the CPUC to recognize that in this particular circumstance the setting of rates is a CEQA event and requires an impact review. The result would then include a direction to SJWC to pump the appropriate amount of ground water and need to be included as part of fundamental ratemaking. In fact, under these circumstances GOWC suggests it would be an abuse of discretion for the Commission not to consider the environmental impacts on rates of SJWC's use or failure to use ground water.

D. Other issues raised by the settlement agreement.

### **III. OTHER MATTERS**

E. GOWC's witness will be its Chairman & CEO John W. S. Roeder. His Declaration is attached hereto as Exhibit A.

F. GOWC advises the Commission Mr. Roeder attended the Settlement Conference on July 6, 2006 and discussed the issues for approximately one hour and was not able to achieve informal resolution. Mr. Roeder had a subsequent discussion with a senior officer of SJWC that afternoon, and was unable to reach resolution. The only avenue available to GOWC and its ratepayers to raise these important issues is to intervene and present them directly to the Commission.

G. Despite being in attendance at the Settlement Conference and being told that DRA and SJWC had reached a settlement between themselves on about June 30, 2006, Mr. Roeder was not provided a copy of that Settlement Document. While the Settlement Document may not have been prepared, without a copy of the document Mr. Roeder is unable to fully analyze the impacts on GOWC and its ratepayers, or determine whether any effort was made to satisfy CEQA or consider the environmental impacts.

H. GOWC notes that the CPUC maintains an internal CEQA group and serves as lead agency on a number of EIRs. The Commission has the *ability* to and has the *duty* to

conduct its own review: of the environmental impact of DRA's direction to pump less ground water; and, SJWC's use of or failure to use ground water upon the groundwater table and the impact on the environment in Santa Clara Valley with a resulting direction to SJWC to pump the appropriate amount of ground water. Given the service list herein, and the fact that GOWC has specifically served the Santa Clara Valley Water District with this MOTION, all potentially interested parties have notice of the issue being raised.

#### **IV. REQUESTED DELAY WITHIN THE PROCEEDING TIMELINE**

GOWC requests the following action, which still is within the published timelines for this proceeding and hearing schedule of July 12-18, 2006:

1. GOWC requests it immediately be provided a copy of the Settlement Agreement by 5 PM on July 12, 2006.
2. GOWC will then provide the other parties Mr. Roeder's testimony on July 17, 2006.
3. Mr. Roeder will then be available for cross examination on July 18, 2006, the last currently published day for hearings.

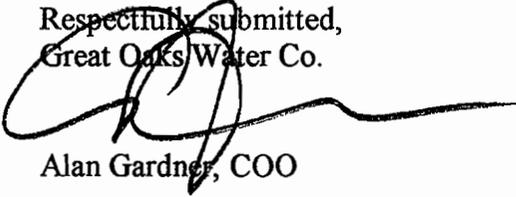
#### **V. PRAYER FOR RELIEF**

GOWC prays for an order:

1. Allowing GOWC to intervene as a party;
2. Directing SJWC and DRA to provide GOWC a copy of the Settlement Agreement as soon as possible, but not later than the close of business on July 12, 2006;
3. Directing GOWC to serve the other parties with Mr. Roeder's testimony no later than 12 noon on July 17, 2006;

4. Directing Mr. Roeder to stand for cross examination at 10 AM on July 18, 2006.

Respectfully submitted,  
Great Oaks Water Co.

A handwritten signature in black ink, appearing to be "Alan Gardner", written over the text "Respectfully submitted, Great Oaks Water Co." and extending to the right.

Alan Gardner, COO

Please note GOWC served SJWC, DRA and the ALJ by email.

**DECLARATION OF JOHN W. S. ROEDER  
IN SUPPORT OF MOTION TO INTERVENE**

I, John W. S. Roeder, do affirm:

1. I am the Chairman & CEO of Great Oaks Water Co. (GOWC)
2. I am appearing as a witness herein because DRA's recommendation in its Report that San Jose Water Company (SJWC) be directed to buy more treated water rather than pump more ground water will have the ultimate impact of : (a) increasing the cost of ground water to GOWC's customers, as well as, SJWC's customers and others in Santa Clara County; and (b) increasing the negative impact on the environment caused by the Santa Clara Valley Water District's violation of CEQA by the District's failure to consider the increasing negative impact on the environment by its rate setting policy.
3. It was not possible to be aware of this issue being present in this proceeding until the DRA Report issued.
4. Before deciding it was necessary to intervene and present evidence on the record to the Commission, I attended the Settlement Conference on July 6, 2006 and discussed the issues for approximately one hour and was not able to achieve informal resolution. I also had a subsequent discussion with a senior officer of SJWC that afternoon, and was unable to reach resolution. I was also not given a copy of the Settlement Agreement, nor advised whether the concerns that I have were addressed.
5. My testimony will provide a detailed discussion of:
  - A. The significance of the affect that groundwater pumping by SJWC has upon the groundwater table and the environment in Santa Clara Valley

B. The impact on the cost of groundwater to GOWC and its ratepayers by DRA directing SJWC to purchase more treated water and pump less groundwater from the Santa Clara Valley Water District. GOWC and its customers exclusively use groundwater recharged by the District.

C. The impact on the environment by SJWC using more treated water and less ground water in a basin that already has historic high water levels and year round flooding issues.

D. The need for the CPUC to recognize that in this particular circumstance the setting of rates is a CEQA event and requires an impact review.

E. And, the legal steps that GOWC has taken to force the SCVWD to meet its legal obligations under CEQA for the setting of rates.

F. Other issues raised by the settlement agreement.

6. On information and belief I note that the CPUC maintains an internal CEQA group and serves as lead agency on a number of EIRs. The Commission has the ability and duty to conduct its own review of the environmental impact of SJWC's use of or failure to use ground water and then direct SJWC to pump the appropriate amount of ground water. Given the service list herein, and the fact that GOWC has specifically served the Santa Clara Valley Water District with this MOTION, all potentially interested parties have notice of the issue being raised.

Dated this 10<sup>th</sup> day of July, 2006 at Boise, Idaho.



John W. S. Roeder, Chairman & CEO  
Great Oaks Water Co.

## MAILING LIST

Mr. Danilo Sanchez, Prog. Manager  
Division of Ratepayer Advocates  
Calif. Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

City of Cupertino  
Office of the City Attorney  
10300 Torre Avenue  
Cupertino, CA 95014

City of Santa Clara  
Office of the City Clerk  
1500 Warburton Avenue  
Santa Clara, CA 95050

City of Saratoga  
Office of the City Attorney  
13777 Fruitvale Avenue  
Saratoga, CA 95070

City of Monte Sereno  
Office of the City Clerk  
18041 Saratoga-Los Gatos Road  
Monte Sereno, CA 95030

County of Santa Clara  
Office of the County Counsel  
70 W. Hedding Street 9th Floor  
San Jose, CA 95110

State of California  
Department of General Services  
100 Paseo de San Antonio Room 20  
San Jose, CA 95113

Great Oaks Water Company  
P.O. Box 23490  
San Jose, CA 95153

San Jose Mercury News  
Attn: Financial Editor  
750 Ridder Park Drive  
San Jose, CA 95190

Mailing List.doc  
2/20/06

City of San Jose  
Office of the City Attorney  
151 W. Mission Street  
San Jose, CA 95110

City of Cupertino  
Office of the City Clerk  
10300 Torre Avenue  
Cupertino, CA 95014

Town of Los Gatos  
Office of the Town Attorney  
110 E. Main Street  
Los Gatos, CA 95030

City of Saratoga  
Office of the City Clerk  
13777 Fruitvale Avenue  
Saratoga, CA 95070

City of Campbell  
Office of the City Attorney  
70 N. First Street  
Campbell, CA 95008

County of Santa Clara  
Office of the County Clerk  
191 N. First Street  
San Jose, CA 95113

California Water Service Co.  
1720 North First Street  
San Jose, CA 95112

City of Milpitas  
Attn: Utilities Section  
455 E. Calaveras Boulevard  
Milpitas, CA 95035

City of San Jose  
Office of the City Clerk  
801 N. First Street  
San Jose, CA 95110

City of Santa Clara  
Office of the City Attorney  
1500 Warburton Avenue  
Santa Clara, CA 95050

Town of Los Gatos  
Office of the Town Clerk  
110 E. Main Street  
Los Gatos, CA 95030

City of Monte Sereno  
Office of the City Attorney  
18041 Saratoga-Los Gatos Road  
Monte Sereno, CA 95030

City of Campbell  
Office of the City Clerk  
70 N. First Street  
Campbell, CA 95008

State of California  
Office of the Attorney General  
1515 K Street  
Sacramento, CA 95814

Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

City of San Jose  
Attn: Municipal Water Department  
3025 Tuers Road  
San Jose, CA 95120

HOME  
BUILDERS  
ASSOCIATION



OF NORTHERN CALIFORNIA

Public Record  
cc: Agudadesk ✓  
m

June 27, 2006

City Clerk  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Via Certified Mail

Dear City Clerk;

The California Government Code authorizes members of the public to request advance notice of several types of governmental action. That is the purpose of this letter from the Home Builders Association of Northern California.

1. Pursuant to Section 66016, we hereby request to receive written notice (and by e-mail if possible) of any meeting concerning adopting a new fee or service charge or increasing an existing fee or service charge, along with the required statement that the information required by Section 66016, if available.
2. Pursuant to Section 66006, we hereby request to receive written notice (and by e-mail if possible) of the meeting at which your annual report regarding development fees is reviewed. We also request a copy of the report.
3. Pursuant to Section 54954.6, we hereby request to receive written notice (and by e-mail if possible) of any meeting concerning adopting or increasing any general tax or assessment.

Please send all of the information to:

Home Builders Assn. of Northern California, So. Division  
675 North First Street, #620  
San Jose, CA 95112  
bbryant@hbanc.org

Thank you for your compliance with this request.

Sincerely,

A handwritten signature in cursive script that reads 'Beverley B. Bryant'.

Beverley B. Bryant, Ph.D.  
Executive Director

SOUTH BAY OFFICE

North First Street

#620

San Jose

California 95112

Tel (408) 977-1490

Fax (408) 977-1493

Public Record

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**Pimentel, Nora**

**From:** Price, Lee  
**Sent:** Monday, July 17, 2006 10:57 AM  
**To:** Pimentel, Nora  
**Subject:** FW: Coyote Valley Development

Public Record

**From:** City Clerk  
**Sent:** Monday, July 17, 2006 9:10 AM  
**To:** Price, Lee  
**Subject:** FW: Coyote Valley Development

**From:** tiyh@comcast.net [mailto:tiyh@comcast.net]  
**Sent:** Sunday, July 16, 2006 2:37 PM  
**To:** cityclerk@sanjoseca.gov  
**Subject:** Coyote Valley Development

Please distribute to the whole council:

Please consider the environmental and fiscal impact of development in the Coyote Valley and instead concentrate of building more density in the City of San Jose. The mountains and valley's around Silicon Valley add beauty, history. We need good transportation within a condensed area if we are to plan for a good future for our great valley.

Thank you

--

Julie Groves. owner  
Therapy In Your Home - OT, PT, ST  
147 Vista Del Monte  
Los Gatos, CA 95030-6335  
408-358-0201 (phone and fax)  
www.TherapyInYourHome.net  
TIYH@comcast.net

7/18/2006

Public Record  
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**Pimentel, Nora**

**From:** Price, Lee  
**Sent:** Monday, July 17, 2006 8:57 AM  
**To:** Pimentel, Nora  
**Subject:** FW: Prop 90 and Personal information

A public record.

**From:** Rebecca Elliot [mailto:relliot@cacities.org]  
**Sent:** Friday, July 14, 2006 8:16 PM  
**To:** Rebecca Elliot  
**Subject:** Prop 90 and Personal information

*Greetings Mayors, Councilmembers and city managers,*

*As you may be aware, the *Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment*, has qualified for the November ballot as Proposition 90. Attached you will find an informational piece on Prop 90, aka. "The Taxpayer Trap", the "dos and dont's" for public officials and an up-to-date coalition list.*

I am limited in the information regarding Prop 90 I can send to city hall email addresses. Therefore, I have also attached a personal contact form for your consideration. Returning the form, or just sending me your personal email address will allow me to keep you up-to-date on what's happening with Prop 90. As always, your personal information stays with me - I will not give it to anyone or any other organization.

Have a great weekend,  
Rebecca

*Rebecca Elliot  
Regional Public Affairs Manager  
P.O. Box 54216  
San Jose, CA 95154-4216  
(408) 829-2946*

7/18/2006

# **We Oppose Proposition 90 The Taxpayer Trap Initiative**

*Costly for Taxpayers. Harmful to the Environment. Bad for Schools,  
Traffic Relief and Every California Community.*

(Coalition List as of 7.7.06)

California Police Chiefs Association  
California Fire Chiefs Association  
California School Boards Association  
Coalition for Adequate School Housing (C.A.S.H.)  
League of California Cities  
California State Association of Counties  
Small School Districts' Association  
California League of Conservation Voters  
California Housing Consortium  
Natural Resources Defense Council  
The Ocean Conservancy  
Sierra Club California  
Defenders of Wildlife  
Environmental Defense  
California Association for Local Economic Development  
Planning and Conservation League  
Orange County Community Housing Corporation  
Greenbelt Alliance  
California Redevelopment Association  
Santa Monica's for Renters' Rights  
Santa Monica Coalition for a Livable City  
American Planning Association, California Chapter  
California Special Districts Association

# Proposition 90

Official ballot title: *Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.*

## Prop. 90 Facts at a Glance

- **Scope:** Applies to all public agencies and private entities such as utilities, all state and local government property acquisitions, and any state or local agency law, regulation, resolution or other action. Includes new federal laws that must be implemented at the state or local level. Even statutory initiatives passed by voters subject to measure's provisions.
- **Compensation by Taxpayers for New Regulations:** Requires taxpayers to compensate property owners for substantial impacts of traditional state and local government regulations on use of private property. Attorney General says, as a result, measure will "limit certain land use, housing, consumer, environmental and workplace laws and regulations."
- **Higher Costs for Public Works Projects:** Measure redefines "just compensation" to require higher payments for property acquisitions for public works projects. Would likely impact costs for a wide variety of public projects and infrastructure projects including schools, roads and highways, dams, levees, and affordable housing.
- **Significant Fiscal Impact:** State's Legislative Analyst's assessment of Prop. 90's fiscal impacts:
  - Unknown, but potentially significant future costs for state and local governments to pay damages and/or modify regulatory or other policies to conform to the measure's provisions
  - Unknown, but potentially significant changes in governmental costs to acquire property for public purposes.
- **Can't Be Amended By Legislature:** If approved, it could only be changed by another initiative.

## Prop. 90 Main Provisions

- **Redefines "damage" to require payment (at new and increased levels) for any government action or action by voters that results in "substantial economic loss" to property.** These changes to laws governing compensation for regulatory action would impact state & local governments' ability to enact and enforce a wide range of laws affecting property, including environmental, land use, consumer protection and housing laws and regulations, or require new payments to property owners for such actions. For example:
  - If voters act by initiative to limit the size of a new development to 100 houses, and the developer claims the property could hold 200 houses, this initiative could allow the developer to make a claim for a payment from the local government for the value for the 100 houses he wasn't allowed to build. Similar compensation claims could be filed with state and local governments for a wide range of government environmental, consumer protection, housing and land use regulations.
- **Redefines "just compensation."** Under the new definition, property taken for a proprietary government purpose would be valued not at the current standard of "fair market value," but at the increased value of the property as the government intends to use it.
  - For example, if a county acquires property for an airport, the owner could seek compensation for the value of the property as if an airport were on it - even if the owner was not legally allowed to construct and operate an airport under the applicable zoning.
  - **Prohibits use of eminent domain unless the property acquired is owned and occupied by a governmental agency. Prohibitions on public/private partnerships would include those with non-profit organizations, such as non-profit homebuilders.**



The Peninsula Division of the League of California Cities is collecting personal (non-city) contact information from its members. This information will be used to enhance the Division's ability to communicate with its membership on important political activities, including ballot measure advocacy and fundraising.

Please note: This information is for internal use only and will not be used for general League business or shared with other organizations.

Please provide the following:

Name: \_\_\_\_\_

Mailing Address (non-city): \_\_\_\_\_

City: \_\_\_\_\_, CA Zip: \_\_\_\_\_

Email (non-city): \_\_\_\_\_

Phone (non-city): \_\_\_\_\_ Fax (non-city): \_\_\_\_\_

Preferred method of contact:  Email  Phone  Fax  Mail

Please return the following information to:

Rebecca Elliot  
Regional Public Affairs Manager, Peninsula Division  
League of California Cities  
P.O. Box 54216  
San Jose, CA 95454-4216  
Phone: (408) 829-2946  
relliot@cacities.org

Thank you in advance for your help!

## **DO'S AND DON'TS FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES WHEN WORKING ON INITIATIVE CAMPAIGNS**

There are two simple, but very important rules California local public officials and employees should follow when involved in campaign activities.

1. **Don't use public funds or resources.** All contributions to the campaign of your time and resources must be made with non-public funds. That means no public facilities or equipment (phones, computers, email accounts, vehicles, copy machines or any other equipment) may be used to plan or promote campaign activities, including fundraising. No public funds or resources may be used in support of your campaign activities.
  
2. **Campaign on your own time. Keep good records.** Track time and your use of private equipment utilized in ballot measure activities, so you are able to document that no public funds were used.

### **The Don'ts. Public officials and public employees may NOT:**

- Distribute campaign literature through the government's internal mail system.
- Place campaign literature on employee bulletin boards, on the government's web page, or elsewhere on government premises.
- Make public appearances speaking about the initiative/campaign during compensated work hours.
- Make telephone calls about the campaign during compensated work hours.
- Walk precincts, draft campaign ads, or perform other campaign tasks during compensated work hours, or assign subordinates to do same.
- Add a link from a government website to a campaign website.
- Send or receive campaign-related emails on government computers.
- Urge other employees to vote a certain way during compensated work hours.
- Use government copy machines, telephones, fax machines, computers, stationery, etc. for campaign purposes.

### **The Do's. Public officials and public employees MAY:**

- Work on the campaign during their personal time, including lunch hours, coffee breaks, vacations, etc.
- Make a campaign contribution to the campaign committee using personal funds, and/or attend a campaign fundraiser during personal time.
- Make public appearances for the campaign during personal time.

Public Record  
P

**Pimentel, Nora**

**From:** Price, Lee  
**Sent:** Tuesday, July 18, 2006 3:05 PM  
**To:** Pimentel, Nora  
**Subject:** FW: COYOTE VALLEY PROPOSAL

public record

**From:** City Clerk  
**Sent:** Tuesday, July 18, 2006 3:04 PM  
**To:** Price, Lee  
**Subject:** FW: COYOTE VALLEY PROPOSAL

**From:** Joyce Wilson [mailto:tmwjdw@sprintmail.com]  
**Sent:** Tuesday, July 18, 2006 2:49 PM  
**To:** CITYCLERK@SANJOSECA.GOV  
**Subject:** COYOTE VALLEY PROPOSAL

Dear Mayor Gonzales and Council Members,

I urge you to follow through on your commitment to a specific plan for Coyote Valley that provides maximum environmental protection. According to the Fiscal Impact Analysis, it is not a good investment for the City. The City of San Jose should not mortgage the rest of the City for that area. The City should focus on revitalizing existing neighborhoods and promote infill of existing developed areas.

Joyce Wilson  
753 Bend Ave.  
San Jose, CA 95136-1802

Q

RECEIVED  
San Jose City Clerk

**PUBLIC NOTICE**

2006 JUL 24 PM 12:13  
Hitachi Global Storage Technologies, Inc.  
5600 Cottle Road,  
San Jose, CA  
95193-0001

On May 11, 2006, Hitachi Global Storage Technologies, Inc. located at 5600 Cottle Road in San Jose, CA, requested a Class 1 permit modification pursuant to 22 CCR 66270.42 from the Department of Toxic Substances Control. This modification notifies the Department of a proposed upgrade to the Building 06 roof (Column 7) Heavy Metals Wastewater line. A new shut-off valve will be installed in the Heavy Metals Wastewater line to accommodate tool rearrangement within the Building 006 manufacturing area.

Per 22 CCR 66270.42(a)(1)(C) any person may request the Department's review of any Class 1 Modification.

Questions regarding this action may be directed to:

Mr. Paul Ruffin  
California Environmental Protection Agency  
Department of Toxic Substances Control  
(916) 255-6677

or

Elizabeth Zimmermann  
Manager, Environmental Programs  
Hitachi Global Storage Technologies, Inc.  
(408) 717-8168