CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
STEPHEN M. HAASE, AICP, DIRECTOR

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

Project File Number, Description, and Location
File No.: PP04-283, Thompson Creek Trail Master Plan: A Master Plan for an approximately 7 mile long multi-use trail located generally along Thompson Creek between San Felipe Road/Heartland Way and Lake Cunningham Park. Applicant: City of San Jose, Department of Public Works, City Facilities Architectural Services Division. Council District: 8

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

Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on January 18, 2005, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **December 20, 2004** and ends on **January 18, 2005.**

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and the Evergreen Branch Library 2635 Aborn Rd., San Jose, and online at http://www.sanjoseca.gov/planning/eir/MND2004.htm Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call Michael Rhoades at (408) 277-4576.

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

Circulated on: 12/20/04

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Deputy

MNDPN/SBA/2/11/03
REV. JAC 12/29/03

DRAFT
MITIGATED NEGATIVE DECLARATION

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

NAME OF PROJECT: Thompson Creek Trail Master Plan

PROJECT FILE NUMBER: PP04-283

PROJECT DESCRIPTION: A Master Plan for an approximately 7 mile long multi-use trail located generally along Thompson Creek between San Felipe Road/Heartland Way and Lake Cunningham Park in San Jose.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Along Thompson Creek between San Felipe Road/Heartland Way and Lake Cunningham Park. Project occurs on multiple parcels (parcel numbers are included in the Initial Study).

COUNCIL DISTRICT: 8

APPLICANT CONTACT INFORMATION: City of San Jose, Department of Public Works, City Facilities Architectural Services Division. Contact Judy Salvano (408) 277-1378.

FINDING

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

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

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

II. AGRICULTURE RESOURCES – Trail section S1 would follow a short segment of Thompson Creek that passes along the edge of a large (1,151 acre) parcel of grazing land on the west side of San Felipe Road south of Silver Creek Road. This parcel (APN 660-01-014) is also under a Williamson Act Contract with Santa Clara County. Construction of this segment of the trail would not compromise continuing agricultural use of the parcel nor would it force cancellation of the Williamson Act Contract, assuming the following mitigation is implemented**:**

To ensure continued viability of agricultural uses on the parcel traversed by Segment S-1, the trail design shall incorporate gates and/or fencing to prevent cattle grazing on the parcel from straying onto San Felipe Road or other nearby lands.

III. AIR QUALITY – Certain construction activities associated with building the proposed trail, including grading, excavation and travel on unpaved surfaces, would generate dust, a portion of which is fine particulate matter, or PM10. Due to the non-attainment status of the Bay Area for PM10, all PM10 emissions from construction sites are considered cumulatively significant. The BAAQMD has developed Best Management Practices (BMPs) to minimize these emissions, which are adopted below as mitigation:

Mitigation Measure AQ-1: During project construction the BAAQMD's Best Management Practices (BMPs) for construction sites shall be implemented. The current BMPs include:

1. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;

2. Cover all trucks hauling soil, sand or other loose materials and all trucks are required to keep at least two feet of freeboard;

3. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas for construction sites;

4. Sweep daily with water sweepers all paved access roads, parking areas, and staging areas at construction sites;

5. Sweep off-site and adjacent streets daily with water sweepers if visible soil material is carried onto public streets;

6. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas;

7. Enclose, cover, water twice daily or apply non-toxic soil binders to any exposed stockpiles (dirt, sand, etc.);

8. Limit traffic speeds on unpaved roads to 15 mph;

9. Install sandbags or other erosion control measures at the bottom of graded slopes, along graded areas adjacent to roadways, and/or along the shoulder of a public road to prevent silt runoff to public roadways;

10. Replant vegetation in disturbed areas as quickly as possible;

11. Suspend excavation and grading activity whenever the wind is strong enough to create visible dust plumes despite control efforts (watering of disturbed areas and dirt construction roads).

With this mitigation, the potential impacts from PM_{10} emissions will be reduced to a less than significant level.

IV. BIOLOGICAL RESOURCES – Implementation of mitigation measures BIO-1 through BIO-8 will reduce the potential biological impacts to a less than significant level.

Special-status Plant Species

Mitigation BIO-1: Rare plant surveys designed to detect the presence or absence of special status plants shall be conducted prior to construction activities in either trail segment R3 or S1. These surveys will be conducted by a qualified botanist and will need to be conducted between March and July to cover the blooming season of all six special plant species in question. If the surveys detect any of the six special status plants then the following program of additional mitigation shall be implemented:

Avoidance. Avoidance of a sensitive resource is the preferred alternative. To the greatest extent feasible, the trail will be aligned to avoid direct (i.e., removal) or indirect impacts to any special status plant species population detected. This would require establishing a minimum 25 to 50 foot buffer from the construction work zone.

Minimization. In addition to the avoidance, minimization measures to further reduce potential impact will be implemented. These measures would include 1.) erecting construction fencing around any identified population to ensure that workers do not inadvertently damage these plants 2.) a qualified on-site monitor should be present during any construction activities that occur within close proximity to the identified populations. 3.) After construction, fencing material and signage should be placed along the trail in these areas identifying it as an ecologically sensitive area, per the recommendations of the project biologist.

Site Restoration Plan. If avoidance is not possible or sufficient buffers cannot be established, a Site Restoration Plan will be developed by the biologist and submitted to the City of San Jose Environmental Principal Planner for review and approval, including review by appropriate resource agencies. The Site Restoration Plan will be implemented to restore or enhance habitat for those species that are affected by the trail. This would require to the replacement or enhancement of any populations of special status plant species that are directly or indirectly impacted by the project. At a minimum, the Site Restoration Plan shall define the following:

- Location of on-site areas (and suitable buffer) to restore lost plant populations. These areas should be prepared (methods of preparation will vary depending on site location), and restored based on appropriate propagation techniques. Once established, these areas would become part of the larger open space area and set aside in perpetuity by establishing a conservation easement.
- Propagation techniques (such as seed collecting, greenhouse efforts to grow plants, etc.) to be employed in the restoration effort.
- The timetable to implement the restoration plan, including pilot-phase studies if necessary.
- Remedial measures to be performed in the event that initial restoration measures are not successful in meeting the performance criteria. The performance criteria would need to ensure that there would be a minimum of a 1:1 replacement of the size of the population and area affected (replaced : lost).
- Site maintenance activities to follow restoration activities, including weed control, irrigation, and control of herbivory wildlife (e.g., installing cages around young plants until they are established).

- Provision of a suitable bond or endowment to adequately fund long-term management of any special status plant species affected by the project.

Special-status Animal Species

Mitigation Measure BIO-2. Construction of any bridges should be conducted between 1 June and 15 October, when these waterways are at low flow, and when it is unlikely the CRLF and WPT would occur in upland habitat, as the warm, dry weather keeps these species near the water. The bridge crossings should have no impact on these two species as long as all structures are placed above the line of jurisdiction or ordinary high water mark (using clear-span construction). This will limit the likelihood of impacting the California red-legged frog or western pond turtle.

In addition, the bridges should be built in ways that are likely to minimize direct and indirect impacts to the California red-legged frog and western pond turtle, including:

- Pre-construction surveys by a qualified biologist 48-hours prior to initiation of construction activities;

- Placement of orange construction fencing around the areas to be preserved to ensure that construction activities do not inadvertently impact preserved areas (e.g., trees, woody vegetation);

- Training of the construction crew by a qualified biologist (e.g., tailgate session) to ensure they are not only aware of the protective measures they are to employ, but also understand the purpose of such measures;

- A qualified biological monitor will be present during the work within close proximity of Thompson Creek to ensure that the project does not inadvertently harm or injure a California red-legged frog or western pond turtle.

Mitigation Measure BIO-3: A protocol-level pre-construction burrowing owl survey should be conducted no more than 30 days before ground breaking of any given trail segment with open grasslands to determine if burrowing owls are present on the project site (paying close attention to Reach 1 near Lake Cunningham and Reach 4 (where BUOW have been known to occur). A construction free buffer (usually 250 ft) should be established around any active burrowing owl nest (1 February to 31 August). Once young have fledged, construction activity can occur within closer proximity to the former nest. A qualified biologist may passively relocate wintering owls that occur within the construction zone.

Mitigation BIO-4. In areas where the trail encroaches upon the 10-foot setback (Riparian Policy), habitat enhancement will be required at a 0.5:1 ratio. This ratio applies to the actual area of encroachment (e.g., if the encroachment measures 10,000 square feet, the enhancement area would be 5,000 square feet). This mitigation will involve removing non-native vegetation from areas adjacent to the trail and replanting with native species. Suggestions for plant species that are suitable for replanting are listed in Appendix B of the Riparian Corridor Policy.

Mitigation BIO-5. Riparian woodland trees removed shall be replaced at a 3:1 ratio. This will mitigate the temporal loss to the habitat (i.e. the amount of time it takes for newly planted trees to reach the level of maturity to replace the wildlife value lost by tree removal. These replacement plantings should be of the same species as those removed (or replaced

with native species (e.g., in the case of eucalyptus)) and should be planted along the same riparian corridor. Plants should be watershed specific and be contract grown and collected within a five-mile radius of the site if possible. Any areas that are replanted will need to have a monitoring plan written to ensure survivorship of the planted trees.

Mitigation Measure BIO-6*:* Prior to finalizing the project design, a wetland delineation will be completed for the project and submitted to the USACE for verification. If it is determined that any bridge supports or bridge construction activities will encroach on federally protected wetlands, a USACE permit shall be obtained and all permit conditions shall be implemented.

Mitigation Measure BIO-7. Implementation of the following program will ensure that raptors (hawks and owls) are not disturbed during the breeding season.

- A qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree and ground nesting raptors) along the Thompson Creek corridor associated with the trail alignment within 30 days of the onset of ground disturbance, if ground disturbance is to occur during the breeding season (1 February to 31 August). These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the various target species. These surveys will explicitly consider the burrowing owl as a potential target species, and pre-construction surveys will be conducted according to the most recent protocol;

- If nesting raptors are identified on or adjacent to the site, then the ornithologist will determine a ground disturbance-free setback zone around the nest (usually a minimum of 250 ft). The actual distance of the ground disturbance free zone will depend on the species, location of the nest in the tree and local topography. This setback must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback until the conclusion of the breeding season, or until young have fledged from the nests. A biological monitor would periodically (i.e., twice weekly) check to ensure that the construction free zone is being honored, and to determine when young have fledged.

- A qualified ornithologist will conduct pre-construction surveys for burrowing owls during the non-breeding season. Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors, as they are expected to abandon their roosts during construction.

- Even though burrowing owls have not been observed on the site in 2003 and 2004, if pre-construction surveys (conducted either during the breeding or non-breeding season) determine that burrowing owls occupy the site just prior to construction, and avoiding development of occupied areas is not feasible, then habitat compensation on off-site mitigation lands should be implemented. Off-site mitigation typically entails evicting the affected owls from the project site (prior to the breeding season) and setting aside and managing specific areas for burrowing owls. Typically, CDFG has requested that burrowing owl habitat be replaced at a ratio of 6.5 acres/breeding pair. Should this occur, on-site mitigation may be feasible on City owned parcels associated with the project (e.g., Canyon Creek Park).

Mitigation Measure BIO-8. A formal tree inventory shall be taken by a qualified botanist/arborist to determine the location, size, species, and condition of trees within the impact areas of the project. In addition to providing for the replacement of ordinance-sized trees, the City Facilities Architectural Services Division shall obtain tree removal permits for any trees measuring 56-inches in diameter or more, or for any tree designated a heritage tree

(including those trees previously discussed above in Checklist Item D, b). Depending on the site and conditions of the trees, the City should specify tree replacement ratios as high as 4:1 for the loss of ordinance-sized trees. Replacement trees could be planted along neighborhood streets, along the riparian corridor, or in areas of ruderal vegetation associated with the trail. All replacement plantings shall be native species and trees shall be of small nursery stock (e.g., seedlings or dee-pots, propagated from local stock, preferably collected within five miles of the project site). Smaller trees are preferred in restoration efforts, as they historically out-perform larger starter trees. If these on site plantings do not fully compensate for the loss of ordinance-sized trees, a contribution should be made to Our Urban Forest where funds would be used to plant trees within the City.

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

Mitigation Measure CULT – 1: Design drawings for trail segments that pass through or alongside the land parcels occupied by historic resources found on the City of San Jose Historic Preservation List shall be reviewed by a qualified historian or historic architect. The review shall follow the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitiating, Restoring, and Reconstructing Historic Buildings.* Recommendations for trail modifications necessary to ensure conformance with applicable provisions of the *Secretary's Standards* shall be incorporated into the final design drawings.

Mitigation Measure CULT-2: To insure the identification of endangered archaeological deposits, archaeological monitoring shall be undertaken at those locations where grading and/or excavation will occur to depths of at least a foot below the existing surface.

A qualified archaeologist should develop an archaeological monitoring program after a review of the archaeological database available at the time of actual construction. Archaeological monitoring activities may be restricted to the observation of grading and trenching operations for a period to be decided by the monitor and may include the recording and/or removal of significant archaeological materials and information, if encountered. If warranted by the nature of the construction activities (such as bridge construction) the archaeological monitor may recommend a program of mechanical subsurface presence/absence testing in advance of construction activities to search for archaeological resources.

If archaeological resources are found in areas which will experience significant earthmoving, the archaeological monitor may recommend a program of data recovery through hand excavation in addition to actual monitoring of construction related earthmoving activities. Upon completion of all archaeological monitoring activities, all information and materials removed should be analyzed for the production of a report of findings to the City of San Jose. Additional copies of this report should be filed with appropriate historical associations in the Santa Clara Valley and with the Northwest Information Center located at Sonoma State University. All archaeological materials retrieved during monitoring and/or excavation activities should be curated in a recognized facility in the City of San Jose.

Mitigation Measure CULT-3: To protect archaeological resources from the visitors who will use the trail and may be tempted to collect visible artifacts, the City shall install signs at entry points warning of the legal consequences of the removal of archaeological materials and in particular, human remains.

Mitigation Measure CULT-4: The City of San Jose should also consider a baseline study of trailside archaeological conditions when the trail opens in order to facilitate the identification of possible future relic hunting activities. In the event that systematic artifact removal is discovered, it may be necessary to take more active measures to protect resource areas by fencing them and/or protecting them by placing layers of fill on top of exposed cultural deposits or by planting vegetation to inhibit access.

Mitigation Measure CULT-5: In the event of the discovery of human remains during construction, all project-related construction shall cease within a 50-foot radius and the procedures set forth in §7050.5 of the Health and Safety Code and §5097.94 of the Public Resources Code. These provisions require notification of the County Coroner to determine if the remains are Native American. If they are, the Coroner shall notify the Native American Heritage Commission who shall attempt to identify the most likely descendants. If no satisfactory agreement can be reached for the disposition of the remains pursuant to State law, then the land owner shall re-inter the human remains and items associated with the Native American burials on the property in a location not subject to further subsurface disturbance.

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

Mitigation GEO-1: In order to reduce the risk of harm to the trail facilities and users from ground shaking during a major earthquake, all structures proposed as part of the project, and particularly the bridge supports, abutments and structures, shall conform to current Building Code requirements and the design shall be reviewed and approved by a registered structural engineer.

Mitigation Measure GEO–2: The trail design and construction recommendations contained in the report by Cotton Shires and Associates, dated June 24, 2003 (Appendix C) shall be followed for the trail segment between Wynfair Ridge Way and Larkspur Canyon Road (Reach 3, Segment L).

Mitigation Measure GEO-3: The City (City Facilities Architectural Services Division) and/or construction contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP). The Plan shall meet the standards established by the State Water Resources Control Board pursuant to the National Pollutant Discharge Elimination System (NPDES) General Permit for discharges of storm water associated with construction under the authority of the Federal Clean Water Act. A Notice of Intent (NOI) shall be filed with the SWRCB, as required. The SWPPP shall specify appropriate Best Management Practices (BMPs) to be implemented during construction to control the potential discharge of surface water pollutants from the site, including the installation and maintenance of erosion control measures. At a minimum, the SWPPP shall restrict grading and land alteration to the dry season of the year, require the installation of protective barriers to prevent sediment discharges to the creek, seasonal wetlands and appropriate riparian areas, and require revegetation of all disturbed areas not covered with impervious surfacing.

Mitigation Measure GEO-4: From Aborn Road south to Heartland Way, the proposed trail should be setback from the top of bank a distance at least equal to the depth of the ravine (top of ravine to bottom of active channel). On average, the minimum setback distance would be an average of 15 – 20 feet. Bridge approaches would be excepted, and this standard should be applied in a manner that is consistent with the City's Riparian Corridor Policies.

Mitigation Measure GEO-5: The trail design shall involve a qualified geotechnical engineer who will investigate the composition of the underlying soils and use this

information to recommend design features to mitigate for identified soil characteristics that could threaten the long-term integrity of the trail surface.

VI. HAZARDS AND HAZARDOUS MATERIALS – The project will not have a significant impact on this resource, therefore no mitigation is required.

VII. HYDROLOGY AND WATER QUALITY –Implementation of the proposed Mitigation Measures HYDRO-1 through HYDRO-4, along with Measures BIO-4, BIO-5 and GEO-3, would reduce the potential impacts on hydrology and water quality to a less than significant level.

Mitigation Measure HYDRO-1: The trail shall be designed to incorporate on-site storm water treatment features in conformance with the Santa Clara Valley Urban Runoff Pollution Prevention Program. These features should include landscape-based measures, including vegetated swales, designed to reduce the velocity of, and increase the detention and/or infiltration of storm water runoff. They shall be engineered to avoid localized flooding and minimize any ponding of water.

Mitigation HYDRO-2: To minimize the potential for decreasing the channel capacity and obstructing high flows, the proposed trail undercrossing at Yerba Buena Road shall be designed in a way that does not reduce the channel capacity beneath the bridge. The trail undercrossing design shall be reviewed and approved by the Santa Clara Valley Water District.

Mitigation HYDRO-3: All new bridges for the trail shall be designed to span from creekbank to creekbank and, to the extent feasible, the abutments and supports shall be designed to avoid intrusion into the stream channel. All bridge designs shall be reviewed and approved by the Santa Clara Valley Water District.

Mitigation HYDRO-4: The City of San Jose and Santa Clara Valley Water District shall monitor the trail during storm events and close the trail where flooding is detected or anticipated. Signs shall be used to control access, and shall be installed at locations where potential users can divert to alternative routes, if available. After a flood event, the trail shall remain closed as necessary, until flood debris and silt are removed and any damage to the trail is repaired.

VIII. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

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

X. NOISE – Mitigation NOISE-1: To reduce potential construction noise disturbance the following measures shall be incorporated into the project construction contracts:

- Construction activities shall be limited to non-holiday weekday (Monday through Friday) periods between 7:00 AM and 7:00 PM.
- The delivery of materials and equipment to the construction site shall be limited to weekday, non-holiday hours between 8:00 AM and 6:00 PM.
- No contractor staging areas shall be located adjacent to residential development.
- All construction equipment powered by internal combustion engines shall be properly muffled and maintained.
- Unnecessary idling of internal combustion engines shall be prohibited. Equipment shall be turned off when not in use.

- Stationary noise-generating equipment such as air compressors shall be located as far as possible from nearby residences or other noise sensitive land uses.
- The contractor shall be required to notify residents within 300 feet of bridge construction sites, or other operations that will require a prolonged presence, of the construction schedule and shall supply residents with a phone number to communicate problems and expedite their resolution.

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

PUBLIC SERVICES – With implementation of the proposed Mitigation Measure PS-1, the project will have less than significant impacts on public services.

Mitigation Measure PS-1: Detailed design plans for all trail segments, bridges, the undercrossing, access points, etc., shall be submitted to the San Jose Police Department Crime Prevention Unit for review and comment. The Police Department's suggestions shall be implemented to the greatest extent feasible.

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

XIII. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

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

MANDATORY FINDINGS OF SIGNIFICANCE –

The proposed Trail project has the potential to result in adverse environmental effects related to biology, and cultural resources, although mitigation is proposed that would reduce those impacts to a less-than-significant level. Even before mitigation, neither the biological or cultural resource impacts would be so significant as to have the potential to cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. There is a small possibility that implementation of the project could harm individual examples of specific rare or endangered plant or animal species, however, mitigation is proposed to ensure that the project does not result in a take of these species.

With application of the identified mitigation measures, the potentially significant environmental impacts would be reduced to a less than significant level and an Environmental Impact Report will not be required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on January 18, 2005 any person may:

(1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or

(2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised

during the public review period. All written comments will be included as part of the Final MND; or

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

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

Circulated on: 12/20/04 _____ _____

Deputy

Adopted on: _____ _____

Deputy

MND/JAC 11/16/04